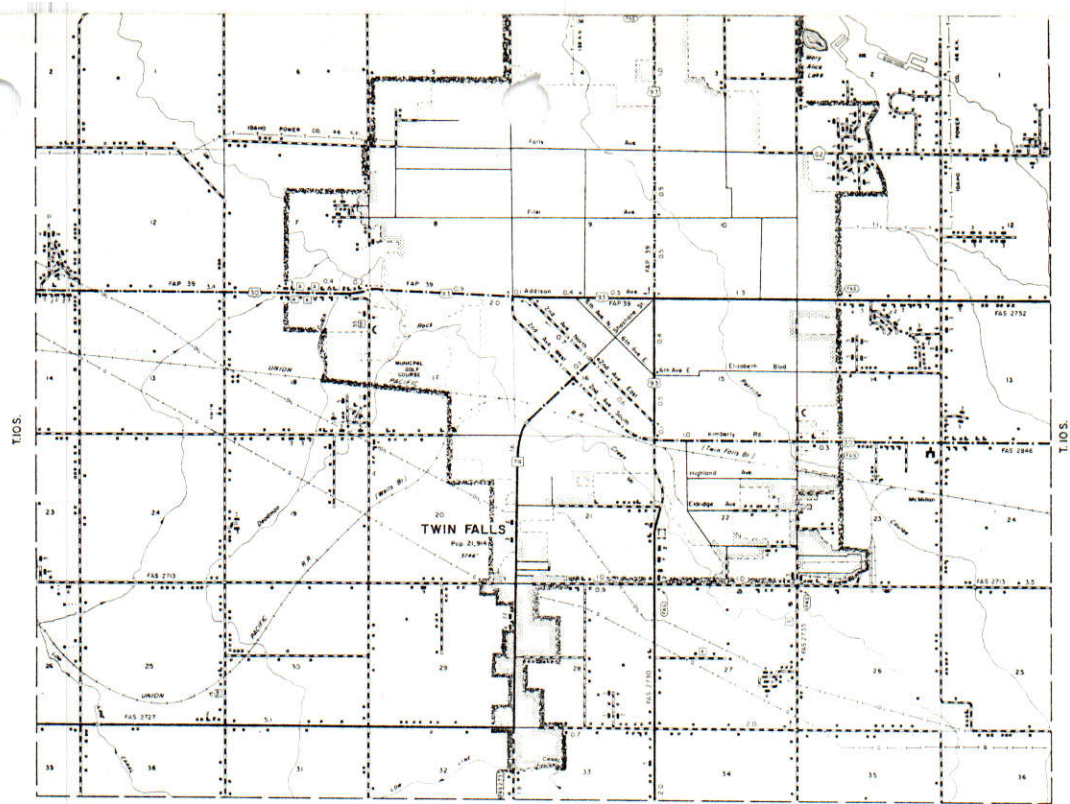




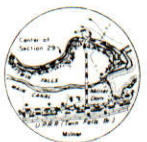
R.16E.

R.17E.

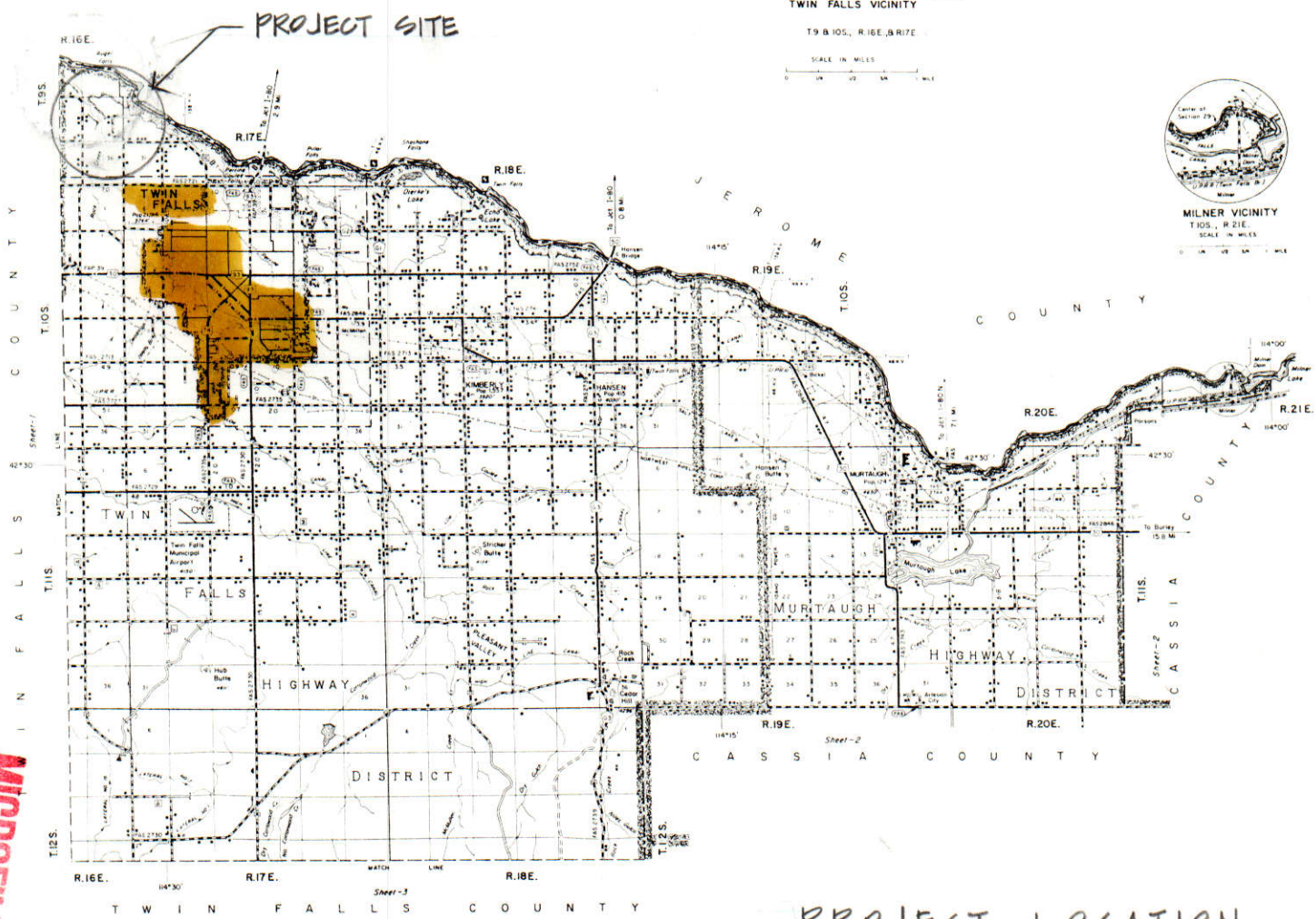
TWIN FALLS VICINITY

T9 & T10S, R.16E. & R.17E.

SCALE IN MILES
0 1/4 1/2 3/4 1 MILE



MILNER VICINITY
T10S, R.21E.
SCALE IN MILES
0 1/4 1/2 3/4 1 MILE



R.16E. R.17E. R.18E.

TWIN FALLS COUNTY

GENERAL HIGHWAY MAP

TWIN FALLS COUNTY
IDAHO

SCALE
0 1 2 3 4 5 MILES
0 1 2 3 4 5 KILOMETERS
FIELD DATA COLLECTED JULY, 1976

REVISIONS	
STATE HIGHWAY SYSTEM	
FEDERAL-AID SYSTEM	
LOCAL ROADS SYSTEM	Dec 31, 1977
CITY and/or URBAN BOUNDARY	
OTHER	

POLYCONIC PROJECTION

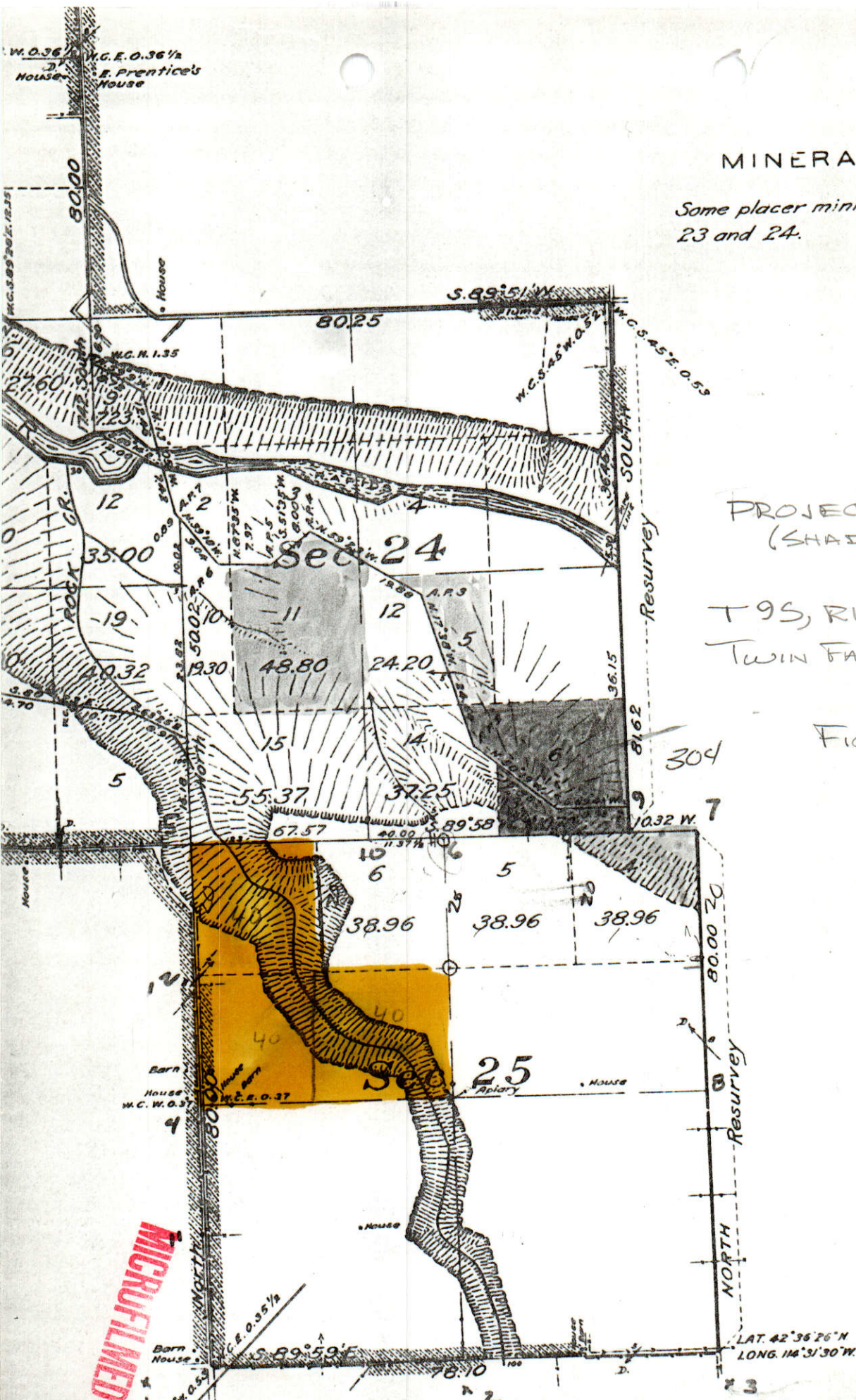


42
TWIN FALLS COUNTY

PROJECT LOCATION

FIGURE 1

MICROFILMED



MINERAL INDICATIONS

Some placer mining has been done in sec. 23 and 24.

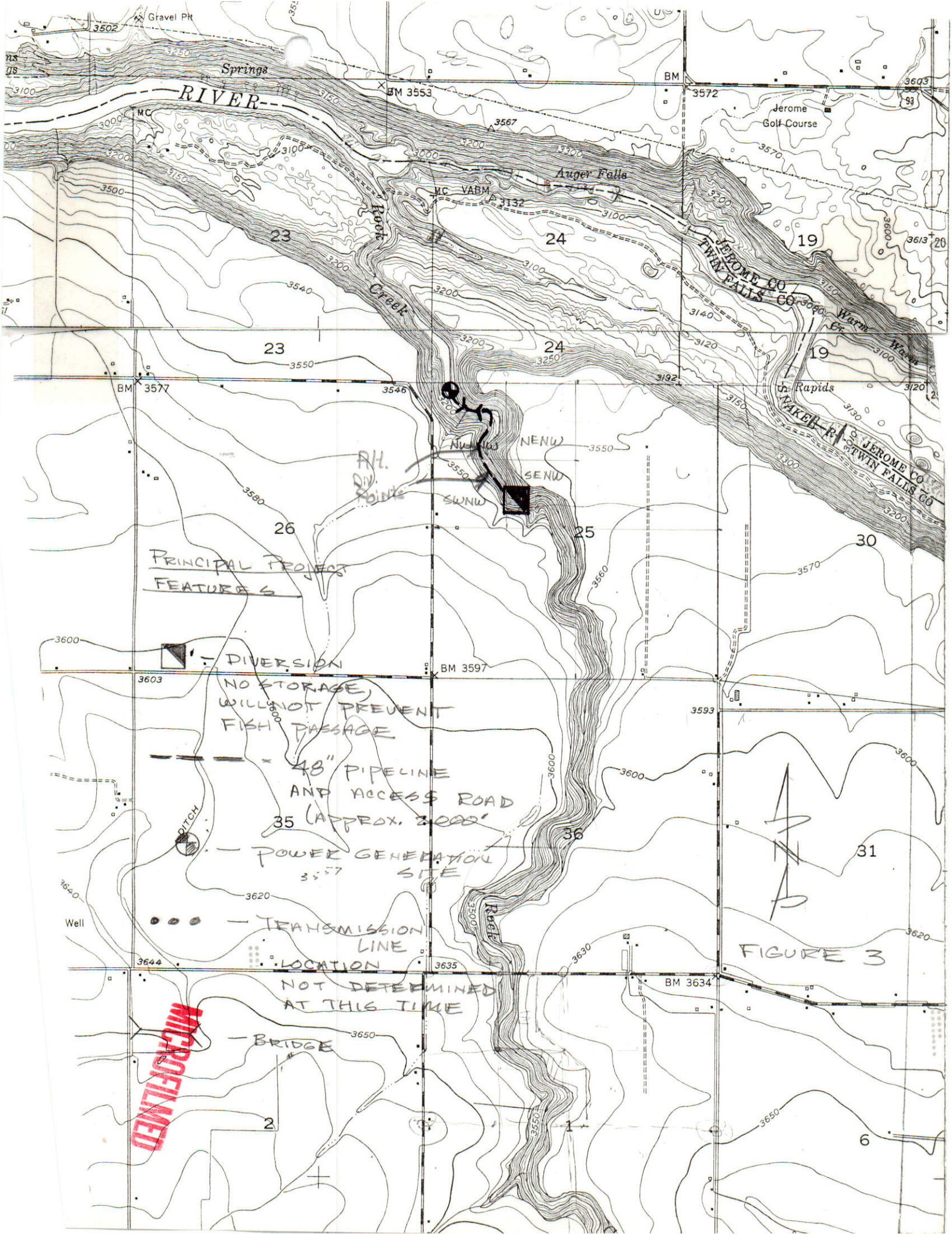
PROJECT LANDS
(SHADED)

T 9 S, R 16 E, BM
TWIN FALLS, COUNTY IDA.

FIGURE 2

The above map of Dependent Resurvey of Sections 14, 15, 22, 23, 24, and 25 in Township No. 9 South, Range No. 16 East of the Boise Meridian, Idaho, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined.

and
pleted
7, 1916



MICROFILMED

FIGURE 3

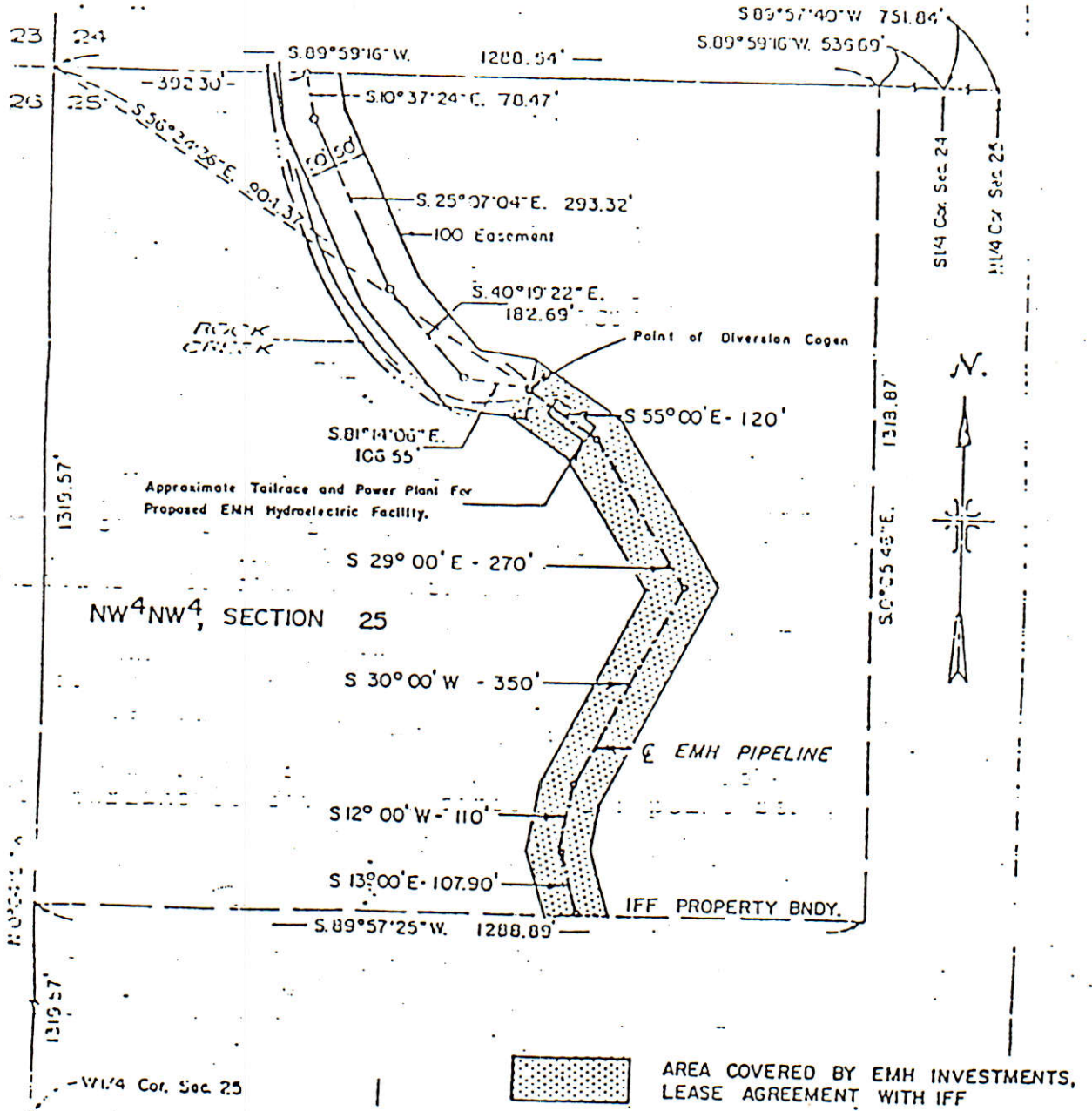


EXHIBIT 2

ROCK CREEK
HYDROELECTRIC PROJECT - EMH
PROJECT LOCATION



Edwards, Howard & Martens, Inc.
ENGINEERS / PLANNERS / SURVEYORS

AUG 05 1991

47-7771

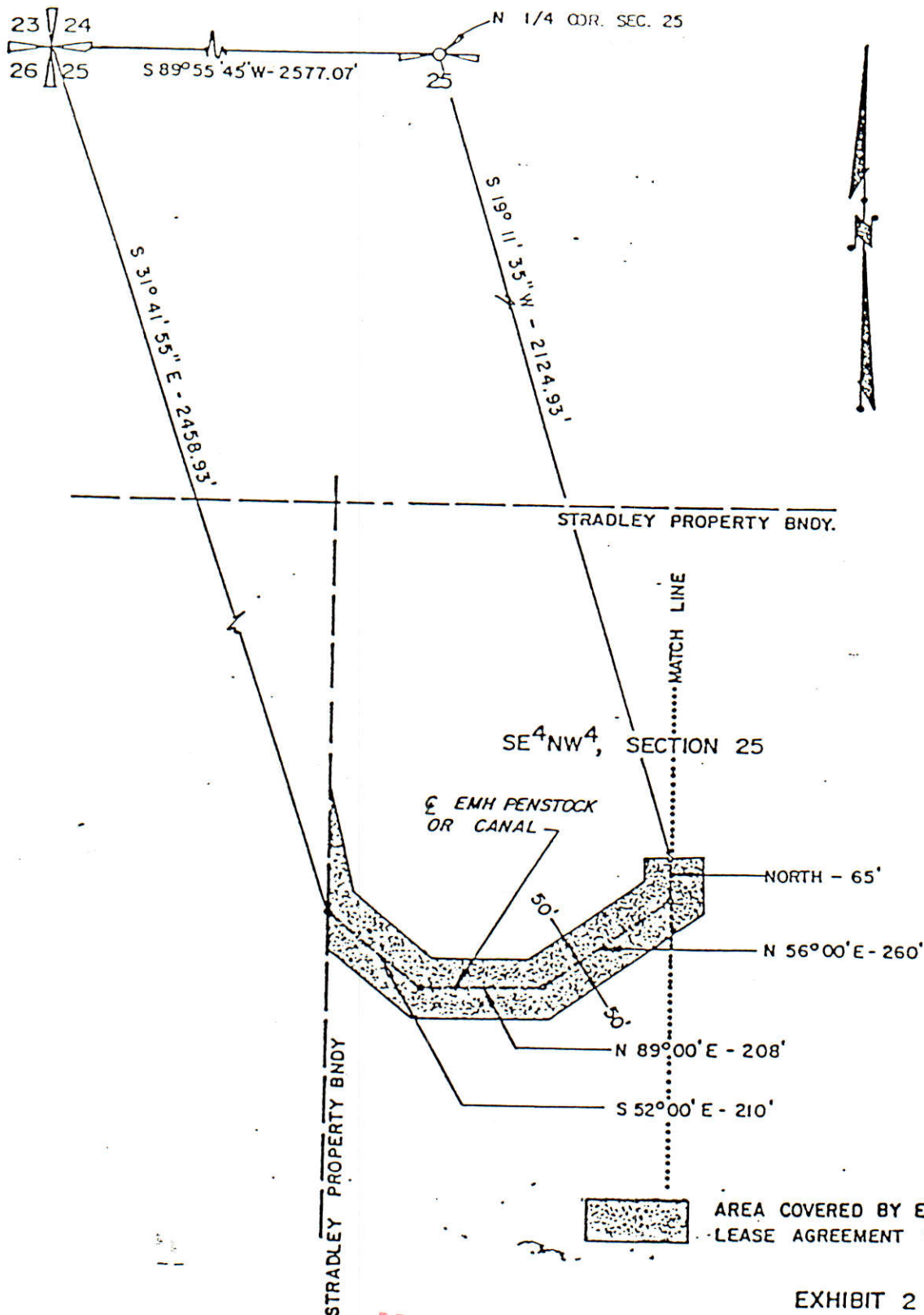


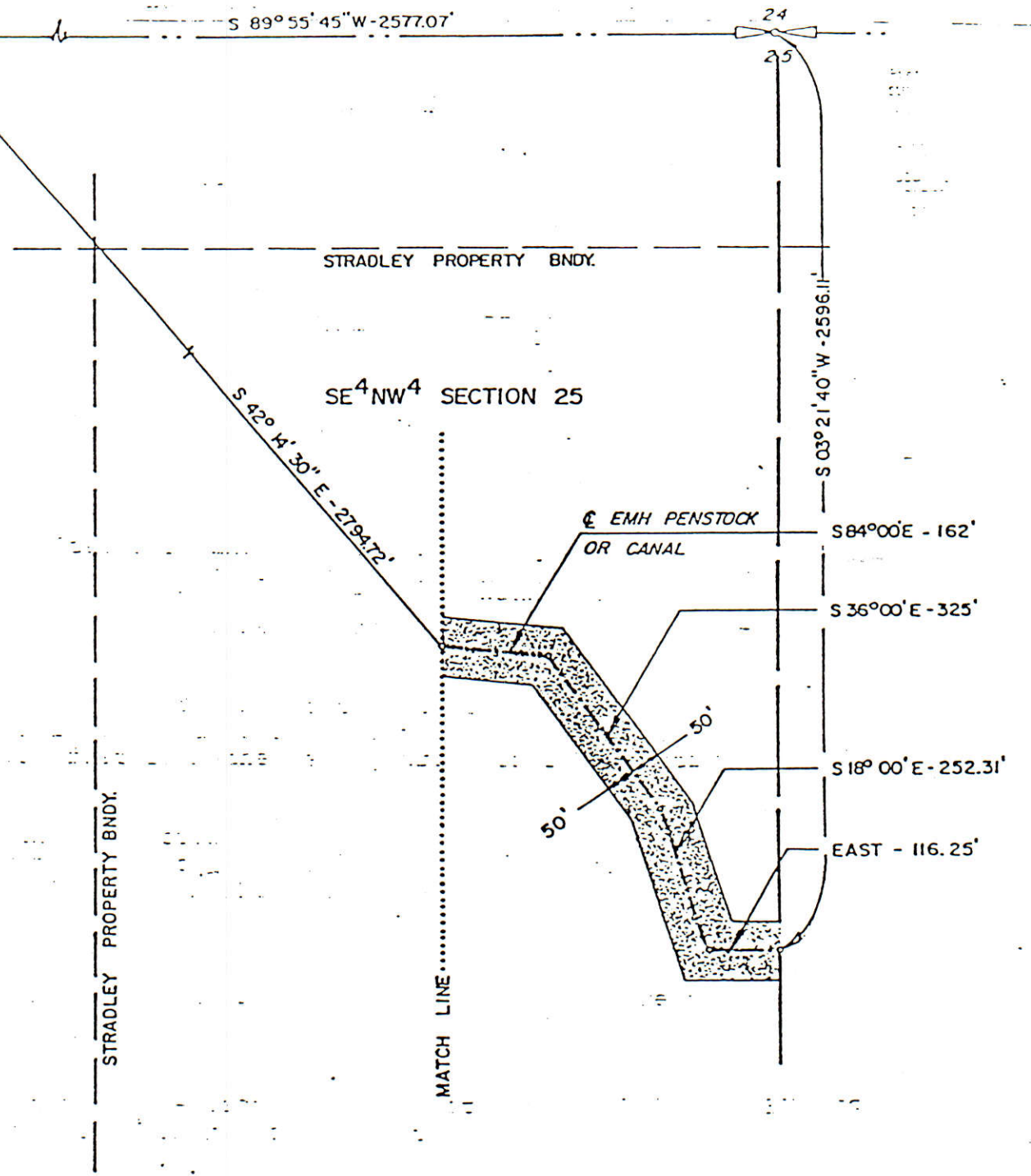
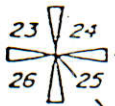
EXHIBIT 2

T. 9 S., R. 16 E., B.M. AUG 05 1991.
TWIN FALLS COUNTY, IDAHO

ROCK CREEK
HYDROELECTRIC PROJECT - EMH
PROJECT LOCATION



Edwards, Howard & Mortensen, Inc.
ENGINEERS / PLANNERS / SURVEYORS



AREA COVERED BY EMH INVESTMENTS
LEASE AGREEMENT WITH STRADLEY

MICROFILMED

AUG 05 1991

EXHIBIT 4

T. 9 S., R. 16 E., B.M.
TWIN FALLS COUNTY, IDAHO

ROCK - CREEK
HYDROELECTRIC PROJECT - EMH
PROJECT LOCATION



Edwards, Howard & Martens, Inc.
ENGINEERS / PLANNERS / SURVEYORS

T. 9 S., R. 16 E., B.M.

47-7771

TWIN FALLS COUNTY, IDAHO

N 1/4 COR. SEC. 25

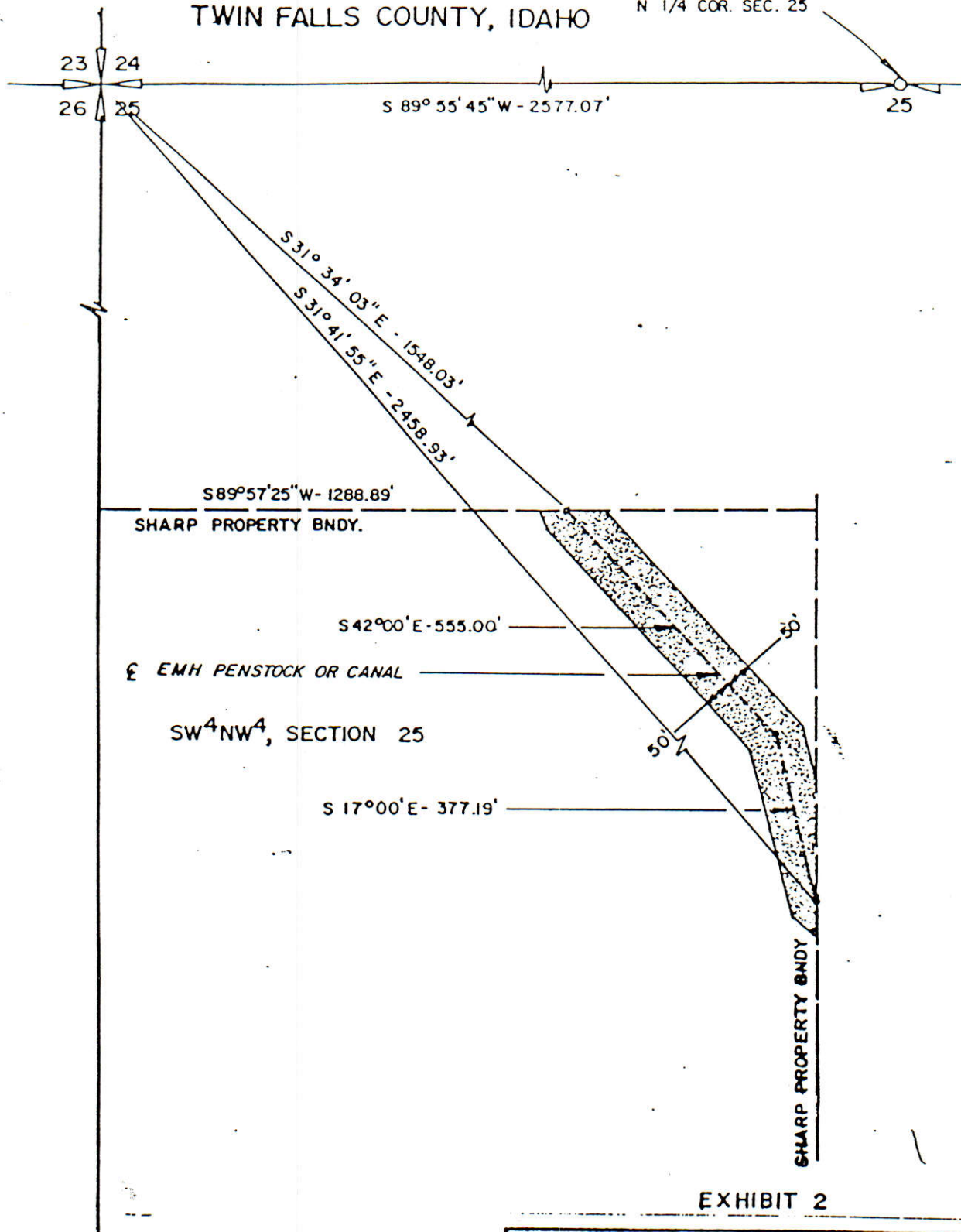


EXHIBIT 2

AREA COVERED BY EMH INVESTMENTS,
LEASE AGREEMENT WITH SHARP

MICROFILMED

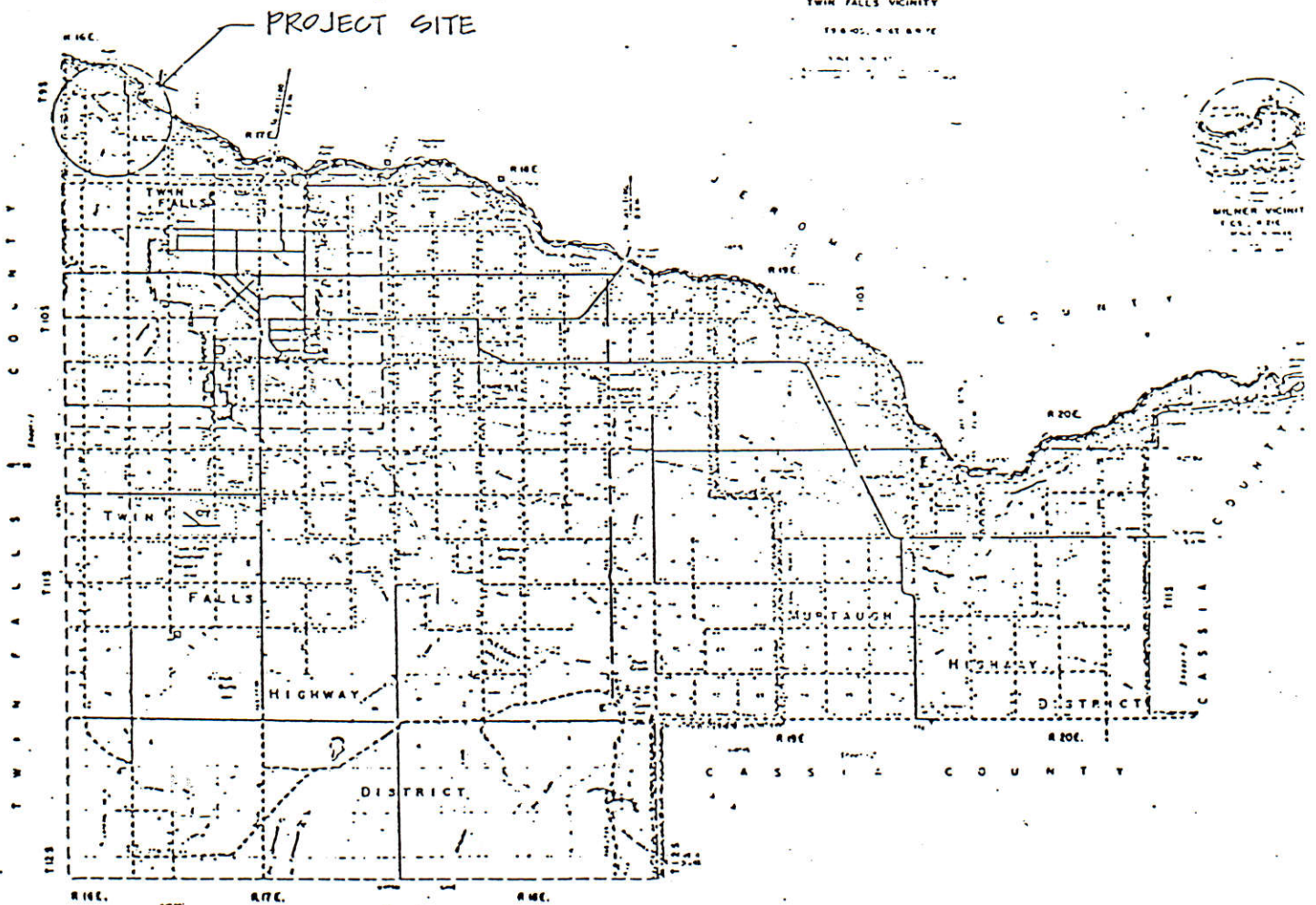
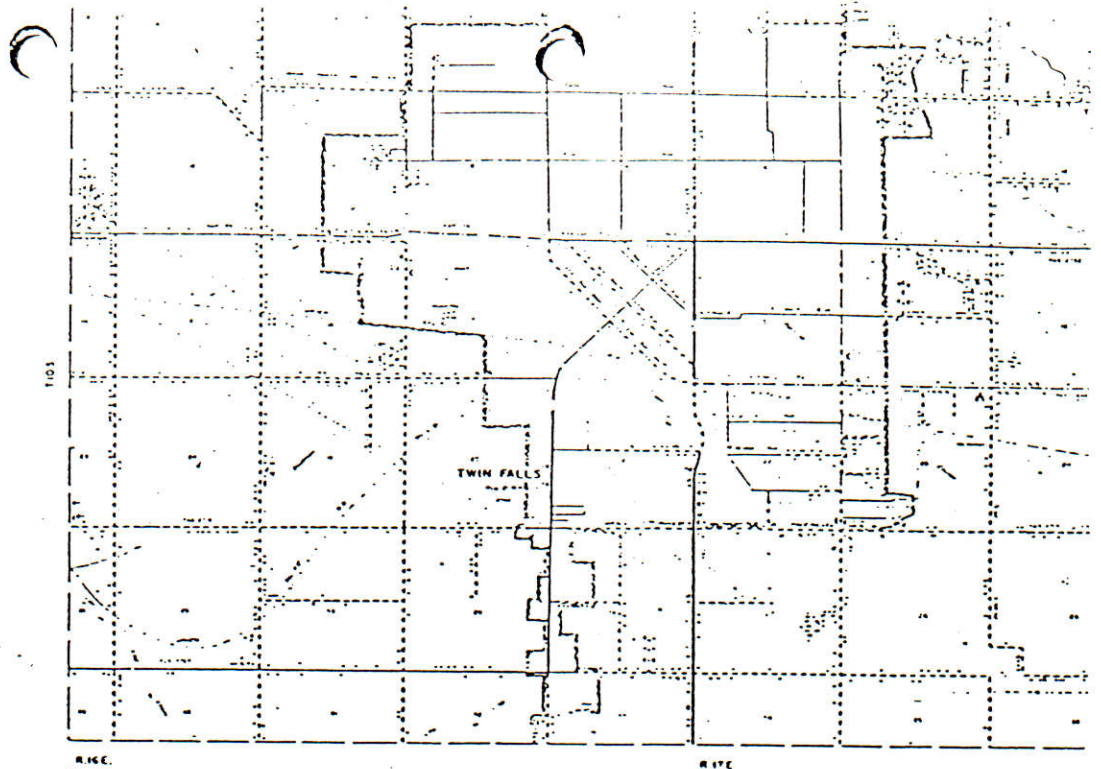
AUG 05 1991

ROCK CREEK
HYDROELECTRIC PROJECT - EMH
PROJECT LOCATION



Edwards, Howard & Mortons, Inc.
ENGINEERS / PLANNERS / SURVEYORS

A-3



GENERAL HIGHWAY MAP
TWIN FALLS COUNTY
IDAHO

FIELD DATA COLLECTED JULY, 1976

NO.	NAME	DATE
1	...	...
2	...	...
3	...	...
4	...	...
5	...	...
6	...	...
7	...	...
8	...	...
9	...	...
10	...	...

MICROFILMED

AUG 05 1991

TWIN FALLS COUNTY

PROJECT LOCATION

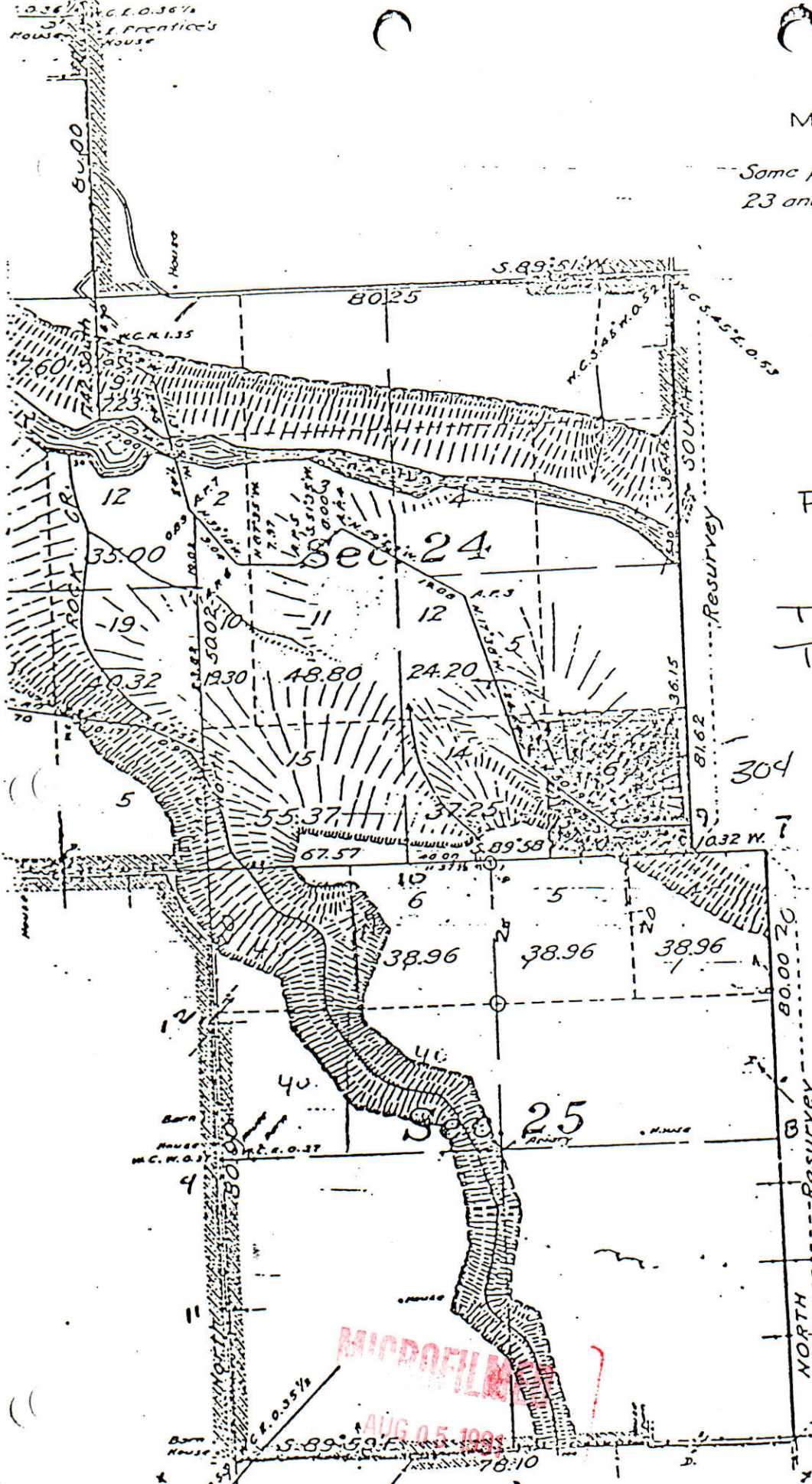
FIGURE 1

$\frac{0.36}{0.36} = 1.0$
Power House

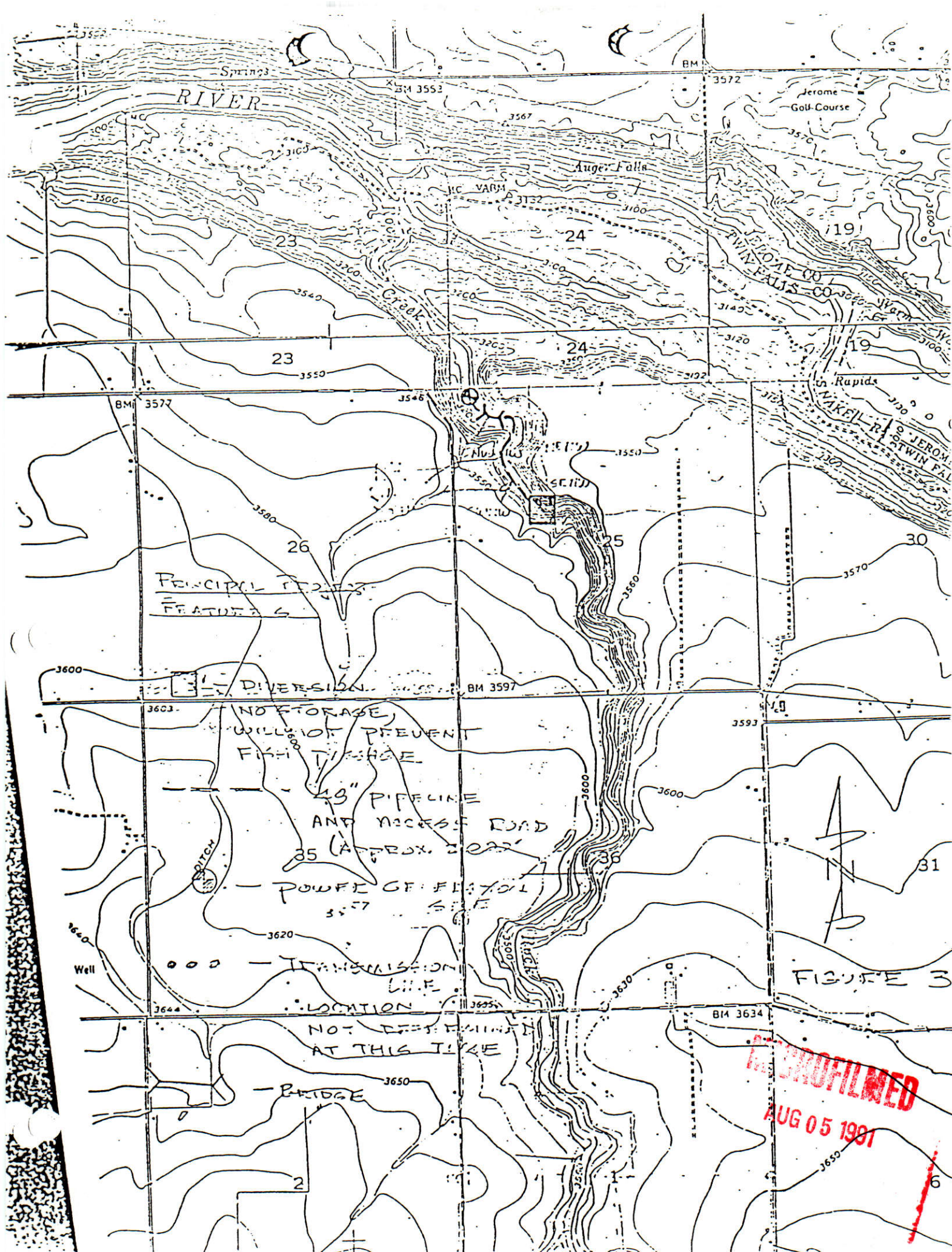
$\frac{0.36}{0.36} = 1.0$
Power House

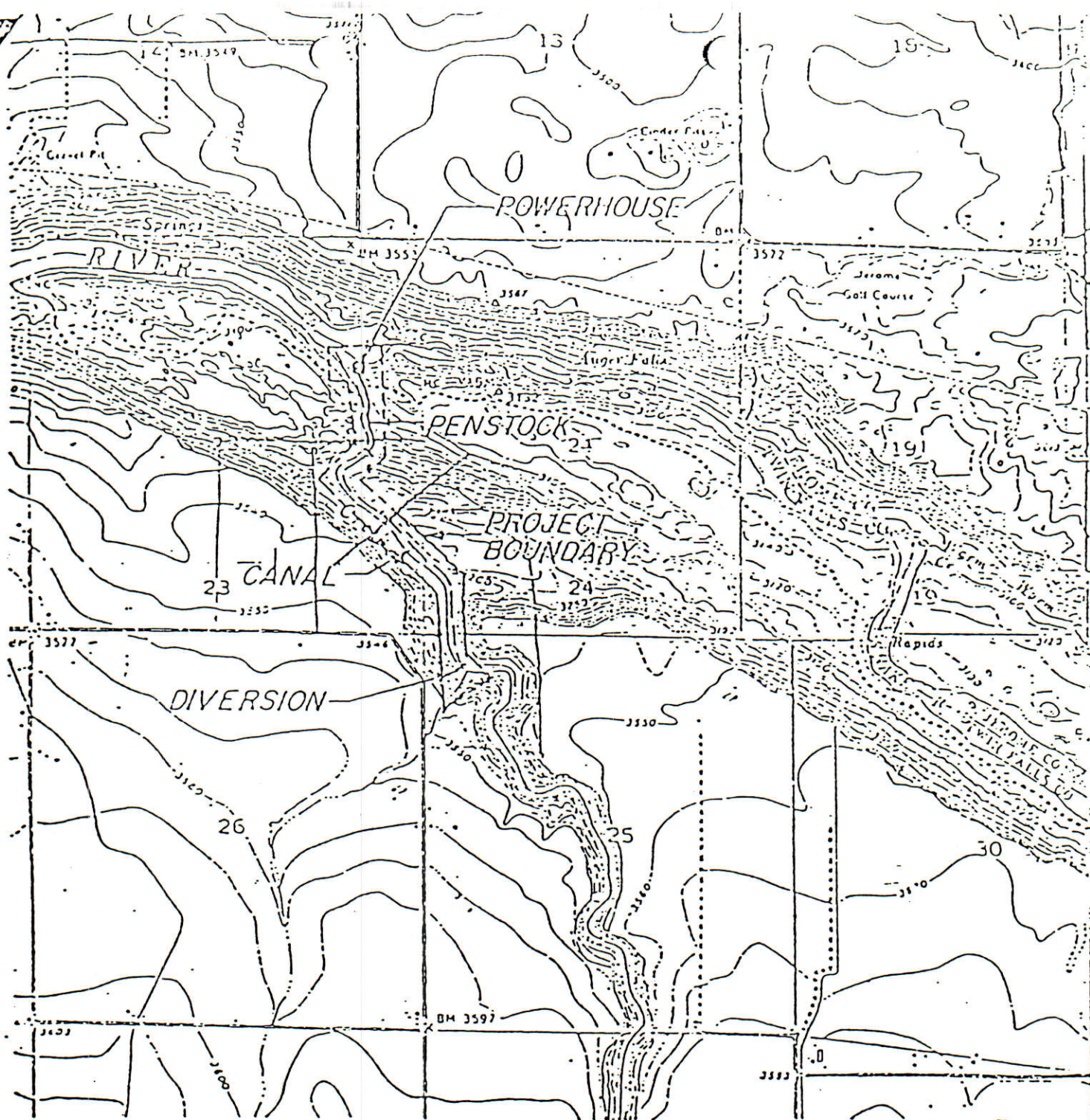
TGS, FIVE, FM
TWIN FALLS, (Bought by)

First = 2



The above map of Dependant Resurvey of Sections 14, 15, 22, 23, 24, No. 9 South, Range No. 16 East of the Boise Meridian, Idaho, is strictly correct and is on file in this office, which have been





ROCK CREEK HYDRO
GENERAL LOCATION

EXHIBIT A

MICROFILMED
AUG 05 1991

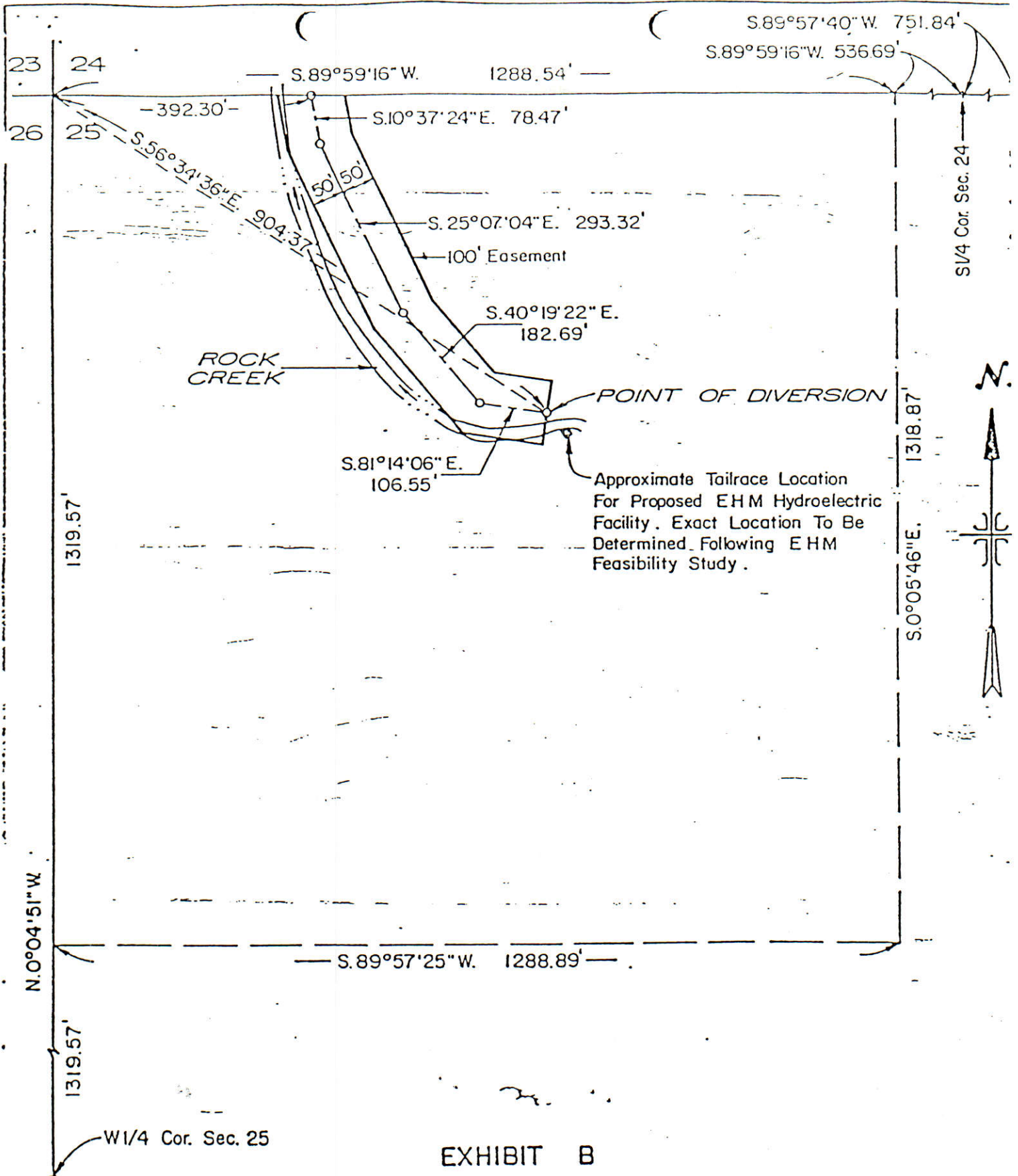
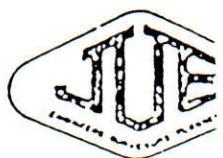


EXHIBIT B

ROCK CREEK HYDROELECTRIC PROJECT

AUG 05 1991





EWOT

Edwards, Howard & Marlens, Inc.
ENGINEERS / PLANNERS / ARCHITECTS

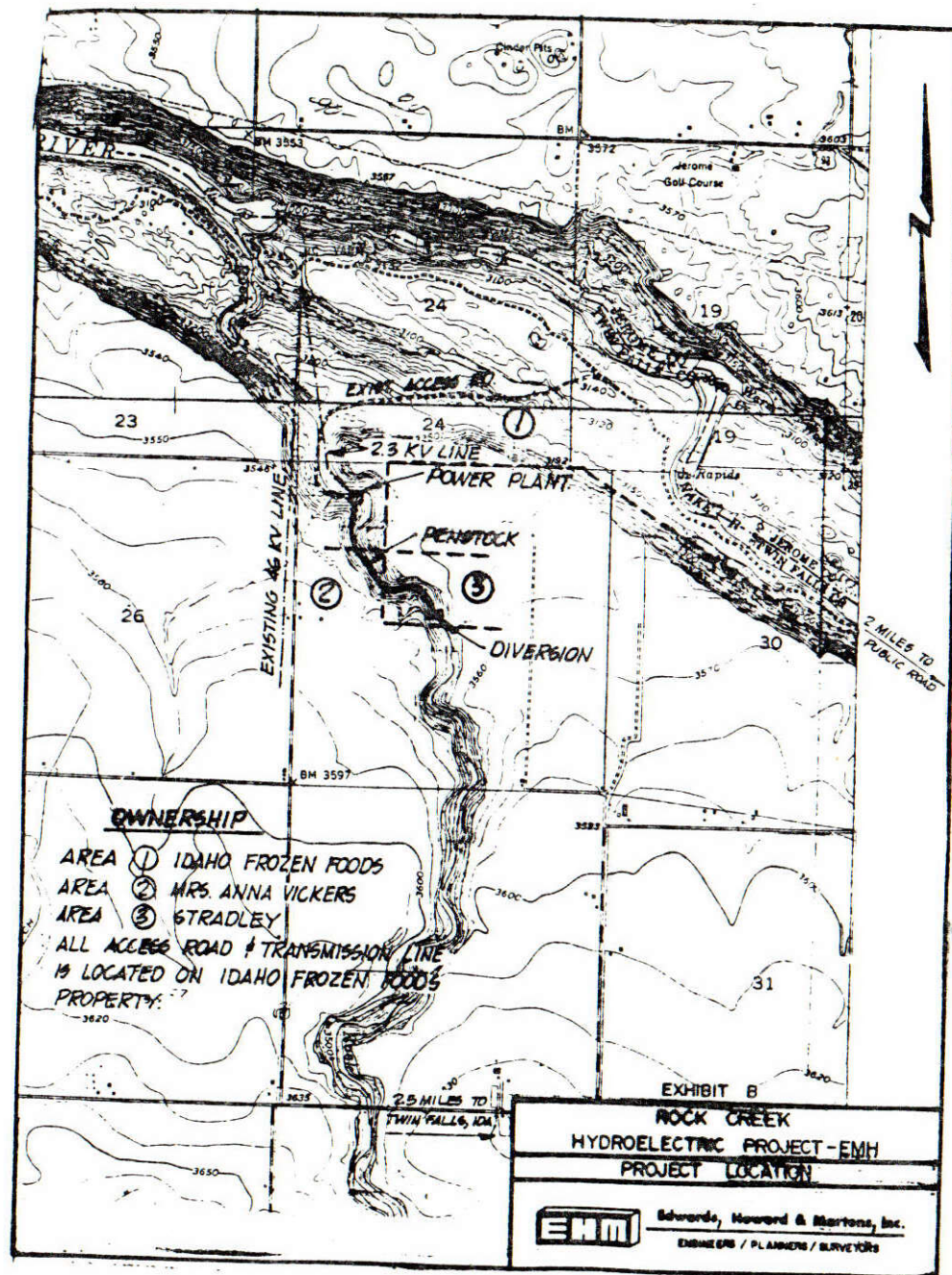
AUG 05 1991



D3a. Agency Comments - The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, 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

SEP 25 1987
MICROFILMED



Form P-1
(Revised October, 1975)

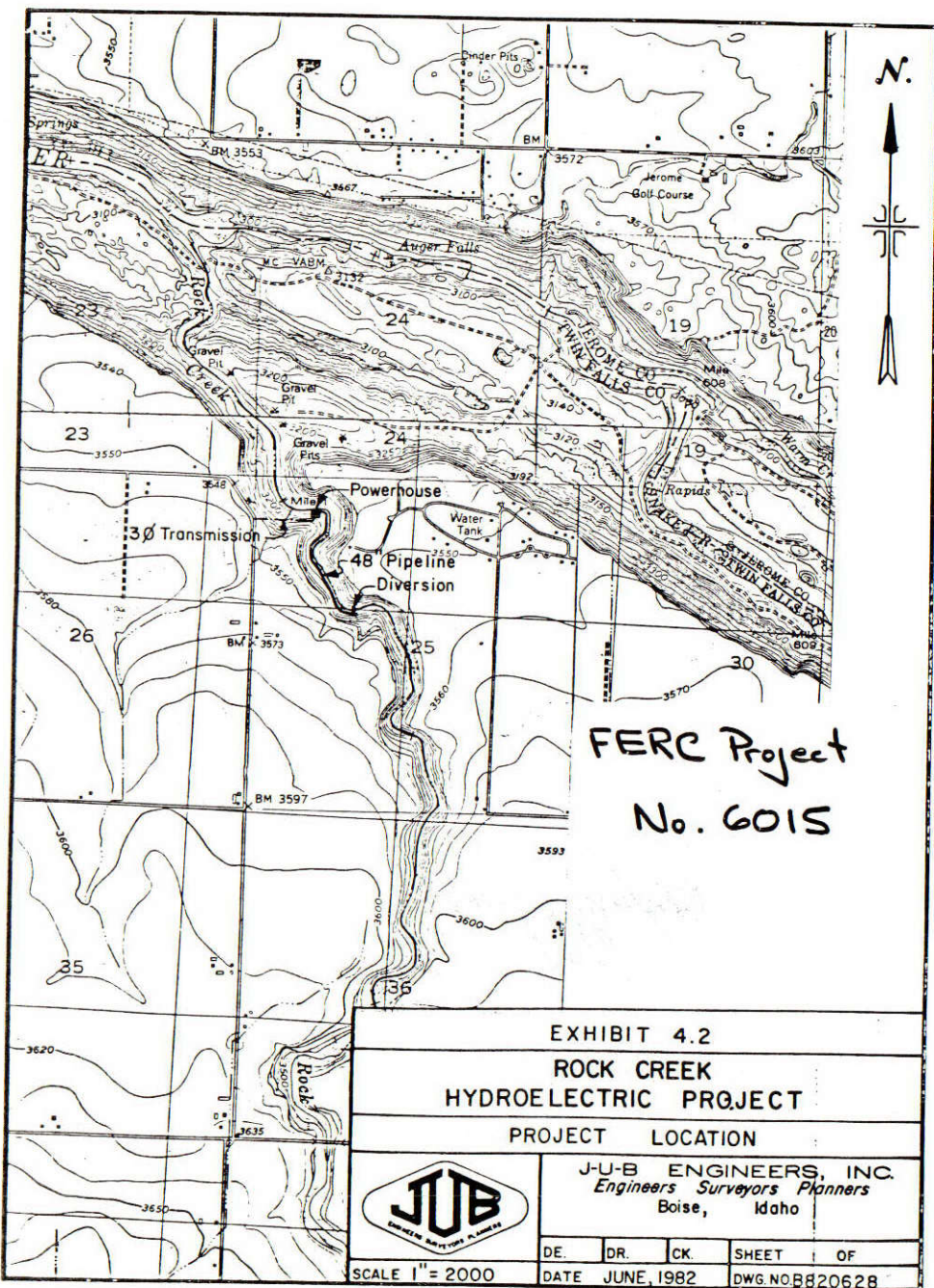
FEDERAL ENERGY REGULATORY COMMISSION

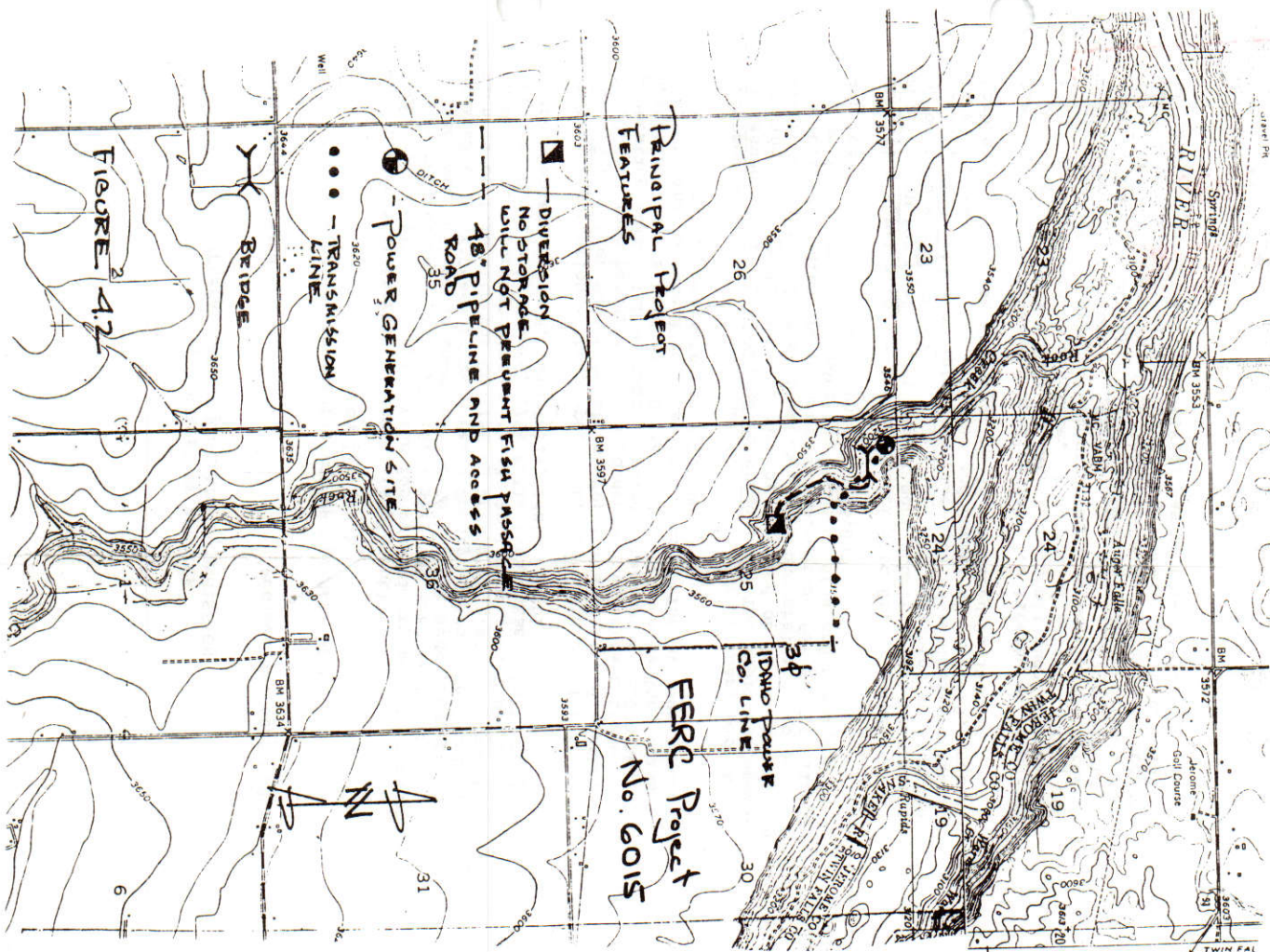
TERMS AND CONDITIONS OF
PRELIMINARY PERMIT

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

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

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





FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426
EQUAL OPPORTUNITY EMPLOYER

POSTAGE AND FEES PAID
FEDERAL ENERGY REGULATORY COMMISSION
FERC-361
FIRST CLASS MAIL



MICROFILMED

SEP 25 1987

Dept of Water Resources P-6015
State House
Boise, Idaho 83720

this order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this permit or of any other date specified in this order, except as specifically ordered by the Commission.

-5-

Ronald A. Corso
Director, Division of
Hydropower Licensing

Project No. 6015-000

- 2 -

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Charles D. Howard

Project No. 6015-000

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT
(March 16, 1982)

Take notice that Charles D. Howard (Applicant) filed on February 22, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. § 810(a) - § 815(c)) for Project No. 6015 to be known as the Rock Creek Hydro Project, located on Rock Creek in Twin Falls County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Charles D. Howard, 1139 Falls Avenue East, Falls Professional Center, Suite 9, Twin Falls, Idaho 83301.

Project Description - The proposed project would consist of: (1) a 5-foot high diversion structure; (2) a 48-inch diameter, 2,600-foot long penstock; (3) a powerplant to contain three generating units with a combined rated capacity of 12,000 kW, operating under a head of 100 feet; (4) a 0.75-mile long transmission line to extend to an existing line. The average annual energy output is estimated at 2,725,000 kWh.

Proposed Scope of Studies under Permit - A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which it would conduct engineering, environmental and economic feasibility studies and prepare an application for an FERC license. The estimated cost of conducting these studies and preparing an application for an FERC license is \$35,000.

Competing Applications - Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before MAY 23 1982, the competing application itself, or a notice of intent to file such an application [see: 18 C.F.R. § 4.30 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 Fed. Reg. 55249, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before MAY 23 1982, and should specify the type of application for licensing. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 C.F.R. § 4.30 et. seq. or § 4.101 et. seq. (1981), as appropriate].

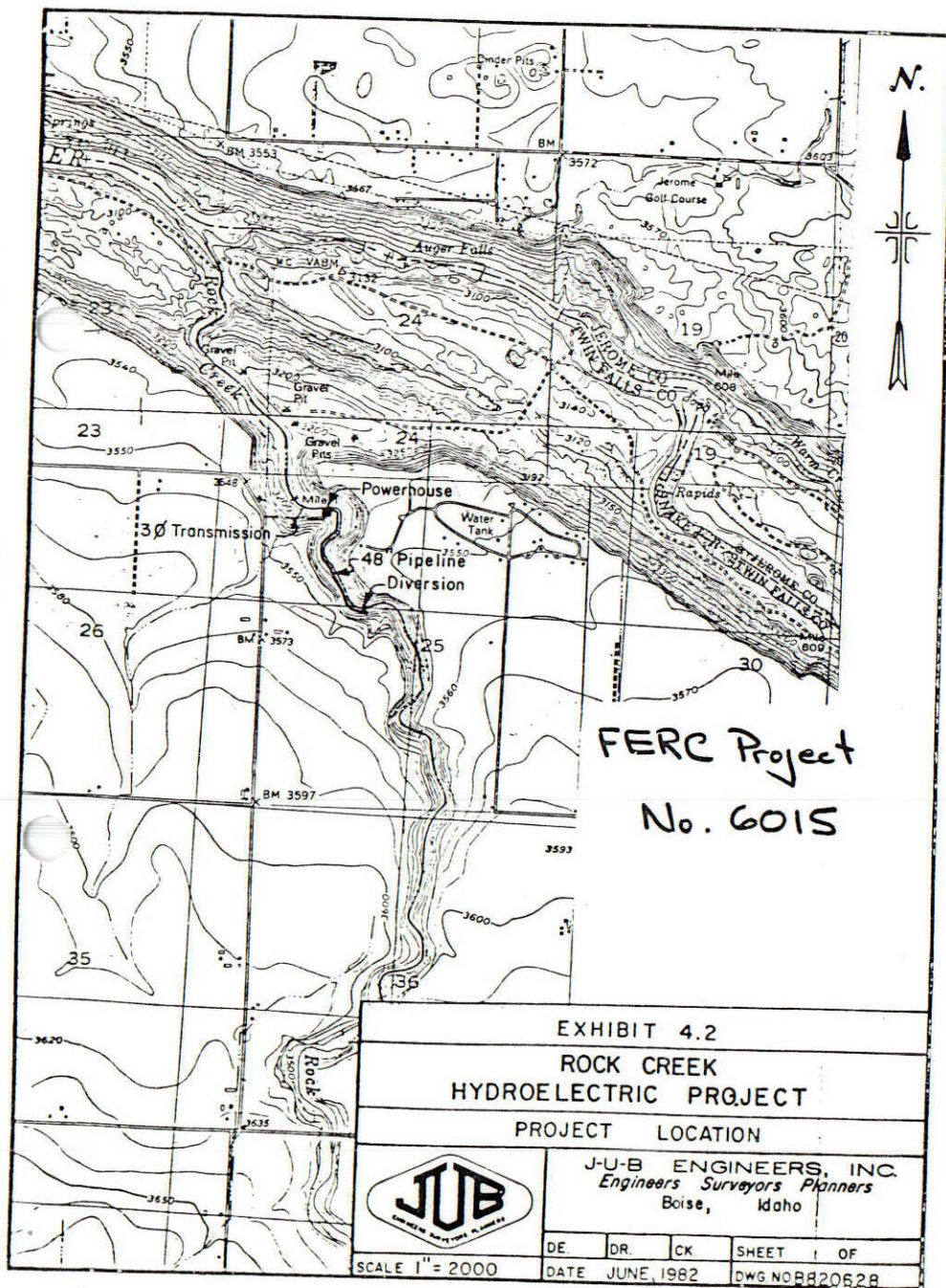
Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than JUL 23 1982.

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

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before MAY 23 1982.

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 "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and three copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 325 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 2-8 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary



Form P-1
 (Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF PRELIMINARY PERMIT

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

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

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

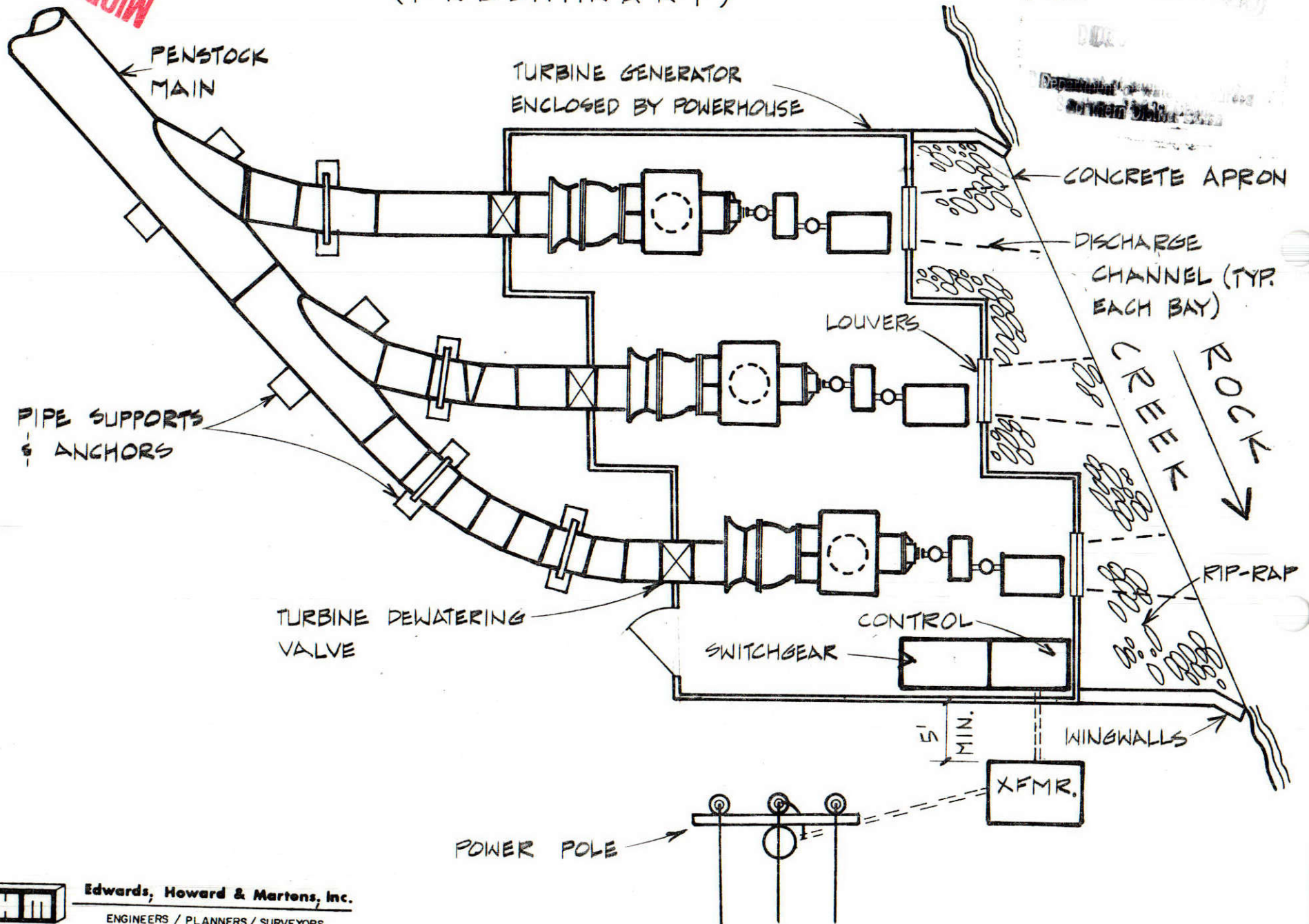
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ROCK CREEK HYDRO #2

(PRELIMINARY)

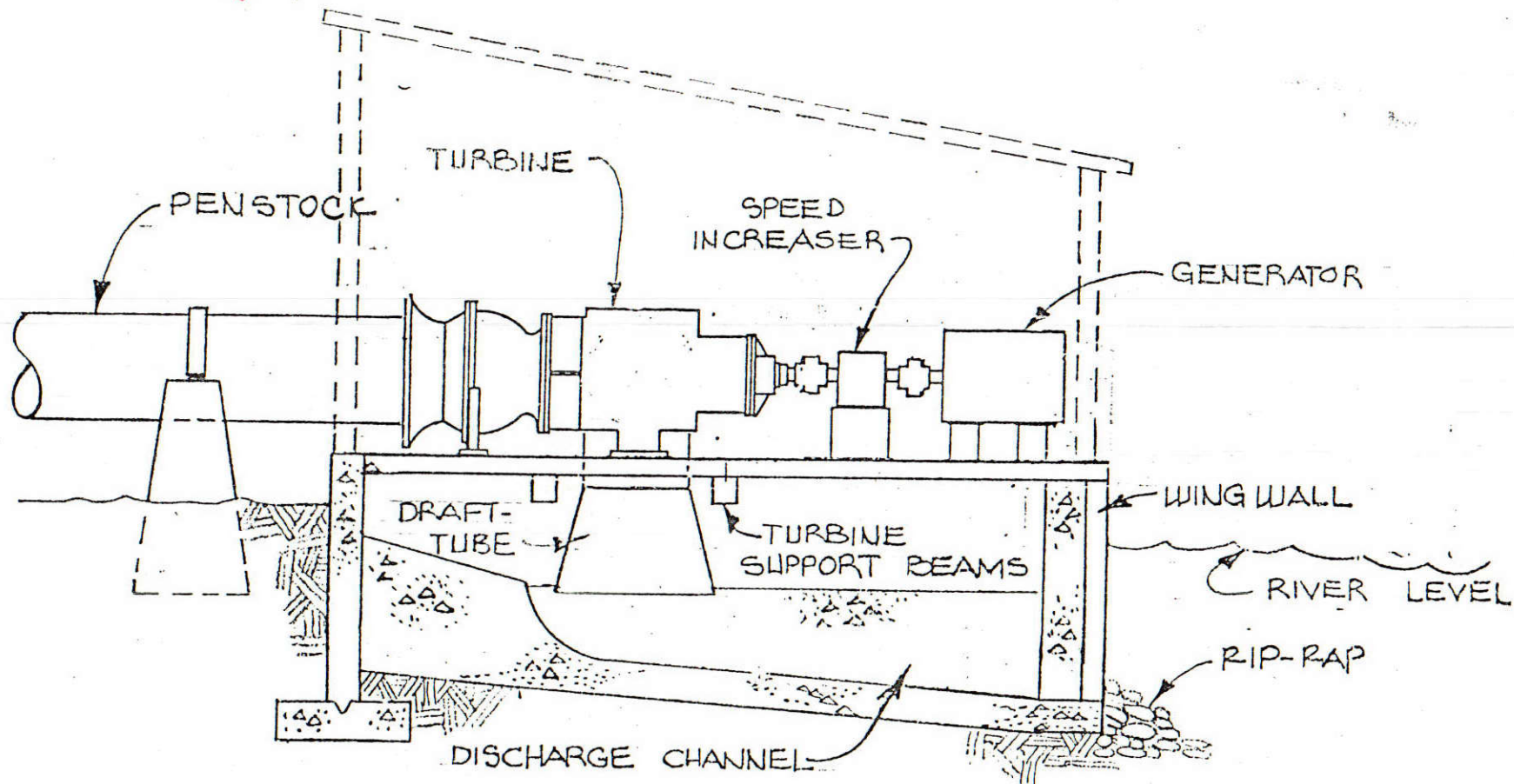
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Edwards, Howard & Martens, Inc.

ENGINEERS / PLANNERS / SURVEYORS

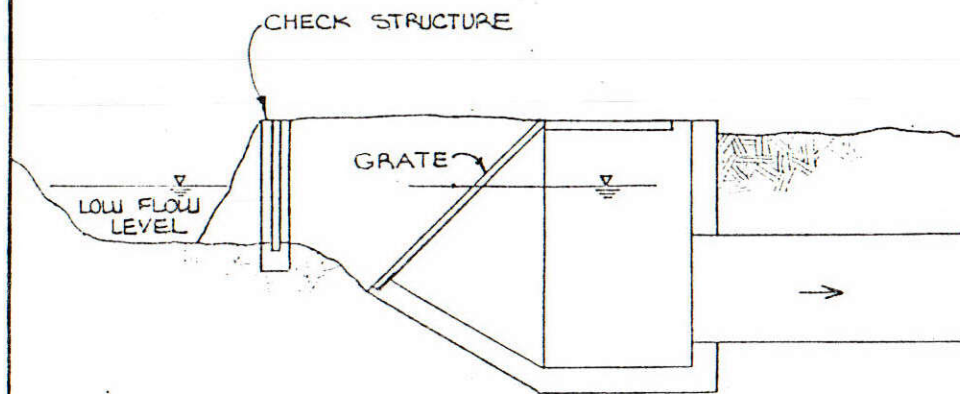
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TYP. TURBINE ELEVATION

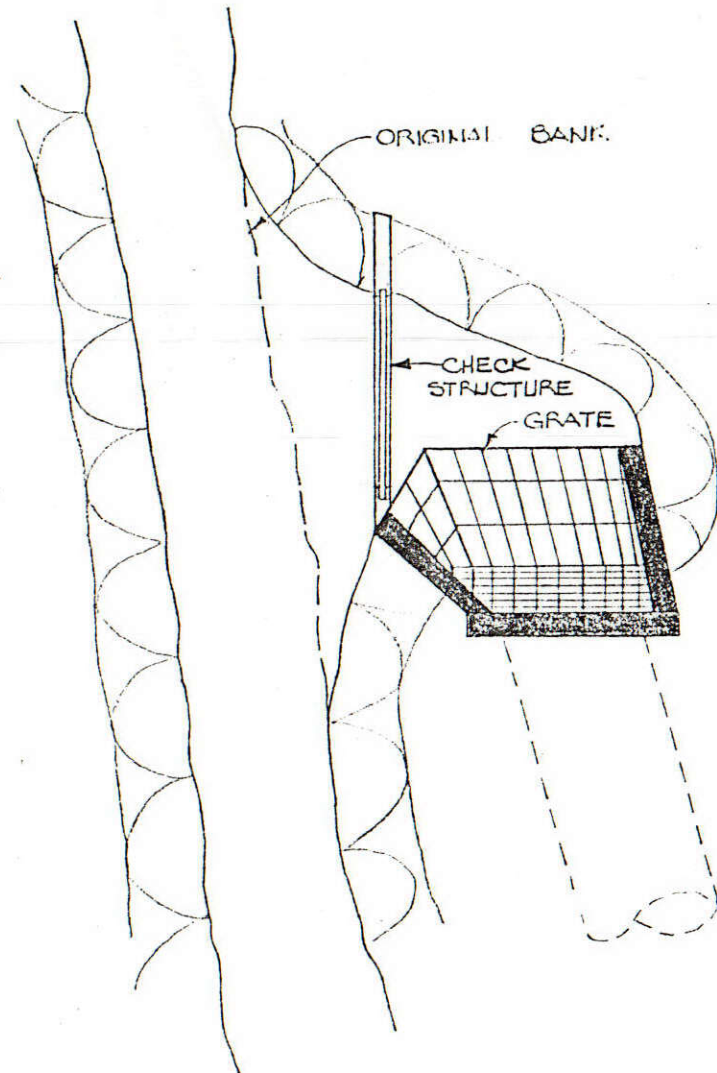
SKETCH C

MICROFILMED



ROCK CREEK HYDRO
DIVERSION STRUCTURE

SKETCH A



WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Permit	47-7771	Howard, Charles D.	202.0
Full Assignment	47-7771	Rock Creek Hydropower Inc.	202.0
Full Assignment	47-7771	Bonneville Pacific Corp.	202.0
Full Assignment	47-7771	BP Hydro Assoc.	202.0
		Stewart Title of Idaho - trustee	
		Idaho Power Co. - lienholder	
		The Fuji Bank Ltd. - lienholder	

NOT RECORDED

AUG 05 1991

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 47-7771 IN THE)
NAME OF BP HYDRO ASSOCIATES) ORDER OF REINSTATEMENT
_____)

WHEREAS, the Department issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted on or before September, 1, 1989; and,

WHEREAS, the Department has notified the permit holders by certified mail that proof was due and instructed the permit holders of the steps to be taken to submit the proof of beneficial use; and,

WHEREAS, the Department has notified the permit holders that the permit lapsed for failure of the permit holders to submit the proof of beneficial use; and,

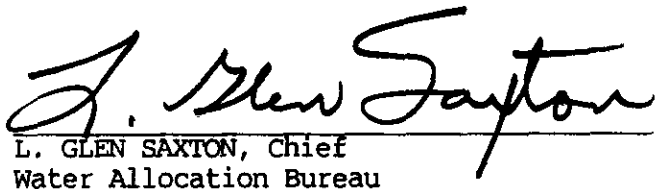
WHEREAS, Section 42-218a of the Idaho Code provides that a permit may be reinstated upon a showing of reasonable cause within sixty days of the date of the notice of lapsing; and,

WHEREAS, the permit holders have provided a reasonable showing why the permit should be reinstated by submitting proof of beneficial use on October 12, 1989;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 47-7771 be REINSTATED and the priority advanced to December 27, 1981.

Dated this 23rd day of October, 1989.

AUG 05 1991


L. GLEN SAXTON, Chief
Water Allocation Bureau

47-7771

44 FEB 162 091

RECEIVED

AUG 12 1988

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

Rock Creek Hydropower, Inc.
and Bonneville Pacific Corporation

Project No. 6015-021
Idaho

-2-

ORDER APPROVING WILDLIFE MITIGATION PLAN WITH MODIFICATION
(Issued August 3, 1988)

Rock Creek Hydropower, Inc. and Bonneville Pacific Corporation (licensees) filed on December 30, 1987, amended on February 12, 1988, and supplemented on March 8, 1988, a wildlife mitigation plan (plan) for the Rock Creek II Project, as required by article 408 of the license. The licensees propose a variety of measures to be implemented, during and after project construction. These measures will minimize adverse effects of project development on golden eagles and riparian wetlands, and compensate for losses of vegetation and wildlife habitat. Off-site lands will be acquired and managed to improve vegetative composition to the benefit of wildlife. Further, the licensees propose to monitor revegetation efforts during September 1988, May 1989, and in September of 1989, 1990, and 1992 to determine if revegetation goals, as stated in the plan, have been met. The licensees also propose contingency measures to replant and irrigate, as needed, based on the results of this monitoring.

The Idaho Department of Fish and Game, and U.S. Fish and Wildlife Service, by letters dated February 16 and February 24, 1988, respectively, have accepted the plan.

To provide the Commission the opportunity to monitor the effectiveness of the revegetative efforts, the licensees must file reports on the results of the aforementioned monitoring. The Commission reserves the right to require modifications to the plan based on these results.

Implementation of the plan with the modifications described herein would provide adequate mitigation for the impacts on wildlife and botanical resources resulting from project development. The plan also provides a means to measure the success of mitigative measures and contingency mitigative plans.

The Director orders:

(A) The wildlife mitigation plan filed on December 30, 1987, amended on February 20, 1988, and supplemented on March 8, 1988, and as modified by paragraph B, is approved.

(B) The licensees shall file a report providing the results of the wildlife mitigative monitoring program and a description of any modifications to the mitigation plan, approved by this order, within 3 months of the completion of each monitoring event. The reports must contain the comments of the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game on the results of each monitoring event. The Commission reserves the right to require modifications to the mitigation plan based on the results of monitoring. Reports are to be filed on January 1, 1989, September 1, 1989, and on January 1 of 1990, 1991, 1992, and 1993.

(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.

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

APPROVED
AUG 05 1991

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE: \$300



POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FENC-381

NOV 20 1981
P -0006015021 101465
STATE OF IDAHO DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, ID 83720



47-7771

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P-6015-015

Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission
(November 9, 1987)

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: Transfer of License
- b. Project No.: 6015-015
- c. Date Filed: September 17, 1987
- d. Applicant: Charles D. Howard
- e. Name of Project: Rock Creek No. 2
- f. Location: On Rock Creek in Twin Falls County, Idaho
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C §791(a)-825(r)
- h. Applicant Contact: McNeill Watkins II
Bishop, Cook, Purcell & Reynolds
1200 Seventeenth Street N.W.
Washington, DC 20036
(202) 857-9885
- i. FERC Contact: James Hunter, (202) 376-9814
- j. Comment Date: DEC 21 1987
- k. Description of Project: On August 29, 1986, a major license was issued to Charles D. Howard (licensee) for the construction, operation, and maintenance of the Rock Creek No. 2 Project No. 6015. It is proposed to transfer the license to Rock Creek Hydropower, Inc. and Bonneville Pacific Corporation (transferees). The purpose of this proposed license transfer is to facilitate the financing, construction, and operation of the licensed project.

The licensee certifies that he has fully complied with the terms and conditions of the license. The transferees accept all the terms and conditions of the license and agree to be bound thereby to the same extent as though they were the original licensees.

- 1. This notice also consists of the following standard paragraphs:
B and C.

DC-A-21

MAILED
AUG 05 1991

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

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

Lois D. Cashell
Acting Secretary

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AUG 05 1991

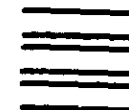
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE \$300



POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FERC-351



RECEIVED
FEDERAL ENERGY
REGULATORY COMMISSION
AUG 05 1991

LOIS D. CASHELL

**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 _____,
(name) (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:

I, Robert H. DeBolt of Boise,
(name) (city).

County of Ada, State of Idaho, being duly sworn, depose
and say: That I am the designated registered agent of the Stewart Title of Idaho, Inc.

_____ : that as such I am in charge of the registered office
(name of corporation)

of the said corporation as required by Section 30-1-12, Idaho Code, at Boise,
(city)

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
(name of corporation)
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.

Robert H. DeBolt
Applicant Robert H. DeBolt

State of Idaho _____)
County of Ada) ss.

On this 29th day of September, 19 88, personally appeared before me
the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Joan M. Hart
Notary Public residing at
Boise, Idaho

My commission expires:

10-15-93

NOTARIZED
AUG 05 1991

State of Idaho
Department of Water Resources
ASSIGNMENT OF PERMIT

I, CHARLES D. HOWARD, hereby assign to BONNEVILLE PACIFIC
PRESIDENT - KCHPT
CORPORATION 257 East 200 South Suite 800
Address Salt Lake City, Utah 84111

CHECK ONE

- ☒ All my right, title, and interest in and to Permit No. 47-7771
to appropriate the public waters of the State of Idaho.
- ☐ The following described portion of my right, title, and interest in and to Permit
No. _____ to appropriate the public waters of the State of Idaho.

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

Made this 24 day of SEPTEMBER, 19 87.

Charles D. Howard
Permit Holder
PRESIDENT
ROCK CREEK HYDROPOWER INC.

Carl V. Edwards
SECRETARY
KCHPT

State of Idaho)
County of Idaho) ss.

On this 24 day of September, 19 87, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same. Charles D. Howard Carl V. Edwards

seal

Edith L. Anderson
Notary Public residing at
Grangeville, Idaho

RECORDED & INDEXED

My commission expires:
Aug 1988

MAR 10 1988

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

A. Establishment of Residency:

I, Kaye O'Riordan, Esq., as the registered agent in Idaho for United States Corporation Company, of Boise, County of Ada, State of Idaho, being duly sworn, deposes and says: That United States Corporation Company is the designated registered agent of Bonneville Pacific Corporation in Idaho, and that the business office of United States Corporation Company in Boise, Idaho, constitutes the registered office of Bonneville Pacific Corporation in Idaho, as required by Section 30-1-12, Idaho Code, and that Bonneville Pacific Corporation is a corporation qualified to do business in the State of Idaho under the laws of the State of Idaho.

B. Ownership of Facilities:

The hydropower facility to be developed pursuant to the attached Assignment of Permit 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.

MICROFILMED

MAR 10 1988

Approved and Affirmed.

Bonneville Pacific Corporation

United States Corporation
Company

By *David P. Mirsch*
David P. Mirsch
Secretary and General Counsel

By *Kaye O'Riordan*
Kaye O'Riordan, Esq.
Authorized Agent

State of Idaho)
 : ss.
County of Ada)

On this 7 day of October, 1987, personally appeared before me the signers of the above instrument, who duly acknowledged to me that they executed the same.

Jennifer K. Lawrence
NOTARY PUBLIC
Residing at: *Davie*

My Commission Expires:

8/1/92

seal

RECORDED

MAR 10 1988

AFFIDAVIT IN SUPPORT OF
ASSIGNMENT OF WATER RIGHTS

I, Charles D. Howard, President of Rock Creek Hydropower, Inc., being duly sworn, deposes and says, that Rock Creek Hydropower, Inc., the assignor of Permit No. 47-7771, to which this affidavit relates, owns in fee simple or controls by long-term lease or perpetual easement all of the real property underlying the proposed improvements to be constructed by Bonneville Pacific Corporation in connection with the development, construction, operation and maintenance of the Rock Creek No. 2 Hydroelectric Project. Rock Creek Hydropower, Inc. has leased all of said real property to Bonneville Pacific Corporation for a term of thirty-five (35) years pursuant to that certain Agreement dated December 18, 1986, as amended and assigned. Copies of said Agreement plus all amendments thereto and assignments thereof, are available to the Department of Water Resources upon request.

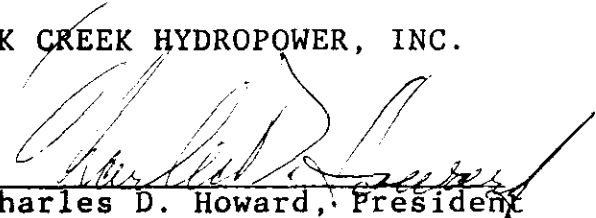
To the best of my knowledge, after due inquiry, all lands and permissions from land owners necessary for the construction, operation and maintenance of the Rock Creek NO. 2 Hydroelectric Project have been obtained and all agreements with respect thereto are in full force and effect.

MICROFILMED

MAR 10 1988

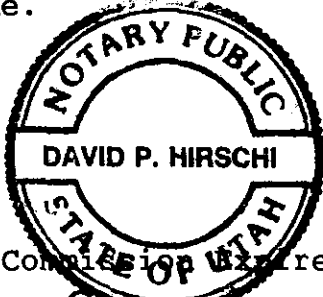
ROCK CREEK HYDROPOWER, INC.

BY


Charles D. Howard, President

STATE OF ~~IDAHO~~ UTAH)
 : ss.
COUNTY OF ~~TWIN FALLS~~
 SALT LAKE

On this 7th day of October, 1987, personally appeared before me Charles D. Howard, the signer of the above instrument, who duly acknowledged to me that he executed the same.



My Commission Expires:

8-20-91

David P. Hirschi
NOTARY PUBLIC
Residing at: Centerville Utah

280d

RECORDED

MAR 10 1988

RECEIVED

JUL 21 1987

State of Idaho

Department of Water Resources
Southern Region Office

Department of Water Resources

ASSIGNMENT OF PERMIT

I, CHARLES D. HOWARD, hereby assign to ROCK CREEK HYDROPOWER INC.
of 1139 FALLS AVE E. SUITE 2, TWIN FALLS, IDAHO 83501
Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 47-7771
to appropriate the public waters of the State of Idaho.

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

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

Made this 7 day of APRIL, 19 87.

Charles D. Howard
Permit Holder

Mary R. Howard
Spouse of Permit Holder

State of Idaho)
County of Twin Falls) ss.

On this 7th day of April, 19 87, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same.

seal

Karen Bolin
Notary Public residing at

Twin Falls, Idaho

MICROFILMED

SEP 20 1987

My commission expires:
2-2-1991

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

For Office Use Only

\$15 FEE Received *AK*

Date *7-29-87*

Receipt # *44101*

REQUEST FOR EXTENSION OF TIME

JUL 27 1987 To provide additional time in which to submit proof
of beneficial use on a water right permit

Department of Water Resources

CHARLES D. HOWARD
(Name)

of *1139 FALLS AVE EAST - SUITE 2*
(Address)

State of *IDAHO*, deposes and says:

That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public Water of the
State of Idaho No. *47-7771*

That under the terms and conditions of said permit, work thereunder was required to be completed on or before
SEPTEMBER 1, 1987

That he has heretofore performed the following work described under said permit:

(This must be filled out! If no work has been completed put none.)

ENGINEERING, FERC LICENSE, LEGAL FEES
FINANCING

Costing \$ *\$150,000*

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:

FROM APRIL 1984 TILL AUG 1986, LICENSE APPLICATION
WAS BEING PROCESSED BY THE FEDERAL ENERGY REGULATORY
COMMISSION (FERC). DELAYED AT FERC BECAUSE OF COURT
RULINGS, AND CHALLENGES BY IDAHO POWER CO. - ISSUED AUG 1986

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations
under said permit to *SEPT 1, 1989*

(1 yr. minimum
5 yrs. maximum)

MICROFILMED

(Signature)

IF OTHER THAN HOLDER, Power of Attorney must be supplied.

Charles D. Howard **PRESIDENT**
ROCK CREEK
HYDROPOWER INC

FEE: \$15.00

SEP 25 1987

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within
which to submit proof of beneficial use is extended to September 1, 1989.

SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL CONCERNING THIS EXTENSION.

Signed this *31st* day of *August*, 19 *87*

A. Glen Saxton
Chief, Operations Bureau

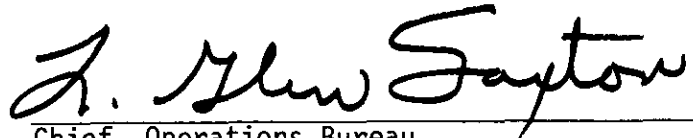
ATTACHMENT OF CONDITIONS OF APPROVAL

For Extension of Time
of Permit No. 47-7771

1. The permit holder shall maintain in Rock Creek between the diversion structure and the tailrace, a continuous minimum flow of 41 cubic feet per second (cfs) in October, November, February, and March, 31 cfs in December and January, and 82 cfs from April 1 through September 30, as measured immediately downstream from the diversion dam, or the inflow at the diversion, whichever is less.

2. Upon the future finding and order of the Director that measuring devices are required to insure the minimum flow is being provided, the permit holder shall install and maintain the devices or recorders as specified by the Department.

Witness my hand this 31st day of August, 1987.


Chief, Operations Bureau

MICROFILMED

SEP 25 1987

7/81

Ident. No. 47-7771

RECEIVED

JUL 21 1987

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

Department of Water Resources

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

1. Individual Applicant or Individual Members of a Partnership:

I, _____ of _____,
(name) (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:

I, CHARLES D. HOWARD - PRES.
ROCK CREEK HYDROPOWER INC. of TWIN FALLS,
(name) (city)

County of TWIN FALLS, State of Idaho, being duly sworn, depose

and say: That I am the designated registered agent of the _____

ROCK CREEK HYDROPOWER INC.: that as such I am in charge of the registered
(name of corporation)

office of the said corporation as required by Section 30-1-12, Idaho Code, at

TWIN FALLS Idaho, wherein are kept the corporate records required
(city)

by Section 30-1-52, Idaho Code: and that ROCK CREEK HYDROPOWER INC.
(name of corporation)

is a corporation 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.

State of Idaho _____)
County of IDAHO) ss.

Charles D. Howard - PRES
Applicant ROCK CREEK HYDROPOWER INC.

On this 7th day of April, 1987, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

seal

MICROFILMED

SEP 25 1987

My commission expires:

2-2-1991

Karen Belin
Notary Public residing at

Idaho, Idaho

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant Charles D. Howard Phone 1-208-734-4888
Post office address 1139 Falls Ave. East Twin Falls, Idaho 83301
2. Source of water supply Rock Creek which is a tributary of Snake River
3. Location of point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25 Township 9S
Range 16E B.M. Twin Falls County, additional points of diversion if any: SW⁴ of NW⁴, NW⁴ of NW⁴, Section 25

4. Water will be used for the following purposes:

Amount 200 cfs for Generate Power purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for Industrial purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for Fire Protection purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 202 cubic feet per second and/or b. acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Diversion, to penstock, power
Plant, Transmission line

b. Height of storage dam None feet, active reservoir capacity None acre-feet; total reservoir capacity None acre-feet, materials used in storage dam: NA

Period of year when water will be diverted to storage No Storage to inclusive.
(Month/Day) (Month/Day)

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

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

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25 Township 9S

Range 16E B.M.

(2) Amount of power to be generated: 2200 horsepower under 110 feet of head.

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

(4) Name of municipality to be served Power sold to Idaho Power Co., or number of families to be supplied with domestic water NA.

(5) If water is to be used for other purposes describe: Fire Protection, (1 cfs)
Industrial (1 cfs) (Temporary Engine Cooling)

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

NA

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

Total number of acres to be irrigated None

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

9. a. Who owns the property at the point of diversion ANNABELLE SHARP, SW ¼, SEC 25
b. Who owns the land to be irrigated or place of use HOWER, DONALD / GAIL STEADLEY SENE SEC-2
RE: ROSALEE DINGWALL AND B. CAMERON
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing will negotiate a lease or purchase

10. Remarks Applicant will apply for a exemption to the Federal Energy
Regulatory Commission. Applicant will apply to State of Idaho
Clearinghouse for review. Minimum stream flows for fisheries will be
maintained.
Point of diversion may be changed as noted in Item #3.

MICROFILMED

Proposed Priority 11/16/1981

Received by TGB Date 11-16-81 Time 11:30 Am

Preliminary check by [initials] Fee \$ 1735⁰⁰ # 20655

Receipted by TGB Date 11-16-81

Publication prepared by manya Date 11/25/81

Published in temis news

Publication dates 12/3 & 12/10/81

Publication approved manya Date 12/1/81

Protests filed by: None

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by ADM

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. 47-7771, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 1987.
- 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: An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

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.

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

This project shall be operated in a manner that will not conflict or interfere with the future diversion of water for irrigation or other beneficial consumption.

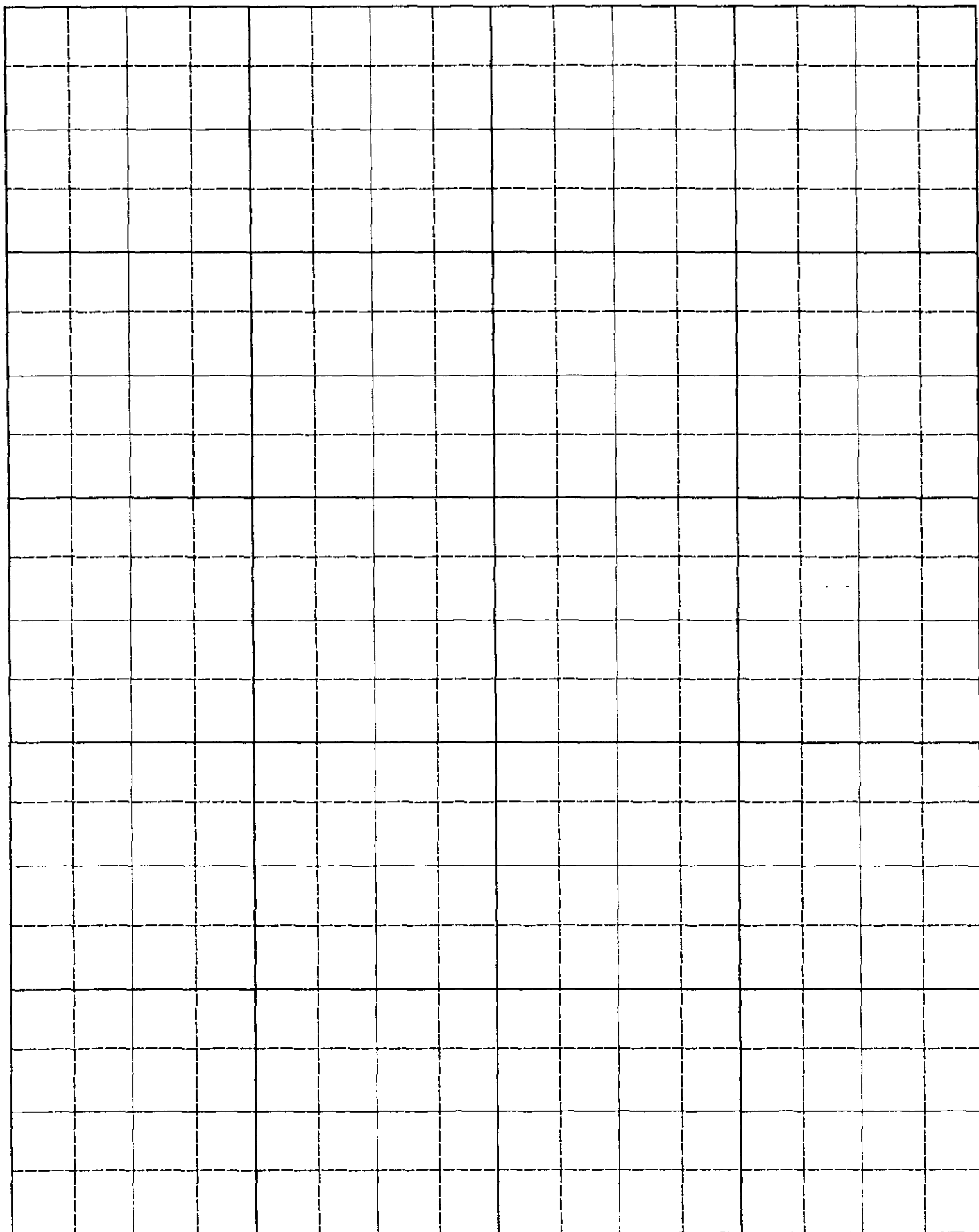
This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.

Witness my hand this 15th day of September, 1982.

J. Glen Sayton
Chief, Operations Bureau

MICROFILMED

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number. See Attached figures # 1, 2, and 3

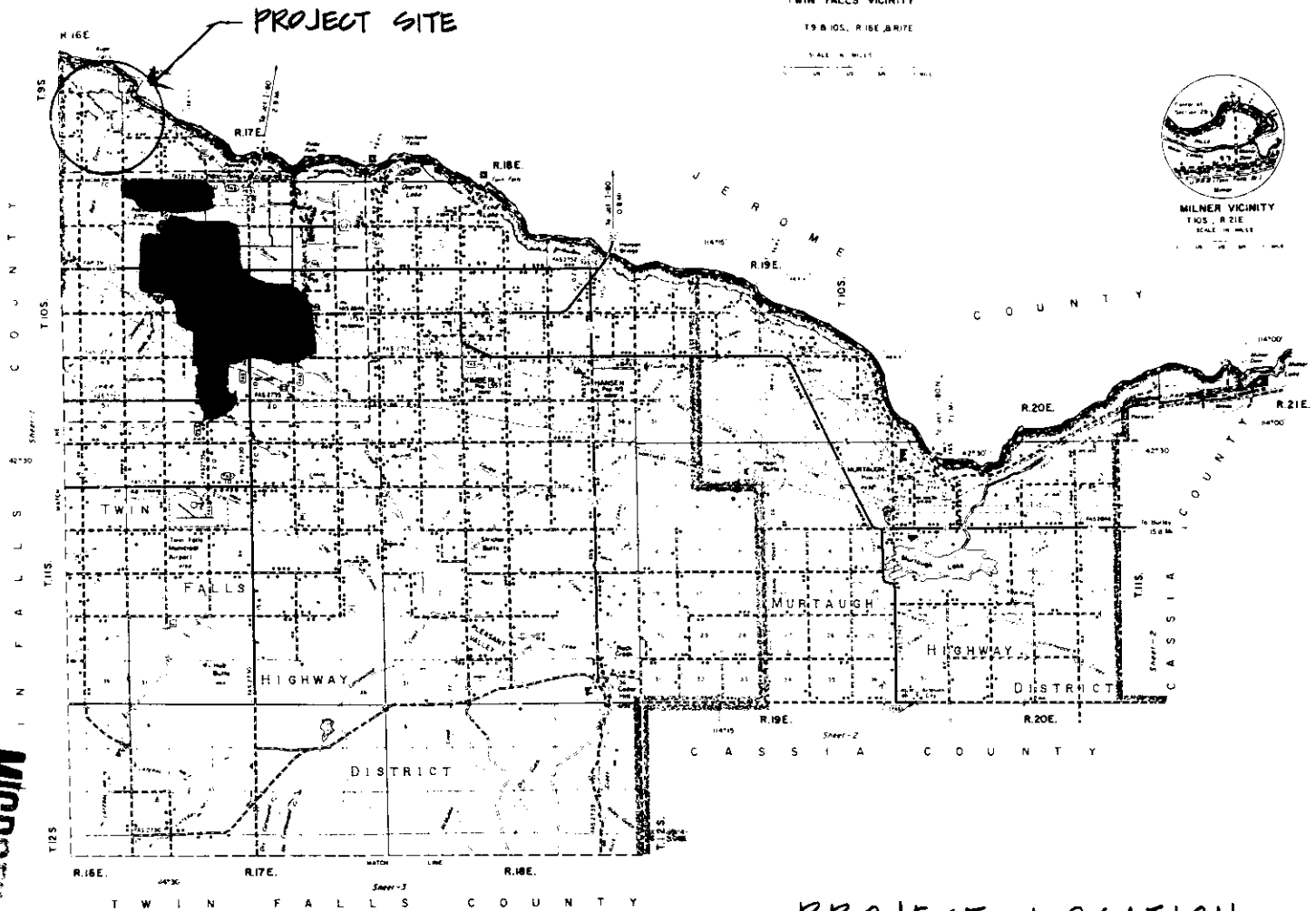
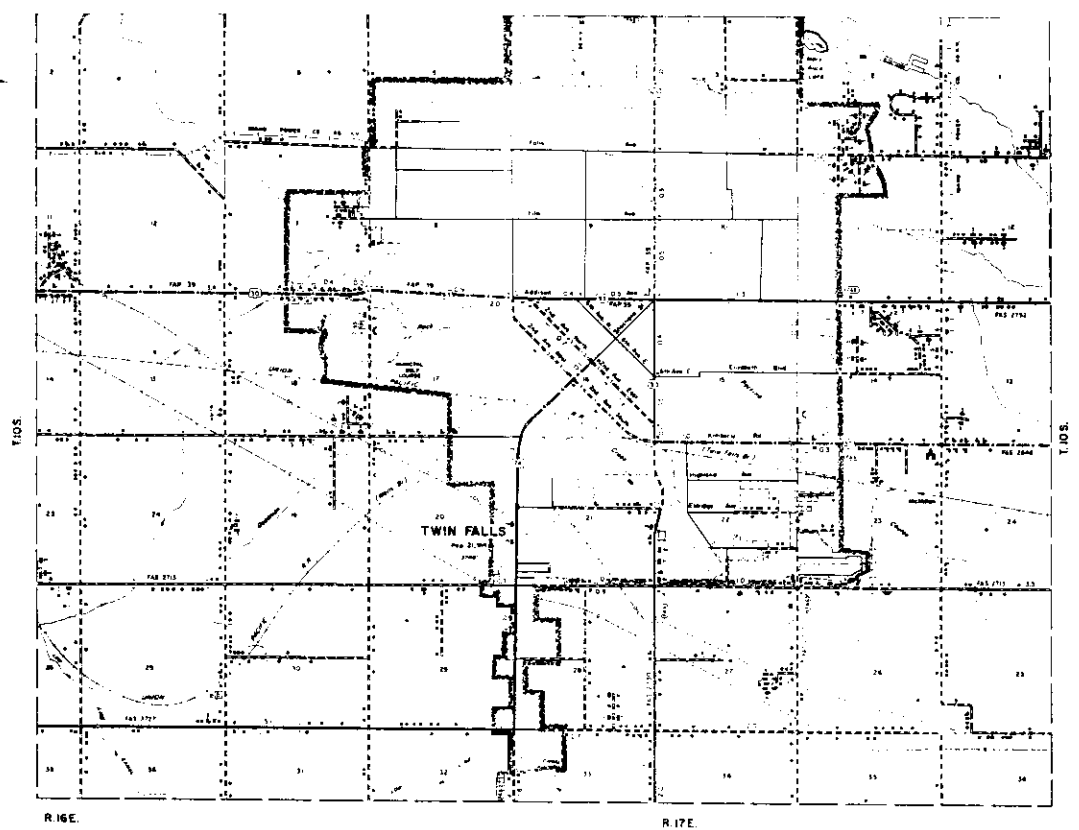


Scale: 2 inches equal 1 mile.

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.

Charles D. Howard 11/16/84
(Applicant)

RECEIVED
NOV 17 1984
SALT LAKE CITY



PROJECT LOCATION

FIGURE 1

MICROFILMED

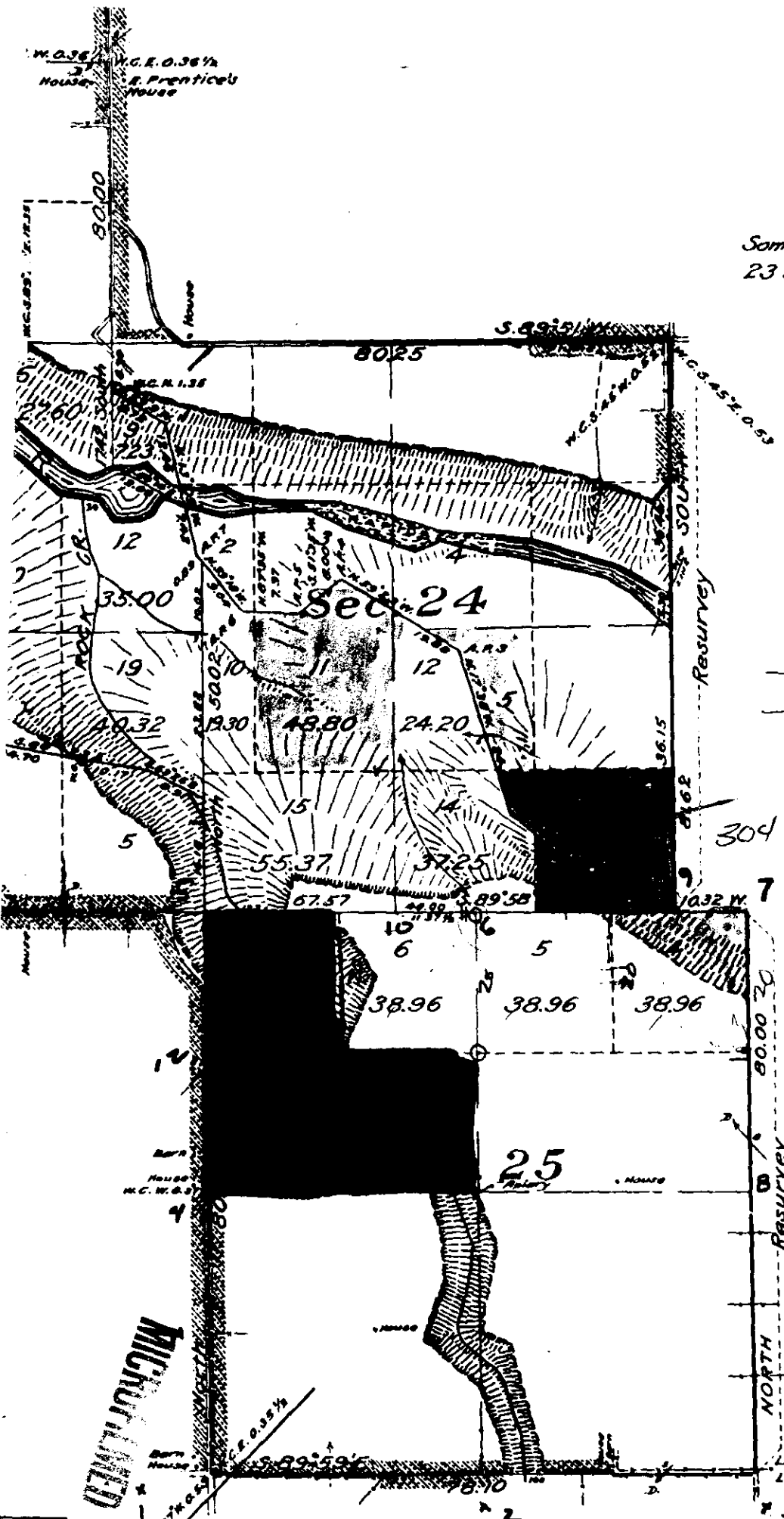
GENERAL HIGHWAY MAP
TWIN FALLS COUNTY
IDAHO

SCALE
0 1 2 3 4 5 MILES
0 1 2 3 4 5 6 7 8 9 10 MILES
FIELD DATA COLLECTED JULY, 1976

REVISIONS	
STATE HIGHWAY SYSTEM	
LOCAL ROAD SYSTEM	
LOCAL ROAD SYSTEM	See S. 1077
LOCAL ROAD SYSTEM	See S. 1077
LOCAL ROAD SYSTEM	See S. 1077

POLYCONIC PROJECTION





MINERAL INDICATIONS

Some placer mining has been done in sec.
23 and 24.

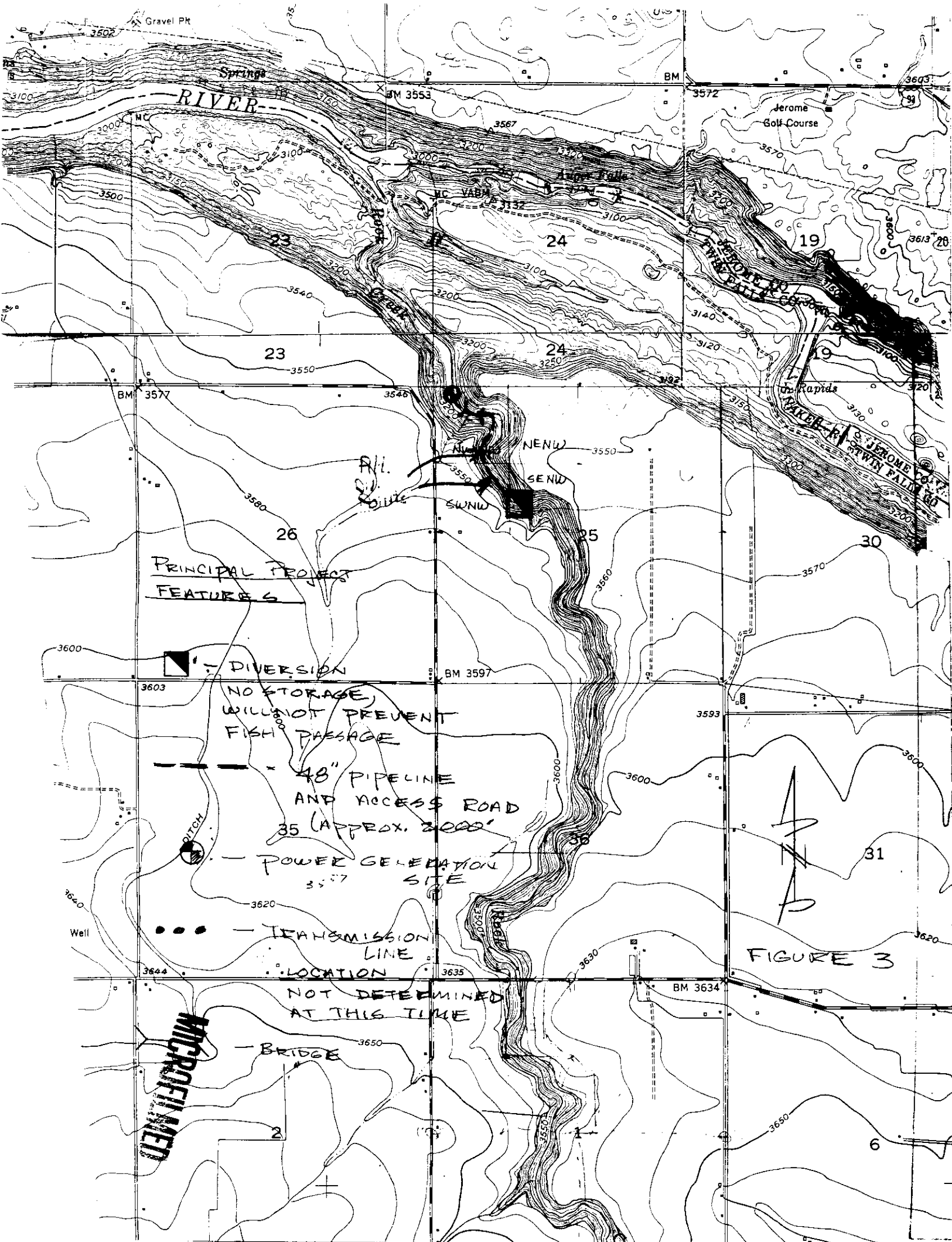
PROJECT LANDS
(SHADED)

T 9S, R 16E, BM
TWIN FALLS, COUNTY IDA.

FIGURE 2

The above map of Dependent Resurvey of Sections 14, 15, 22, 23, 24, and
Township No. 9 South, Range No. 16 East of the Boise Meridian, Idaho, is strictly com
able to the field notes of the survey thereof on file in this office, which have been exa

dated
7.1916



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, CHARLES D. HOWARD of TWIN FALLS,
(name) (city)

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

2. Corporation:

I, _____ of _____,
(name) (city)

County of _____, State of Idaho, being duly sworn, depose

and say: That I am the designated registered agent of the _____

_____ : that as such I am in charge of the registered
(name of corporation)

office of the said corporation as required by Section 30-1-12, Idaho Code, at

_____ Idaho, wherein are kept the corporate records required
(city)

by Section 30-1-52, Idaho Code: and that _____
(name of corporation)

is a corporation qualified to do business in the State of Idaho under the laws of
the State of Idaho.

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

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

☒ 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.

Charles D. Howard
Applicant

State of Idaho)
County of TWIN FALLS) ss.

On this 16th day of November, 19 81, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

Loren O. Thaler
Notary Public residing at

Twin Falls, ID

seal

My commission expires:

RECEIVED
NOV 16 1981
TWIN FALLS, ID



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

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

November 17, 1981

Charles D. Howard
1139 Falls Avenue East
Twin Falls, Idaho 83301

Re: Application for Permit

Dear Mr. Howard:

This office currently processing your Application for Permit filed on November 16, 1981.

Since the application seeks to establish a water right for power generating purposes, and it appears that a commercially marketable amount of power may be produced, the following information must be submitted for inclusion with your application in accordance with Section 42-202 of the IDAHO CODE:

- 1) A plan for the facility. This must include a drawing showing the proposed layout of the plant on the property, and must give approximate locations, dimensions, and elevations of all major components of the facility.
- 2) An itemized estimate of the cost of constructing the facility.
- 3) A statement of the financial resources of the applicant and the means by which funds are to be provided for construction of the project. This information will be reviewed in confidence and returned to you.

Advertising and regional office review of the application should be completed by December 14, 1981. If the requested information is received by that date, no additional delay in processing will be incurred.

If you have any questions regarding these requirements, please contact this office.

Sincerely,

Merry G. Blau
Senior Water Resource Agent

TGB:marya

MERRY G. BLAU

Affidavit of Publication

Nº 10934

STATE OF IDAHO, }
COUNTY OF TWIN FALLS } ss.

I, H. Enderle being first duly sworn upon
oath, depose and say that I am print clerk of the TIMES-NEWS,
published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
the notice of advertisement, as per clipping attached, was published in the regular and
entire issue of said newspaper, and not in any supplement thereof, for two
consecutive Weeks, commencing with the issue dated
December 3, 1981, and ending with the issue dated
December 10, 1981.

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

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

H. Enderle
Subscribed and sworn to before me on this December, 1981 day of
Gladie L. Smith
Notary Public in and for the County of Twin Falls,
State of Idaho, residing at Twin Falls, Idaho

MICROFILMED

JAN 15 1982

Department of
Social Services

de mca

**NOTICE OF
APPLICATION FOR
WATER RIGHT**

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

47-7771

HOWARD, CHARLES D.
1139 FALLS AVE. EAST,
TWIN FALLS, ID 83301

Source: ROCK CREEK
tributary to SNAKE
RIVER

Date Filed: 11/16/1981

Amount: 202.00 CFS

Diversion Point: SENW
SWNW NWNW Sec 25 T
09S R 16E, TWIN FALLS
Co.

Use: INDUSTRIAL (1.00
CFS) from 01/01 to 12/31
POWER: (200.00 CFS)
from 01/01 to 12/31

FIRE PROTECTION (1.00
CFS) from 01/01 to 12/31

Place of Use: NWNW
Sec 25 T 09S R 16E

Diversion Means:
DIVERSION TO
PENSTOCK, POWER
PLANT, TRANSMISSION
LINE

47-7772

BITZENBURG, LEE W.
&/or VIRGINIA
RT. 2, TWIN FALLS, ID
83301

Source:
GROUNDWATER

Date Filed: 11/24/1981

Amount: 0.19 CFS

Diversion Point: NWSW
Sec 11 T 11S R 16E, TWIN
FALLS Co.

Use: STOCKWATER
(0.03 CFS) from 01/01 to
12/31

DOMESTIC (0.16 CFS)
from 01/01 to 12/31

Place of Use: SENE
NESE Sec 10 T 11S R 16E
NWSW Sec 11 T 11S R
16E

Diversion Means: WELL
& PUMP

If issued, the permit(s)
will be subject to all prior
water rights. Protests
against the granting of
any permit must be filed
with the Director of the
Idaho Department of
Water Resources, 1041
Blue Lakes Blvd. North,
Twin Falls Idaho 83301
and received on or
before DECEMBER 21,
1981.

A. KENNETH DUNN
Director

PUBLISH: Thursday,
December 3, and 10,
1981.

ASSIGNMENT AND TRUST AGREEMENT

This Assignment and Trust Agreement (hereinafter called the "Assignment"), dated as of September 22, 1988, is hereby entered into by Bonneville Pacific Corporation 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. 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 amended by a First Amendment to Credit Agreement dated September 1, 1988, and as supplemented and modified by a Project Lending Agreement ("Project Lending Agreement"), dated as of September 22, 1988, among Assignor, the Banks and the Agent (the Credit Agreement, as amended and 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 \$3,500,000 to finance the construction of a certain hydroelectric project known as the Rock Creek II Hydroelectric Project in Twin Falls County, Idaho (the "Project").

B. Charles D. Howard ("Howard") has filed with the Department of Water Resources of the State of Idaho ("Department") an Application for Permit to Appropriate Public Waters No. 47-7771 and the Department approved such application on September 15, 1982, 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 Assignment of Permit dated April 7, 1987, Howard assigned to Rock Creek Hydropower, Inc. ("Rock Creek") its entire right, title and interest in and to the Permit, a copy of which Assignment 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. Pursuant to an Assignment of Permit dated September 24, 1987, Rock Creek assigned to Assignor its entire right,

RECORDED
AUG 05 1991

title and interest in and to the Permit, a copy of which Assignment is attached hereto as Exhibit D.

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

G. As a condition to making the loans under the Loan Agreement to finance the construction of the Project, the Banks 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 first obtaining 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 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 ten (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.

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AUG 05 1991

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.

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, 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 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.

12. The Trustee may resign at any time by giving at least ninety (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 sixty (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 arrangement 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.

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.

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:

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.

BONNEVILLE PACIFIC CORPORATION

By: *Kenneth W. Bell*
Its: *Vice Pres & Treasurer*

STEWART TITLE OF IDAHO,
INC., as Trustee

By: *Joan M. Hart*
Its: *Vice-President*

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AUG 05 1991

NORWEST BANK MINNESOTA,
NATIONAL ASSOCIATION

By: Patricia S. Grant
Its: Vice President

FIRST SECURITY BANK OF
UTAH, N.A.

By: _____
Its: _____

MARQUETTE BANK MINNEAPOLIS, N.A.

By: _____
Its: _____

RAINIER NATIONAL BANK

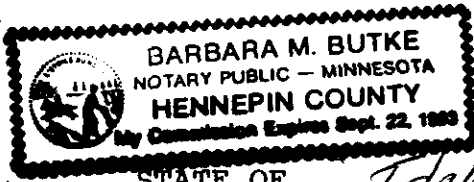
By: _____
Its: _____

STATE OF Minnesota)
COUNTY OF Hennepin) ss.

On this 28th day of September, 1988, before me Barbara M. Butke, a notary public, personally appeared Kenneth W. Bell known or identified to me to be the Vice President and Treasurer of Bonneville Pacific Corporation ("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

NOT FILMED
AUG 05 1991.

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: September 22, 1993

STATE OF Idaho)
COUNTY OF Ada) ss.

On this 29 day of September, 1988, before me Gary Montgomery, 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.

G. Montgomery
Notary Public
Residing at: Moscow, Idaho
My Commission Expires: June 27, 1992

STATE OF Minnesota)
COUNTY OF Hennepin) ss.

On this 28th day of September, 1988, before me Barbara M. Butke, a notary public, personally appeared Patrick G. Ensett 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: September 22, 1993

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AUG 05 1991

NORWEST BANK MINNESOTA,
NATIONAL ASSOCIATION

By: _____
Its: _____

FIRST SECURITY BANK OF
UTAH, N.A.

By: _____
Its: _____

MARQUETTE BANK MINNEAPOLIS, N.A.

By: *[Signature]*
Its: *Division Vice President*

RAINIER NATIONAL BANK

By: _____
Its: _____

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ of Bonneville Pacific Corporation ("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

RECORDED
AUG 05 1991

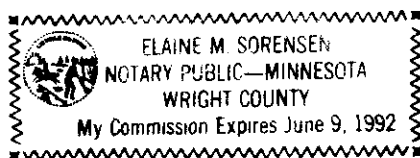
STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 1988, 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: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 28 day of Sept, 1988, before me Elaine M. Sorensen, a notary public, personally appeared James A. LaBresche known or identified to me to be the Vice President 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
Residing at: _____
My Commission Expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ of Rainier National Bank ("Bank") that executed the above instrument or the person who executed the

FILED
AUG 05 1991

NORWEST BANK MINNESOTA,
NATIONAL ASSOCIATION

By: _____
Its: _____

FIRST SECURITY BANK OF
UTAH, N.A.

By: Harvey J. Jann
Its: VICE PRES

MARQUETTE BANK MINNEAPOLIS, N.A.

By: _____
Its: _____

RAINIER NATIONAL BANK

By: _____
Its: _____

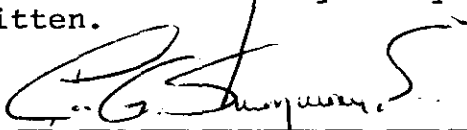
STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ of Bonneville Pacific Corporation ("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

NOTARIZED
AUG 05 1991

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

On this 28th day of September, 1988, before me
Roger G. Shumway, a notary public, personally appeared
Harvey M. 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.


Notary Public
Residing at: Woods Cross, Utah
My Commission Expires: My Commission Expires
June 4, 1991

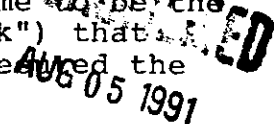
STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this _____ day of _____, 1988, before me
_____, a notary public, personally appeared _____
_____ known or identified to me to be the
_____ 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.

Notary Public
Residing at: _____
My Commission Expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 1988, before me
_____, a notary public, personally appeared _____
_____ known or identified to me to be the
_____ of Rainier National Bank ("Bank") that
executed the above instrument or the person who executed the


40605 1991

NORWEST BANK MINNESOTA,
NATIONAL ASSOCIATION

By: _____
Its: _____

FIRST SECURITY BANK OF
UTAH, N.A.

By: _____
Its: _____

MARQUETTE BANK MINNEAPOLIS, N.A.

By: _____
Its: _____

RAINIER NATIONAL BANK

By: Matthew C. Rudolf
Its: VICE President

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ of Bonneville Pacific Corporation ("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

INDEXED
AUG 05 1991

STATE OF _____)
) ss.
 COUNTY OF _____)

On this _____ day of _____, 1988, 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: _____

STATE OF MINNESOTA)
) ss.
 COUNTY OF HENNEPIN)

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ 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.

Notary Public
 Residing at: _____
 My Commission Expires: _____

STATE OF Washington)
) ss.
 COUNTY OF KING)

On this 28th day of September, 1988, before me Matthew C. Rudolf, a notary public, personally appeared Vice President of Rainier National Bank ("Bank") that executed the above instrument or the person who executed the

RECORDED
 AUG 05 1991

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.

William A. Ruppold
Notary Public
Residing at: Seattle
My Commission Expires: 3/28/90

69dph

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AUG 05 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT**APPROVED**

To appropriate the public waters of the State of Idaho

1. Name of applicant Charles D. Howard Phone 1-208-734-4888
Post office address 1139 Falls Ave. East Twin Falls, Idaho 83301
2. Source of water supply Rock Creek which is a tributary of Snake River
3. Location of point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25 Township 9S
Range 16E B.M. Twin Falls County, additional points of diversion if any: SW⁴ of NW⁴, NW⁴ of NW⁴, Section 25
4. Water will be used for the following purposes:
Amount 200 cfs for Generate Power purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for Industrial purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for Fire Protection purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 202 cubic feet per second and/or b. acre-feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Diversion, to penstock, power
PLANT
Plant) Transmission line

b. Height of storage dam None feet, active reservoir capacity None acre-feet; total reservoir capacity None acre-feet, materials used in storage dam: NA
Period of year when water will be diverted to storage No Storage to inclusive.
(Month/Day) (Month/Day)
c. Proposed well diameter is NA inches; proposed depth of well is NA feet.
7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years (minimum 1 year - maximum 5 years).
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25 Township 9S
Range 16E B.M. 2200
(2) Amount of power to be generated: 2200 horsepower under 110 feet of head.
(3) List number of each kind of livestock to be watered NA

b. Name of municipality to be served Power sold to Idaho Power Co., or number of families to be
supplied with domestic water NA
c. If water is to be used for other purposes describe: Fire Protection, (1 cfs)
Industrial (1 cfs), Temporary Engine (2 cfs)

AUG 05 1991

Approved Priority. 11/16/1981

Received by T.G.B. Date 11-16-81 Time 11:30 Am

Preliminary check by JD Fee \$ 1735⁰⁰ # 20655

Receipted by T.G.B. Date 11-16-81

Publication prepared by mange Date 11/25/81

Published in tennis news

Publication dates 12/3 + 12/10/81

Publication approved mange Date 12/1/81

Protests filed by: None

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by ADH

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. 47-7771, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 1987.

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: An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

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.

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

This project shall be operated in a manner that will not conflict or interfere with the future diversion of water for irrigation or other beneficial consumption.

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

Witness my hand this 15th day of September, 1982.

J. Glen Sayton
Chief, Operations Bureau

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AUG 05 1991

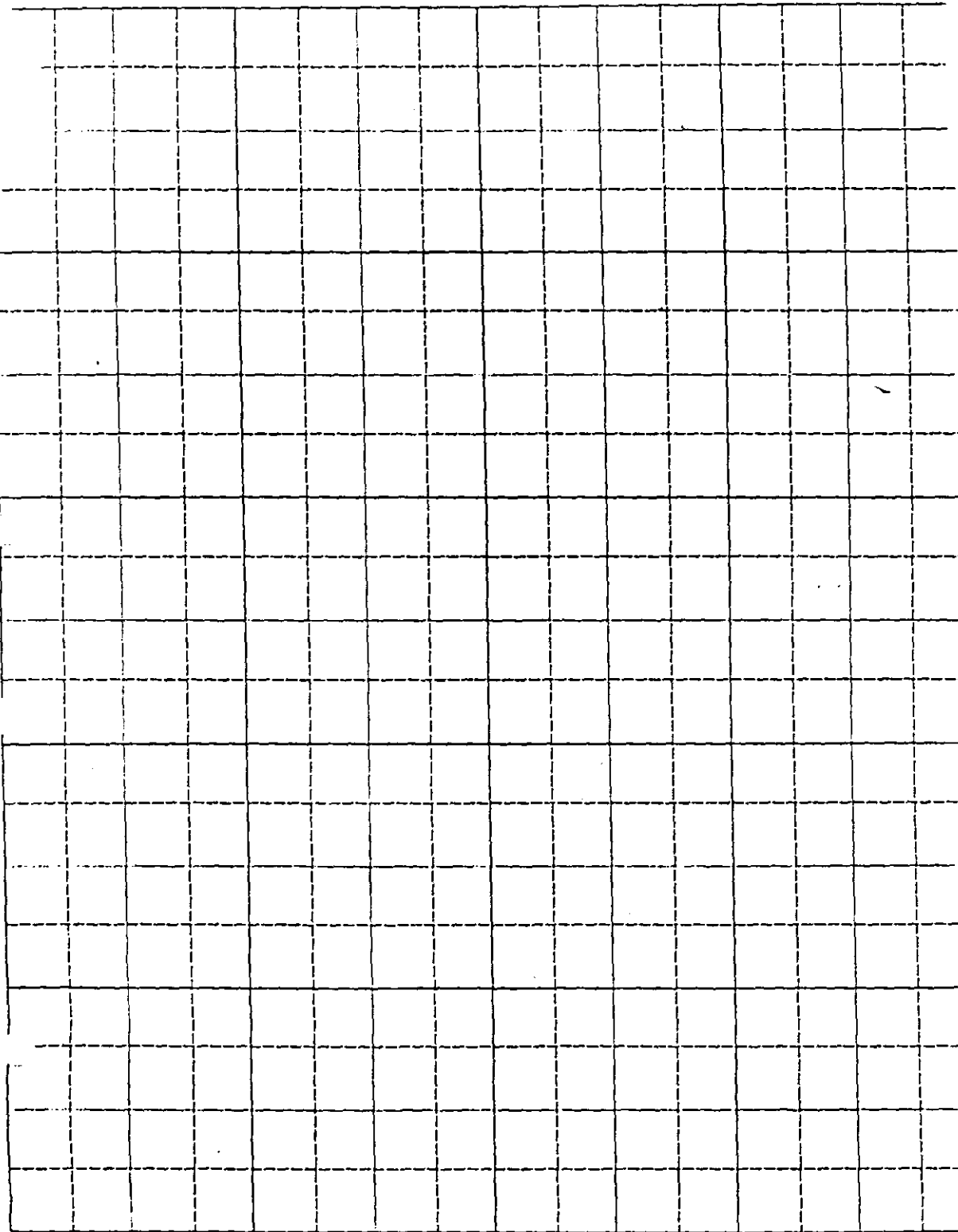
NA

Total number of acres to be irrigated None

10. Remarks Applicant will apply for a exemption to the Federal Energy
Regulatory Commission. Applicant will apply to State of Idaho
Clearinghouse for review. Minimum stream flows for fisheries will be
maintained.
Point of diversion may be changed as noted in Item #3.

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AUG 05 1991

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number. See Attached figures # 1, 2, and 3



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.

Charles D. Howard 11/16/64
(Applicant)

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AUG 05 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESFor Office Use Only
\$15 FEE Received 48
Date 7-29-87
Receipt # 44101RECEIVED
REQUEST FOR EXTENSION OF TIMEJUL 27 1987 To provide additional time in which to submit proof
of beneficial use on a water right permit

Department of Water Resources

CHARLES D. HOWARD

(Name)

of 1139 FALLS AVE. FIVE - FIVE Z
(Address)State of IDAHO, deposes and says:That he is the holder, or the duly authorized agent of the holder*, of Permit to appropriate the Public Water of the
State of Idaho No. 47-7771.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before

SEPTEMBER 1, 1987

That he has heretofore performed the following work described under said permit: _____

(This must be filled out if no work has been completed put none.)

ENGINEERING, FEIC LICENSE, LEGAL FEE,
FINANCINGCosting \$ 150,000

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:

FROM APRIL 1984 TILL AUG 1986, LICENSE APPLICATION
WAS BEING PROCESSED BY THE FEDERAL ENERGY COMMISSION
(FERC). DELAYED AT FERC BECAUSE OF COURT
RULINGS, AND CHALLENGES BY IDAHO POWER CO. - ISSUED AUG 1986

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations

under said permit to

SEPT 1, 1989(1 yr. minimum
5 yrs. maximum)

(Signature)

FOR OFFER

IF OTHER THAN HOLDER, Power of Attorney must be supplied.

FEE: \$15.00

SEP 25 1987

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within
which to submit proof of beneficial use is extended to September 1, 1989.

SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL CONCERNING THIS EXTENSION.

Signed this 31st day of August, 1987.A. Glen Saxton
Chief, Operations Bureau

ATTACHMENT OF CONDITIONS OF APPROVAL

For Extension of Time
of Permit No. 47-7771

1. The permit holder shall maintain in Rock Creek between the diversion structure and the tailrace, a continuous minimum flow of 41 cubic feet per second (cfs) in October, November, February, and March, 31 cfs in December and January, and 82 cfs from April 1 through September 30, as measured immediately downstream from the diversion dam, or the inflow at the diversion, whichever is less.

2. Upon the future finding and order of the Director that measuring devices are required to insure the minimum flow is being provided, the permit holder shall install and maintain the devices or recorders as specified by the Department.

Witness my hand this 31st day of August, 1987.

A. Glen Saxton

Chief, Operations Bureau

MICROFILMED

SEP 25 1987

MICROFILMED

AUG 05 1991

RECEIVED

JUL 21 1987

State of Idaho

Department of Water Resources
Southern Region Office

Department of Water Resources

ASSIGNMENT OF PERMIT

I, CHARLES D. HARRIS, hereby assign to ROCK CREEK HYDROPOWER I,
of 1139 FALLS AVE E. SUITE 2, TWIN FALLS, IDAHO 83401
Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 47-7771
to appropriate the public waters of the State of Idaho.

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

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

Made this 7 day of April, 19 87.

Charles D. Harris
Permit Holder

Marie Rose Harris
Spouse of Permit Holder

State of Idaho)

County of Twin Falls) ss.

On this 7th day of April, 19 87, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same.

s e a l

Notary Public residing at

Twin Falls, Idaho

My commission expires:

2-2-1991

FILED
AUG 05 1991
MICROFILMED

SEP 25 1987

September 2, 1987

Rock Creek Hydropower, Inc.
1139 Falls Avenue East, Suite 2
Twin Falls, ID 83301

Gentlemen:

Re: Permit No. 47-7771

This office acknowledged receipt of the assignment conveying the above referenced permit to you. The department has changed its records and enclosed is a copy of the permit for your records.

Enclosed is a copy of the request for extension of time. The time within which to submit proof of beneficial use is extended to September 1, 1989. Note the conditions of approval as set forth on the second page.

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

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

MICROFILMED

SEP 25 1987

MICROFILMED
AUG 05 1991

State of Idaho
Department of Water Resources

ASSIGNMENT OF PERMIT

I, CHARLES D. HOWARD, hereby assign to BONNEVILLE PACIFIC
PRESIDENT - RCNPL
CORPORATION
Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 47-7771
to appropriate the public waters of the State of Idaho.

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

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

Made this 24 day of SEPTEMBER, 19 87.

Charles D. Howard
Permit Holder
PRESIDENT
ROCK CREEK HYDROPOWER INC.
SECRETARY
RCNPL

State of Idaho)
County of Idaho) 69.

On this 24 day of September, 19 87, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same. Charles D. Howard Carl V. Edwards

seal

Edith L. Anderson
Notary Public residing at
Grangeville, Idaho

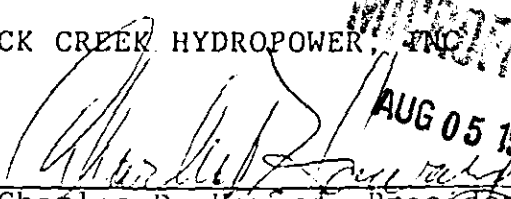
My commission expires:
Aug. 1988

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AUG 05 1991

AFFIDAVIT IN SUPPORT OF
ASSIGNMENT OF WATER RIGHTS

I, Charles D. Howard, President of Rock Creek Hydropower, Inc., being duly sworn, deposes and says, that Rock Creek Hydropower, Inc., the assignor of Permit No. 47-7771, to which this affidavit relates, owns in fee simple or controls by long-term lease or perpetual easement all of the real property underlying the proposed improvements to be constructed by Bonneville Pacific Corporation in connection with the development, construction, operation and maintenance of the Rock Creek No. 2 Hydroelectric Project. Rock Creek Hydropower, Inc. has leased all of said real property to Bonneville Pacific Corporation for a term of thirty-five (35) years pursuant to that certain Agreement dated December 18, 1986, as amended and assigned. Copies of said Agreement plus all amendments thereto and assignments thereof, are available to the Department of Water Resources upon request.

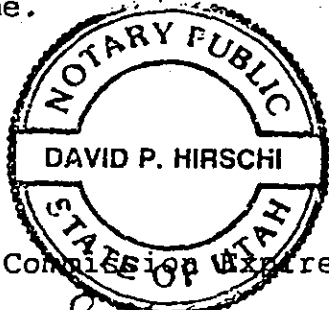
To the best of my knowledge, after due inquiry, all lands and permissions from land owners necessary for the construction, operation and maintenance of the Rock Creek NO. 2 Hydroelectric Project have been obtained and all agreements with respect thereto are in full force and effect.

ROCK CREEK HYDROPOWER, INC.
BY 
Charles D. Howard, President

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AUG 05 1991

STATE OF IDAHO ~~UTAH~~)
: ss.
COUNTY OF ~~TWIN FALLS~~
~~SALT LAKE~~

On this 7th day of October, 1987, personally appeared before me Charles D. Howard, the signer of the above instrument, who duly acknowledged to me that he executed the same.



My Commission Expires:

8-00-11

Charles D. Howard
NOTARY PUBLIC
Residing at: *Centerville Utah*

280d

RECORDED
AUG 05 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

EXHIBIT E

CECIL D. ANDRUS

Governor

R. KEITH HIGGINSON

Director

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

October 14, 1987



RE: Permit No. 47-7771

Bonneville Pacific Corp.
257 E. 200 S., Suite 800
Salt Lake City, UT 84111

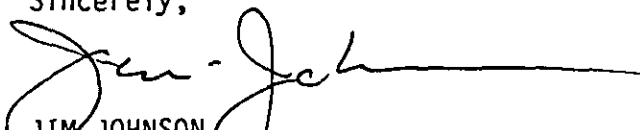
Dear Permit Holders:

This office acknowledges receipt of the Assignment of the above referenced permit to you.

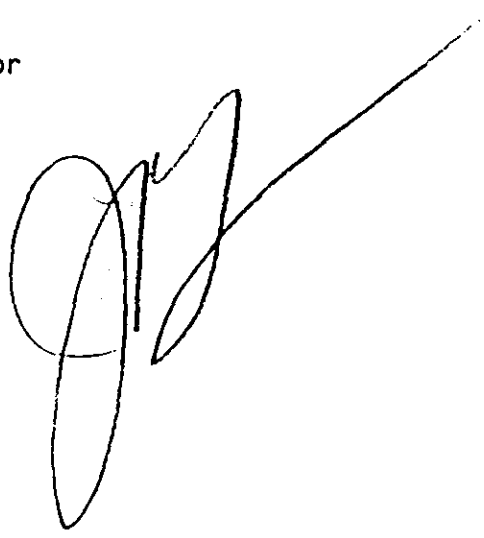
Enclosed for your records is a copy of the permit. Be sure to note the conditions of approval on the fourth page that identify requirements necessary for developing the permit into a licensed water right.

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

Sincerely,


JIM JOHNSON
Water Rights Supervisor

JJ:sc
Enclosure



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AUG 05 1991

After recording mail to:
David P. Hirschi, Esq.
Bonneville Pacific Corporation
257 East 200 South, #800
Salt Lake City, Utah 84111

MEMORANDUM OF LEASE AND
ASSIGNMENT OF LEASE

THIS MEMORANDUM AND ASSIGNMENT is made and entered into this ____ day of September, 1988, by and between ROCK CREEK JOINT VENTURE, an Idaho joint venture ("RCJV"), BONN-TECH, an Idaho general partnership ("Bonn-Tech") and BONNEVILLE PACIFIC CORPORATION, a Delaware corporation ("Bonneville").

Recitals

((A. RCJV, Bonn-Tech and SLC Leasing (Wyoming), Inc., a Wyoming corporation, entered into a Modification and Extension Agreement and Addendum dated April 8, 1987 (the "Modification and Extension Agreement"), whereunder the Parties thereto modified, extended, assigned and confirmed that certain Lease Agreement (the "Lease") dated February 7, 1984, originally between Idaho Frozen Foods Corporation, a Delaware corporation, and EMH, an Idaho partnership. The terms and conditions of the Modification and Extension Agreement and Lease are incorporated herein by this reference.

B. Bonn-Tech desires hereby to assign all of its rights, titles and interests in and to the Lease and the Modification and Extension Agreement to Bonneville.

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C. The parties hereto desire hereby to memorialize and confirm the Lease and the Modification and Extension Agreement and to make the same a matter of public record.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. Amendment to Lease. The Lease and the Modification and Extension Agreement are hereby amended to reflect the accurate legal description of the real property being leased under the Lease and the Modification and Extension Agreement. Said real property is accurately described in the Exhibit "A" attached hereto and by this reference made a part hereof.

2. Assignment of Lease. Bonn-Tech hereby assigns, transfers and quit claims to Bonneville all of its rights, titles and interest in and to the Lease and by the Modification and Extension Agreement, and Bonneville hereby accepts the assignment thereof.

3. Confirmation of Lease. Pursuant to the terms and conditions of the Lease and the Modification and Extension Agreement, all of which are incorporated herein, RCJV hereby confirms that it owns fee simple title to the real property described in Exhibit "C", and has leased, and hereby does lease to Bonneville (pursuant to the assignment herein contained) for a term of forty (40) years commencing March 1, 1984, of the real property described in Exhibit "C." As modified by

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AUG 05 1991

assigned hereby, the Lease and the Modification and Extension Agreement, remain fully enforceable and binding upon RCJV and Bonneville.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officers or partners as of the date and year first above written.

BONN-TECH, an Idaho general
partnership

By: Bonneville Pacific Corpora-
tion, Its General Partner

By _____
Its _____

ROCK CREEK JOINT VENTURE, an
Idaho joint venture

By: Shorock Hydro, Inc.,
a joint venture partner

By _____
Its _____

By: TFH Limited Partnership, a
joint venture partner

By: Hy-Rock, Inc., its general
partner

By _____
Its _____

By: RKT Limited Partnership, a
joint venture partner

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AUG 05 1991

By: Globe Realty, Inc., its
general partner

By _____
Its _____

dph1001

REFILMED
AUG 05 1991

EXHIBIT "A"

Legal Description

REPRODUCED
AUG 05 1991

EXHIBIT "A"

Legal Description

PARCEL 1

A strip of land 100 feet wide lying adjacent with and 50 feet left and 50 feet right of the centerline of a power canal lying in the NW 1/4 NW 1/4, Section 25, T.9 S., R.16 E., B.M., Twin Falls County, Idaho and more particularly described as follows:

Beginning at the Northwest corner of said Section 25, said point also lies North 00 deg. 04'51" West. 2639.14 feet from the West quarter corner of said Section 25;
thence South 56 deg. 34'36" East, 904.37 feet to the centerline of the power canal, said point being the REAL POINT OF BEGINNING;
thence South 55 deg. 00'00" East, 120.00 feet;
thence South 29 deg. 00'00" East, 270.00 feet;
thence South 30 deg. 00'00" West, 350.00 feet;
thence South 12 deg. 00'00" West, 110.00 feet;
thence South 13 deg. 00'00" East, 107.90 feet, to the South boundary of the NW 1/4 NW 1/4 of said Section 25, which is the POINT OF ENDING of the above described easement.

PARCEL 2

A leasehold easement for an access road and a transmission line over and across:

(1) An easement for a transmission line 50 feet in width over and across Lots 12 and 19 of Section 23, Township 9 South, Range 16 East, B.M., and Lots 10 and 15 of Section 24, Township 9 South, Range 16 East, B.M., and the NW 1/4 NW 1/4 of Section 25, Township 9 South, Range 16 East, B.M.

(2) An easement for an access road over and across NW 1/4 NW 1/4 of Section 25, Lots 14 and 15 and NE 1/4 SE 1/4 of Section 24, Township 9 South, Range 16 East, B.M., and Lots 10, 11, and 12 of Section 19, SW 1/4 NE 1/4 of Section 30, and SW 1/4 NE 1/4 of Section 29, Township 9 South, Range 17 East, B.M.

(3) A non-exclusive non-possessory right of way for an existing road 30 feet in width as described in the grant of right of way by the United States Bureau of Land Management under Serial No. 20094, covering the following described federal lands:

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AUG 05 1991

Lot 5 of Section 24, Township 9 South, Range 16 East, B.M., and Lots 10 and 12 of Section 30, Township 9 South, Range 17 East, B.M.

(4) A non-exclusive easement for an access road 50 feet in width as granted by the State of Idaho, State Board of Land Commissioners as State of Idaho Easement No. 5335 being described as:

(1) A strip of land 50 feet in width, being twenty-five feet on each side of the following described centerline as it crosses the SE 1/4 NE 1/4 of Section 30 and the SW 1/4 NW 1/4 of Section 29, both in Township 9 South, Range 17 East, B.M.:

Commencing at the southwest section corner of Section 29, Township 9 South, Range 17 East, B.M.;

thence North 0 deg. 09'33" West 2,637.69 feet along the West boundary of said Section 29 to the West one-quarter corner of said Section 29;

thence South 89 deg. 58'15" East 745.63 feet along the South boundary for the SW 1/4 NW 1/4 of said Section 29 to a point, said point being the REAL POINT OF BEGINNING;

thence North 63 deg. 17'22" West 218.18 feet;

thence North 58 deg. 02'43" West 289.00 feet;

thence North 52 deg. 56'41" West 159.01 feet;

thence North 61 deg. 02'36" West 429.41 feet;

thence North 64 deg. 28'09" West 553.29 feet;

thence North 49 deg. 58'15" West 493.85 feet;

thence North 61 deg. 33'52" West 268.79 feet to a point on the western boundary of the SE 1/4 NE 1/4 of Section 30, said point being the terminus of said centerline.

(2) A strip of land fifty feet wide, being twenty-five feet on each side of the following described centerline as it crosses the NE 1/4 SW 1/4 of Section 29, Township 9 South, Range 17 East, B.M.:

Commencing at the south 1/4 corner of Section 29, Township 9 South, Range 17 East, B.M.;

thence North 0 deg. 07'21" West 1,318.33 feet along the eastern boundary of the SE 1/4 SW 1/4 of said Section 29;

thence North 89 deg. 58'55" West 79.13 feet along the southern boundary of the NE 1/4 SW 1/4 of said Section 29 to a point, said point being the REAL POINT OF BEGINNING;

thence North 44 deg. 02'33" West 215.58 feet;

thence North 55 deg. 48'15" West 311.45 feet;

thence North 68 deg. 08'17" West 601.31 feet;

thence North 49 deg. 01'47" West 381.94 feet to a point on the western boundary of the NE 1/4 SW 1/4 of Section 29, said point being the terminus of said centerline and easement.

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AUG 05 1991

AFFIDAVIT OF USER
OF WATER RIGHTS FOR POWER PURPOSES

I, David P. Hirschi, Secretary and General Counsel of Bonneville Pacific Corporation, a Delaware corporation (the "Corporation") hereby depose, affirm and state as follows:

1. The Corporation is the Assignee of a certain Water Permit No. 47-7771.

2. Rock Creek Hydropower, Inc., Charles D. Howard, Gerald Martens, Carl Edwards, and Rock Creek Joint Venture, 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 as Exhibits A and B and by this reference made a part hereof.



DAVID P. HIRSCHI
Secretary of Bonneville Pacific
Corporation

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AUG 05 1991

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

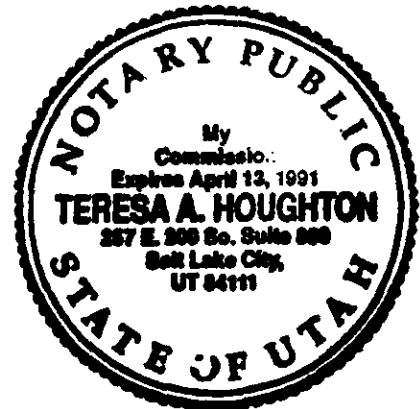
On this 14th day of September, 1988, personally appeared before me David P. Hirschi, the signer of the above instrument, who duly acknowledged to me that he executed the same.

Teresa A. Houghton
NOTARY PUBLIC
Residing at: Salt Lake

My Commission Expires:

4-13-91

74dph



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AUG 05 1991

EXHIBIT A

Rock Creek Hydropower, Inc. Lease

(Attached)

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AGREEMENT

ROCK CREEK #2 WATER POWER PROJECT

THIS Lease and Assignment Agreement (the "Agreement") made and entered into this 18th day of December, 1986, by and between ROCK CREEK HYDROPOWER, INC. hereinafter referred to as "RCHPI", CHARLES D. HOWARD, GERALD MARTENS and CARL EDWARDS, hereinafter referred to as "EMH", CHARLES D. HOWARD, an individual hereinafter referred to as "HOWARD", parties of the first part, and BONN-TECH, an Idaho general partnership, hereinafter referred to as the "Partnership", parties of the second part,

WITNESSETH:

WHEREAS, EMH, owns or has the right to acquire or use certain real property (the "Real Property") located in Twin Falls County, State of Idaho, described in and represented by two leases (Exhibits "A-1" and "A-2"), and the Vickers/Sharp Easement ("A-3"), attached hereto and by this reference made a part hereof), which Real Property is intended to be leased by the Partnership as part of a hydroelectric project known as the Rock Creek #2 Hydro-electric Project ("Project"); and,

WHEREAS, HOWARD owns or has the right to acquire certain non-consumptive water rights for electrical generation ("Water Rights"), more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof; and

WHEREAS, EMH has negotiated with COGENERATION, INC., an Idaho corporation ("Cogen"), an Agreement ("Transmission Agreement"), for the joint use of the 46 KV transmission facilities that are already constructed, a copy of which is attached hereto as Exhibit "C"; and

WHEREAS, HOWARD has received a license for a Major Water Power Project with the Federal Energy Regulatory Commission for the Project as FERC No. 6015 ("FERC License"), a copy of which is attached hereto as Exhibit "D" and by this reference made a part hereof; and

WHEREAS, a Power Contract is to be negotiated between the owner of the FERC License and a power purchasing entity for power generated by the Project; and,

--
WHEREAS, the Partnership desires to lease and/or obtain assignments of the FERC License, the Water Rights, the

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AUG 05 1991

Real Property, the Transmission Agreement, the Power Contract, and all rights and interests necessarily appurtenant thereto for purposes of constructing, operating and maintaining the Project; and,

WHEREAS, HOWARD and EMH will exchange the Real Property, the Water Rights, the FERC License, and the Power Contract for all the stock of RCHPI to facilitate the lease of the aforementioned rights and interests to the Partnership; and,

WHEREAS, HOWARD and RCHPI agree to submit an application to FERC naming RCHPI as licensee; and

WHEREAS, RCHPI desires to lease and/or assign all of the foregoing rights and interests to the Partnership upon the terms herein contained;

NOW, THEREFORE, in consideration of this Agreement and the mutual promises and covenants of the parties hereto, the parties agree as follows:

1. Agreement to Lease and Assign:

RCHPI hereby leases to the Partnership, all the Real Property interests it currently possesses relative to the Project, including the Idaho Frozen Foods lease, the Stradley lease, and the Sharp/Vickers easement once the same is obtained. RCHPI also leases and assigns to the Partnership all rights, interests and obligations relating thereto, as indicated in Exhibit "D" hereof. The Partnership hereby accepts such leases and assignments and after the execution and delivery thereof, shall comply with the terms and conditions of the agreements and rights assigned, and the Partnership further agrees to meet the obligations of RCHPI, EMH, or HOWARD required by said agreements and rights.

2. Term of Lease and Assignment:

This agreement shall remain in full force and effect and binding upon the parties hereto from and after the date hereof and continuing for a term of thirtyfive (35) years from the date of first power production by the Project, providing that the terms and conditions of the other paragraphs in this Agreement are complied with. In the event it is desirable by both parties to this Agreement to acquire additional rights, permits or land, relative to the Project, such rights, permits or lands shall be acquired and owned by RCHPI, at the sole expense of the Partnership. Such rights, permits or lands will

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AUG 05 1991

become an addendum to this Lease Agreement and shall be leased to the Partnership subject to the terms of this Agreement.

3. Construction of the Project:

The Partnership or its designee, at its expense, shall use its best efforts to construct, or have constructed, install and complete the Project which shall consist of a diversion structure, power generating facility and all appurtenant structures, capable of utilizing the maximum amount of plant capacity allowed by FERC, and shall be completed and producing power before December 31, 1988.

4. Power Contract:

The Partnership, either solely or by and through its agents, designee, or assigns, shall be responsible to negotiate a power sales contract (the "Power Contract") for the purchase and sale of power generated from the Project. RCHPI will cooperate fully with partnership in obtaining a power contract and agrees that any modifications in this Agreement are due to requirements of the power contract. RCHPI agrees to make such modifications.

5. Control of the Project:

The Partnership or its designee shall lease the Project and shall have complete control over the construction, operation and maintenance of the Project during the term of this Agreement and shall be the sole manager of the Project, and all improvements constructed by the partnership on the project shall be owned by the partnership throughout the term of this Agreement. RCHPI grants to the Partnership or its designee the right to contract with third parties relative to the construction, operation, and maintenance of the Project throughout the term of this Agreement; provided nothing shall be done to jeopardize the FERC License in accordance with Article 13 hereof. RCHPI reserves the right of ingress and egress for the purpose of verifying that the Partnership is complying with the terms of this Agreement.

6. Consideration:

A. The Partnership shall pay, quarterly in arrears to RCHPI;

-- During Period One, which shall commence on the date ^{First Operation Date as Idaho Power Company Contract} when electricity is first generated by the Project, and shall terminate fifteen (15) years after that date, the lease payments shall be as follows: (1) Five percent (5%) of the gross annual

AUG 05 1991

revenues received by the Partnership under the Power Contract, up to 11,700,000 kwh per year; (2) fifty percent (50%) of the net annual revenues received by the Partnership under the Power Contract over 11,700,000 kwh each year. It is understood by and between the parties that the the payment of lease payments during Period One is subordinated and junior to payments for (1) debt service not to exceed seventy-five percent (75%) of gross annual revenues, from the first 11,700,000 kwh produced on an annual basis; (2) operations, maintenance, and insurance to be established by industry standards, but not to exceed eight percent (8%) of gross annual revenues; and (3) the royalty payments to lessees as per Exhibits "A-1" and "A-2" of Agreement, and also, royalties to the Twin Falls Canal Company ("TFCC") in the event TRCC furnishes additional water under a separate agreement. In the event that net revenues are insufficient to pay the lease payment to RCHPI during Period One, such lease payments shall accrue, with interest at the rate of ten percent (10%) per annum. All accrued and deferred lease payments, together with interest thereon shall be due no later than the end of the fifteenth (15th) year from the beginning of Period One.

At the end of Period One, Period Two shall commence and shall terminate at the end of the thirty-fifth (35th) year following the first production of electricity by the Project. During Period Two lease payments shall be as follows: (1) thirty percent (30%) of the gross annual revenues received by the Partnership under the Power Contract up to 11,700,000 kwh; (2) fifty percent (50%) of the net annual revenues received by the Partnership under the Power Contract over 11,700,000 kwh. In addition any increase in revenues to the Partnership as a result of decrease in the royalty payments to lessees as per Exhibits "A-1" and "A-2" shall be shared equally with RCHPI.

Net annual revenues as used to determine the division of power revenue over 11,700,000 kwh each year shall be defined as gross annual revenue from the sale of power over 11,700,000 kwh, minus actual pro-rata operation and maintenance expenses or eight percent (8%) of gross annual revenue from the sale of power over 11,700,000 kwh, whichever is less; and other pro-rata expenses which are taxes, both state and local including kwh tax; royalty to land owners and TFCC; and the power purchasers Power Co. maintenance fees. All royalties paid to TFCC for additional water shall be approved by both RCHPI and the partnership.

B. The Partnership understands and agrees that as part of the consideration for Idaho Frozen Foods lease (Exhibit "A-1") and the Stradley lease (Exhibit "A-2"), a total royalty payment of five and three tenths percent (5.3%) of the gross annual revenue shall be paid to the parties under the terms of their respective leases. These royalties are in addition to the royalty due RCHPI.

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1 C. All payments to RCHPI, as outlined in Section 6-A
2 shall be made to the RCHPI Trust Administrator, Title Fact,
3 P. O. Box 486, Twin Falls, Idaho, 83303.

4 7. Exchange of Property for Stock:

5 EMH and HOWARD agree to exchange all of their interest
6 in the Water Rights, the Real Property, the FERC License, the
7 Transmission Agreement, and the Power Contract for all of the
8 stock of RCHPI. Said exchange of property for stock shall place
9 legal ownership of the aforementioned assets and interests in
10 RCHPI, thus facilitating the lease by RCHPI to the Partnership.
11 EMH agrees to pledge and/or assign the RCHPI stock and/or the
12 Water Rights to the designated lending institution of the part-
13 nership for security purposes.

14 8. Tax Benefits:

15 The Partnership, as lessee of the Project, shall
16 receive all Federal and State tax benefits, including, but not
17 limited to ITC, ETC, and Cost Recovery Deductions (ACRS) avail-
18 able to this Project under tax laws and regulations relating
19 to power projects of this nature.

20 9. Operation and Maintenance:

21 At all times during the term of this Agreement, the
22 Partnership shall keep and maintain the Project and all improve-
23 ments 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, reasonable wear and
tear excepted. The Partnership 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 pro-
vide and maintain adequate protective equipment sufficient to
prevent damage to the facility. The Partnership shall make
every reasonable effort to produce the maximum amount of power
annually.

24 10. Taxes and Assessments:

25 From the date hereof, the Partnership shall be respon-
26 sible for and pay the kilowatt hour taxes assessed against the
27 Project during the term hereof. The partnership shall be
28 responsible for and pay all real and personal property taxes
29 and any other taxes that may be assessed against the Project
30 during the term of the lease.

11. Default:

In the event either party hereto is in default under this Agreement, and such default is not cured within thirty (30) days after written notice of the default is delivered to the defaulting party, the non-defaulting party shall have the right to bring one or more of the following actions:

A. An action for specific performance under this Agreement.

B. An action for damages incurred as a result of the default.

C. Any other rights and remedies provided by law, including the right to terminate this lease.

In the event of default under this Article, the non-prevailing party shall pay all costs and fees incurred by the prevailing party in enforcing this Agreement, including reasonable attorneys' fees and court costs.

The parties agree to cooperate fully with lenders in providing an appropriate and reasonable cure as may be required.

12. Covenant of Title and Peaceful Possession:

RCHPI, EMH, Howard and the Partnership covenant and warrant as follows:

A. Howard, by ownership of the FERC license and under existing law, has the right of condemnation to acquire the necessary rights covered by the IFF lease, Stradley lease, and the Sharp/Vickers easement.

B. EMH will attempt to extend the Stradley lease from March, 1988, to December 31, 1988, if the Partnership deems it necessary. Any cost associated with extending this lease shall be paid for by EMH.

C. EMH will acquire the Sharp/Vickers easement, or fee, free of encumbrances, either through negotiation or condemnation. The Partnership will deposit a minimum of fifteen percent (15%) of the actual purchase price into an escrow account when requested by EMH, which account will be used in whole or in part to purchase or condemn said easement or fee. The balance of the purchase price and the difference between the total purchase price and \$100,000 will be paid into the escrow account prior to closing the purchase of the Sharp/Vickers easement or fee. In the event the easement or fee must be

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AUG 05 1991

condemned, the Partnership will pay a total of \$100,000 to EMH upon acquisition of the easement or fee. Any portion of the \$100,000 not used in acquiring the easement or fee shall be retained by EMH.

D. The Partnership will negotiate any extension of the IFF lease and any additional provisions that they deem necessary. The Partnership's negotiations for the acquisition of the IFF concessions in no way lessens EMH's/RCHPI's/Howard's obligation and warranty to provide all necessary land rights. The Partnership's failure to successfully negotiate the acquisition of an extension or change in the character of the IFF easement is not an event of default by the Partnership. EMH will share with the Partnership the cost of obtaining said extension by paying one-half (1/2) of any costs paid by the Partnership in negotiating the extension, up to a maximum of \$25,000.00. The Partnership will originally pay all amounts to IFF to obtain the extension. EMH's share, up to a maximum of \$25,000.00, shall be repaid to the Partnership within thirty (30) days of execution of a power sales agreement for this project.

In the event of a breach of the warranties contained herein by RCHPI, and/or Howard, the exclusive remedy of Bonn-Tech shall be a refund of all payments made to RCHPI, EMH, and/or Howard, exclusive of the \$50,000 that has already been paid to them and any monies received by Howard under a separate engineering agreement.

13. RCHPI, EMH, and HOWARD Covenant of Further Assurances:

RCHPI or HOWARD will remain in a position of responsibility to FERC as licensee and the Partnership shall be directly responsible to RCHPI for construction and operation of the Project in accordance with FERC rules and regulations, and at the option of the Partnership, RCHPI or HOWARD agree to cooperate in the establishment of a joint venture, leasehold, or any beneficial ownership of the Project to the Water Rights, Power Contract, FERC, the Internal Revenue Service, or any other governmental agency. RCHPI or HOWARD agree to cooperate in the assignment of any and all rights and permits owned by RCHPI or Howard to the Partnership lender for the purpose of Project financing, specifically including the FERC license, even if RCHPI, EMH and/or HOWARD is the sole licensee or co-licensee. RCHPI, EMH and/or HOWARD covenant to execute all such further documentation as may be required to complete the intent of this Agreement.

14. Warranties:

RCHPI, EMH and HOWARD warrant that there are no other agreements, leases or contracts in existence to transfer any of

AUG 05 1991

its interest in the Project to any other parties. RCHPI, EMH, and/or HOWARD warrant that no liens exist on the Project, which would impair the lease, transfer or assignment of ownership interest to the Partnership. In the event of a breach of warranties, the Partnership may declare a default in accordance with Article 11 hereof and pursue the remedies herein. Any charges made by Cogen for the use of all facilities, including the substation and transformers, shall be the responsibility of the Partnership.

15. Force Majeure or Delays in Obtaining Governmental Permissions:

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, inability to insure the Project at a reasonable cost, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, the Power Contract or FERC License Amendment or other necessary permissions have not been obtained through no fault of either party, or other reason of a like nature not the fault of the party delayed in performing the work or doing the acts required under the terms of this Agreement, then performance of such action shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

16. Additional Instruments and After Acquired Rights:

In the event it is necessary or desirable to prepare and execute additional instruments or documents to carry out the terms of this Agreement, the parties hereto agree to cooperate fully in the preparation and execution of the same. With respect to the FERC License and Water Rights, the lease herein contained is made with sufficient warranties to create effective leases of said interests at such time as the same are fully acquired or perfected by RCHPI, EMH, or HOWARD. RCHPI, EMH, or HOWARD agree to cooperate with and assist the Partnership in securing the necessary consents for the assignment of the Idaho Frozen Foods lease, the Stradley lease, the Transmission Agreement, and the Power Contract.

17. Eminent Domain:

In the event the Project shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Agreement shall terminate and expire as of the date of such taking, and parties of the first and second part shall thereupon be released from any liability thereafter

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AUG 05 1991

1 accruing hereunder. It is understood and agreed that the Part-
2 nership shall be entitled to the entire award or compensation
3 under any proceeding in eminent domain relating to the ongoing
4 operations of the Project except (a) such portion of the award
5 directly proportionate to the royalty income due or to become
6 due to RCHPI pursuant to this Agreement, and (b) any portion
7 of the award or compensation specifically relating to the Water
8 Rights transferred hereunder, valued as of the end of the term
9 specified in Paragraph 2 hereof. Any compensation or award re-
10 lating to the value of the Water Rights or any other right, con-

11 tract or interest prior to the end of the term as specified in
12 Paragraph 2 hereof shall belong to the Partnership. Any compen-
13 sation or award relating to the value of RCHPI's irrigation
14 facilities shall belong to RCHPI. Parties agree to cooperate.

15 18. Return of Project:

16 At the end of the lease term as specified in Paragraph
17 2 hereto, the Project and all appurtenances thereof shall revert,
18 at no cost, to RCHPI. At any time within six (6) months prior
19 to the expiration of the lease term as specified in Paragraph 2
20 hereof, the Partnership shall have the right to remove all
21 items of personal property of the Project.

22 19. Indemnification:

23 The Partnership shall indemnify and hold harmless
RCHPI, EMH, or HOWARD, its officers, agents, employees and
landowners, from and against any and all suits, demands, claims,
causes of action, costs or expenses, including the reasonable
attorneys' fees, which may arise or be asserted against RCHPI,
EMH, or HOWARD, its officers, agents, or employees by reason of
assigned agreements, construction, maintenance, or operation of
the Project by the Partnership, and hold harmless RCHPI from
damage to property belonging to any other person or entity re-
sulting from or arising out of, or in any way connected with the
construction, maintenance, and operation of the power generating
facilities or connections, or the interconnection between the
facility and other facilities or power transmission lines. Said
indemnification shall include all costs, expenses, and fees, in-
cluding attorneys' fees, which may be incurred by RCHPI or HOWARD
resulting from any claim or demand, or by the defense thereof,
brought against RCHPI or HOWARD by any third person or entity.

* 20. Assignment:

-- The Partnership, at its sole option and without the
consent of RCHPI, EMH, or HOWARD, has the right to assign or
sublease this Agreement to any corporation, partnership, indivi-

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AUG 05 1991

dual, or any other entity of its choosing, and all terms of this document shall remain in full effect and become a part of any agreement to any successors or assigns of the Partnership.

21. Liability Insurance and Indemnification:

The Partnership shall, at all times during the term of this Agreement, carry adequate public liability insurance, the same to be in an amount of not less than \$1,000,000.00 for injury to one person and \$2,000,000.00 against claims of more than one person from one accident upon said premises or such

higher amounts as requested by RCHPI from time to time taking into consideration inflation and other changing factors. RCHPI shall be an additional insured under the loss payable clause of said policy, a copy of said policy shall be furnished RCHPI before construction by the Partnership.

22. Notices:

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

If to RCHPI, EMH, and/or CHARLES D. HOWARD:

EMH
Suite 2
1139 Falls Avenue East
Twin Falls, ID 83301
Attention: Doug Howard

If to the Partnership:

Bonn-Tech
Star Route Box 3654
Jackson Hole, WY 83001
Attention: Walter Tearse

Either party may change its address in writing by giving notice of such change in the manner herein provided.

23. Entire Agreement:

-- Subject to Paragraph 16 hereof, this Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and shall not be modified or amended except by written instrument duly executed by the parties hereto.

AUG 05 1991

24. Binding Agreement:

This Agreement shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

25. Captions;

Captions throughout this instrument are for the 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 Agreement.

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

EMH

Charles D. Howard
Charles D. Howard

Gerald L. Martens
Gerald L. Martens

Carl Edwards
Carl Edwards

Charles D. Howard
Charles D. Howard, An Individual

ROCK CREEK HYDROPOWER, INC.

Charles D. Howard
Charles D. Howard, President

ATTEST:

Carl N. Edwards
Secretary

BONN-TECH PARTNERSHIP

By: Bruce Morley
Bruce Morley, Secretary
Cogentech, Inc., Managing Partner

AGREEMENT - 11

RECORDED
AUG 05 1991

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LEASE AGREEMENT

THIS LEASE made this 27th day of February, 1984, between Idaho Frozen Foods Corp., a Delaware corporation, hereinafter called the "Lessor," and E.M.H. Investments, a partnership organized and existing under the laws of the State of Idaho, hereinafter called "Lessee;"

W I T N E S S E T H:

(1) Property and Term: Lessor, in consideration of the rents, covenants and agreements herein reserved and contained, on the part of the Lessee to be paid, kept and performed, hereby leases to the Lessee the following described premises situated in the County of Twin Falls, State of Idaho, to wit:

The property described on Exhibit "1" attached hereto and made a part hereof as if set out at length herein.

Including the use of Lessor's access road during construction; provided that Lessee shall maintain, or cause to be maintained, said roadway in a condition which permits easy automobile access of Lessor during the construction period. After construction of the project each party shall use their own roadway unless otherwise agreed. This description shall be amended following construction of the project so as to include only the property required to be included as "Exempt Project" properties by the Federal Energy Regulatory Commission.

TO HAVE AND TO HOLD the said premises unto the Lessee and its successors and assigns for a period of forty (40) years beginning the 1st day of the month immediately following the execution hereof.

(2) Use of the Property: It is intended that Lessee will finance, construct, own, and operate a hydroelectric generation facility on the leased premises. The project will require diversion of water from Rock Creek and conveyance through a penstock and canal which will be constructed on the leased premises to the proposed powerhouse, all in the configuration as generally shown on Exhibit "2" hereto. It is acknowledged that part of the lands required for the project are not owned by Lessors.

-- (3) Rental. In consideration for the execution of this lease, the Lessee hereby covenants and agrees to pay annually to the Lessor as "rental" eight percent (8%) of the "gross receipts from the sales of power" from the head available on the Lessor's property, which is agreed to be 48 feet. Said payment to be made during the term of this Lease, beginning with the date of the first sale of power. For the purposes of

AUG 05 1991

1 this Lease, the term "gross receipts from sales of power" as
2 used herein shall mean the total receipt of revenue from said
3 48 feet by the Lessee from the project without deducting any
4 costs, payments, repayments, or expenses. Payments shall be
5 made to the Lessor within thirty (30) days of the receipt of
6 payments received by Lessee from power sales.

7 (4) Permissions, Cooperation of Lessor, and Termination
8 if Permissions Not Obtained: It is under-
9 stood and agreed that in order to construct a power generation
10 facility on the leased premises that the Lessee must obtain
11 certain permissions, e.g., a State of Idaho water right permit,
12 a Federal Energy Regulatory Commission exemption, and other
13 state and federal permissions so as to authorize construction
14 and operation of said facility. It is understood and agreed
15 that the Lessor will cooperate in all respects in executing
16 necessary documents as may be required in obtaining necessary
17 water rights, permissions, licenses and necessary rights of
18 way, not only for the construction of the generation facility,
19 but including the use of roadways and transmission line corridors
20 as may be required to connect said facility to adjacent facilities.
21 Notwithstanding Lessor's agreement to cooperate with
22 Lessee in obtaining such permission, Lessor shall not be oblig-
23 ated to consent to any easements or other request for the use
of its adjoining property unless Lessor, in its sole discre-
tion, determines that such requests, if granted, will not inter-
fere with Lessor's then present or future use of such land.
Lessee agrees to pursue the FERC exemption diligently
and covenants to file the exemption application on or before the
date as set out in the preliminary permit.

In the event that said permissions are not obtained
and the facility not constructed within three (3) years and six
(6) months of the date of the execution of this Lease, this
Lease shall be deemed terminated and of no further force and
effect unless extended by mutual agreement of the parties, pro-
vided that Lessor shall agree to extensions to complete the
project construction in the event of delays beyond the control
of Lessee. In the event that this Lease is terminated for the
failure of Lessee to construct the facility or to complete
construction of the facility, Lessee shall, at Lessor's request,
restore the property to the extent practical to its condition
prior to the commencement of any construction activity by
Lessor.

(5) Approval of Construction Plans: Prior to the
time of formal application for exemption submitted to the
Federal Energy Regulatory Commission, the Lessee shall consult

FILED
AUG 05 1991

1 with the Lessor as to the proposed location of the canal, pen-
2 stock and other facilities and shall obtain Lessor's approval
3 of said location. Lessee agrees to pay Lessor's costs of review
4 of plans at the time such review costs are incurred by Lessor,
5 to determine whether the power canal is properly located so as
6 to not interfere with the Lessor's waste water treatment faci-
7 lities on adjacent properties owned by Lessors. These costs
8 may be deducted from Lessee's first payments to Lessor hereunder.
In the event that the Federal Energy Regulatory Commission
requires as a term of its license a relocation of the facility,
and such relocation affects Lessor's use of its land for its
land disposal or other purposes, then Lessee shall reimburse
Lessor for any and all costs and expenses related to the replace-
ment of improvement related to its use of its land to permit
compliance with the terms of the license or Lessee shall termi-
nate its project and this Lease.

9 (6) Construction Schedules: It is acknowledged by
10 the parties that the Federal Energy Regulatory Commission exemp-
11 tion will direct construction schedules which must be met as a
condition of the exemption. In the event that the Lessee is
not able to meet those schedules and defaults under the provi-
sions of the FERC exemption, such default shall also be deemed
a default under the provisions of this Lease.

12 (7) Embankment Disposal: Lessor hereby agrees to
13 allow Lessee to dispose of excess embankment materials during
14 construction of the project on Lessor's adjacent property in
locations as directed by Lessors.

15 (8) Property Taxes and Kilowatt Hour Tax: Lessee
16 shall be responsible for all ad valorem and personal property
17 tax on the parcel which is the subject of this Lease including
18 increased real property and personal property taxes assessed by
19 reason of the improvements constructed on the leasehold as part
of power generating facility and appurtenances, and will also
pay the kilowatt hour tax assessed on power generation by the
State of Idaho. Lessee agrees that the leasehold parcel as
finally and specifically surveyed and described may be sepa-
rated as a separate tax parcel for the purposes of ad valorem
taxes, at the expense of Lessee.

20 (9) Assignment and Subordination to Lender: Lessee
21 shall not be permitted to assign this Lease unless it obtains
22 the prior written consent of the Lessor. Any assignment of
23 Lessee's interest in more than 50% of the power generation
facilities or a change in the composition of the partnership
which is the Lessee hereunder shall be treated as an assignment
for the purposes of this document. Provided, however, Lessor
herein consents to an assignment of the Lease as security.

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AUG 05 1991

1 Lessee's lender and Lessor agrees to subordinate its interest
2 in the constructed facilities to lender's security interest in
3 the constructed facilities; in the event lender succeeds to
4 Lessee's interest in the Lease, Lessor agrees that this Lease
shall continue in full force and effect provided that Lessee
and lender are not then in default of any provisions of this
Lease.

5 (10) Transmission Lines: The parties hereto acknow-
6 ledge that the present Idaho Public Utilities Commission restric-
7 tions on the sale of power to utilities may require the transmis-
8 sion lines from the facility and the easement to be assigned
9 the power purchaser.

10 (11) Mechanic's Liens: Lessee shall allow no mecha-
11 nic's liens or other liens against the leased premises, but in
12 the event said occur, Lessee agrees to indemnify Lessor for all
13 its costs, expenses, losses, and damages, including reasonable
14 attorney's fees, related to Lessor's satisfaction of any mecha-
15 nic's lien. Lessee will require performance and completion
16 bonds covering all work to be done on the leased premises.

17 (12) Fire or Casualty: If during the term of this
18 Lease, the improvements constructed by the Lessee shall be dam-
19 aged by fire or other casualty, Lessee shall have the option of
20 whether to rebuild the damaged improvements, this Lease shall
21 continue in full force and effect and Lessee covenants to recon-
22 struct said improvements within a reasonable time, but in no
23 event more than 30 months. If Lessee elects not to rebuild the
damaged improvements, then Lessee shall remove all debris and
restore the property to the condition existing prior to the
construction of the improvements.

(13) Liability Insurance and Indemnification: The
Lessee shall, at all times during the term of this Lease, carry
adequate public liability insurance, the same to be in an amount
of not less than \$500,000.00 for injury to one person and
\$1,000,000.00 against claims of more than one person from one
accident upon said premises or such higher amounts as requested
by Lessor from time to time taking into consideration inflation
and other changing factors. The Lessor shall be an additional
insured under the loss payable clause of said policy, a copy
of said policy shall be furnished Lessor before construction by
lessee commences. In addition, the Lessee agrees to indemnify
and hold harmless the Lessor from damage to property belonging
to the Lessor and any other person or entity resulting from or
arising out of, or in any way connected with the construction,
maintenance, and operation of the power generating facilities
or connections, or the interconnection between the facility and
other facilities or power transmission lines. Said indemnifi-

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AUG 05 1991

1 cation shall include all costs, expenses, and fees, including
2 attorney's fees, which may be incurred by the Lessor resulting
3 from any claim or demand, or by the defense thereof, brought
4 against the Lessor by any third person or entity.

5 (14) Special Representation of the Lessee: The Lessee
6 agrees in the performance of their obligations hereunder to
7 comply fully with all the laws, rules and regulations pertain-
8 ing to the subject matter of the operation of a hydroelectric
9 facility, including particularly the Federal Power Act, the
10 rules and regulations of the Federal Energy Regulatory Commission
11 and the Idaho Public Utilities Commission to the extent that
12 their operations may be subject to the jurisdiction of any
13 state or federal regulatory agencies, subject to the terms of
14 all valid and applicable orders of any of such agencies. The
15 Lessee agrees to pay any and all costs and expenses of itself
16 in effecting compliance with any such laws, rules, regulations
17 and orders which apply to construction, operation or maintenance
18 of the power facilities.

19 (15) Responsibility for Charges: Lessee shall pay
20 all charges for utilities or other charges as necessary in the
21 operation of Lessee's facilities and shall indemnify the Lessor
22 against any liability or damage on such account.

23 (16) Right to Inspect and Authorized Access: The
Lessor, its agents, employees, and other representatives, shall
have the right to enter onto and upon said premises, or any
part thereof, at reasonable hours for the purpose of examining
the same.

Lessor acknowledges that employees, agents, and invi-
tees of the Lessee, as well as governmental inspectors will be
using the access roads and the leased property during construc-
tion and thereafter in the inspection and/or operation and
maintenance of the facilities and authorizes them to do so.

(17) Best Efforts: The Lessee agrees to use their
best efforts to keep the power plant operating at the maximum
allowable generating capacity in accordance with the available
water flows, provided that said obligation shall abate for shut-
downs caused by acts of God, emergencies, and normal scheduled
operation and maintenance work. Best efforts shall be defined
as the accepted practices in the hydroelectric utility industry.
Lessee also covenants to purchase all of Lessee's power require-
ments from sources other than the project since all output of
the project will be sold pursuant to the Power Sales Agreement.
Lessor also acknowledges that any power requirements of Lessor
must be purchased from other than the property production if
Lessor has power requirements.

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JUN 05 1991

1 (18) Option to Renew: This Lease may be renewed for
2 an additional forty (40) year term by the Lessee by giving writ-
3 ten notice to the Lessor one year prior to the end of the lease
4 term as described herein; provided; that Lessee is not in
5 default of this Lease on the date it gives its written notice
6 and on the date the renewal term is to commence.

7 (19) Bankruptcy: If the Lessee shall file a petition
8 for bankruptcy or for re-organization or for an arrangement pur-
9 suant to the General Bankruptcy Act, as amended, or any similar
10 federal or state law, or shall be adjudged to be bankrupt, or
11 become insolvent, or shall make an assignment for the benefit
12 of its creditors, or shall admit in writing its inability to
13 pay its debts generally as they become due, or if a petition or
14 answer proposing the adjudication of the Lessee as a bankrupt
15 or its re-organization under the General Bankruptcy Act or any
16 similar federal or state law shall be filed in any court and
17 such petition or answer shall not be discharged or denied within
18 one hundred twenty (120) days after the filing thereof, or if
19 the receiver, trustee or liquidator (or similar official) of
20 the Lessee or more than one-third of the property of the Lessee
21 shall be appointed in any proceeding or by any federal or state
22 office or agency and shall not be discharged within one hundred
23 twenty (120) days after such appointment, such event shall be
deemed a default and subject to the remedies as provided in
this agreement.

1 (20) Condemnation: If at any time during the term of
2 this Lease the whole or any part of the leased premises shall
3 be taken for any public or quasi-public purpose by any lawful
4 power or authority by the exercise of the right of condemnation
5 or eminent domain, subject to the rights of the Lessee's lender
6 or other lienholders, the Lessee shall be entitled to and re-
7 ceive any and all awards that may be made in such proceeding
8 for the improvements constructed by the Lessee; provided, that
9 damages awarded for taking of the fee shall be payable to Les-
10 sor. Lessor shall be entitled to its proportionate share of
11 any damages awarded by the Court for the value of lost future
12 revenues as based upon the rental reserved in paragraph 3,
13 "Rental," above.

14 If such proceeding shall result in the taking of the
15 demised premises, Lessee shall have the right not to reconstruct
16 and this Lease and the terms thereof shall terminate and expire
17 on the date of such taking and all rent or other sums or charges
18 provided in this Lease to be paid by the Lessee shall be appor-
19 tioned and paid to the date of such taking, and Lessee shall
20 have twelve (12) months to remove the remaining improvements.

1 If less than the whole or less than substantially all
2 of the demised premises shall be taken in such proceeding, and
3 the facilities could be altered so as to allow the facility to
4 operate during the remaining portion of the lease term, Lessee
shall have the option to rebuild, but rent shall abate during
said reconstruction, it being understood Lessee will utilize
its best efforts to reconstruct.

5 (21) Default: It is expressly understood and agreed
6 that each and all of the provisions of this Lease are conditions
7 precedent to be faithfully and fully performed and observed by
8 the Lessee so as to entitle the Lessee to continue in possession
9 of the leased property, and if any default shall occur, the pay-
10 ment of rent or in the observance, payments, or performance of
11 any of the provisions, terms, or conditions hereof, the Lessor,
12 at its election, shall have the right to re-enter said premises,
13 provided, however, that no termination of this Lease shall be
made by the Lessor unless the Lessor has, at least sixty (60)
days prior thereto, given written notice to the Lessee or any
assignee thereof, of their intention to do so by mailing to the
Lessee, at the Lessee's address at 1139 Falls Avenue East, Twin
Falls, Idaho, 83301, which notice shall specify such default or
defaults and the Lessee has not, during the sixty (60) days
after the time of mailing said notice, remedied or corrected
the default so specified. The failure of the Lessor to exer-
cise its rights for one default under this Lease shall not be a
waiver of Lessor's right to exercise those rights for any sub-
sequently occurring default.

14 If a default shall occur as provided in this agreement,
15 the Lessor may elect to purchase the facilities of the Lessee
16 by assuming the liens of the Lessee's lender and the Lessor may
17 thereafter operate the facility without payment to the Lessee;
18 or the Lessee may be required by the Lessor to remove all faci-
lities within twelve (12) months and restore the property in
accordance with paragraph (4) herein, but if said property has
not been removed within the twelve (12) months, the Lessor
shall have the right to re-enter and take possession of the
property and shall be deemed the owner of any said improvements
which remain.

19 (22) Prompt Payments: It is anticipated that the
20 Idaho Power Company will be required to purchase all power
21 generated for a term of 35 years pursuant to a Power Sales Con-
22 tract. In the event the Idaho Power Company defaults in pay-
23 ments to Lessee under the Power Sales Contract, Lessee agrees
to attempt to collect all amounts then due for power sales and
to secure a new purchaser as soon as possible on the most favor-
able basis available. If at any time during the term of this
Lease, or any extension thereof, sales are to other than Idaho

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AUG 05 1991

1 Power Company or their successors and assigns by the Lessee,
2 Lessee hereby guarantees Lessor's rental payments due in accor-
3 dance with paragraph (3) hereof, whether or not the then power
4 purchasers have made timely payments to the Lessee.

5 (23) Attorney's Fees: The Lessor shall be entitled
6 to recover from the Lessee all reasonable attorney's fees incur-
7 red by it in the preparation and giving of any notice of default
8 (if such default in fact shall exist). In any action or other
9 proceeding brought to enforce any of the terms of this Lease,
10 the prevailing party shall be entitled to reasonable attorney's
11 fees.

12 The parties hereto bind their successors and assigns.

13 IN WITNESS WHEREOF, the parties hereto executed this
14 Lease Agreement the day and year first above written.

15 IDAHO FROZEN FOODS CORP.

16 By [Signature]
17 President

18 ATTEST:

19 [Signature]
20 Secretary

21 E.M.R. INVESTMENTS

22 By [Signature]
23 Carl V. Edwards

By [Signature]
Charles D. Howard

By [Signature]
Gerald Martens

)

SS. 11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044

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James P. Davis
Notary Public for Idaho
Residing at

Margie M. Cae
Notary Public for Idaho
Residing at Grangeville, Idaho

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Edwards, Howard & Martens, Inc.

ENGINEERS / PLANNERS / SURVEYORS

1139 Falls Ave. E., Suite B
Twin Falls, Idaho 83301
Phone 724-4800

IN THE FIELDS OF:

PLANNING
SURVEYING
HIGHWAYS
WATER
SEWAGE
STRUCTURAL
SUBDIVISIONS
AIRPORTS
BRIDGES

Date: December 1, 1982

DESCRIPTION OF
A HYDROELECTRIC POWER PROJECT EASEMENT
FOR IDAHO FROZEN FOODS PROPERTY
ROCK CREEK - HYDRO PROJECT
LYING IN NW 1/4 NW 1/4, SECTION 25,
T.9S., R.16E., B.M.,
TWIN FALLS COUNTY, IDAHO

A strip of land 100 feet wide lying adjacent with and 50 feet left and 50 feet right of the centerline of a power canal lying in the NW 1/4 NW 1/4, Section 25, T.9S., R.16E., B.M., Twin Falls County, Idaho and more particularly described as follows:

Beginning at the Northwest corner of said Section 25. Said point also lies North 00° 04' 51" West, 2639.14 feet from the West quarter of said Section 25.

Thence, South 56° 34' 36" East, 904.37 feet to the centerline of the power canal, said point being the REAL POINT OF BEGINNING.

Thence, South 55° 00' 00" East, 120.00 feet,

Thence, South 29° 00' 00" East, 270.00 feet,

Thence, South 30° 00' 00" West, 350.00 feet,

Thence, South 12° 00' 00" West, 110.00 feet,

Thence, South 13° 00' 00" East, 107.90 feet, to the South boundary of the NW 1/4 NW 1/4 of said Section 25, which is the POINT OF ENDING of the above described easement.

Prepared by:

EDWARDS * HOWARD * MARTENS, INC.

Charles D. Howard
DEC 1982

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LEASE AGREEMENT

THIS LEASE made this 15 day of MARCH, 1983, between Homer Stradley, Donald Stradley & Sam Stradley, hereinafter called the "Lessor," and E.M.H. Investments, a partnership organized and existing under the laws of the State of Idaho, hereinafter called "Lessee;"

W I T N E S S E T H:

1. Property and Term: Lessor, in consideration of the rents, covenants and agreements herein reserved and contained, on the part of the Lessee to be paid, kept and performed, hereby leases to the Lessee the following described premises situated in the County of Twin Falls, State of Idaho, to wit:

The property described on Exhibits 1 and 3 attached hereto and made a part hereof as if set out at length herein.

This description shall be amended following construction of the project so as to include only the property required to be included as "Exempt Project" properties by the Federal Energy Regulatory Commission.

TO HAVE AND TO HOLD the said premises unto the Lessee and its successors and assigns for a period of forty (40) years beginning the 1st day of the month immediately following the execution hereof.

2. Use of the Property: It is intended that Lessee will finance, construct, and own a canal or penstock that will be part of an electric generation facility on the leased premises. The project will require diversion of water from Rock Creek and conveyance through a penstock or canal which will be constructed on the leased premises and generally shown on Exhibits 2 and 4 hereto.

EXHIBIT A-2

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It is acknowledged that part of the lands required for the project are not owned by Lessors.

3. Rental: In consideration for the execution of this lease, the Lessee hereby covenants and agrees to pay annually to the Lessor as "rental" five percent (5%) of the "gross receipts from the sales of power" from the head available on the Lessor's property, which is agreed to be 46 feet if only lands described in Exhibit 1 are utilized or 70 feet if lands described in Exhibits 1 and 3 are used. Said payment to be made during the term of this Lease beginning with the date of the first sale of power. For the purposes of this Lease, the term "gross receipts from sales of power" as used herein shall mean the total receipt of revenue from said 46 feet or 70 feet, whichever applies, by the Lessee from the project without deducting any costs, payments, repayments, or expenses. Payments shall be made to the Lessor within thirty (30) days of the receipt of payments received by Lessee from power sales.

4. Permissions, Cooperation of Lessor, and Termination
if Permissions Not Obtained: It is understood and agreed that in order to construct a power generation facility on the leased premises that the Lessee must obtain certain permissions, e.g., a State of Idaho water right permit, a Federal Energy Regulatory Commission exemption, and other state and federal permissions so as to authorize construction and operation of said facility. It is understood and agreed that the Lessor will cooperate in all respects in executing necessary documents as may be required in obtaining necessary water rights, permissions, licenses and necessary rights of way for the construction of the canal or penstock. Notwithstanding Lessor's agreement to cooperate with Lessee in obtaining such permission, Lessor shall not be obligated to consent to any easements or other request for the use of its adjoining property unless Lessor, in its sole discretion, determines that such requests, if granted, will not interfere with Lessor's then present or future use of such land.

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Lessee agrees to pursue the FERC exemption diligently and covenants to file the exemption application on or before the date as set out in the preliminary permit.

In the event that said permissions are not obtained and the facility not constructed within five (5) years of the date of the execution of this Lease, this Lease shall be deemed terminated and of no further force and effect unless extended by mutual agreement of the parties, provided that Lessor shall agree to extensions to complete the project construction in the event of delays beyond the control of Lessee. In the event that this Lease is terminated for the failure of Lessee to construct the facility or to complete construction of the facility, Lessee shall, at Lessor's request, restore the property to the extent practical to its condition prior to the commencement of any construction activity by Lessee.

5. Construction Schedules: It is acknowledged by the parties that the Federal Energy Regulatory Commission exemption will direct construction schedules which must be met as a condition of the exemption. In the event that the Lessee is not able to meet those schedules and defaults under the provisions of the FERC exemption, such default shall also be deemed a default under the provisions of this Lease.

6. Embankment Disposal: Lessor hereby agrees to allow Lessee to dispose of excess embankment materials during construction of the project on Lessor's adjacent property in locations as directed by Lessors.

7. Property Taxes and Kilowatt Hour Tax: Lessee shall be responsible for all ad valorem and personal property tax on the parcel which is the subject of this Lease including increased real property and personal property taxes assessed by reason of the improvements constructed on the leasehold as part of power

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generating facility and appurtenances, and will also pay the kilowatt hour tax assessed on power generation by the State of Idaho. Lessee agrees that the leasehold parcel as finally and specifically surveyed and described may be separated as a separate tax parcel for the purposes of ad valorem taxes, at the expense of the Lessee.

8. Mechanic's Liens: Lessee shall allow no mechanic's liens or other liens against the leased premises, but in the event said occur, Lessee agrees to indemnify Lessor for all its costs, expenses, losses, and damages, including reasonable attorney's fees, related to Lessor's satisfaction of any mechanic's lien. Lessee will require performance and completion bonds covering all work to be done on the leased premises.

9. Fire or Casualty: If during the term of this lease, the improvements constructed by the Lessee shall be damaged by fire or other casualty, Lessee shall have the option of whether to rebuild or to terminate. If the Lessee elects to rebuild the damaged improvements, this Lease shall continue in full force and effect and Lessee covenants to reconstruct said improvements within a reasonable time, but in no event more than 30 months. If Lessee elects not to rebuild the damaged improvements, then Lessee shall remove all debris and restore the property to the condition existing prior to the construction of the improvements.

10. Liability Insurance and Indemnification: The Lessee shall, at all times during the term of this Lease, carry adequate public liability insurance, the same to be in an amount of not less than \$500,000.00 for injury to one person and \$1,000,000.00 against claims of more than one person from one accident upon said premises. The Lessor shall be carried as an additional insured under the loss payable clause of said policy. In addition,

REFILED
AUG 05 1991

the Lessee agrees to indemnify and hold harmless the Lessor from damage to property belonging to the Lessor and any other person or entity resulting from or arising out of, or in any way connected with the construction, maintenance, and operation of the power generating facilities or connections, or the interconnection between the facility and other facilities or power transmission lines. Said indemnification shall include all costs, expenses, and fees, including attorney's fees, which may be incurred by the Lessor resulting from any claim or demand, or the defense thereof, brought against the Lessor by any third person or entity.

11. Special Representation of the Lessee: The Lessee agrees in the performance of their obligations hereunder to comply fully with all the laws, rules and regulations pertaining to the subject matter of the operation of a hydroelectric facility, including particularly the Federal Power Act, the rules and regulations of the Federal Energy Regulation Commission and the Idaho Public Utilities Commission to the extent that their operations may be subject to the jurisdiction of any state or federal regulatory agencies, subject to the terms of all valid and applicable orders of any of such agencies. The Lessee agrees to pay any and all costs and expenses of itself in effecting compliance with any such laws, rules, regulations and orders which apply to construction, operation or maintenance of the power facilities.

12. Responsibility for Charges: Lessee shall pay all charges for utilities or other charges as necessary in the operation of Lessee's facilities and shall indemnify the Lessor against any liability or damage on such account.

13. Right to Inspect and Authorized Access: Lessor acknowledges that employees, agents, and invitees of the Lessee, as well as governmental inspectors will be using the access roads and the leased property during construction and thereafter in

AUG 05 1991

the inspection and/or operation and maintenance of the facilities and authorizes them to do so.

14. Best Efforts: The Lessee agrees to use their best efforts to keep the power plant operating at the maximum allowable generating capacity in accordance with the available water flows, provided that said obligation shall abate for shutdowns caused by acts of God, emergencies, and normal scheduled operation and maintenance work. Best efforts shall be defined as the accepted practices in the hydroelectric utility industry. Lessee also covenants to purchase all of Lessee's power requirements from sources other than the project since all output of the project will be sold pursuant to the Power Sales Agreement. Lessor also acknowledges that any power requirements of Lessor must be purchased from other than the project production if Lessor has power requirements.

15. Option to Renew: This Lease may be renewed for an additional forty (40) year term by the Lessee by giving written notice to the Lessor one year prior to the end of the lease term as described herein.

16. Bankruptcy: If the Lessee shall file a petition in bankruptcy or for re-organization or for an arrangement pursuant to the General Bankruptcy Act, as amended, or any similar federal or state law, or shall be adjudged to be bankrupt, or become insolvent, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of the Lessee as a bankrupt or its re-organization under the General Bankruptcy Act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within one hundred twenty (120) days after the filing thereof, or if the receiver, trustee or liquidator

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(or similar official) of the Lessee or more than one-third of the property of the Lessee shall be appointed in any proceeding or by any federal or state office or agency and shall not be discharged within one hundred twenty (120) days after such appointment, such event shall be deemed a default and subject to the remedies as provided in this agreement.

17. Condemnation: If at any time during the term of this Lease the whole or any part of the leased premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, subject to the rights of the Lessee's lender or other lien holders, the Lessee shall be entitled to and receive any and all awards that may be made in such proceeding for the improvements constructed by the Lessee; provided, that damages awarded for taking of the fee shall be payable to Lessor. Lessor shall be entitled to its proportionate share of any damages awarded by the Court for the value of lost future revenues as based upon the rental reserved in paragraph 3, "Rental," above.

If such proceeding shall result in the taking of the demised premise, Lessee shall have the right not to reconstruct and this Lease and the terms thereof shall terminate and expire on the date of such taking and all rent or other sums or charges provided in this Lease to be paid by the Lessee shall be apportioned and paid to the date of such taking, and Lessee shall have twelve (12) months to remove the remaining improvements.

If less than the whole or less than substantially all of the demised premises shall be taken in such proceeding, and the facilities could be altered so as to allow the facility to operate during the remaining portion of the lease term, Lessee shall have the option to rebuild, but rent shall abate during said reconstruction, it being understood Lessee will utilize its best efforts to reconstruct.

15 391

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

By Donald S. Stradley
Donald Stradley
Donnell

By Dora Stradley
Dora Stradley

State of Idaho)
) ss.
County of)

On this 17 day of March 1983, before me, a
notary public in and for said State, personally appeared
Donnell & Dora Stradley
known to me to be the persons whose name are subscribed to
the within instrument and acknowledged to me that they executed
the same.

Leheri Sumner
Notary Public
Residing at

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Edwards, Howard & Martens, Inc.

ENGINEERS / PLANNERS / SURVEYORS

1139 Falls Ave. E., Suite B
Twin Falls, Idaho 83301
Phone 734-4888

IN THE FIELDS OF:

PLANNING
SURVEYING
HIGHWAYS
WATER
SEWAGE
STRUCTURAL
SUBDIVISIONS
AIRPORTS
BRIDGES

Date: December 16, 1982

DESCRIPTION OF
A HYDROELECTRIC POWER PROJECT EASEMENT
FOR STRADLEY PROPERTY
ROCK CREEK - HYDRO PROJECT
LYING IN SE 1/4 NW 1/4, SECTION 25,
T.9S., R.16E., B.M.,
TWIN FALLS COUNTY, IDAHO

A strip of land 100 feet wide lying adjacent with and 50 feet left and 50 feet right of the centerline of a power canal lying in the SE 1/4 NW 1/4, Section 25, T.9S., R.16E., B.M., Twin Falls County, Idaho and more particularly described as follows:

Beginning at the Northwest corner of said Section 25. Said point also lies North 00° 04' 51" West, 2639.14 feet from the West quarter of said Section 25.

Thence, South 31° 41' 55" East, 2458.93 feet to the centerline of the power canal, said point being the REAL POINT OF BEGINNING.

Thence, South 52° 00' 00" East, 210.00 feet,

Thence, North 89° 00' 00" East, 208.00 feet,

Thence, North 56° 00' 00" East, 260.00 feet,

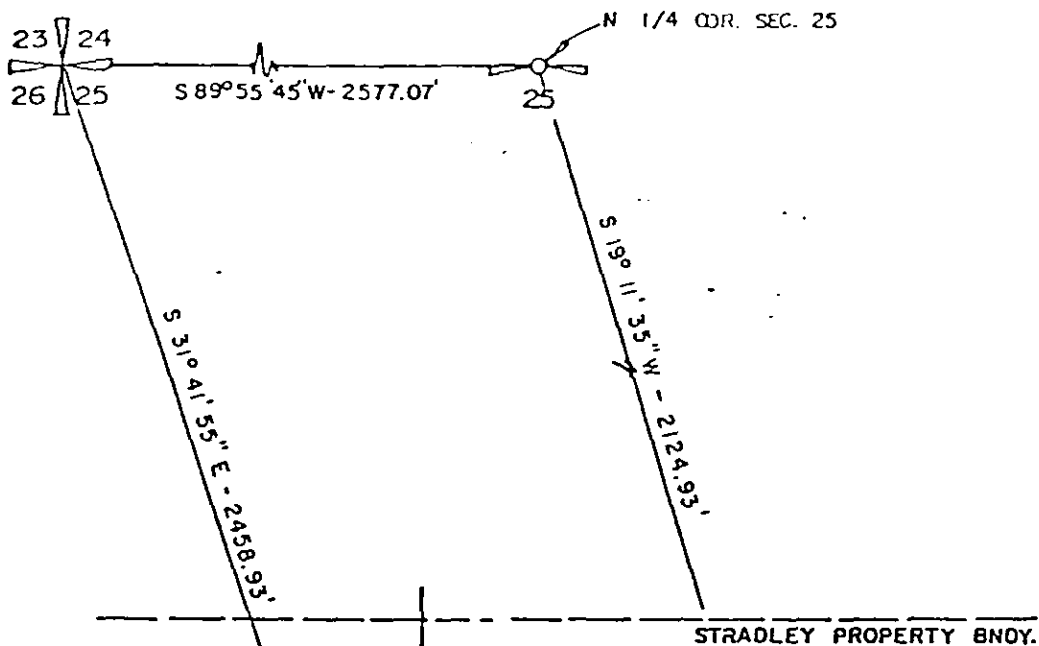
Thence, North 00° 00' 00" East, 65.00 feet, to the POINT OF ENDING of the above described easement.

Prepared by:

EDWARDS * HOWARD * MARTENS, INC.

EXHIBIT 1

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SE⁴NW⁴, SECTION 25

EMH PENSTOCK
OR CANAL

NORTH - 65'

N 56°00'E - 260'

N 89°00'E - 208'

S 52°00'E - 210'

AREA COVERED BY EMH INVESTMENTS
LEASE AGREEMENT WITH STRADLEY

EXHIBIT 2

ROCK CREEK
HYDROELECTRIC PROJECT - EMH
PROJECT LOCATION



Edwards, Howard & Mortons, Inc.
ENGINEERS / PLANNERS / SURVEYORS

T. 9 S., R. 16 E., B.M.
TWIN FALLS COUNTY, IDAHO

1991



Edwards, Howard & Martens, Inc.

ENGINEERS / PLANNERS / SURVEYORS

1139 Falls Ave. E., Suite B
Twin Falls, Idaho 83301
Phone 734-4888

IN THE FIELDS OF:

PLANNING
SURVEYING
HIGHWAYS
WATER
SEWAGE
STRUCTURAL
SUBDIVISIONS
AIRPORTS
BRIDGES

Date: March 3, 1983

DESCRIPTION OF
A HYDROELECTRIC POWER PROJECT EASEMENT
FOR STRADLEY PROPERTY
ROCK CREEK - HYDRO PROJECT
LYING IN SE 1/4 NW 1/4, SECTION 25,
T.9S., R.16E., B.M.,
TWIN FALLS COUNTY, IDAHO

A strip of land 100 feet wide lying adjacent with
and 50 feet left and 50 feet right of the centerline of
a power canal lying in the SE 1/4 NW 1/4, Section 25,
T.9S., R.16E., B.M., Twin Falls County, Idaho, and more
particularly described as follows:

Beginning at the Northwest corner of said Section
25. Said point also lies North 00° 04' 51" West,
2639.14 feet from the West quarter of said Section 25.

Thence, South 42° 14' 30" East, 2794.27 feet to
the centerline of the power canal, said point being
the REAL POINT OF BEGINNING.

Thence, South 84° 00' 00" East, 162.00 feet,

Thence, South 36° 00' 00" East, 325.00 feet,

Thence, South 18° 00' 00" East, 252.31 feet,

Thence, due East, 116.25 feet, to the POINT OF ENDING
of the above described easement.

Prepared by:

EDWARDS * HOWARD * MARTENS, INC.

EXHIBIT 3

23 24
26 25

S 89° 55' 45" W - 2577.07'

24
25

STRADLEY PROPERTY BNDY.

SE⁴NW⁴ SECTION 25

S 42° 44' 30" E - 2794.72'

S 03° 21' 40" W - 2596.11'

EMH PENSTOCK
OR CANAL

S 84° 00' E - 162'

S 36° 00' E - 325'

S 18° 00' E - 252.31'

EAST - 116.25'

STRADLEY PROPERTY BNDY.

MATCH LINE



AREA COVERED BY EMH INVESTMENTS
LEASE AGREEMENT WITH STRADLEY

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AUG 05 1991

EXHIBIT 4

ROCK - CREEK
HYDROELECTRIC PROJECT - EMH
PROJECT LOCATION

T. 9 S., R. 16 E., B.M.
TWIN FALLS COUNTY, IDAHO

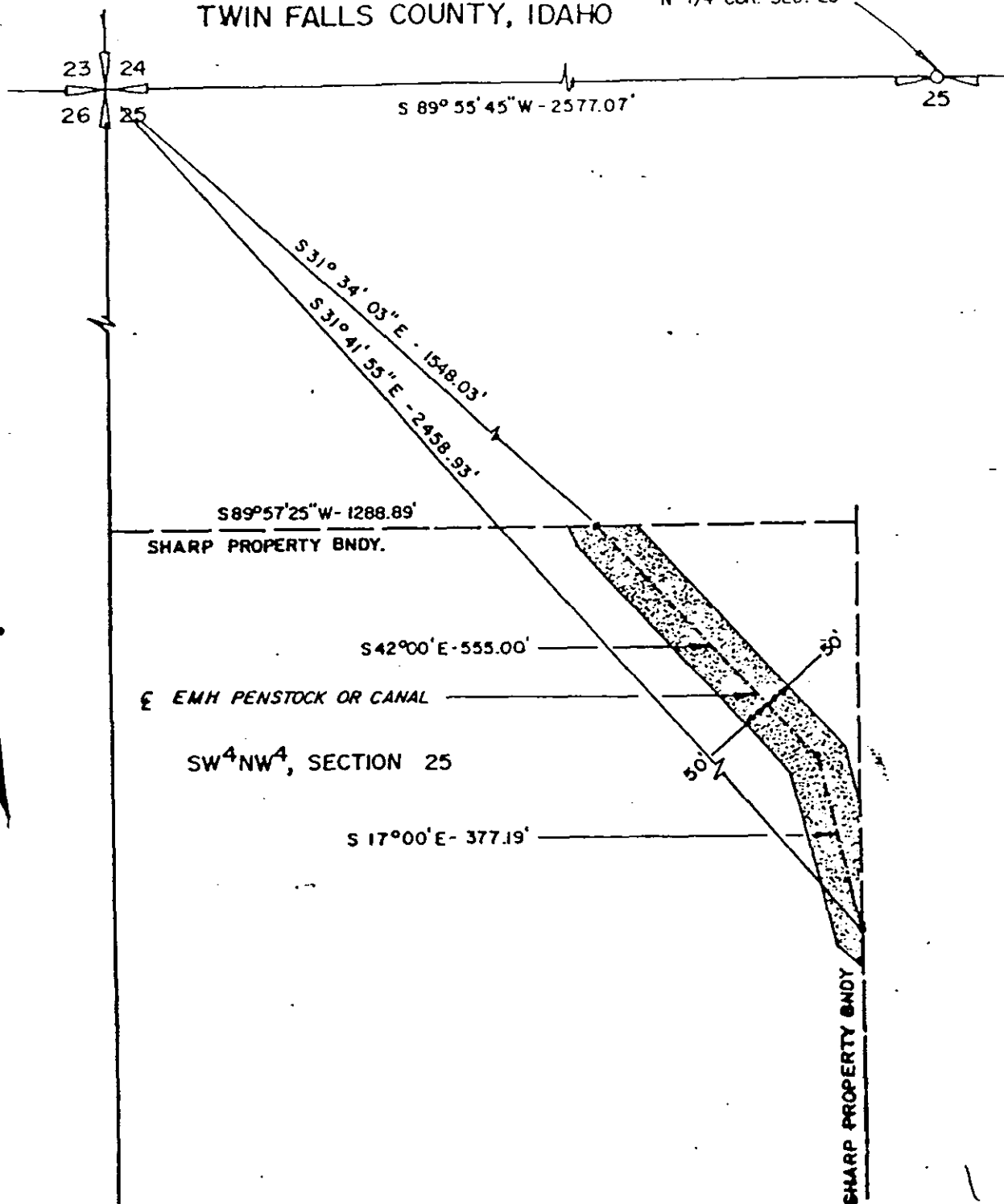


Edwards, Howard & Martens, Inc.
ENGINEERS / PLANNERS / SURVEYORS

T. 9 S., R. 16 E., B.M.

TWIN FALLS COUNTY, IDAHO

N 1/4 COR. SEC. 25



S 89° 57' 25" W - 1288.89'
SHARP PROPERTY BNDY.

S 42° 00' E - 555.00'

EMH PENSTOCK OR CANAL

SW 1/4 NW 1/4, SECTION 25

S 17° 00' E - 377.19'

SHARP PROPERTY BNDY.

EXHIBIT 2

AREA COVERED BY EMH INVESTMENTS,
LEASE AGREEMENT WITH SHARP

ROCK CREEK
HYDROELECTRIC PROJECT - EMH
PROJECT LOCATION



Edwards, Howard & Martens, Inc.
ENGINEERS / PLANNERS / SURVEYORS

EC-1011-A-3

AGREEMENT

THIS AGREEMENT is made and entered into this 18th
day of DECEMBER, 1986, by and between CHARLES D. HOWARD,
GERALD MARTENS, and CARL EDWARDS, hereinafter referred to as
"EMH", BONN-TECH, an Idaho General Partnership, hereinafter
referred to as "Bonn-Tech", and EHM, INC., hereinafter referred
to as "EHM;"

WITNESSETH:

WHEREAS, EMH owns certain site studies, licenses,
water rights, transmission agreements and land easements of
that certain hydroelectric project known as Rock Creek #2
Hydro-Electric Project (hereinafter "Project"); and

WHEREAS, Bonn-Tech, or its nominee, will be the con-
tracting agent to contract the Project; and

WHEREAS, Bonn-Tech desires to obtain the right to
utilize the items listed above for the economic life of 35 years.

NOW, THEREFORE, in consideration of this Agreement
and the mutual promises and covenants of the parties hereto,
the parties hereto agree as follows:

1. Bonn-Tech agrees to pay EMH for all items listed
above according to the following:

A. The sum of ONE HUNDRED EIGHTY-NINE THOUSAND
AND NO/100 DOLLARS (\$189,000.00) to EMH which shall be paid as
follows:

RECORDED
JUN 05 1991

AGREEMENT - 1
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ICES
HE WORTH
NUNGESTER
FELTON
and
LEZAMIZ

1 (1) FIFTY THOUSAND AND NO/100 DOLLARS
2 (\$50,000) credit for sums previously paid by Bonn-
3 Tech's predecessors;

4 (2) TEN THOUSAND AND NO/100 DOLLARS (\$10,000)
5 upon execution of the contract;

6 (3) SIXTY THOUSAND AND NO/100 DOLLARS
7 (\$60,000) to be paid as follows:

8 (i) Thirty Thousand and No/100
9 (\$30,000) on March 1, 1987, provided,
10 however, that this payment is expressly
11 contingent upon EMH's acquisition
12 of all property rights necessary
13 for construction of the Project.
14 Said property rights are described
15 in that certain agreement titled
16 "Rock Creek #2 Power Project" as
17 executed by the parties hereto. In
18 the event that all such property
19 rights have not been obtained by
20 March 1, 1987, this \$30,000 shall be
21 deferred until such time as EMH shall
22 have obtained and secured those pro-
23 perty rights.

(ii) The second Thirty Thousand and
No/100 (\$30,000) payment shall be paid
within thirty (30) days after the
execution of the power contract for
the sale of power on the Rock Creek
No. 2 Hydroelectric Project.

(4) SIXTY-NINE THOUSAND AND NO/100 DOLLARS
(\$69,000) to be paid within sixty (60) days after the
start of construction.

2. All payments to EMH shall be made to the RCHPI
Trust Administrator, TitleFact, P. O. Box 486, Twin Falls,
Idaho, 83301.

3. Bonn-Tech shall offer to retain EMH to complete the requirements under FERC License Number 6015, at a maximum estimated cost of SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$6,500), the actual cost to be determined by current hourly rates. Said offer shall be in writing setting forth the required engineering activities. EMH shall then inform Bonn-Tech within 15 days as to whether it accepts or rejects the job. Payment to be made to EMH upon receipt of billings, and EHM will submit all work to Bonn-Tech for review and written approval prior to submission of any written documents to FERC.

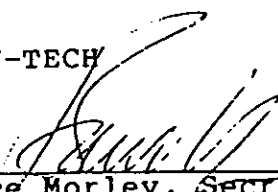
4. EMH agrees to furnish hard copies of all studies including but not limited to engineering, feasibility, and planning studies, which it currently possess to Bonn-Tech.

5. In the event that EMH receives or prepares further studies in conjunction with or in regard to the Project, EMH agrees to immediately forward hard copies of such studies to Bonn-Tech.

6. It is agreed by and between the parties that all dates referred to hereinabove in Article 1 shall have a thirty (30) day cure period, at the sole option of Bonn-Tech.

7. In the event that this Agreement shall become the subject matter of litigation, the prevailing party shall be entitled to attorney's fees.

BONN-TECH



Bruce Morley, Secretary
Cogentech, Inc., Managing Partner

AGREEMENT - 3

TICES
HEWORTH
NUNGESTER
FELTON
and
LEZAMIZ

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EMH

Charles D. Howard
Charles D. Howard

Gerald Martens
Gerald Martens

Carl W. Edwards
Carl Edwards

EHM Inc.

By: Carl W. Edwards

REPRODUCTION

AUG 05 1991

AGREEMENT - 4

FICES
HEPWORTH
NUNGESTER
FELTON
and
LFZAMIZ

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant Charles D. Howard Phone 1-208-734-4888
Post office address 1139 Falls Ave. East Twin Falls, Idaho 83301
2. Source of water supply Rock Creek which is a tributary of Snake River
3. Location of point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25 Township 9S
Range 16E B.M. Twin Falls County, additional points of diversion if any: SW⁴ of NW⁴, NW⁴ of NW⁴, Section 25
4. Water will be used for the following purposes:
Amount 200 cfs for Generate Power purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for Industrial purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for Fire Protection purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 202 cubic feet per second and/or b. _____ acre-feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Diversion, to penstock, power
Plant
Plant Transmission line
b. Height of storage dam None feet, active reservoir capacity None acre-feet; total reservoir capacity None acre-feet; materials used in storage dam: NA
Period of year when water will be diverted to storage No Storage to _____ inclusive.
(Month/Day) (Month/Day)
c. Proposed well diameter is NA inches; proposed depth of well is NA feet.
7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years (minimum 1 year - maximum 5 years).
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25 Township 9S
Range 16E B.M. 2200
(2) Amount of power to be generated: 2200 horsepower under 110 feet of head.
(3) List number of each kind of livestock to be watered NA
(4) Name of municipality to be served Power sold to Idaho Power Co., or number of families to be supplied with domestic water NA
(5) If water is to be used for other purposes describe: Fire Protection, (1 cfs)
Industrial, (1 cfs) - Temporary Engine Cooling

EXHIBIT B

NA

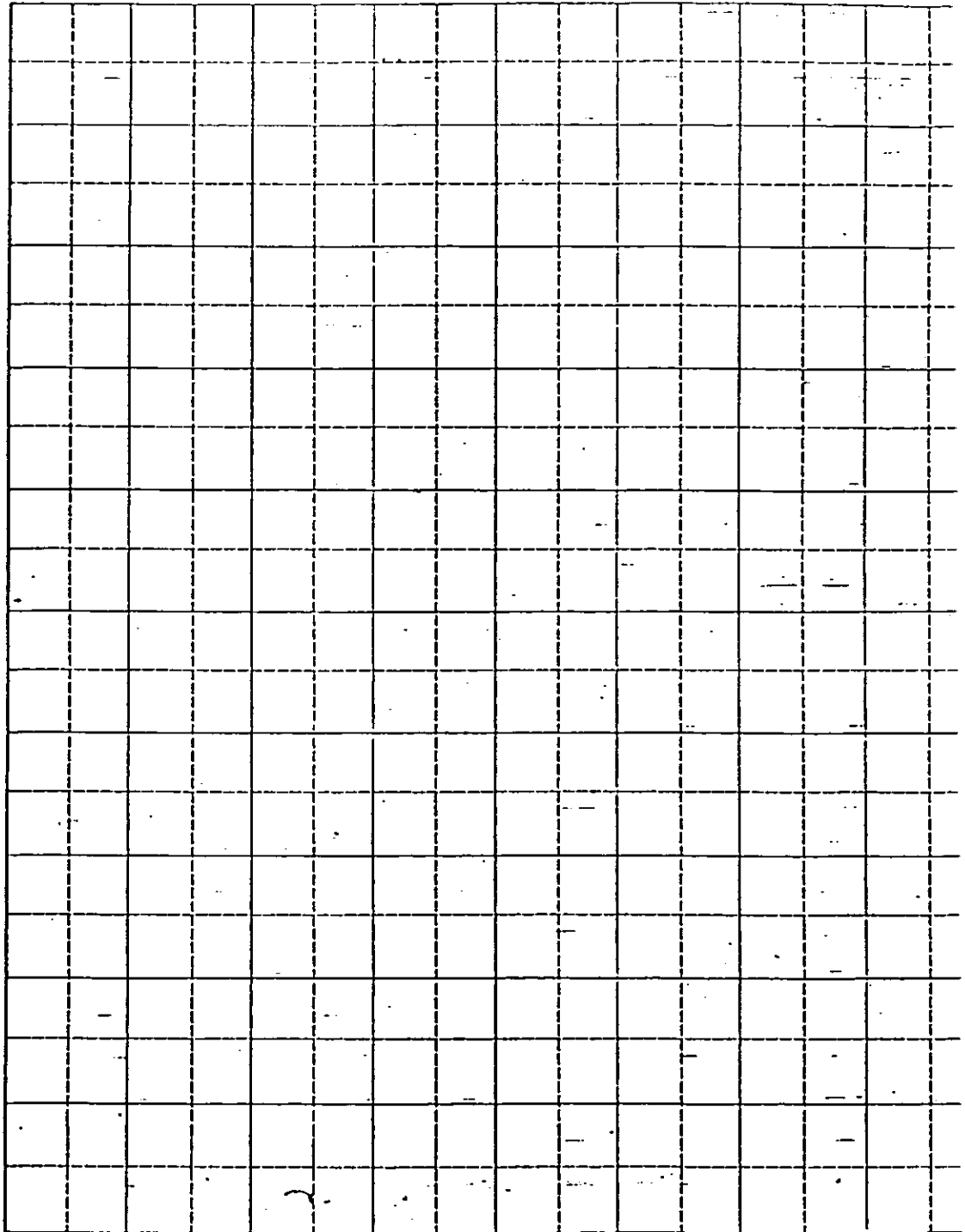
[illegible]

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

- applicant to make this filing will negotiate a lease or purchase

10. Remarks Applicant will apply for a exemption to the Federal Energy
Regulatory Commission. Applicant will apply to State of Idaho
Clearinghouse for review. Minimum stream flows for fisheries will be
maintained.
Point of diversion may be changed as noted in Item #3.

11. Map of proposed project show clearly the proposed point of diversion, place of use, section number, township and range number. See Attached figures # 1, 2, and 3

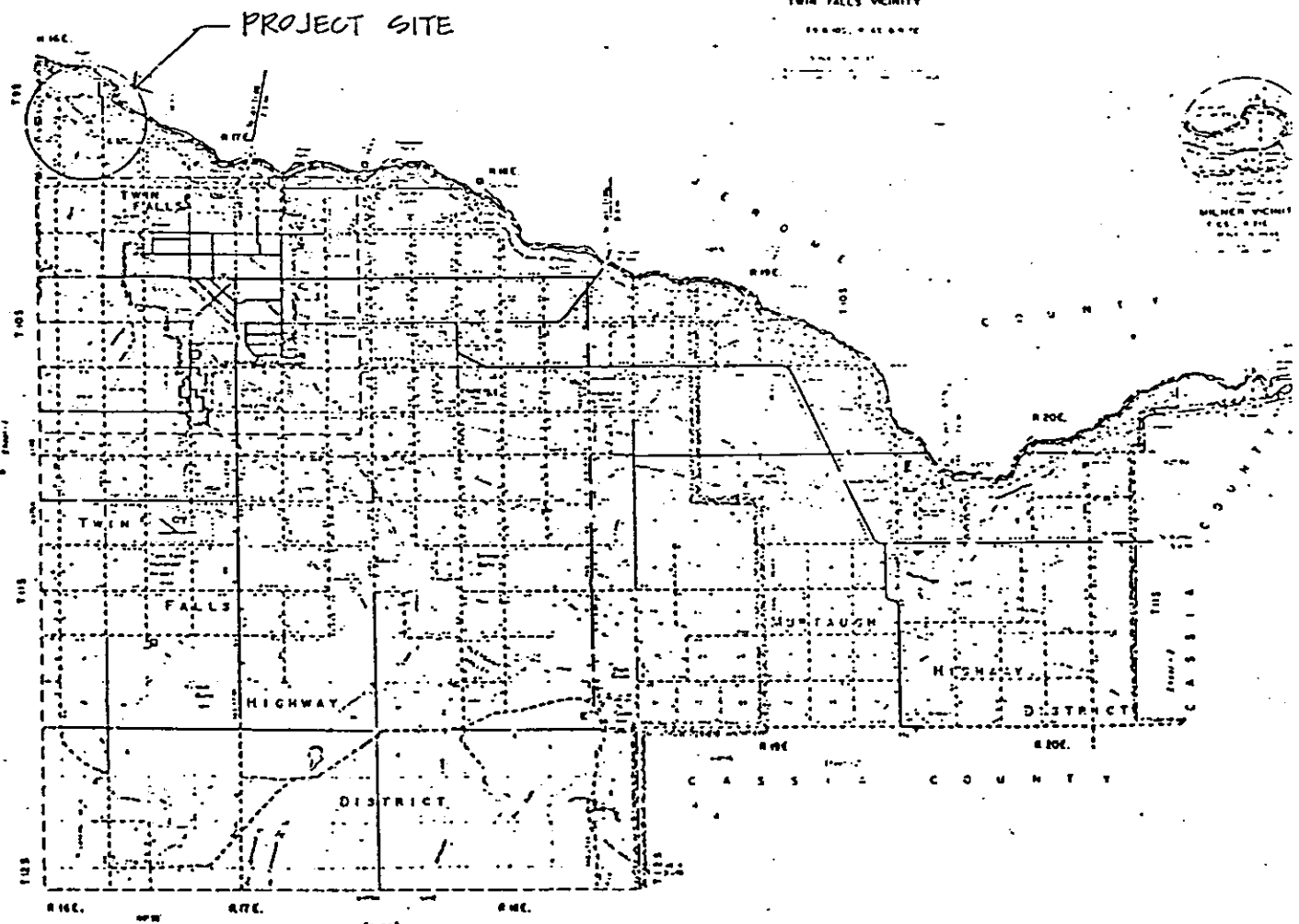
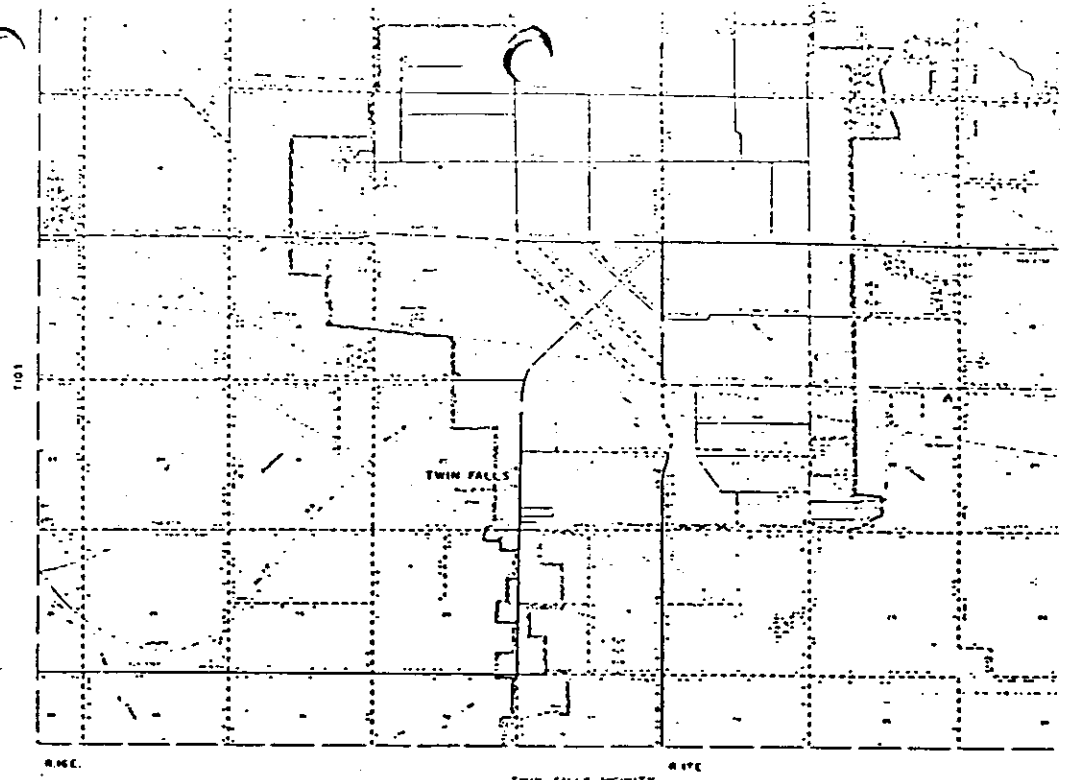


Scale: 2 inches equal 1 mile.

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

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Charles D. Howard 11/16/91
(Applicant)



GENERAL HIGHWAY MAP
TWIN FALLS COUNTY
IDAHO

FIELD DATA COLLECTED JULY, 1974

Project Name	
Project Number	
Project Date	
Project Location	

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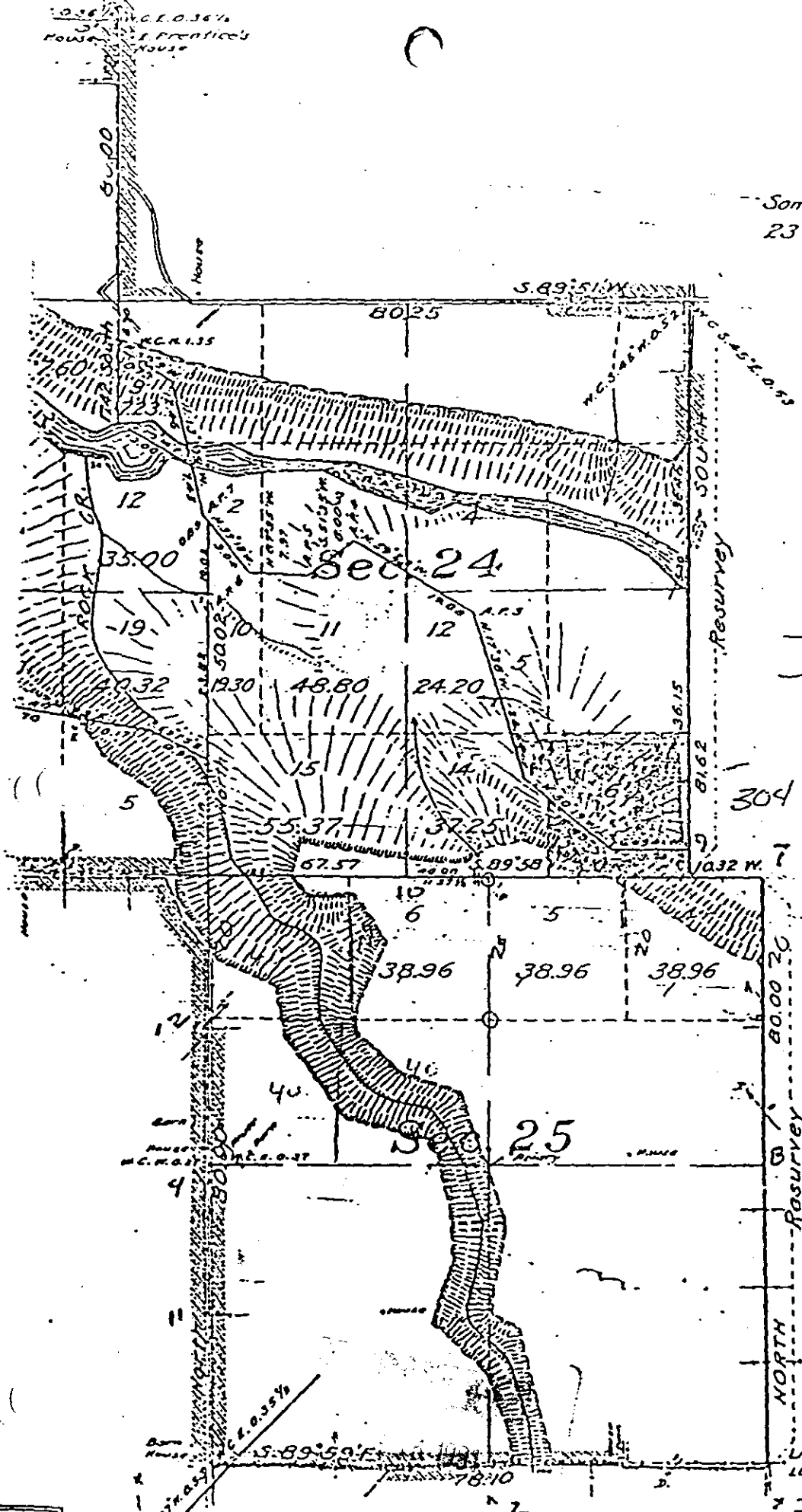
TWIN FALLS COUNTY

PROJECT LOCATION

FIGURE 1

MINERAL INDICATION

Some placer mining has been done in 23 and 24.



PROF. L. L. L. L.
(S. 22. 2.)

T 9 S, R 16 E, FM
TWIN FALLS, IDAHO

FIGURE 2

The above map of Dependent Resurvey of Sections 14, 15, 22, 23, 24, T9S, R16E, FM Twin Falls, Idaho, is strictly correct as shown in this office, which have been

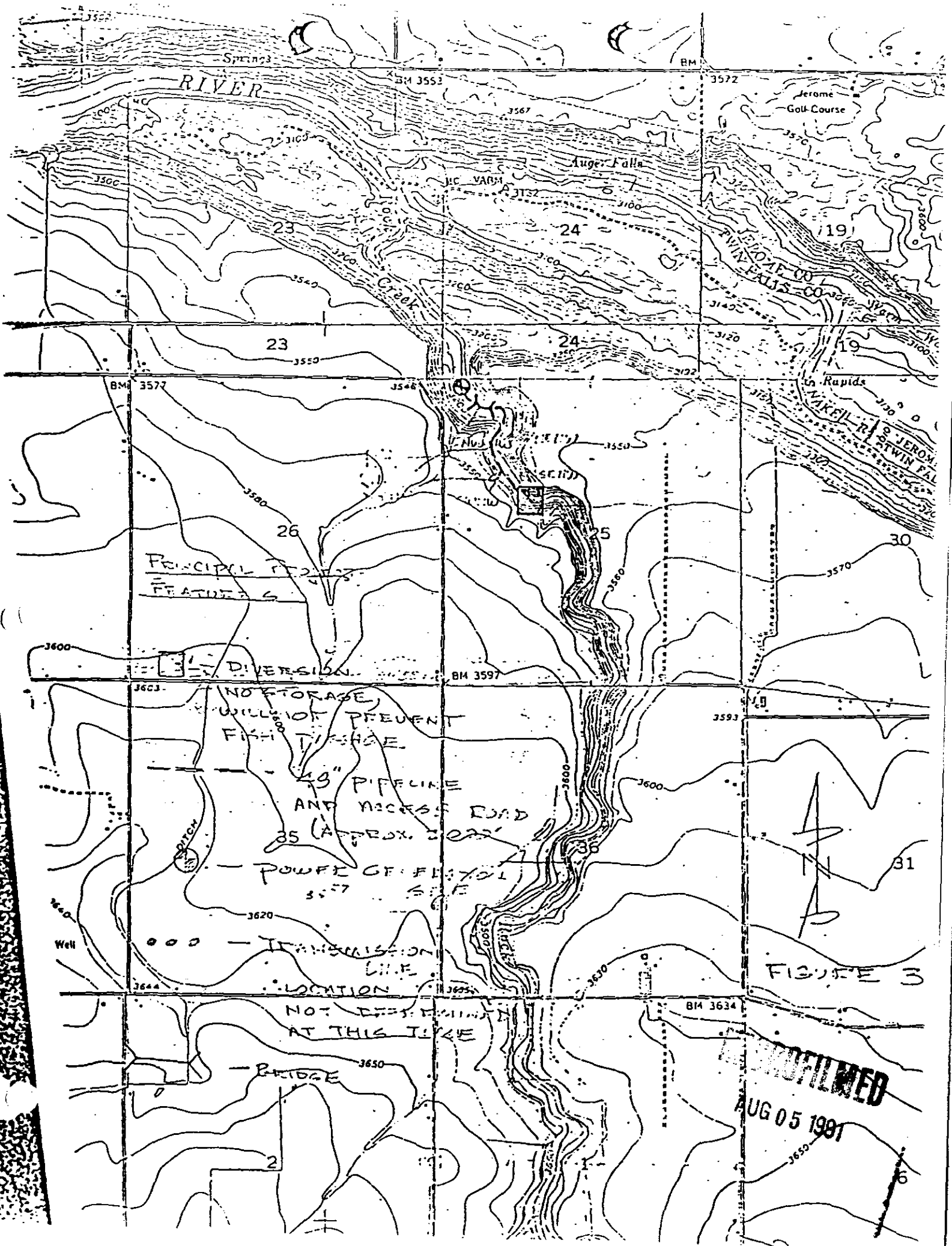


FIGURE 3

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Processed Priority 11/16/1981

Received by T.G.B. Date 11-16-81 Time 11:30 AM
Preliminary check by Ø Fee \$ 17.35 ± 20.05
Received by T.G.B. Date 11-16-81
Publication prepared by manager Date 11/25/81
Published in Senior news
Publication dates 12/3 & 12/10/81
Publication approved manager Date 12/1/81
Protests filed by: None
Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by ADK

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. 47-7771, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 1982.

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: An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

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.

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

This project shall be operated in a manner that will not conflict or interfere with the future diversion of water for irrigation or other beneficial consumption.

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

Witness my hand this 15th day of September, 1982.

J. M. HANCOCK
Chief, Operations Bureau

A G R E E M E N T

THIS AGREEMENT made and entered into this 15th day of June, 1982, by and between COGENERATION, INC., an Idaho corporation, the principal office of which is in Twin Falls, Idaho, hereinafter referred to as "COGEN"; and EMH INVESTMENTS, a partnership composed of Carl V. Edwards, Gerald Lee Martens and Charles D. Howard, with its principal office in Twin Falls, Idaho, hereinafter referred to as "EMH".

WHEREAS, Cogen filed Application for exemption for project No. 4165 with the Federal Energy Regulatory Commission, hereinafter referred to as "FERC", which exemption from licensin was granted on June 30, 1981; and

WHEREAS, Charles D. Howard, on behalf of EMH, filed Application for preliminary permit with FERC on project No. 6015-0000, and EMH now contemplates an amended preliminary permit Application for the same project, and a cancellation of Application for Minor license No. 6015-001, and

WHEREAS, certain facets of both proposed projects interface because they propose the overlapping use of certain real property in the development of each project; and

WHEREAS, the parties acknowledge that it is in their mutual interest to resolve the interfaces so that both projects may proceed to completion, and the parties herein wish to deline their agreement in writing;

NOW, THEREFORE, in consideration of the execution of this Agreement which shall constitute good and valuable consid-eration, and other considerations hereinafter set out, receipt of which is hereby acknowledged, the parties hereto agree as follows:

W I T N E S S E T H:

I.

Cogen agrees to secure the services of JUB Engineers Inc. to perform for EMH the electrical engineering (turbine

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and generator, control equipment and intertie), on an "as necessary" or "requested" basis. The fees to be charged by JUB Engineers Inc., to EMH will be the same as fees normally charged by JUB Engineers Inc. to other hydroelectric clientele. JUB Engineers Inc. agrees to work with and be available for general consultation with EMH during the "feasibility study" and "design phase" stages of EMH's project. JUB Engineers Inc. will execute its consent to this provision by the execution of the "approved" signature block at the end of this Agreement.

II.

The parties acknowledge that both proposed projects must be tied to a forty-six (46) kilovolt line on completion. The forty-six (46) kilovolt line is approximately two (2) to four (4) miles south of the projects. It is acknowledged that it would benefit EMH to use Cogen's transmission line and substation protection to the connection. As a part of this Agreement, Cogen agrees to allow EMH the use of its transmission line which will run from Cogen's project to said forty-six (46) kilovolt line at no cost to EMH for the use of said line or for the maintenance thereof.

III.

The parties acknowledge that Cogen presently has an exclusive road access to its proposed power plant and diversion works, and that Cogen must construct an improved gravel road to maintain and operate the facilities it plans to construct. Cogen will assist EMH in requesting permission from Idaho Frozen Foods Corp. to use the Cogen private access road. EMH shall not be liable for any of the cost or expense in constructing or maintaining said private access road. As partial consideration for this Agreement, Cogen will assist EMH in negotiating the approval of Idaho Frozen Foods Corp. for EMH to have the right of use of Idaho Frozen Foods Corp.'s properties to construct,

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operate, and maintain a hydroelectric power plant on Rock Creek upstream from Cogen's proposed power plant on Rock Creek. Cogen will also assist in negotiating permission to allow EMH access across Rock Creek at Cogen's point of diversion, and hereby agrees to grant unto EMH a right of access across Rock Creek at Cogen's point of diversion. In connection therewith, Cogen shall incorporate into the construction of its diversion, facilities to allow EMH to set beams for bridge decking sufficient to support heavy construction equipment at no cost to EMH.

IV.

131 head

Cogen agrees that in the event that the negotiations for access and a "Royalty Agreement" with Idaho Frozen Foods Corp. on behalf of EMH are not successful, Cogen will pay EMH a royalty of TEN THOUSAND DOLLARS (\$10,000.00) per calendar year, (prorated as to the first year if less than a full calendar year) for each and every year that Cogen's plant is in operation and no permission has been obtained from Idaho Frozen Foods Corp. or its successors and assigns. At such time as EMH obtains access and a satisfactory "Royalty Agreement" with Idaho Frozen Foods Corp., regardless of the feasibility of EMH's project or EMH's decision to pursue construction of its power project, this provision will cease and become null and void. (For the purposes of this Agreement, a "Royalty Agreement" with Idaho Frozen Foods Corp. shall be defined as an Agreement under which EMH would pay between six percent (6%) and eight percent (8%) of gross revenues generated on the power head located on Idaho Frozen Foods Corp.'s property or any other figure acceptable to EMH.) It is further agreed that both parties will actively pursue negotiations with Idaho Frozen Foods Corp. immediately. It is understood that the agreement with Idaho Frozen Foods Corp. must have a minimum

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term of two (2) years to allow EMH to begin construction after the date of the exemption or license has been received by EMH from FERC and two (2) years after the initiation of construction to complete the project. If EMH is not granted an exemption or license by FERC during the term of the preliminary permit, then and in such even any agreement between EMH and Idaho Frozen Foods Corp. shall terminate at the end of said preliminary permit period.

V.

EMH will modify and/or amend its preliminary permit application to FERC to eliminate possible conflict between the proposed power plant and the discharge therefrom, and Cogen's point of diversion in accordance with the drawings attached hereto as Exhibit "A". It being agreed by and between these respective parties that not more than fifteen feet (15') of head will be utilized by Cogen on lands covered under permit #6015, and that Exhibit "A" shall be modified to reflect the same. That because of the nature of the two (2) projects, the power plant tailrace from EMH may overlap the area described in Exhibit "A" and for that reason it is hereby agreed that EMH may construct its power plant and tailrace at the point indicated on, and in accordance with, Exhibit "B".

VI.

Cogen desires to construct its project during the calendar year of 1982, and the parties agree as further consideration of this Agreement to cooperate and diligently work to obtain an amended license exemption for Cogen in accordance with Exhibit "A" hereto, and an amended preliminary permit for EMH in accordance with the stipulations of this Agreement. The parties agree to execute the necessary documentation to forward to the Federal Energy Regulatory Commission as soon as possible so as to facilitate the earliest possible approval of the Federal Energy Regulatory

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AUG 05 1991

Commission for the development of these two (2) projects on Rock Creek.

VII.

The cost and expense for the construction and maintenance of any other facility or works jointly used by these respective parties in connection with their respective projects which have not specifically been referred to above shall be paid by these parties on a pro-rata basis determined by the amount of power developed by each party.

VIII.

In the event any provisions of this Agreement may ^{AS PROPOSED TO BE AMENDED OR OTHERWISE HEREINAFTER} cause the invalidation of preliminary permit #6015, it is agreed that any such provisions shall be amended so as to eliminate the cause of such invalidation.

The parties hereto respectfully bind themselves, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate the and year first above written.

COGENERATION, INC.

by: John J. Straubhaar
President

ATTEST:

William W. Bloch
Secretary

EMH INVESTMENTS

Carl V. Edwards
Carl V. Edwards

Gerald Lee Martens
Gerald Lee Martens

Charles D. Howard
Charles D. Howard

APPROVED:

JUB ENGINEERS, INC.

W.D. Briggs, Pres.
by Michael H. [unclear]
President

AUG 05 1991

STATE OF IDAHO)
) ss
County of Twin Falls)

On this 15th day of June, 1982, before me, a Notary Public in and for said State, personally appeared John G. Shea and Dellert W. Blank known or identified to me to be the President and Secretary, respectively, of COGENERATION, INC., the corporation that executed the foregoing instrument, 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.

James C. Mendenhall
Notary Public for Idaho
residing at Twin Falls, Idaho.

STATE OF IDAHO)
) ss
County of Twin Falls)

On this 15th day of June, 1982, before me, a Notary Public in and for said State, personally appeared CARL V. EDWARDS known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he 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.

James C. Mendenhall
Notary Public for Idaho
residing at Twin Falls, Idaho.

STATE OF IDAHO)
) ss
County of Twin Falls)

On this 15 day of June, 1982, before me, a Notary Public in and for said State, personally appeared, GERALD LEE .. MARTENS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he 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.

James C. Mendenhall
Notary Public for Idaho
residing at Twin Falls, Idaho.

-6-

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AUG 05 1994

STATE OF IDAHO)
County of Twin Falls) ss

On this 15 day of June, 1982, before me, a Notary Public in and for said State, personally appeared, CHARLES D. HOWARD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he 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.

James C. Mada
Notary Public for Idaho;
residing at Twin Falls, Idaho.

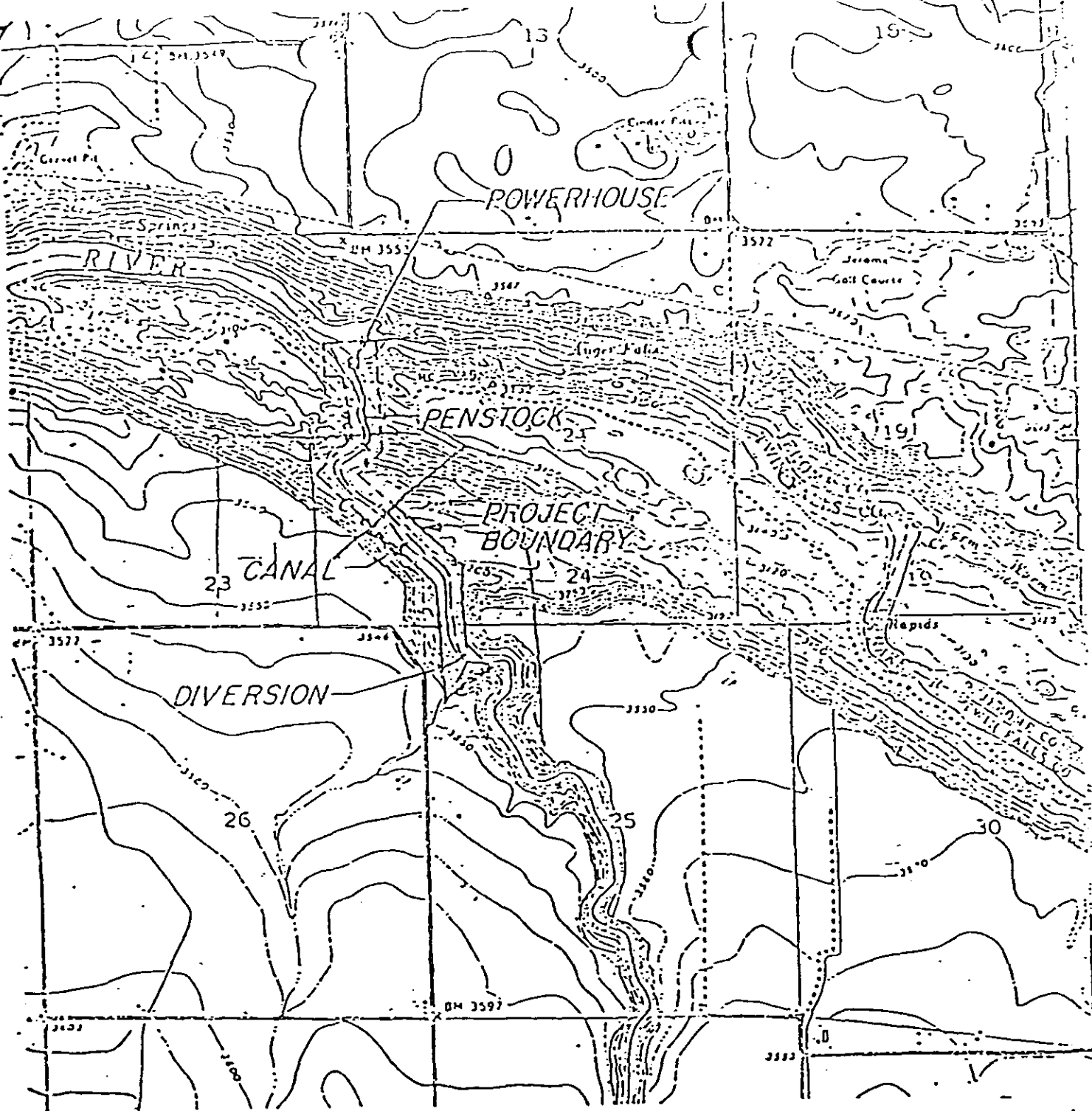
STATE OF IDAHO)
County of Twin Falls) ss

On this 15 day of June, 1982, before me, a Notary Public in and for said State, personally appeared D. Michael Preston, known or identified to me to be the president of JUB ENGINEERS, INC., the corporation that executed the foregoing instrument, 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.

James C. Mada
Notary Public for Idaho;
residing at Twin Falls, Idaho.

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AUG 05 1991



ROCK CREEK HYDRO
GENERAL LOCATION

AUG 05 1991

EXHIBIT A

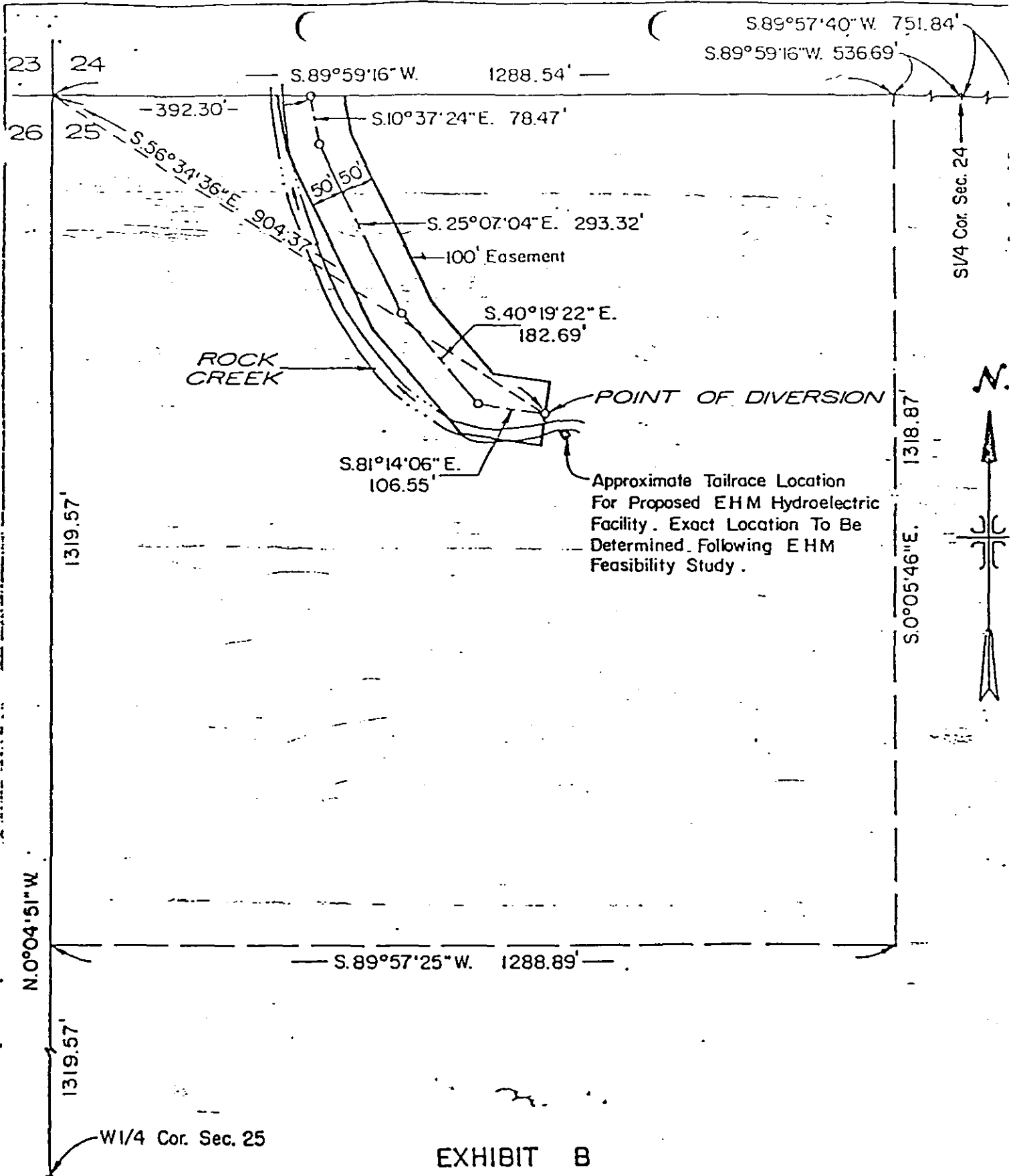
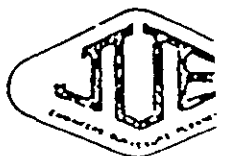


EXHIBIT B

ROCK CREEK HYDROELECTRIC PROJECT

AUG 05 1991



FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300



POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FERC-331

EXHIBIT D

Charles W. Howard P-6015
1139 Fallin Ave. East
Fallis Professional Ctr., Suite B
Twin Falls, Idaho 83301

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION AUG 27 1986

Charles D. Howard

Project No. 6015-007

ORDER ISSUING LICENSE
(Major Project - 5MW or Less)

(Issued August 29, 1986)

Charles D. Howard has filed a license application under Part 1 of the Federal Power Act (Act) to construct, operate, and maintain the Rock Creek No. 2 Project, located in Twin Falls County, Idaho, on Rock Creek. The project would occupy lands of the United States administered by the Bureau of Land Management.

Notice of the application has been published. The motions to intervene that have been granted and the comments filed by agencies and individuals have been fully considered in determining whether to issue this license, as discussed below.

Idaho Power Company asked that a need for project output be shown. The need for project power and its economic feasibility are discussed in the attached Environmental Assessment (EA). The Commission has also discussed these issues raised by IPC in its recent license order for the Horseshoe Bend Project No. 5376. 36 FERC 161,135 (1986).

A proposed project is economically feasible so long as its projected levelized cost is less than the long-term levelized cost of alternative energy to any utility in the region that can be served by the project. Staff has calculated the projected alternative energy cost in the region to be 73.1 mills per kilowatt hour as of the date the Rock Creek No. 2 Project is expected to go on line. This cost is based on the generic coal-fueled steam-electric plant forecasted by the Northwest Power Planning Council in its proposed resources portfolios to come on line about the year 2002. Since the levelized cost of energy from the Rock Creek No. 2 project is significantly less than this cost the project is economically feasible.

The applicant proposes to sell the power generated by the project to Idaho Power Company. The Idaho Public Utility Commission (IPUC) has established a 35-year levelized cost for Idaho Power Company of 47 mills per kilowatt hour for projects going on line in 1987. This rate is lower than the estimated levelized cost of the Rock Creek No. 2 project of 53.2 mills per kilowatt hour. The proposed project thus might not be financially feasible if it has to depend on a power sales contract with Idaho Power Company at the established rates. However, the project power could also be sold to other utilities in the Northwest or California whose currently established avoided costs range up to 80 mills per kilowatt hour.

Based on projected regional costs and the currently established rates in the region, staff is reasonably confident that there will be a market for the project power at prices sufficient to support construction within the time constraints of the license.

The Idaho Department of Water Resources (IDWR) requested that the Commission condition the license to insure that the project would not interfere with developments on the Snake River and its tributaries pursuant to the Idaho State Water Plan. This request is not granted for the reasons given by the Commission in the Horseshoe Bend license order where IDWR requested the inclusion of the same condition.

Summary of Findings

An EA was issued for this project. Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA attached to this order. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if constructed, operated, and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the Safety and Design Assessment attached to this order.

The Director, Office of Hydropower Licensing, concludes that the project would not conflict with any planned or authorized development, and would be best adapted to comprehensive development of the waterway for beneficial public uses.

The Director orders:

(A) This license is issued to Charles D. Howard (licensee) for a period of 50 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Rock Creek No. 2 Project. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G:

<u>Exhibit G-</u>	<u>FERC No. 6015-</u>	<u>Showing</u>
1	19	Project Location
2	20	Alignment Plan View

DC-A 33

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(2) Project works consisting of: (a) a 9.5-foot-high, 40-foot-long concrete diversion dam with crest elevation 3,306 feet; (b) a concrete intake structure with an overall length of 88 feet; (c) a 66-inch-diameter, 2,700-foot-long steel penstock; (d) a 30-foot-wide, 50-foot-long, 14-foot-high concrete powerhouse containing three generating units, rated at 1.1 MW, 0.52 MW, and 0.28 MW; (e) a concrete tailrace with a normal water surface elevation of 3,161 feet; (f) the 2.4-kV generator leads; (g) a 2.4/4.16-kV, 2MVA transformer; (h) a 4,700-foot-long, 4.16-kV transmission line connecting to an existing Idaho Power Company substation; (i) access facilities including a 14-foot-wide, 44-foot-long steel bridge, 20,000 feet of existing gravel road, and 2,700 feet of proposed gravel road; and (j) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F recommended for approval in the attached Safety and Design Assessment.

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

(C) The Exhibit G described above and those sections of Exhibits A and F recommended for approval in the attached Safety and Design Assessment are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-2, (October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," except article 20. The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued:

a. For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 2,530 horsepower.

b. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 1.6 acres of its lands, a reasonable annual charge as determined by the Commission in accordance with its regulations in effect from time to time.

Article 202. 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 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).

Article 203. The licensee shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which result from maintenance, operation, or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

Article 301. The licensee shall commence construction of project works within two years from the issuance date of the license and shall complete construction of the project within four years from the issuance date of the license.

Article 302. The licensee shall, at least 60 days prior to start of construction, submit one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe and adequate project.

Article 303. The licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall submit to the Commission's Regional Director and Director, Division of Inspections, one copy each of the approved cofferdam construction drawings and specifications and the letter(s) of approval.

Article 304. The licensee shall within 90 days of completion of construction file with the Commission for approval revised Exhibits A, F, and G to describe and show the project as built.

Article 305. The licensee shall, at least 60 days prior to start of construction, submit one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of the contract drawings and specifications for a system to automatically shut off flow to the conduit or penstock at the diversion headworks, in the event of a conduit or penstock failure. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe shut down of the conduit and penstock and thereby prevent serious environmental damage.

Article 401. The licensee, after consultation with the Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, Bureau of Land Management, and Soil Conservation Service, shall prepare and file with the Commission within 6 months from the date of issuance of this license, a plan to control erosion and dust, to stabilize slopes, and to minimize the quantity of sediment or other potential water pollutants resulting from construction and operation of the project, including spoil disposal. The plan shall also include functional design drawings and map locations of control measures; an implementation schedule; monitoring and maintenance programs for project construction and operation, including procedures for emergency situations (rock falls and pipeline failures); and provisions for periodic review of the plan and for making any necessary revisions to the plan. Documentation of agency consultation on the plan and copies of any agency recommendations shall be included in the filing.

In the event that the licensee does not concur with any agency recommendations, the licensee shall provide a discussion of the reasons for not concurring, based on actual site geological, soil, and groundwater conditions. The Commission reserves the right to require changes to the plan. Unless the Director, Office of Hydropower Licensing, directs otherwise, the licensee may commence ground-disturbing or spoil-producing activities at the project 90 days after filing the above plan.

Article 402. The licensee shall operate the Rock Creek No. 2 Project in an instantaneous run-of-river mode for the protection of fish and wildlife resources. The licensee, in operating the project in an instantaneous run-of-river mode, shall at all times maintain a discharge from the project so that flow in Rock Creek, as measured immediately downstream from the project tailrace, approximates the instantaneous sum of inflow at the diversion structure. Instantaneous run-of-river operation may be temporarily modified if required by operating emergencies beyond control of the licensee, and for short periods upon mutual agreement between the licensee and the Idaho Department of Fish and Game.

Article 403. The licensee shall maintain in Rock Creek between the diversion structure and the tailrace, a continuous minimum flow of 41 cubic feet per second (cfs) in October, November, February, and March, 31 cfs in December and January, and 82 cfs from April 1 through September 30, as measured immediately downstream from the diversion dam, or the inflow at the diversion, whichever is less, for the protection of fish and wildlife resources in Rock Creek. This flow regime may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee and the Idaho Department of Fish and Game.

Article 404. The licensee, after consultation with the Idaho Department of Fish and Game, and within 6 months of the date of issuance of this license, shall install a streamflow gage in Rock Creek immediately upstream of the powerhouse outfall. The licensee shall monitor streamflows and maintain records of daily minimum and maximum flow releases from the diversion dam for each water year (October 1 through September 30). The licensee shall provide these daily records of each year to the Idaho Department of Fish and Game by December 31, for the preceding water year and more often if requested by the agency.

Article 405. The licensee, after consultation with the Idaho Department of Fish and Game and within 6 months from the date of issuance of this license, shall file for Commission approval functional design drawings of the fish screening structure for the intake and of the design features of the tailrace to prevent the attraction and entry of fish. The filing shall include documentation of consultation and comments of the consulted

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AUG 05 1991

agencies on the drawings. The licensee shall file as-built drawings with the Commission within 6 months after completing construction.

Article 406. The licensee, after consultation with the Idaho Department of Fish and Game and within 6 months from the date of issuance of this license, shall file for Commission approval functional design drawings of fish passage facilities for the Rock Creek No. 2 Project and a plan to monitor the operation of the fish passage facilities. The filing shall include documentation of agency consultation and agency comments on the drawings and monitoring plan. The licensee shall file as-built drawings with the Commission within 6 months after completion of construction.

Article 407. The licensee, after consultation with the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game and within 6 months from the date of issuance of the license, shall file a transmission line design plan, prepared in accordance with the guidelines set forth in "Suggested Practices for Raptor Protection on Power Lines", Raptor Research Report No. 4, Raptor Research Foundation, Inc., 1981. The plan shall include detailed design drawings of the transmission line, clearly showing phase spacing, configuration, and grounding practices, a construction schedule, and agency comments on the adequacy of the design plan. Unless the Director, Office of Hydropower Licensing, instructs otherwise, licensee may commence construction of transmission line facilities 90 days after filing the plan.

Article 408. The licensee, after consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, and within 6 months from the date of issuance of this license, shall file for Commission approval a wildlife mitigative plan. The plan shall include specific measures to revegetate disturbed areas with native plant species beneficial to wildlife and measures to mitigate the loss of riparian vegetation. An implementation schedule and agency comments on the plan shall be included in the filing.

Article 409. The licensee shall, prior to any future construction at the project, consult with the Idaho State Historic Preservation Officer (SHPO) and the Bureau of Land Management (BLM) about the need for cultural resource survey and salvage work. Documentation of the nature and extent of consultations, including a cultural resources management plan and a schedule to conduct any necessary investigation prior to such construction, and a copy of a letter from the SHPO accepting the plan, shall be filed with the Commission within 6 months prior to any construction activity in the location of such investigations. The licensee shall make available funds in a reasonable amount for any such work as required. If any previously unrecorded archeological or historic 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 mitigative plan for the protection of significant archeological or historic resources. If the licensee, the SHPO, and BLM cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the licensee to conduct, at its own expense, any such work found necessary.

Article 410. 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 processes, the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 411. (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 watercraft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining

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JAN 1991

walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The licensee may convey fee 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 or state water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric

transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, 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.

AUG 05 1991
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(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

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

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(E) The relief requested in the motions to intervene by Idaho Power Company and Idaho Department of Water Resources is denied.

(F) This order is issued under authority delegated to the Director and is final unless appealed under Rule 1902 to the Commission by any party within 30 days from the issuance date of this order. Filing an appeal does not stay the effective date of this order or any date specified in this order. The licensee's failure to appeal this order shall constitute acceptance of the license.

Richard T. Hunt

Richard T. Hunt
Director, Office of
Hydropower Licensing

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

Rock Creek No. 2 Hydroelectric Project
FERC No. 6015-007--Idaho
March 28, 1986

I. APPLICATION

On August 31, 1984, Charles D. Howard (applicant) applied for a major license of 5 megawatts (MW) or less, for the Rock Creek No. 2 Hydroelectric Project.

The project would be located on Rock Creek, a tributary of the Snake River, approximately 4 miles from Twin Falls, in Twin Falls County, Idaho (figure 1). Approximately 1.6 acres of lands administered by the Bureau of Land Management would be affected.

II. PURPOSE AND NEED FOR POWER

A. Purpose

The proposed project would provide an estimated average of 10,453,000 kilowatt hours (kWh) of electrical energy per year, at a 63-percent plant factor, to the Idaho Power Company or to another northwest utility.

B. Need for Power

Available data suggest that because of population growth and a continuing demand for amenities, growth in the demand for electric power and energy will continue. Assuming positive load growth and an existing resource base, a reliability need for additional resources can be projected to exist in the future for any power system. Additional resources would have to be obtained in the future for any system in order to meet projected additional load requirements with the degree of reliability required for present systems. The timing of the need would vary in different systems, depending upon such factors as the rates of load growth, the load characteristics, the available existing power resources, and the reliability criteria established for each system.

Installation of a power resource before a reliability need exists can be justified if, over the life of the resource, the early installation of the resource will provide benefits compared to the installation of the most likely alternative power resource when a reliability need occurs. The early installation of a hydroelectric resource and the use of hydroelectric energy to displace more expensive thermal energy generation, coupled with the incremental deferral of a thermal capacity alternative, can produce

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AUG 05 1984

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economic benefits. Fossil-fueled conservation and reduced atmospheric impacts of fossil-fueled combustion are additional benefits of hydroelectric displacement and deferral of the thermal generation.

In the 1983 Northwest Conservation and Electric Power Plan, the Northwest Power Planning Council (Council) projects a regional need for additional power resources by 1992, based on a mid-high growth rate forecast and by 1996, based on a mid-low growth rate forecast (the two equally likely and most probable growth rate scenarios). The Bonneville Power Administration forecast, released in December 1984, and the Pacific Northwest Utilities Conference Committee forecast, issued in March of 1985, show regional energy deficits for mid-range load forecasts in the 1997-1998 and 1995-1996 periods, respectively. Individual systems within the region also indicate resource deficits exist prior to the regional deficits.

The staff's economic analyses show a need for the project. From the time the project becomes operational until it is needed to meet increased regional power needs, the proposed project would be available to lessen the use of existing fossil-fueled electric generating plants located in the Pacific Northwest, California, and the Southwest, thus conserving nonrenewable resources and reducing the emission of noxious byproducts caused by the combustion of fossil fuels.

In accordance with the 1980 Pacific Northwest Electric Power Planning and Conservation Act (Northwest Act), the Council also prescribed a spectrum of resources to meet power needs through the year 2005 for each of the respective load forecast scenarios. In both the mid-low and mid-high forecast scenarios, these resources include cost-effective conservation, hydroelectric generating resources, and thermal generating resources to strengthen secondary energy. Additional cogeneration and coal-fired resources are included to meet the mid-high forecast scenario.

Since the Northwest Act grants a higher priority to the use of renewable-resource generation than to the use of fossil-fueled generation, the installation of reliable, cost-effective, and environmentally acceptable hydroelectric resources to defer the thermal generation included in the Council plan is justifiable under the Northwest Act.

Continuing modifications to increase the carrying capacity of transmission lines connecting the Pacific Northwest, California, and the Southwest will allow a significantly greater transfer of power than has occurred historically and will provide an expanded market for economic project power.

C. Hydroelectric Power and Resource Utilization Evaluation

The staff made an independent study of the hydropower potential of the Rock Creek No. 2 Project and found that the applicant's proposed installed capacity, estimated average annual generation, selection of size and type of generation units, and construction cost estimate are reasonable.

The staff finds that the project is economically feasible based on fuel savings from off-loading existing coal-fired, steam-electric plants in the Pacific Northwest until 2002 and by producing equivalent power from a steam-electric plant thereafter. For the analysis, staff used a levelized power value of 73.1 mills/kWh, a levelized tax savings of 5.8 mills/kWh, and a levelized annual cost of 51.2 mills/kWh, giving a net annual benefit of 25.7 mills/kWh.

The staff incorporated the minimum flows proposed by the applicant into the estimates of annual generation and into the project's economics. The 1.9-MW capacity would make good use of the flow and hydraulic head of the site.

The proposed project does not conflict with any proposed or existing developments of Rock Creek, makes good use of the flow and fall of the creek, and would be best adapted to the comprehensive development of Rock Creek upon compliance with the terms and conditions of the license.

III. PROPOSED PROJECT AND ALTERNATIVES

A. Proposed Project

1. Project Description

The proposed project would consist of: (1) a 9.5-foot-high, 40-foot-long concrete diversion dam; (2) a concrete intake structure; (3) a 66-inch-diameter, 2,700-foot-long steel penstock; (4) a 1,500-square-foot powerhouse, containing three units with a total generating capacity of 1.9 MW; (5) a concrete tailrace; (6) a 4,700-foot-long, 4.16-kilovolt, aerial transmission line; and (7) access facilities, including a 44-foot-long, steel bridge, 20,000 feet of existing gravel road, and 2,700 feet of proposed gravel road. Principal project features are shown in figure 2. The project would be operated in a run-of-river mode, with a hydraulic capacity of 190 cubic feet per second (cfs).

AUG 05 1991

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2. Proposed Mitigative Measures

The applicant proposes the following mitigative measures:

- (1) releasing a minimum flow of 41 cfs in October and November, 31 cfs in December and January, 41 cfs in February and March, and 82 cfs in April through September;
- (2) constructing self-cleaning screens to prevent fish from entering the penstock;
- (3) designing the diversion and inlet to prevent air entrainment in the penstock;
- (4) installing fish passage facilities;
- (5) using a transmission line design that would prevent raptor electrocutions;
- (6) scheduling instream construction activities during periods of low flows;
- (7) using riprap in the tailrace to reduce erosion in the tailrace;
- (8) revegetating disturbed areas with native vegetation; and
- (9) painting the penstock a natural brown to allow it to blend into the landscape.

B. Alternatives to the Proposed Project

Hydroelectric projects are unique in the electric power generation field because of their rugged machinery, high reliability, low operation and maintenance costs, long life, and use of a renewable resource. These characteristics, plus a guaranteed market under the Public Utilities Regulatory Policies Act and tax advantages such as rapid depreciation and energy credits, have made small hydroelectric project development an attractive business venture and have fostered a considerable amount of competition for the more feasible hydroelectric projects.

There exists a finite number of economically feasible hydroelectric sites. Generally, hydro sites are selected based on the availability of adequate streamflow, favorable topography (a sharp vertical drop in a short horizontal distance), accessibility, power transmission distance, and minimum streamflow and fishery requirements. This site has been selected for development by the applicant, and the alternative is not to construct the project.

If the project is not constructed, the power that would have been developed will be provided by nonrenewable fuels, a negative influence on energy independence. It is presumed that projects that would use nonpassive renewable resources other than hydropower, such as wind, biomass, or solar photovoltaic power generation, will be installed when commercially and economically feasible. Whether the project is built or not, the installation of projects that would use passive renewable resources, such as solar water or space heating will continue, and conservation efforts will continue, until the market is saturated or until these installations become uneconomical.

C. Alternative of No Action

No action would mean that the potential hydropower of the proposed project would not be used; there would be no construction and no alteration of the existing environment.

IV. CONSULTATION AND COORDINATION

A. Agency Consultation

The Commission's regulations require prospective applicants to consult with the appropriate resource agencies before filing an application for license. This constitutes an initial step in compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Consultation must be complete and must be documented in accordance with the Commission's regulations. After the Commission accepts the application, concerned entities may submit formal comments during the public notice period. The following entities commented on the application for the Rock Creek Project, in response to a public notice dated December 11, 1984.

<u>Commenting Entities</u>	<u>Date of Letter</u>
Idaho Department of Health and Welfare	January 18, 1985
Department of the Interior	February 8, 1985
<u>Intervenors</u>	
Idaho Power Company	February 4, 1985
Idaho Department of Water Resources	February 8, 1985

The applicant responded to the commenting entities by letter dated February 21, 1985.

B. Pacific Northwest Electric Power Planning and Conservation Act

Under Section 4(h) of the Northwest Act, the Council developed the Columbia River Basin Fish and Wildlife Program (Program) to protect, mitigate, and enhance fish and wildlife resources associated with the development of hydroelectric projects. The Program contains a framework for assessing the impacts of new hydroelectric development on fish and wildlife resources and lists a number of general mitigative measures that should be implemented for any new development.

AUG 05 1991

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The Program requires that fish and wildlife agencies, Indian tribes, and the Council be consulted during the study, design, construction, and operation of new hydroelectric projects. The Commission's regulations currently require applicants to initiate prefilling consultation with these entities, and gives these entities the postfilling opportunity to review and to comment on the license application. This consultation process has occurred.

The Program states that authorization for new hydroelectric projects should include conditions of development that would mitigate the impacts of the project on fish and wildlife resources.

The applicant proposes ways to mitigate adverse impacts and agrees with the consulted agencies on mitigative measures. Further, the applicant must satisfy the intent of the Program by providing adequate mitigative measures. Moreover, the Commission has the authority to order, where practical, alterations of project structures and operations in order to take into account the Council's Program. Accordingly, the staff concludes that the proposed project does not conflict with the applicable provisions of the Council's Program.

V. ENVIRONMENTAL ANALYSIS

A. Proposed Project

1. General Description of the Locale

Rock Creek originates in Cassia County, about 30 miles southeast of Twin Falls, and flows northwest to the Snake River. About 3 miles southeast of Twin Falls, Rock Creek enters a well-defined canyon that continues through Twin Falls and through the project area to its confluence with the Snake River. Lands surrounding Rock Creek support agriculture and desert shrub vegetation.

The semiarid climate of the project area is characterized by hot, dry summers, cold winters, and windy springs. Average annual precipitation is about 10 inches.

The proposed project would have no direct or indirect effects on recreation, visual resources, and socioeconomic resources. A discussion of other resource concerns follow.

2. Geology and Soils

Affected Environment: The proposed project would be located in southern Idaho on the Rock Creek canyon bottom, about 1 1/4 miles

upstream from its confluence with the Snake River. Bedrock in the area consists of basalt lava flows. The diversion dam, penstock, diversion access road, and powerhouse would be located on relatively soil-free rock talus at the base of the steep canyon walls. The Rock Creek canyon rim is unstable; the basalt rimrock is commonly fractured by tension cracks (Howard, 1984). Rock falls are the source of the talus on the lower canyon slopes.

Environmental Issues and Concerns: Soils, though relatively uncommon or thin in the proposed major construction areas, would be very susceptible to erosion and to loss of sediment during excavation and other soil-disturbing construction activities. Canyon rim failures and rock falls would present hazards to project features. The applicant would set structures away from the rim and away from tension cracks to eliminate hazards on the rim; would place structures away from alcoves and runout slopes to eliminate serious hazards within the canyon; and would use flow barriers to alleviate damage from rock falls if future problems arise (Howard, 1984). Erosion and sedimentation, however, would also occur in the event of a pipeline failure or break caused by rock falls or shifting of the talus.

Conclusions and Recommendations: The applicant has proposed some general measures to reduce erosion and sedimentation, but has not provided a specific erosion, sediment, and slope-stability control plan for the project. The applicant could adequately minimize the erosion, sedimentation, and effects of unstable slope conditions at the project by using suitable design measures and construction techniques in conjunction with the proposed general measures. The licensee should consult with appropriate resources agencies in preparing and implementing a detailed erosion, sediment, and slope-stability control plan for the project.

Unavoidable Adverse Impacts: Minor erosion and sedimentation would be unavoidable during construction.

3. Water Resources

Affected Environment: At the proposed project site, Rock Creek drains about 300 square miles. The natural flow of Rock Creek is supplemented during fall and early winter by return flow in the form of irrigation water from adjacent cropland that produces higher than expected flow for streams in southeastern Idaho. Flows in Rock Creek, as measured at a Geological Survey gage located 1,000 feet downstream of the proposed powerhouse, exceed 135 cfs 90 percent of the time; 205 cfs 50 percent of the time; and 290 cfs 10 percent of the time. The average discharge during the 6 years of record was 200 cfs. From 1975 to 1984, flows ranged from a

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AUG 05 1991

daily minimum of 70 cfs to a daily maximum of 2,120 cfs. This maximum flow was artificially induced by the failure of an irrigation canal in May 1978. Low flows typically occur in February and March; high flows typically occur in August, September, and October.

The diversion dam would raise the existing water level by 4 feet, creating an impoundment with a surface area of 0.14 acre, a gross storage capacity of 0.56 acre-feet, a maximum depth of 9.5 feet, and a mean depth of 4 feet.

The Idaho Department of Health and Welfare (DHW) classifies the water quality of Rock Creek as poor because of elevated water temperatures in summer and high levels of bacteria, nutrients, and turbidity. Wastes from municipal, industrial, and agricultural sources have contributed to the poor water quality of Rock Creek. Federal and state resource agencies are trying to improve the water quality of Rock Creek.

The ranges of specific water quality data for Rock Creek are: water temperature, 37.4 to 67.1 degrees Fahrenheit (°F); dissolved oxygen (DO), 8.4 to 12.2 milligrams per liter (mg/l); pH, 8.4 to 8.6; fecal coliform, 88 to 1,200 coliforms per 100 millimeters; total nitrogen, 2.4 to 4.4 mg/l; and total phosphorus, 0.06 to 0.39 mg/l.

Environmental Issues and Concerns: Project construction would erode surface soils and would resuspend streambottom sediments, causing minor, short-term increases in turbidity. Operating the proposed project would reduce the volume of water flowing through the 2,700-foot-long bypass reach and would adversely affect water quality. Reduced discharges to the bypass reach could cause higher water temperatures and could reduce DO concentrations during the summer.

Conclusions and Recommendations: Implementing a plan to control erosion and sedimentation, as discussed in Section V.2, would minimize the amount of sediment introduced to Rock Creek and would reduce turbidity.

As recommended by DHW, the licensee should release sufficient flows into the bypass reach to maintain DO and water temperature at levels in compliance with the Idaho water quality standards for Rock Creek. The specific flow regime is discussed in the following section on fishery resources.

The Idaho Department of Fish and Game (DFG) recommends that the applicant take measures to prevent gas supersaturation in the tailrace discharge (letter from Jerry M. Conley, Director, Idaho

Department of Fish and Game, Boise, Idaho, September 12, 1984). Gas supersaturation should be prevented in the project discharge; the applicant agrees to design the diversion and intake structures to prevent air entrainment in the penstock.

On October 11, 1984, DHW granted water quality certification for the proposed project, under Section 401 of the Clean Water Act.

Unavoidable Adverse Impacts: Some erosion, sedimentation, and turbidity problems would be unavoidable during project construction. Operating the project would cause minor, long-term changes in DO concentrations and water temperature in the 2,700-foot-long bypass reach.

4. Fishery Resources

Affected Environment: Game species of fish in Rock Creek are rainbow trout (*Salmo gairdneri*) and brown trout (*S. trutta*). Nongame species include speckled dace (*Rhinichthys osculus*), mottled sculpin (*Cottus bairdi*), largescale sucker (*Castomus macrocheilus*), reidside shiner (*Richardsonius balteatus*), and common carp (*Cyprinus carpio*).

DFG rates the fishery resource in the project reach of Rock Creek as substantial. In 1978, DFG classified Rock Creek as a value class III stream, which indicates the occurrence of habitat that is occasionally used by a highly valued fish population of high interest or the occurrence of an essential habitat for a relatively low-valued population of a fish species of high interest. The classification means that there is a moderate potential for either restoration of the habitat or reclamation to an equal or higher valued fishery.

In September 1982, DHW conducted an angler survey as part of a biological assessment of Rock Creek. The results of the survey show that the hourly catch rate of trout is poor compared to the rate of other streams in southeastern Idaho, and that anglers rate the trout fishing in Rock Creek as average. Efforts to improve the water quality of Rock Creek have improved the trout fishery; eventually, Rock Creek may be upgraded to a value class II stream (personal communication, Bob Bell, Regional Fishery Manager, Idaho Department of Fish and Game, Jerome, Idaho, March 13, 1986).

No federally listed threatened or endangered aquatic species occur within the project area (letter from John P. Wolfen, Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Department of the Interior, September 17, 1984).

Environmental Issues and Concerns: Construction activities would temporarily increase turbidity levels in Rock Creek. Rochester

et al. (1984) state that construction-related sedimentation and turbidity may reduce the visibility of sight-feeding fish, disrupt spawning, and smother aquatic fish food organisms. The applicant's success in stabilizing slopes and minimizing long-term erosion would determine long-term increases in sedimentation.

The applicant's diversion of up to 200 cfs for project operation would reduce flows and would reduce the available habitat for the fishery resources. Flow reduction in many western streams affects fishery resources by reducing usable habitat (Loar and Sale, 1981). Reducing discharges to the bypass reach might elevate the summer water temperatures of Rock Creek, which are at the upper range of optimum temperatures for trout during that period. Bell (1984) found that growth is retarded in all coldwater species of fish when water temperatures are in excess of 68 °F.

Conclusions and Recommendations: Implementing a plan to control erosion and sedimentation, as discussed in Section V.2, would protect the fishery resources from increases in turbidity.

DFG recommends that the applicant release minimum flows from the diversion according to the following flow regime schedule to protect the fishery resources.

Month	Flow in cfs
October and November	41
December and January	31
February and March	41
April through September	82

The applicant agrees to follow the schedule of minimum flow releases recommended by DFG and as noted earlier, proposes to operate the project in a run-of-river mode.

An instream minimum flow release must be maintained to protect the fishery resource in Rock Creek. The licensee should implement the schedule of minimum flow release recommended by DFG and should operate the project in a run-of-river mode. The licensee should also install a stream gage to monitor the minimum flow releases.

DFG recommends that the applicant provide self-cleaning fish screens at the project intake to prevent entrainment of fish in the penstock, and the applicant agrees. Appropriately designed self-cleaning fish screens should be attached to the intake structure to minimize impingement and prevent entrainment. The design features of the tailrace should prevent the attraction and entry of fish.

DFG also recommends that upstream fish passage facilities be installed at the diversion in the event the diversion proves to be a barrier

to trout migration. The applicant agrees to install a fish ladder at the diversion during the initial construction of the project. The licensee should install an appropriately designed fish ladder at the diversion to allow the upstream movement of resident trout.

Unavoidable Adverse Impacts: Fish populations would experience a minor, short-term impact as a result of instream construction activities.

5. Terrestrial Environment

Affected Environment: The majority of the project area is characterized by shrub communities, which are dominated by big sagebrush (*Artemisia tridentata*), greasewood (*Sarcobatus vermiculatus*), and shadscale (*Atriplex confertifolia*). Riparian communities found along Rock Creek consist of isolated stands of cottonwood (*Populus* spp.), willow (*Salix* spp.), and tamarisk (*Tamarix chinensis*) (Howard, 1984).

Mule deer (*Odocoileus hemionus*) are found in the project vicinity. Other mammals include cottontail rabbit (*Sylvilagus nuttalli*), coyote (*Canis latrans*), raccoon (*Procyon lotor*), and porcupine (*Erethizon dorsatum*) (Howard, 1984). Raptors expected to occur in the project vicinity include golden eagle (*Aquila chrysaetos*) and prairie falcon (*Falco mexicanus*).

No federally listed threatened or endangered plant or animal species are known to occur in the project area (letter from John P. Wolfelin, Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Department of the Interior, September 17, 1984).

Environmental Issues and Concerns: Constructing the penstock and access road would cause the loss of approximately 5 acres of sparsely vegetated talus slopes, which have limited value to wildlife. Installing the transmission line poles would affect less than 2 acres of shrub vegetation. Construction of the powerhouse and diversion structure has the potential to disturb less than 1 acre of riparian habitat; riparian habitat is valuable wildlife habitat (Brinson et al., 1981), especially in arid regions, and is very limited in Idaho (Boccard, 1980). Increased noise levels and human activity during the 3-month construction period would temporarily disrupt the normal activities of local wildlife population in and adjacent to the project area. The transmission line, if not properly designed, would pose an electrocution hazard to large raptors.

Conclusions and Recommendations: The applicant's proposal to reseed disturbed areas with native plant species would minimize

AUG 05 1991

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long-term impacts to wildlife habitat; however, no specific details of the proposal have been provided. The licensee should provide a plan that describes revegetation methods, plant species used, and revegetation monitoring, and that provides for the replacement of any lost riparian habitat.

The design of the transmission line in accordance with accepted raptor guidelines (Raptor Research Foundation, Inc., 1981), as proposed by the applicant, would adequately protect large raptors from electrocution. The applicant has not provided specific design drawings of the proposed line, however. The licensee should prepare a specific transmission line design plan that outlines measures to protect raptors.

Unavoidable Adverse Impacts: Human activity and noise levels during the construction period would have a minor, short-term effect on local wildlife populations.

6. Cultural Resources

Affected Environment: No archeological or historic sites have been identified in the project area that are listed in, eligible for, or potentially eligible for inclusion in the National Register of Historic Places (letter from Thomas J. Green, State Archeologist, State Historic Preservation Office, Idaho State Historical Society, Boise, Idaho, July 10, 1984).

Environmental Issues and Concerns: Archeological or historic sites discovered during construction could be affected by the project.

Conclusions and Recommendations: If the licensee discovers archeological or historic sites during construction, the licensee should halt construction in the vicinity of the sites, should consult the State Historic Preservation Officer about the significance of such sites, and should implement any necessary measures to avoid or to mitigate impacts to significant sites.

Unavoidable Adverse Impacts: None.

B. Cumulative Impacts

1. Rock Creek Basin

Rock Creek is a tributary of the Upper Snake River Basin, an area from Weiser, Idaho, upstream to headwaters in Yellowstone National Park, Wyoming (figure 1).

The land surrounding the project area is irrigated by a network of irrigation canals that receive water diverted from the Snake River at the Milner Dam, located 30 miles east of the proposed project.

Flows in Rock Creek, therefore, are supplemented by seepage from the numerous irrigation canals, several seep tunnels, and natural springs in the area.

The staff, in reviewing hydropower applications for the Upper Snake River Basin, has identified visual quality, recreation, waterfowl, and value class I fishery as important resources for the mainstem Upper Snake River and its tributaries; these resources are not found in the Rock Creek Basin.

2. Proposed and Existing Hydroelectric Development

In addition to the proposed Rock Creek No. 2 Project, there are two exempted projects and a pending exemption application for the Rock Creek Basin (figure 1). The exempted projects are the Rock Creek Project (FERC No. 6450) located downstream from the proposed project, and the Jay A. Moyle/KTFI Creek Project (FERC No. 6663), upstream from the proposed project, on a small tributary to Rock Creek. The pending exemption (FERC No. 8961) is the Lower Low Line Project, which would be located upstream of the proposed project on an nearby irrigation canal.

3. Target Resources

A target resource is an important resource that could be affected by two or more proposed hydropower projects. The staff, after reviewing data from existing and proposed hydropower projects in the basin and considering comments from federal and state resource agencies and the public, identified resident trout as a target resource for the part of the Rock Creek Basin in which the proposed project would be located.

The species of concern in Rock Creek are rainbow trout and brown trout. As discussed in Section V.4, DFG classified Rock Creek in the project area as value class III, or substantial fishery resource, and this classification may be upgraded in the future. The resident trout fishery in Rock Creek, however, does not compare with that found in the nearby Upper Snake River where trophy-size rainbow trout are caught by anglers.

4. Environmental Impacts to Target Resources

The operation of the project without appropriate mitigative measures could exert stress on the resident trout populations in the project area, as discussed in Section V.4. The applicant proposes to maintain the minimum flows in the bypass reach that are recommended by DFG, and to construct and to operate a fish ladder and self-cleaning fish screens at the project. Similar mitigative measures have also been included as mandatory conditions set by fish and

APR 05 1991

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wildlife agencies for the exempted Rock Creek Project (FERC No. 6450), located downstream from the proposed project (personal communication, Bob Bell, Regional Fishery Manager, Idaho Department of Fish and Game, Jerome, Idaho, March 12, 1986). A 1985 report prepared by several fish and wildlife agencies and other independent groups places the Rock Creek No. 2 Project in a 2A category, a ranking which indicates that significant adverse effects to fish and wildlife could be reduced to an insignificant level if proper mitigative procedures are implemented (Columbia River Inter-tribal Fish Commission et al., 1985).

The implementation of the proposed mitigative measures at the Rock Creek No. 2 Project would ensure that project operation would result in insignificant impacts to resident trout. For this reason, the staff concludes that the construction and operation of the Rock Creek No. 2 Project would have no potential for causing cumulative adverse impacts to resident trout populations in the Rock Creek Basin.

C. Alternative of No Action

Implementation of the no-action alternative would not change the existing physical or biological components of the area. It would, however, preclude the opportunity to use the renewable water resource of Rock Creek to generate electricity.

D. Recommended Alternative

The proposed project is the preferred alternative because electricity generated from a renewable resource would be sold to the Idaho Power Company, thus lessening the use of existing fossil-fueled, stream-electric plants, and because the environmental impacts that would result from constructing and operating the project would be minor and would be adequately mitigated.

VI. FINDING OF NO SIGNIFICANT IMPACT

Construction activities would result in short-term, minor increases in erosion, sedimentation, and turbidity levels in Rock Creek, minor impacts to fish populations, and localized disturbances to wildlife populations. Mitigative measures proposed by the applicant and recommended by the staff would adequately protect the environmental resources of Rock Creek.

The project would not affect any federally listed threatened or endangered species. Similarly, no sites or structures listed or eligible for listing on the National Register of Historic Places would be affected.

In accordance with the National Environmental Policy Act of 1969, this environmental assessment was prepared for the Rock Creek No. 2 Hydroelectric Project. On the basis of the record and of the staff's independent environmental analysis, issuance of a license for the project would not constitute a major federal action significantly affecting the quality of the human environment.

VI. LITERATURE CITED

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MAY 15 1991

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VII. LIST OF PREPARERS

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SAFETY AND DESIGN ASSESSMENT ROCK CREEK NO. 2 PROJECT FERC NO. 6015-007-IDAHO

I. EVALUATION OF DESIGN, CONSTRUCTION AND PERFORMANCE

The project is classified as low hazard, subject to the Portland Regional Office recommendation. The proposed diversion structure would impound an insignificant amount of water and its failure would not endanger downstream life or property.

II. EXHIBITS

The following parts of Exhibit A and the following Exhibit P drawings conform to the Commission's rules and regulations and should be included in the license:

Exhibit A - Section titled "Project Features".

<u>Exhibit P</u>	<u>FERC No. 6015-</u>	<u>Showing</u>
F-2	6	Alignment Plan View
F-3	7	Penstock Plan and Cross-Section
F-4	8	Penstock Plan and Cross-Section
F-5	9	Penstock Plan and Cross-Section
F-6	10	Penstock Plan and Cross-Section
F-7	11	Penstock Plan and Cross-Section
F-8	12	Inlet Structure
F-9	13	Inlet Structure
F-10	14	Inlet Structure

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P-11	15	Inlet Structure
P-12	16	Flow Control Structure
P-13	17	Flow Control Structure
P-14	18	Powerhouse Plan and Section

FEDERAL POWER 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.

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

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

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

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

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

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

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

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

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity

AUG 05 1991

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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 benefitting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

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

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

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

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

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

DEC 5 1991

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

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

Article 21. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 22. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 23. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 24. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 25. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment

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AUG 05 1991

of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 26. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 27. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 28. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 29. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 30. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 31. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

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- 12 -

Article 12. 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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22. Default: It is expressly understood and agreed that each and all of the provisions of this Lease are conditions precedent to be faithfully and fully performed and observed by the Lessee so as to entitle the Lessee to continue in possession of said leased property, and if any default shall occur, the payment of rent or in the observance, payments, or performance of any of the provisions, terms or conditions hereof, the Lessor, at its election, shall have the right to re-enter said premises, provided, however, that no termination of this Lease shall be made by the Lessor unless the Lessor has, at least sixty (60) days prior thereto, given written notice to the Lessee or any assignee thereof, of their intention to do so by mailing to the Lessee, at the Lessee's address at 1139 Falls Avenue East, Twin Falls, Idaho 83301, which notice shall specify such default or defaults and the Lessee has not, during the sixty (60) days after the time of mailing said notice, remedied or corrected the default so specified. The failure of the Lessor to exercise its rights for one default under this Lease shall not be a waiver of Lessor's right to exercise those rights for any subsequently occurring default.

If a default shall occur as provided in this agreement, the Lessor may elect to purchase the facilities of the Lessee by assuming the liens of the Lessee's lender and the Lessor may thereafter operate the facility without payment to the Lessee; or the Lessee may be required by the Lessor to remove all facilities within twelve (12) months and restore the property in accordance with paragraph 4 hereof, but if said property has not been removed within the twelve (12) months, the Lessor shall have the right to re-enter and take possession of the property and shall be deemed the owner of any said improvements which remain.

FIRST AMENDMENT TO AGREEMENTS

Rock Creek #2 Water Power Project Agreement
and Companion Agreement

THIS FIRST AMENDMENT to the Rock Creek #2 Water Power Project Agreement and its Companion Agreement is made and entered into this 6th day of April, 1987, by and between ROCK CREEK HYDROPOWER, INC., hereinafter referred to as "RCHPI", CHARLES D. HOWARD, GERALD MARTENS, and CARL EDWARDS, hereinafter referred to as "EMH", CHARLES D. HOWARD, an individual, hereinafter referred to as "Howard", parties of the first part and BONN-TECH, an Idaho general partnership, hereinafter referred to as the "Partnership", party of the second part;

W I T N E S S E T H:

WHEREAS, the parties of the first part and the party of the second part have previously entered into the Rock Creek #2 Water Power Project Agreement dated December 18, 1986, (hereinafter the "Agreement"), a true copy of which is attached hereto as Exhibit "A", and by this reference made a part hereof; and

WHEREAS, Charles D. Howard, Gerald Martens, Carl Edwards, EMH, Inc. and Bonn-Tech have also entered into another agreement (hereinafter the "Companion Agreement"), a true and correct copy of which is attached hereto as Exhibit "B", and by this reference made a part hereof; and

WHEREAS, the parties desire to amend or modify various portions of the Agreement and the Companion Agreement; and

WHEREAS, the parties intend that any provisions herein contained which are contrary to terms contained in those Agreements shall be controlled by the terms of this Amendment, but that all other terms of the Agreements shall be fully enforceable as written;

NOW, THEREFORE, in consideration of this Amendment to the Agreements and the mutual promises and covenants of the parties hereto, the parties agree as follows:

1. Page 3, paragraph 6A, lines 19-22 and page 4, lines 1-9 of the Agreement should read as follows:

A. The Partnership shall pay, quarterly in arrears, to RCHPI;

During Period One, which shall commence on the First Operation Date of the Project

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(which term "First Operation Date" shall be defined in the Power Sales Contract to be executed between the Partnership and the utility purchasing the electricity generated by the Project), and shall terminate sixteen (16) years after that date, the lease payments shall be as follows: (1) Five percent (5%) of the gross annual revenues received by the Partnership under the Power Contract, on the first 11,700,000 kwh generated per year; (2) fifty percent (50%) of the net annual revenues received by the Partnership under the Power Contract over 11,700,000 kwh generated each year. It is understood by and between the parties that the payment of lease payments during Period One is subordinated and junior to payments for (1) debt service not to exceed seventy-five percent (75%) of gross annual revenues, from the first 11,700,000 kwh produced on an annual basis; (2) any additional principal and interest payments due as a result of a capital improvement or replacement loan to the Project as provided hereinbelow in this paragraph; provided, however, that all such payments shall be made from gross annual revenues from the first 11,700,000 kwh produced on an annual basis, and after the initial permanent debt service on the Project has been repaid said capital improvement or replacement loans shall at no time exceed seventy percent (70%) of gross annual revenues from the first 11,700,000 kwh produced on an annual basis; (3) a senior return to equity of seven percent (7%) of gross revenues received by the Partnership under the Power Contract on the first 11,700,000 kw of electricity generated, per year, payable directly to the Partnership, which payment is hereinafter referred to as the "senior return"; (4) insurance costs and all taxes connected with the Project, including Idaho kilowatt hour tax; (5) operations and maintenance charges to be established by industry standards, but not to exceed six percent (6%) of gross annual revenues; and (6) the royalty payments to Lessees as per Exhibits "A-1" and "A-2" of this Agreement, and also, royalties to the Twin Falls Canal Company ("TFCC") in the event TFCC furnishes additional water under a separate agreement. In the event that net revenues

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AUG 05 1991

are insufficient to pay the lease payment to RCHPI during Period One, such lease payments shall accrue, with interest at the rate of ten percent (10%) per annum. To the extent that Project revenues permit, all accrued and deferred lease payments to RCHPI, together with interest thereon shall be due and are payable one-fourth (1/4) at the end of year seventeen (17), one-third (1/3) of the unpaid balance at the end of year eighteen (18), one-half (1/2) of the unpaid balance at the end of year nineteen (19) and the balance at the end of year twenty (20). In the event that Project revenues are insufficient to pay all accrued and deferred lease payments to RCHPI at the end of years seventeen (17), eighteen (18), nineteen (19) and twenty (20), any amount remaining owing to RCHPI at the end of year twenty (20) shall be deemed extinguished and there shall be no further liability to RCHPI on account of unpaid accrued and deferred lease payments. In the event that net revenues are insufficient to pay Bonn-Tech the senior return, such senior return payments shall accrue, with interest at the rate of ten percent (10%) per annum, and are due and payable after all accrued and deferred lease payments have been paid to RCHPI or the same have been extinguished as provided above. In the event the Project requires a major capital improvement and/or replacement, the cost of which is in excess of the O & M allowance, Bonneville Pacific Corporation, or its designee, shall be entitled to loan the necessary funds for such project purposes, and such loan amount, if lent by Bonneville, shall earn interest at the rate of two percent (2%) above the "reference rate" of First Interstate Bank of Utah, N.A. (Salt Lake City Main Office) from the date such loan is made until repaid. In the event a commercial lender shall make the loan, the loan amount plus interest shall be repaid at the rate contained in the loan documents.

2. With respect to the modifications made under paragraph 1 hereof, Bonn-Tech hereby reconfirms its obligation to use reasonable efforts to maximize the net revenues to be generated by the Project. In the event there shall exist insufficient funds to pay the RCHPI lease payment at any time hereunder, Bonn-Tech, subject to the priorities set forth in paragraph 1 hereof, covenants to pay said lease payment in such

AUG 05 1991

amount as is possible under the then existing circumstances and to accrue only so much of said lease payment as is necessary to meet the priority obligations set forth in paragraph 1 hereof. Bonn-Tech grants to RCHPI the right to review all accounting books and records relating to the Project to verify the accuracy of all accounting undertaken by Bonn-Tech in establishing whether lease payments can be made or must be accrued. In the event of dispute between the parties relating to the accounting practices and methods used by Bonn-Tech in making such determination, the parties agree to submit such dispute to binding arbitration in accordance with the Idaho Uniform Arbitration Act.

3. The parties agree to open an escrow account at First American Title Company in Twin Falls, Idaho, in which shall be deposited (i) all necessary Project rights transferable or to be transferred to the Partnership; (ii) all funds pursuant to and in accordance with paragraph 12(C) of the Agreement; and (iii) all funds pursuant to and in accordance with paragraph 1(A)(3)(i) of the Companion Agreement. The parties agree that the execution of a Power Sales Contract for the Project is a condition precedent to a closing of the escrow and the disbursement of any funds from the escrow account.

4. Paragraph 22 of the Agreement is hereby amended to show as the address for the Partnership the following:

Bonn-Tech
c/o Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, Utah 84111
ATTN: President

5. All other terms contained in the Agreements are hereby confirmed and ratified and shall be of full force and continuing effect.

6. The parties intend by this Amendment to modify and/or amend the Agreement in accordance with Paragraph 23 of said Agreement.

7. This First Amendment shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

8. In the event that the Agreement, the Companion Agreement, or this Amendment thereto shall become the subject of litigation, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees from the non-prevailing party.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Agreements the day and year first above written.

EMH

Charles D. Howard
Charles D. Howard

Gerald L. Martens
Gerald L. Martens

Carl V. Edwards
Carl V. Edwards

Charles D. Howard
Charles D. Howard, an
individual

ROCK CREEK HYDROPOWER, INC.

By Charles D. Howard
Charles D. Howard, President

ATTEST:

Carl V. Edwards
Carl V. Edwards, Secretary

BONN-TECH, an Idaho general
partnership

By: Bonneville Pacific Corporation
Its General Partner

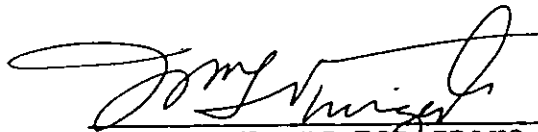
By: L. Wynne Johnson
Its President

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AUG 05 1991

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 6th day of April, 1987, before me, a Notary Public, in and for said County and State, personally appeared CHARLES D. HOWARD, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he 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.

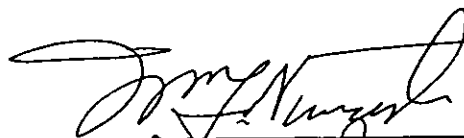


NOTARY PUBLIC FOR IDAHO
Residing at: Bull Lake
My commission expires: _____

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 3rd day of April, 1987, before me, a Notary Public, in and for said County and State, personally appeared GERALD D. MARTENS, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he 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.



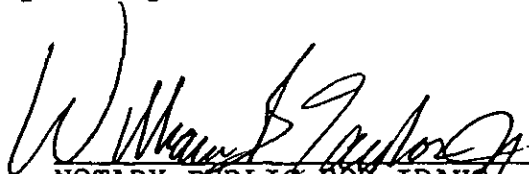
NOTARY PUBLIC FOR IDAHO
Residing at: Bull Lake
My commission expires: _____

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STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 4th day of APRIL, 1987, before me, a Notary Public, in and for said County and State, personally appeared CARL V. EDWARDS, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he 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: Grangerville
My commission expires: 3-12-93

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 6th day of April, 1987, before me, a Notary Public, in and for said County and State, personally appeared CHARLES D. HOWARD, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he 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.

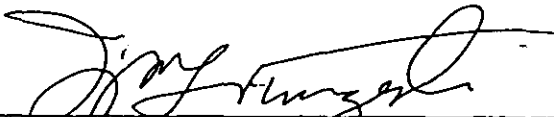

NOTARY PUBLIC FOR IDAHO
Residing at: Buhl Idaho
My commission expires: _____

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AUG 05 1991

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 6th day of April, 1987, before me, a Notary Public, in and for said County and State, personally appeared CHARLES D. HOWARD and CARL V. EDWARDS, known or identified to me to be the President and Secretary, respectively, of ROCK CREEK HYDROPOWER, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

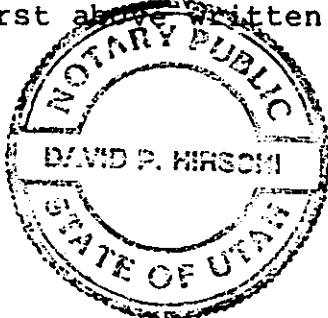
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC FOR IDAHO
Residing at: Buhl, ID
My commission expires: _____

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

On this 7th day of April, 1987, before me, a Notary Public, in and for said County and State, personally appeared L. Wynn Johnson, known or identified to me to be the President of BONNEVILLE PACIFIC CORPORATION, General Partner of BONN-TECH, the corporation that executed the foregoing instrument, 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.




NOTARY PUBLIC FOR IDAHO
Residing at: Centerville, UT
My commission expires: 8-20-87

MICROFILMED

AUG 05 1991

SECOND AMENDMENT TO AGREEMENTS
ROCK CREEK #2 WATER POWER PROJECT AGREEMENT
AND COMPANION AGREEMENT

THIS SECOND AMENDMENT TO THE ROCK CREEK #2 WATER POWER PROJECT AGREEMENT AND ITS COMPANION AGREEMENT is made and entered into this 28th day of September, 1987, by and between ROCK CREEK HYDROPOWER, INC., hereinafter referred to as "RCHPI", CHARLES D. HOWARD, GERALD L. MARTENS, AND CARL V. EDWARDS, hereinafter referred to as "EMH", CHARLES D. HOWARD, an individual, hereinafter referred to as "Howard", EMH, Inc., hereinafter referred to as "^{EMH}EMH, Inc.", and BONN-TECH, an Idaho general partnership, hereinafter referred to as the "Partnership".

RECITALS:

A. The parties hereto have previously entered into the Rock Creek #2 Water Power Project Agreement dated December 18, 1986 (hereinafter the "Agreement").

B. Charles D. Howard, Gerald Martens, Carl Edwards, EMH, Inc. and Bonn-Tech have entered into another agreement (hereinafter referred to the "Companion Agreement").

C. The parties entered into a First Amendment to Agreements dated April 7, 1987 (the "First Amendment") which modified certain provisions of the Agreement and the Companion Agreement.

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D. The parties desire hereby to further amend and/or restate certain provisions of the Agreement and Companion Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Representations of RCHPI, EMH, EMH, Inc. and Howard. RCHPI, EMH, EMH, Inc. and Howard, jointly and severally, represent and warrant the following:

(((a) A perpetual easement (the "Stradley Easement") over and across certain real property (described in the Agreement as the Stradley Lease property) has been obtained by RCHPI, and RCHPI has assigned said easement to Bonn-Tech or its designee, Bonneville Pacific Corporation, by good and sufficient assignment of easement.

(b) All assignments and consents necessary to fully assign to RCHPI the Transmission Agreement (as described in the Agreement) have been obtained and all consents or other approvals necessary for RCHPI to further assign the Transmission Agreement to Bonn-Tech (and its assigns) under the Agreement have been obtained and are in full force and effect.

(((c) Upon close of escrow, as hereinafter described, RCHPI is prepared to exercise the Sharp/Vickers Option (as described in the Agreement and as contained in the present escrow) provided funds for such exercise are provided by Bonn-Tech as contemplated by the Agreement. The parties

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AUG 05 1991

agree to exercise such Option at a mutually agreeable time, provided, however, that such exercise shall be accomplished on or before December 31, 1987, in accordance with the Option Agreement.

(d) The Water Rights (as defined in the Agreement) have been assigned to RCHPI, and said assignment has been approved in writing by the Idaho Department of Water Resources. Said Water Rights have been further assigned to Bonn-Tech (or its designee), and such subsequent assignment has been submitted to the Idaho Department of Water Resources for approval and RCHPI is aware of no reason why such assignment should not be approved by said Department.

(((e) Howard has applied for an assignment of the FERC License relating to the Project to RCHPI and Bonneville Pacific Corporation as joint licensees. Howard and RCHPI will exercise due diligence to assure that such assignment is approved by FERC as soon as practicable. Upon approval by FERC of such assignment, RCHPI shall be solely responsible for assuring that all interests in real property required under said license are properly and timely obtained and held by RCHPI for the benefit of the Project except interests presently held by Rock Creek Joint Venture, which interests shall be obtained directly by Bonn-Tech, or assigns, if required by FERC.

2. Close of Escrow. Upon execution of this Agreement, and provided the representations and warranties contained in paragraph 1 hereof are true and correct upon the

AUG 05 1991

execution hereof, the parties hereto agree to close escrow as provided in that certain Escrow Agreement among the parties and First American Title Company dated April __, 1987. At such closing, RCHPI shall direct Escrow Agent to provide copies of all documents held in escrow to Bonn-Tech and to provide to Bonn-Tech originals of all consents relating to the lease and assignments of contracts, rights and interests to Bonn-Tech as contemplated by the Agreement and by this Second Amendment. At such closing, Bonn-Tech shall pay Thirty Thousand Dollars (\$30,000.00) to EMH (or EMH, Inc. as directed) pursuant to the Companion Agreement, and shall authorize, and hereby does authorize, Escrow Agent to pay to EMH (or EMH, Inc. as directed) an additional Thirty Thousand Dollars (\$30,000.00) presently held in escrow, as required under the Companion Agreement. Bonn-Tech shall also deliver to Howard the sum of Fourteen Thousand Seven Hundred Seventeen and 42/100 Dollars (\$14,717.42) for engineering services rendered by Howard in connection with the Project.

3. Reaffirmation of Easement, Lease, and Assignment. RCHPI hereby reaffirms that under the Agreement it has, and hereby does, lease (or sublease) to Bonn-Tech, and its assigns, all of its rights, titles, interests and obligations acquired by RCHPI, by assignment or otherwise, under the Stradley Easement, the Idaho Frozen Foods Lease (as described in the Agreement) and the Sharp/Vickers property (at such time as the Option is exercised), and agrees to cooperate fully in

executing and/or obtaining all documents, consents and approvals which may be necessary or desirable in evidencing the same. RCHPI further reaffirms that under the Agreement it has, and hereby does, assign and quit claim unto Bonn-Tech, and its assigns, the Water Rights, Transmission Agreement and all other rights, titles, interests, permits, approvals and authorizations which it may have or claim in and to the Project except (a) its rights as joint licensee under the FERC License, (b) its rights to receive royalty income under the Agreement, as amended by the First Amendment, and (c) its rights as lessor or sublessor, as the case may be, of the real property interest being leased or subleased, as the case may be, to Bonn-Tech, and its assigns, under the Agreement and under this Second Amendment.

4. Reconveyance of Rights and Interests at the End of the Term. The parties reaffirm that the term of the Agreement, as amended, is thirty-five (35) years from the First Energy Date as defined in the Power Contract. At the end of the term, Bonn-Tech, and its assigns, hereby reaffirm and acknowledge their respective obligations to terminate the lease and to reassign to RCHPI all other rights, titles, interests and obligations acquired by Bonn-Tech or its assigns pursuant to the Agreement, as amended, including, without limitation, all easements, fee titles, leases or subleases of real property used in connection with the Project, the Water Rights, the joint interest of Bonneville Pacific Corporation in the FERC

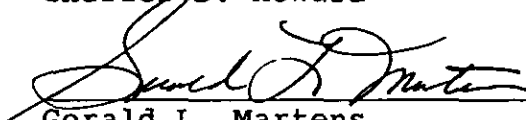
License and good and sufficient title to all equipment and improvements placed upon the real property by Bonn-Tech or Bonneville Pacific Corporation pursuant to the construction and operation of the Project.

5. Reaffirmation of Agreements. Except as modified hereby, the parties reaffirm the terms and provisions of the Agreement the Companion Agreement and the First Amendment, and declare the same to be in full force and effect and binding upon the parties hereto. All terms and conditions contained in the Agreement, the First Amendment and the Companion Agreement applicable to the provisions hereof, except as modified herein, are incorporated herein by this reference.

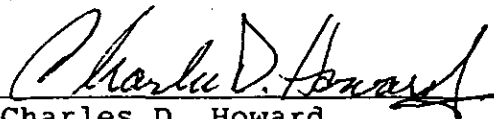
IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Agreements the day and year first above written.

EMH


Charles D. Howard


Gerald L. Martens


Carl V. Edwards


Charles D. Howard,
An Individual

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ATTEST:

ROCK CREEK HYDROPOWER, INC.

Carl V. Edwards
Carl V. Edwards, Secretary

By Charles D. Howard
Charles D. Howard, President

BONN-TECH, an Idaho general
partnership

By: Bonneville Pacific
Corporation, Its General
Partner

By L. Wynn Johnson
Its President

EHM
EMH, Inc.

By Samuel M. Martin
Its Secretary-Treasurer

STATE OF IDAHO)
COUNTY OF Idaho : ss.
~~TWIN FALLS~~)

On this 24 day of September, 1987, before me,
Notary Public in and for said County and State, personally
appeared Charles D. Howard, known and identified to me to be
the individual whose name is subscribed to the within
instrument, and acknowledged to me that he 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.

Edith L. Andersson
NOTARY PUBLIC FOR IDAHO
Residing at: Grangeville, Id.

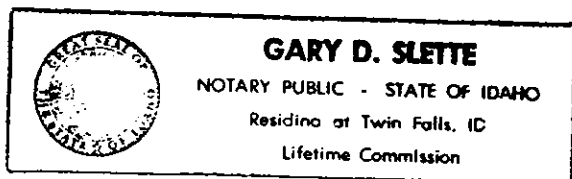
My Commission Expires:

Aug 1988

STATE OF IDAHO)
 : SS.
COUNTY OF TWIN FALLS)

On this 28th day of September, 1987, before me,
Notary Public in and for said County and State, personally
appeared Gerald L. Martens, known and identified to me to be
the individual whose name is subscribed to the within
instrument, and acknowledged to me that he 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.



A handwritten signature in dark ink, appearing to read "G. Slette", written over a horizontal line.

NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls

My Commission Expires:

Lifetime

STATE OF IDAHO)
 : SS.
COUNTY OF Idaho (~~TWIN FALLS~~)

On this 24 day of September, 1987, before me,
Notary Public in and for said County and State, personally
appeared Carl V. Edwards, known and identified to me to be the
individual whose name is subscribed to the within instrument,
and acknowledged to me that he 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.

Edith L. Anderson
NOTARY PUBLIC FOR IDAHO
Residing at: Changewille, Id

My Commission Expires:

Aug. 1988

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AUG 05 1991

STATE OF IDAHO)
Idaho : ss.
COUNTY OF TWIN FALLS)

On this 24 day of Sept, 1987, before me, Notary Public in and for said County and State, personally appeared Charles D. Howard and Carl V. Edwards, known to me or identified to me to be the President and Secretary, respectively, of Rock Creek Hydropower, Inc., the corporation that executed the foregoing instrument and acknowledged to me that said 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.

Edith L. Andersson
NOTARY PUBLIC FOR IDAHO
Residing at: Grangeville, ID

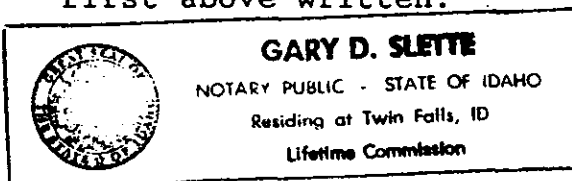
My Commission Expires:

Aug 1988

STATE OF IDAHO)
 : ss.
COUNTY OF TWIN FALLS)

On this 28th day of September, 1987, before me, Notary Public in and for said County and State, personally appeared Gerald Martens, known to me or identified to me to be the Buyer/Trust, of EMH, Inc., the corporation that executed the foregoing instrument and acknowledged to me that said 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.



My Commission Expires:

Lifetime

G D Slette
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls

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

On this _____ day of September, 1987, before me,
Notary Public in and for said County and State, personally
appeared L. Wynn Johnson, known to me or identified to
me to be the President, of Bonneville Pacific Corporation,
the general partner of Bonn-Tech, an Idaho general partnership,
the partnership that executed the foregoing instrument and
acknowledged to me that said corporation executed the same as
general partner.

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

255d

After recording mail to:
David P. Hirschi, Esq.
Bonneville Pacific Corporation
275 East 200 South, Suite 800
Salt Lake City, Utah 84111

MEMORANDUM OF LEASE AND
ASSIGNMENT OF LEASE

THIS MEMORANDUM AND ASSIGNMENT is made and entered into this ____ day of September, 1988, by and between ROCK CREEK HYDROPOWER, INC. ("RCHPI"), CHARLES D. HOWARD, GERALD MARTENS and CARL EDWARDS (collectively "EMH"), CHARLES D. HOWARD ("Howard") BONN-TECH, an Idaho General Partnership ("Bonn-Tech") and BONNEVILLE PACIFIC CORPORATION ("Bonneville").

Recitals

A. RCHPI, EMH, Howard and Bonn-Tech entered into an Agreement - Rock Creek No. 2 Water Power Project dated December 18, 1986, which Agreement was amended by a First Amendment to Agreements dated April 6, 1987, and a Second Amendment to Agreements dated September 28, 1987. Said Agreement, as amended, is hereinafter referred to the "Lease".

B. Under the Lease, RCHPI, EMH and Howard agreed to lease, sublease and acquire and lease to Bonn-Tech certain rights and interests including certain real property located in Twin Falls County, State of Idaho, for use by Bonn-Tech in the construction, operation and maintenance of a hydro electric project known as Rock Creek II Hydroelectric Project (the "Project").

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C. Bonn-Tech desires to assign all of its rights, titles and interest in and to the Project including its rights, interests and obligations under the Lease to Bonneville.

D. The Parties hereto desire hereby to amend the Lease to reflect current ownership of the real properties which are the subject of the Lease, to reconfirm the Lease, and to make the Lease a matter of public record.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. Amendment to Lease. The Lease is hereby amended to reflect accurate legal descriptions of the real property being leased under the Lease. Said real property is accurately described in Exhibits "A", "B" and "C" attached hereto and by this reference made a part hereof. The Parties hereby confirm that the real property described in Exhibit "A" is currently owned by Rock Creek Joint Venture, an Idaho joint venture, and that all of the Lessee's interest thereunder has been assigned to Bonn-Tech pursuant to the terms and conditions of that certain Modification and Extension Agreement and Addendum dated April 8, 1987, which Agreement is also incorporated herein by this reference and affects only that real property described in Exhibit "A", attached hereto. The Parties further confirm that the real property described in Exhibit "B" is owned by RCHPI in fee simple, and that the real property described in Exhibit "C" is held by RCHPI under a perpetual easement granted by Edith

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AUG 05 1991

Ensunsa, individually and as personal representative of the estate of Sam Stradley (aka Samuel Stradley), and Donnell (aka Donald) and Dora Stradley, dated _____, 1988 and recorded _____, 1988 as Instrument No. _____ in the records of the Twin Falls, Idaho County Recorder. The Lease is further modified to reflect a term of thirty five (35) years from the First Energy Date as defined in that certain Firm Energy Sales Agreement between Idaho Power Company and Bonneville dated July 13, 1987 (Facility No. 31615104).

2. Assignment of Lease. Bonn-Tech hereby assigns, transfers and quit claims to Bonneville all of its rights, titles and interests in and to the Project, including, but not limited to, the Lease. Bonneville hereby accepts the assignment herein contained and agrees to assume all rights, titles, interests and obligations of Bonn-Tech with respect to the Project including, but not limited to, the Lease.

3. Quit Claim by Bonneville. Bonneville has obtained through a certain assignment dated October 8, 1987 and recorded as Instrument No. 928857 of the official records of the Twin Falls County, Idaho, Recorder an interest in certain easements granted to RCHPI by Edith Ensunsa individually and as personal representative of the estate of Sam Stradley, deceased, and Donnell Stradley and Dora Stradley. Bonneville hereby quit claims and assigns to RCHPI all of its rights, titles and interest in and to said easements. It is the intent of Bonneville and RCHPI and the other parties hereto that all of the real property which is the subject of the aforementioned

assignments is being leased to Bonneville by the Lease confirmed herein and affects the real property described in Exhibit "C".

4. Confirmation of Lease. Pursuant to the terms and conditions hereof, and the terms and conditions of the Lease, all of which are incorporated herein by this reference, RCHPI, EMH and Howard hereby confirm that they have leased, and hereby lease to Bonneville (pursuant to the assignment and quit claim herein contained) all the real property described in Exhibit "A" (to the extent of their respective interests therein, if any) and in Exhibits "B", and "C" hereof. As modified and assigned hereby, the Lease remains fully enforceable and binding upon the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officers the day and year first above written.

BONN-TECH PARTNERSHIP

By Bonneville Pacific Corporation
Its General Partner

By _____
Its _____

ROCK CREEK HYDROPOWER, INC.

By Charles D. Howard, President

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EMH

Charles D. Howard

Gerald L. Martens

Carl Edwards

Charles D. Howard, an Individual
BONNEVILLE PACIFIC CORPORATION

By _____
Its _____

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EXHIBIT A

Rock Creek Joint Venture Parcel

PARCEL 1

A strip of land 100 feet wide lying adjacent with and 50 feet left and 50 feet right of the centerline of a power canal lying in the NW 1/4 NW 1/4, Section 25, T.9 S., R.16 E., B.M., Twin Falls County, Idaho and more particularly described as follows:

Beginning at the Northwest corner of said Section 25, said point also lies North 00 deg. 04'51" West. 2639.14 feet from the West quarter corner of said Section 25;
thence South 56 deg. 34'36" East, 904.37 feet to the centerline of the power canal, said point being the REAL POINT OF BEGINNING;
thence South 55 deg. 00'00" East, 120.00 feet;
thence South 29 deg. 00'00" East, 270.00 feet;
thence South 30 deg. 00'00" West, 350.00 feet;
thence South 12 deg. 00'00" West, 110.00 feet;
thence South 13 deg. 00'00" East, 107.90 feet, to the South boundary of the NW 1/4 NW 1/4 of said Section 25, which is the POINT OF ENDING of the above described easement.

PARCEL 2

A leasehold easement for an access road and a transmission line over and across:

(1) An easement for a transmission line 50 feet in width over and across Lots 12 and 19 of Section 23, Township 9 South, Range 16 East, B.M., and Lots 10 and 15 of Section 24, Township 9 South, Range 16 East, B.M., and the NW 1/4 NW 1/4 of Section 25, Township 9 South, Range 16 East, B.M.

(2) An easement for an access road over and across NW 1/4 NW 1/4 of Section 25, Lots 14 and 15 and NE 1/4 SE 1/4 of Section 24, Township 9 South, Range 16 East, B.M., and Lots 10, 11, and 12 of Section 19, SW 1/4 NE 1/4 of Section 30, and SW 1/4 NE 1/4 of Section 29, Township 9 South, Range 17 East, B.M.

(3) A non-exclusive non-possessionary right of way for an existing road 30 feet in width as described in the grant of right of way by the United States Bureau of Land Management under Serial No. 20094, covering the following described federal lands:

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AUG 05 1991

Lot 5 of Section 24, Township 9 South, Range 16 East, B.M., and Lots 10 and 12 of Section 30, Township 9 South, Range 17 East, B.M.

(4) A non-exclusive easement for an access road 50 feet in width as granted by the State of Idaho, State Board of Land Commissioners as State of Idaho Easement No. 5335 being described as:

(1) A strip of land 50 feet in width, being twenty-five feet on each side of the following described centerline as it crosses the SE 1/4 NE 1/4 of Section 30 and the SW 1/4 NW 1/4 of Section 29, both in Township 9 South, Range 17 East, B.M.:

Commencing at the southwest section corner of Section 29, Township 9 South, Range 17 East, B.M.;

thence North 0 deg. 09'33" West 2,637.69 feet along the West boundary of said Section 29 to the West one-quarter corner of said Section 29;

thence South 89 deg. 58'15" East 745.63 feet along the South boundary for the SW 1/4 NW 1/4 of said Section 29 to a point, said point being the REAL POINT OF BEGINNING;

thence North 63 deg. 17'22" West 218.18 feet;

thence North 58 deg. 02'43" West 289.00 feet;

thence North 52 deg. 56'41" West 159.01 feet;

thence North 61 deg. 02'36" West 429.41 feet;

thence North 64 deg. 28'09" West 553.29 feet;

thence North 49 deg. 58'15" West 493.85 feet;

thence North 61 deg. 33'52" West 268.79 feet to a point on the western boundary of the SE 1/4 NE 1/4 of Section 30, said point being the terminus of said centerline.

(2) A strip of land fifty feet wide, being twenty-five feet on each side of the following described centerline as it crosses the NE 1/4 SW 1/4 of Section 29, Township 9 South, Range 17 East, B.M.:

Commencing at the south 1/4 corner of Section 29, Township 9 South, Range 17 East, B.M.;

thence North 0 deg. 07'21" West 1,318.33 feet along the eastern boundary of the SE 1/4 SW 1/4 of said Section 29;

thence North 89 deg. 58'55" West 79.13 feet along the southern boundary of the NE 1/4 SW 1/4 of said Section 29 to a point, said point being the REAL POINT OF BEGINNING;

thence North 44 deg. 02'33" West 215.58 feet;

thence North 55 deg. 48'15" West 311.45 feet;

thence North 68 deg. 08'17" West 601.31 feet;

thence North 49 deg. 01'47" West 381.94 feet to a point on the western boundary of the NE 1/4 SW 1/4 of Section 29, said point being the terminus of said centerline and easement.

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EXHIBIT B

RCHPI Parcel

All that land lying below the rim of Rock Creek Canyon located in the Southwest quarter of the Northwest quarter (SW 1/4 NW 1/4), Section 25, Township 9 South, Range 16 East, Boise Meridian, Twin Falls County, Idaho, described as follows:

Commencing at the West quarter corner of Section 25, said point lies South 00 deg. 04'51" East, 2639.13 feet from the Northwest corner of Section 25;
thence North 25 deg. 46'00" East, 1520.80 feet to the REAL POINT OF BEGINNING.
thence North 89 deg. 57'25" East, 397.00 feet;
thence South 34 deg. 05'56" East, 241.40 feet;
thence South 00 deg. 05'46" East, 640.00 feet;
thence North 32 deg. 25'42" West, 994.71 feet;
to the REAL POINT OF BEGINNING.

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EXHIBIT C

Stradley Parcel

PARCEL 1

A strip of land 100 feet wide lying adjacent with and 50 feet left and 50 feet right of the centerline of a power canal lying in the SE 1/4 NW 1/4, Section 25, T.9 S., R.16 E., B.M., Twin Falls County, Idaho and more particularly described as follows:

Beginning at the Northwest corner of said Section 25, said point also lies North 00 deg. 04'51" West, 2639.14 feet from the West quarter corner of said Section 25; thence South 31 deg. 41'55" East, 2458.93 feet to the centerline of the power canal, said point being the REAL POINT OF BEGINNING.
thence South 52 deg. 00'00" East, 210.00 feet;
thence North 89 deg. 00'00" East, 208.00 feet;
thence North 56 deg. 00'00" East, 260.00 feet;
thence North 00 deg. 00'00" East, 65.00 feet to the POINT OF ENDING of the above described easement.

PARCEL 2

A strip of land 100 feet wide lying adjacent with and 50 feet left and 50 feet right of the centerline of a power canal lying in the SE 1/4 NW 1/4, Section 25, T.9 S., R.16 E., B.M., Twin Falls County, Idaho, and more particularly described as follows:

Beginning at the Northwest corner of said Section 25, said point also lies North 00 deg. 04'51" West, 2639.14 feet from the West quarter corner of said Section 25;
thence South 42 deg. 14'30" East, 2794.27 feet to the centerline of the power canal, said point being the REAL POINT OF BEGINNING.
thence South 84 deg. 00'00" East, 162.00 feet;
thence South 36 deg. 00'00" East, 325.00 feet;
thence South 18 deg. 00'00" East, 252.31 feet;
thence due East 116.25 feet to the POINT OF ENDING of the above described easement.

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EXHIBIT B

Rock Creek Joint Venture Lease

(Attached)

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LEASE AGREEMENT

THIS LEASE made this 27th day of February, 1984, between Idaho Frozen Foods Corp., a Delaware corporation, hereinafter called the "Lessor," and E.M.H. Investments, a partnership organized and existing under the laws of the State of Idaho, hereinafter called "Lessee;"

W I T N E S S E T H:

(1) Property and Term: Lessor, in consideration of the rents, covenants and agreements herein reserved and contained, on the part of the Lessee to be paid, kept and performed, hereby leases to the Lessee the following described premises situated in the County of Twin Falls, State of Idaho, to wit:

The property described on Exhibit "1" attached hereto and made a part hereof as if set out at length herein.

Including the use of Lessor's access road during construction; provided that Lessee shall maintain, or cause to be maintained, said roadway in a condition which permits easy automobile access of Lessor during the construction period. After construction of the project each party shall use their own roadway unless otherwise agreed. This description shall be amended following construction of the project so as to include only the property required to be included as "Exempt Project" properties by the Federal Energy Regulatory Commission.

TO HAVE AND TO HOLD the said premises unto the Lessee and its successors and assigns for a period of forty (40) years beginning the 1st day of the month immediately following the execution hereof.

(2) Use of the Property: It is intended that Lessee will finance, construct, own, and operate a hydroelectric generation facility on the leased premises. The project will require diversion of water from Rock Creek and conveyance through a penstock and canal which will be constructed on the leased premises to the proposed powerhouse, all in the configuration as generally shown on Exhibit "2" hereto. It is acknowledged that part of the lands required for the project are not owned by Lessors.

(3) Rental. In consideration for the execution of this lease, the Lessee hereby covenants and agrees to pay annually to the Lessor as "rental" eight percent (8%) of the "gross receipts from the sales of power" from the head available on the Lessor's property, which is agreed to be 48 feet. Said payment to be made during the term of this Lease beginning with the date of the first sale of power. For the purposes of

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1 this Lease, the term "gross receipts from sales of power" as
2 used herein shall mean the total receipt of revenue from said
3 48 feet by the Lessee from the project without deducting any
4 costs, payments, repayments, or expenses. Payments shall be
5 made to the Lessor within thirty (30) days of the receipt of
6 payments received by Lessee from power sales.

7 (4) Permissions, Cooperation of Lessor, and Termination
8 if Permissions Not Obtained: It is under-
9 stood and agreed that in order to construct a power generation
10 facility on the leased premises that the Lessee must obtain
11 certain permissions, e.g., a State of Idaho water right permit,
12 a Federal Energy Regulatory Commission exemption, and other
13 state and federal permissions so as to authorize construction
14 and operation of said facility. It is understood and agreed
15 that the Lessor will cooperate in all respects in executing
16 necessary documents as may be required in obtaining necessary
17 water rights, permissions, licenses and necessary rights of
18 way, not only for the construction of the generation facility,
19 but including the use of roadways and transmission line corridors
20 as may be required to connect said facility to adjacent facilities.
21 Notwithstanding Lessor's agreement to cooperate with
22 Lessee in obtaining such permission, Lessor shall not be oblig-
23 ated to consent to any easements or other request for the use
of its adjoining property unless Lessor, in its sole discre-
tion, determines that such requests, if granted, will not inter-
fere with Lessor's then present or future use of such land.
Lessee agrees to pursue the FERC exemption diligently
and covenants to file the exemption application on or before the
date as set out in the preliminary permit.

In the event that said permissions are not obtained
and the facility not constructed within three (3) years and six
(6) months of the date of the execution of this Lease, this
Lease shall be deemed terminated and of no further force and
effect unless extended by mutual agreement of the parties, pro-
vided that Lessor shall agree to extensions to complete the
project construction in the event of delays beyond the control
of Lessee. In the event that this Lease is terminated for the
failure of Lessee to construct the facility or to complete
construction of the facility, Lessee shall, at Lessor's request,
restore the property to the extent practical to its condition
prior to the commencement of any construction activity by
Lessor.

(5) Approval of Construction Plans: Prior to the
time of formal application for exemption submitted to the
Federal Energy Regulatory Commission, the Lessee shall consult

1 with the Lessor as to the proposed location of the canal, pen-
2 stock and other facilities and shall obtain Lessor's approval
3 of said location. Lessee agrees to pay Lessor's costs of review
4 of plans at the time such review costs are incurred by Lessor,
5 to determine whether the power canal is properly located so as
6 to not interfere with the Lessor's waste water treatment faci-
7 lities on adjacent properties owned by Lessors. These costs
8 may be deducted from Lessee's first payments to Lessor hereunder.
In the event that the Federal Energy Regulatory Commission
requires as a term of its license a relocation of the facility,
and such relocation affects Lessor's use of its land for its
land disposal or other purposes, then Lessee shall reimburse
Lessor for any and all costs and expenses related to the replace-
ment of improvement related to its use of its land to permit
compliance with the terms of the license or Lessee shall termi-
nate its project and this Lease.

9 (6) Construction Schedules: It is acknowledged by
10 the parties that the Federal Energy Regulatory Commission exemp-
11 tion will direct construction schedules which must be met as a
12 condition of the exemption. In the event that the Lessee is
not able to meet those schedules and defaults under the provi-
sions of the FERC exemption, such default shall also be deemed
a default under the provisions of this Lease.

13 (7) Embankment Disposal: Lessor hereby agrees to
14 allow Lessee to dispose of excess embankment materials during
15 construction of the project on Lessor's adjacent property in
16 locations as directed by Lessors.

17 (8) Property Taxes and Kilowatt Hour Tax: Lessee
18 shall be responsible for all ad valorem and personal property
19 tax on the parcel which is the subject of this Lease including
increased real property and personal property taxes assessed by
reason of the improvements constructed on the leasehold as part
of power generating facility and appurtenances, and will also
pay the kilowatt hour tax assessed on power generation by the
State of Idaho. Lessee agrees that the leasehold parcel as
finally and specifically surveyed and described may be sepa-
rated as a separate tax parcel for the purposes of ad valorem
taxes, at the expense of Lessee.

20 (9) Assignment and Subordination to Lender: Lessee
21 shall not be permitted to assign this Lease unless it obtains
22 the prior written consent of the Lessor. Any assignment of
23 Lessee's interest in more than 50% of the power generation
facilities or a change in the composition of the partnership
which is the Lessee hereunder shall be treated as an assignment
for the purposes of this document. Provided, however, Lessor
herein consents to an assignment of the Lease as security to

AUG 05 1991

1 Lessee's lender and Lessor agrees to subordinate its interest
2 in the constructed facilities to lender's security interest in
3 the constructed facilities; in the event lender succeeds to
4 Lessee's interest in the Lease, Lessor agrees that this Lease
shall continue in full force and effect provided that Lessee
and lender are not then in default of any provisions of this
Lease.

5 (10) Transmission Lines: The parties hereto acknow-
6 ledge that the present Idaho Public Utilities Commission restric-
7 tions on the sale of power to utilities may require the transmis-
8 sion lines from the facility and the easement to be assigned
9 the power purchaser.

10 (11) Mechanic's Liens: Lessee shall allow no mecha-
11 nic's liens or other liens against the leased premises, but in
12 the event said occur, Lessee agrees to indemnify Lessor for all
13 its costs, expenses, losses, and damages, including reasonable
14 attorney's fees, related to Lessor's satisfaction of any mecha-
15 nic's lien. Lessee will require performance and completion
bonds covering all work to be done on the leased premises.

16 (12) Fire or Casualty: If during the term of this
17 Lease, the improvements constructed by the Lessee shall be dam-
18 aged by fire or other casualty, Lessee shall have the option of
19 whether to rebuild the damaged improvements, this Lease shall
20 continue in full force and effect and Lessee covenants to recon-
21 struct said improvements within a reasonable time, but in no
22 event more than 30 months. If Lessee elects not to rebuild the
23 damaged improvements, then Lessee shall remove all debris and
restore the property to the condition existing prior to the
construction of the improvements.

(13) Liability Insurance and Indemnification: The
Lessee shall, at all times during the term of this Lease, carry
adequate public liability insurance, the same to be in an amount
of not less than \$500,000.00 for injury to one person and
\$1,000,000.00 against claims of more than one person from one
accident upon said premises or such higher amounts as requested
by Lessor from time to time taking into consideration inflation
and other changing factors. The Lessor shall be an additional
insured under the loss payable clause of said policy, a copy
of said policy shall be furnished Lessor before construction by
lessee commences. In addition, the Lessee agrees to indemnify
and hold harmless the Lessor from damage to property belonging
to the Lessor and any other person or entity resulting from or
arising out of, or in any way connected with the construction,
maintenance, and operation of the power generating facilities
or connections, or the interconnection between the facility and
other facilities or power transmission lines. Said indemnifi-

AUG 05 1991

1 cation shall include all costs, expenses, and fees, including
2 attorney's fees, which may be incurred by the Lessor resulting
3 from any claim or demand, or by the defense thereof, brought
4 against the Lessor by any third person or entity.

5 (14) Special Representation of the Lessee: The Lessee
6 agrees in the performance of their obligations hereunder to
7 comply fully with all the laws, rules and regulations pertain-
8 ing to the subject matter of the operation of a hydroelectric
9 facility, including particularly the Federal Power Act, the
10 rules and regulations of the Federal Energy Regulatory Commission
11 and the Idaho Public Utilities Commission to the extent that
12 their operations may be subject to the jurisdiction of any
13 state or federal regulatory agencies, subject to the terms of
14 all valid and applicable orders of any of such agencies. The
15 Lessee agrees to pay any and all costs and expenses of itself
16 in effecting compliance with any such laws, rules, regulations
17 and orders which apply to construction, operation or maintenance
18 of the power facilities.

19 (15) Responsibility for Charges: Lessee shall pay
20 all charges for utilities or other charges as necessary in the
21 operation of Lessee's facilities and shall indemnify the Lessor
22 against any liability or damage on such account.

23 (16) Right to Inspect and Authorized Access: The
Lessor, its agents, employees, and other representatives, shall
have the right to enter onto and upon said premises, or any
part thereof, at reasonable hours for the purpose of examining
the same. The Lessor acknowledges that employees, agents, and invi-
tees of the Lessee, as well as governmental inspectors will be
using the access roads and the leased property during construc-
tion and thereafter in the inspection and/or operation and
maintenance of the facilities and authorizes them to do so.

(17) Best Efforts: The Lessee agrees to use their
best efforts to keep the power plant operating at the maximum
allowable generating capacity in accordance with the available
water flows, provided that said obligation shall abate for shut-
downs caused by acts of God, emergencies, and normal scheduled
operation and maintenance work. Best efforts shall be defined
as the accepted practices in the hydroelectric utility industry.
Lessee also covenants to purchase all of Lessee's power require-
ments from sources other than the project since all output of
the project will be sold pursuant to the Power Sales Agreement.
Lessor also acknowledges that any power requirements of Lessor
must be purchased from other than the property production if
Lessor has power requirements.

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AUG 05 1991

1 (18) Option to Renew: This Lease may be renewed for
2 an additional forty (40) year term by the Lessee by giving writ-
3 ten notice to the Lessor one year prior to the end of the lease
4 term as described herein; provided; that Lessee is not in
5 default of this Lease on the date it gives its written notice
6 and on the date the renewal term is to commence.

7 (19) Bankruptcy: If the Lessee shall file a petition
8 for bankruptcy or for re-organization or for an arrangement pur-
9 suant to the General Bankruptcy Act, as amended, or any similar
10 federal or state law, or shall be adjudged to be bankrupt, or
11 become insolvent, or shall make an assignment for the benefit
12 of its creditors, or shall admit in writing its inability to
13 pay its debts generally as they become due, or if a petition or
14 answer proposing the adjudication of the Lessee as a bankrupt
15 or its re-organization under the General Bankruptcy Act or any
16 similar federal or state law shall be filed in any court and
17 such petition or answer shall not be discharged or denied within
18 one hundred twenty (120) days after the filing thereof, or if
19 the receiver, trustee or liquidator (or similar official) of
20 the Lessee or more than one-third of the property of the Lessee
21 shall be appointed in any proceeding or by any federal or state
22 office or agency and shall not be discharged within one hundred
23 twenty (120) days after such appointment, such event shall be
deemed a default and subject to the remedies as provided in
this agreement.

13 (20) Condemnation: If at any time during the term of
14 this Lease the whole or any part of the leased premises shall
15 be taken for any public or quasi-public purpose by any lawful
16 power or authority by the exercise of the right of condemnation
17 or eminent domain, subject to the rights of the Lessee's lender
18 or other lienholders, the Lessee shall be entitled to and re-
19 ceive any and all awards that may be made in such proceeding
20 for the improvements constructed by the Lessee; provided, that
21 damages awarded for taking of the fee shall be payable to Les-
22 sor. Lessor shall be entitled to its proportionate share of
23 any damages awarded by the Court for the value of lost future
revenues as based upon the rental reserved in paragraph 3,
"Rental," above.

19 If such proceeding shall result in the taking of the
20 demised premises, Lessee shall have the right not to reconstruct
21 and this Lease and the terms thereof shall terminate and expire
22 on the date of such taking and all rent or other sums or charges
23 provided in this Lease to be paid by the Lessee shall be appor-
tioned and paid to the date of such taking, and Lessee shall
have twelve (12) months to remove the remaining improvements.

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1 If less than the whole or less than substantially all
2 of the demised premises shall be taken in such proceeding, and
3 the facilities could be altered so as to allow the facility to
4 operate during the remaining portion of the lease term, Lessee
shall have the option to rebuild, but rent shall abate during
said reconstruction, it being understood Lessee will utilize
its best efforts to reconstruct.

5 (21) Default: It is expressly understood and agreed
6 that each and all of the provisions of this Lease are conditions
7 precedent to be faithfully and fully performed and observed by
8 the Lessee so as to entitle the Lessee to continue in possession
9 of the leased property, and if any default shall occur, the pay-
10 ment of rent or in the observance, payments, or performance of
11 any of the provisions, terms, or conditions hereof, the Lessor,
12 at its election, shall have the right to re-enter said premises,
13 provided, however, that no termination of this Lease shall be
made by the Lessor unless the Lessor has, at least sixty (60)
days prior thereto, given written notice to the Lessee or any
assignee thereof, of their intention to do so by mailing to the
Lessee, at the Lessee's address at 1139 Falls Avenue East, Twin
Falls, Idaho, 83301, which notice shall specify such default or
defaults and the Lessee has not, during the sixty (60) days
after the time of mailing said notice, remedied or corrected
the default so specified. The failure of the Lessor to exer-
cise its rights for one default under this Lease shall not be a
waiver of Lessor's right to exercise those rights for any sub-
sequently occurring default.

14 If a default shall occur as provided in this agreement,
15 the Lessor may elect to purchase the facilities of the Lessee
16 by assuming the liens of the Lessee's lender and the Lessor may
17 thereafter operate the facility without payment to the Lessee;
18 or the Lessee may be required by the Lessor to remove all faci-
lities within twelve (12) months and restore the property in
accordance with paragraph (4) herein, but if said property has
not been removed within the twelve (12) months, the Lessor
shall have the right to re-enter and take possession of the
property and shall be deemed the owner of any said improvements
which remain.

19 (22) Prompt Payments: It is anticipated that the
20 Idaho Power Company will be required to purchase all power
21 generated for a term of 35 years pursuant to a Power Sales Con-
22 tract. In the event the Idaho Power Company defaults in pay-
23 ments to Lessee under the Power Sales Contract, Lessee agrees
to attempt to collect all amounts then due for power sales and
to secure a new purchaser as soon as possible on the most favor-
able basis available. If at any time during the term of this
Lease, or any extension thereof, sales are to other than Idaho

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1 Power Company or their successors and assigns by the Lessee,
2 Lessee hereby guarantees Lessor's rental payments due in accor-
dance with paragraph (3) hereof, whether or not the then power
purchasers have made timely payments to the Lessee.

3 (23) Attorney's Fees: The Lessor shall be entitled
4 to recover from the Lessee all reasonable attorney's fees incur-
red by it in the preparation and giving of any notice of default
5 (if such default in fact shall exist). In any action or other
proceeding brought to enforce any of the terms of this Lease,
6 the prevailing party shall be entitled to reasonable attorney's
fees.

7 The parties hereto bind their successors and assigns.

8 IN WITNESS WHEREOF, the parties hereto executed this
Lease Agreement the day and year first above written.

9 IDAHO FROZEN FOODS CORP.

10
11 By [Signature]
President

12 ATTEST:

13 [Signature]
14 Secretary

15 E.M.H. INVESTMENTS

16
17 By [Signature]
Carl V. Edwards

18 By [Signature]
Charles D. Howard

19
20 By [Signature]
Gerald Martens

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AUG 05 1991

1 STATE OF IDAHO)

2 County of Twin Falls)

3 On this 7th day of February, 1984, before me,

4 the undersigned, a Notary Public in and for the said County and
5 State, personally appeared Lee F. Odenwald and

6 Daniel G. Anderson, known to me to be the

7 President and Secretary, respectively, of IDAHO FROZEN FOODS

8 CORP., who executed the foregoing instrument on behalf of said

9 corporation and acknowledged to me that such corporation executed

the same.

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

13 CS Clements

14 Notary Public for Idaho
Residing at

15 STATE OF IDAHO)

16 County of Twin Falls)

17 On this 31st day of JAN, 1984, before me,

18 the undersigned, a Notary Public in and for the said County and
19 State, personally appeared Charles D. Howard and Gerald Martens,

20 known to me to be the partners of E.M.H. INVESTMENTS, who exe-
21 cuted the foregoing instrument on behalf of said partnership

22 and acknowledged to me that they executed the same.

23
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1 - IN WITNESS WHEREOF, I have hereunto set my hand and
2 affixed my official seal the day and year in this certificate
3 first above written.

4 James P. Davis
5 Notary Public for Idaho
6 Residing at

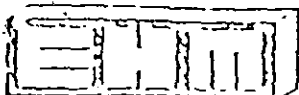
7 STATE OF IDAHO)
8 : ss.
9 County of Idaho)

10 On this 31st day of January, 87, before me,
11 the undersigned, a Notary Public in and for the said County and
12 State, personally appeared Carl V. Edwards, known to me to be
13 a partner of E.M.H. INVESTMENTS, who executed the foregoing
14 instrument on behalf of said partnership and acknowledged to me
15 that he executed the same.

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

19 Margie M. Case
20 Notary Public for Idaho
21 Residing at Grayville, Idaho

22
23
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AUG 05 1991



Edwards, Howard & Martens, Inc.

ENGINEERS / PLANNERS / SURVEYORS

1139 Falls Ave. E., Suite B
Twin Falls, Idaho 83301
Phone 721-4000

IN THE FIELDS OF:

PLANNING
SURVEYING
HIGHWAYS
WATER
SEWAGE
STRUCTURAL
SUBDIVISIONS
AIRPORTS
BRIDGES

Date: December 1, 1982

DESCRIPTION OF
A HYDROELECTRIC POWER PROJECT EASEMENT
FOR IDAHO FROZEN FOODS PROPERTY
ROCK CREEK - HYDRO PROJECT
LYING IN NW 1/4 NW 1/4, SECTION 25,
T.9S., R.16E., B.M.,
TWIN FALLS COUNTY, IDAHO

A strip of land 100 feet wide lying adjacent with and 50 feet left and 50 feet right of the centerline of a power canal lying in the NW 1/4 NW 1/4, Section 25, T.9S., R.16E., B.M., Twin Falls County, Idaho and more particularly described as follows:

Beginning at the Northwest corner of said Section 25. Said point also lies North 00° 04' 51" West, 2639.14 feet from the West quarter of said Section 25.

Thence, South 56° 34' 36" East, 904.37 feet to the centerline of the power canal, said point being the REAL POINT OF BEGINNING.

Thence, South 55° 00' 00" East, 120.00 feet,

Thence, South 29° 00' 00" East, 270.00 feet,

Thence, South 30° 00' 00" West, 350.00 feet,

Thence, South 12° 00' 00" West, 110.00 feet,

Thence, South 13° 00' 00" East, 107.90 feet, to the South boundary of the NW 1/4 NW 1/4 of said Section 25, which is the POINT OF ENDING of the above described easement.

Prepared by:

EDWARDS * HOWARD * MARTENS, INC.

Richard D. Howard
DEC 1982

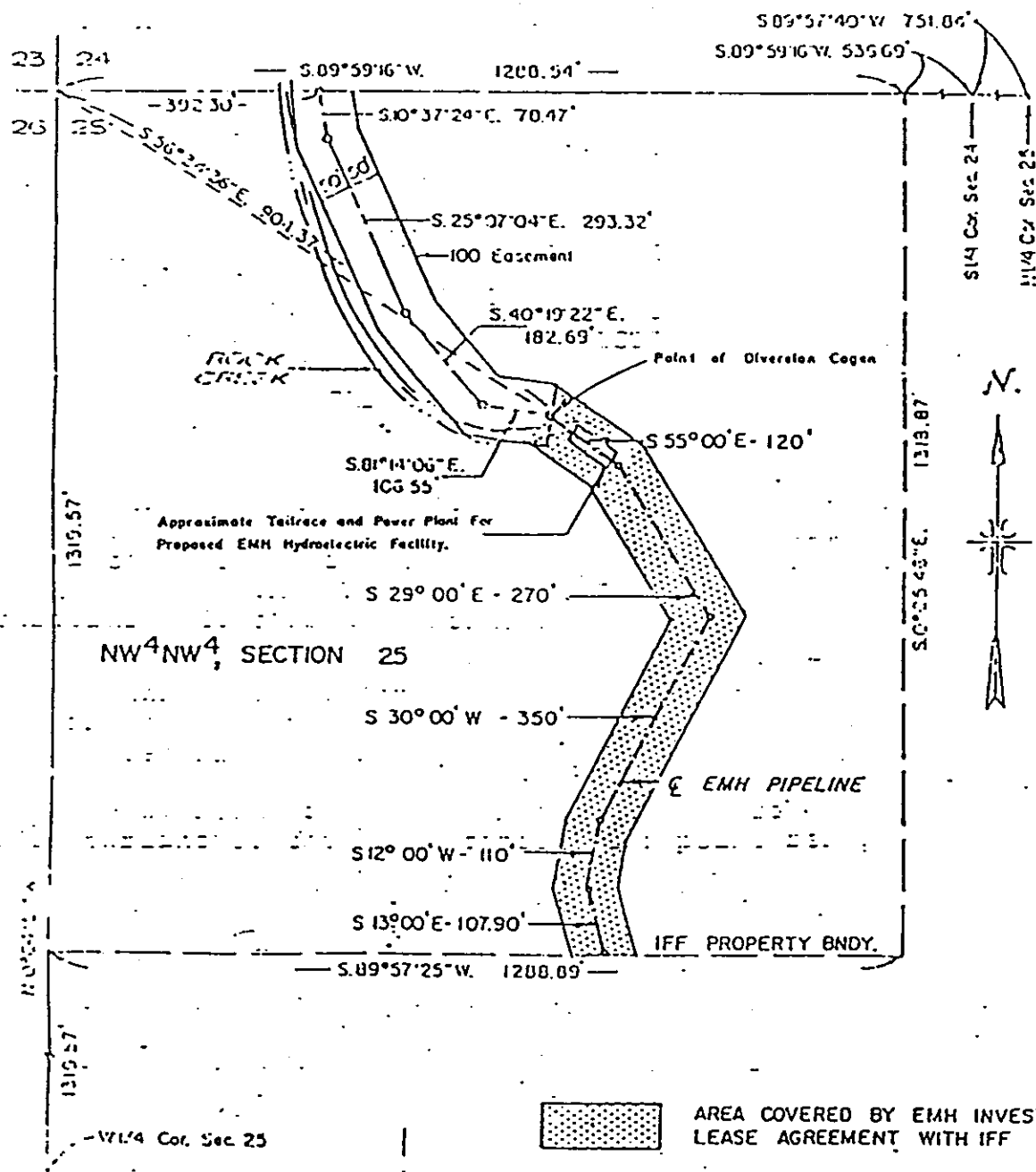


EXHIBIT 2

ROCK CREEK HYDROELECTRIC PROJECT - EMH PROJECT LOCATION



Edwards, Howard & Associates, Inc.

ENGINEERS & SURVEYORS

AUG 05 1991

MODIFICATION AND EXTENSION

AGREEMENT AND ADDENDUM

THIS MODIFICATION AND EXTENSION AGREEMENT AND ADDENDUM (the "Modification Agreement") is made and entered into this 8th day of April, 1987, by and among SLC LEASING (WYOMING), INC., a Wyoming corporation ("SLC") and ROCK CREEK JOINT VENTURE, an Idaho joint venture ("RCJV") (SLC and RCJV are sometimes collectively referred to herein as "Lessors"), BONN-TECH, an Idaho general partnership or its assigns ("Lessee" or "Bonn-Tech") and SHOROCK HYDRO, INC., an Idaho corporation ("Shorock").

RECITALS:

A. By Lease Agreement (the "Lease") dated February 7, 1984, Idaho Frozen Foods Corp., a Delaware corporation ("IFF"), as Lessor, leased certain real property to ("E.M.H."), as Lessee, for the purpose of constructing, operating and maintaining a hydroelectric generating facility upon the leased premises therein described.

B. By various instruments the Lessor's interest under said Lease has been assigned by IFF to Lessors hereunder, and Lessee's interest in and under said Lease has been assigned by E.M.H. to Lessee hereunder.

C. Lessors and Lessee hereto desire hereby to ratify and confirm the present rights and interests of the Lessors and Lessee under the Lease, and to modify and clarify certain provisions of the Lease.

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D. By Agreement dated June 15, 1982 (the "Agreement"), Cogeneration, Inc. and E.M.H. agreed, among other things, to a joint usage of a substation and transmission line constructed in connection with a hydroelectric project described in said Agreement.

E. By various instruments the interests of Cogeneration, Inc. under the Agreement have been assigned to Shorock and the interests of E.M.H. under the Agreement have been assigned to Bonn-Tech.

F. Shorock and Bonn-Tech desire that the portion of this Modification Agreement dealing with the Agreement become and hereby is declared by said parties to be an addendum to the Agreement.

NOW, THEREFORE, in consideration of One Hundred Dollars (\$100.00) in hand paid by Lessee to RCJV, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Ratification of Lease and Acknowledgment of Interests. Lessors and Lessee hereby ratify the continued existence of the Lease, and, except as the same is modified hereby, agree that the Lease is in existence and is valid and enforceable against Lessors and Lessee as their interests appear. Lessors hereby acknowledge and agree that Bonn-Tech, an Idaho general partnership, the Lessee hereunder, is the rightful and sole holder of Lessee's interest under the Lease. Likewise,

AUG 05 1991

Lessee hereby acknowledges and agrees that Rock Creek Joint Venture, an Idaho joint venture, as contract purchaser and SLC as fee simple owner of the demised premises, as their interests appear, are the rightful and sole holders of Lessors' interest under the Lease. All assignments made in the past with respect to both the Lessors' and the Lessee's interests hereunder are hereby ratified and approved.

2. Access Road and Transmission Line Easement;
Restricted Use.

(a) Road Access. Section 1 of the Lease is hereby modified to provide that the road to be used as access during the construction period shall, upon completion of construction, become a continuing easement and right-of-way for access to and from the facility to be constructed by Lessee upon the demised premises. Said easement or right-of-way shall be coterminous with the Lease. Lessee agrees to pay one-half ($\frac{1}{2}$) of all maintenance costs incurred in maintaining said road for as long as Lessee is using the same as herein provided. It is understood by Lessors and Lessee that the location of said road may be changed from time to time during the term of the Lease.

(b) Transmission Line Easement. Lessors hereby grant to Lessee an easement for the construction, operation and maintenance of a transmission line to be constructed by Lessee upon the demised premises in connection with Lessee's hydroelectric project. Said easement shall be coterminous with

the Lease and shall be of such size and location as may be deemed reasonably necessary by Lessee to properly construct, operate and maintain said transmission line. In the event the transmission line and/or the obligation to maintain the same is transferred to a third party (e.g. Idaho Power Company) Lessee shall have the right to assign said easement to such third party, subject to the following restrictions.

(c) Restricted Use. Lessors and Lessee agree that to provide security at Lessee's facility and at RCJV's facility, certain restrictions on the use of the road and transmission line easements herein granted are required. Therefore, the Lessee consents to Lessors' imposition of such reasonable steps as may be necessary to restrict access to the facilities to personnel authorized by Shorock, Lessee and Lessors to use said access routes solely for the purpose of constructing, operating, maintaining, or monitoring the Shorock and Lessee facilities. It is further understood and agreed between the parties that RCJV is the owner of certain additional property which is adjacent to the property affected by the lease and this Agreement, and that RCJV reserves the right to make use of such additional property for any lawful purpose, and to utilize the common access route for the purpose of securing access, ingress and egress to the additional adjacent property. RCJV and Lessee agree to share equally in the costs of taking the measures required to carry out the intent of this paragraph.

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3. Construction Period. The third paragraph of Section 4 of the Lease is amended in its entirety to read as follows:

In the event that said permissions are not obtained and the facility not constructed by December 31, 1988, this Lease shall be deemed terminated and of no further force and effect unless extended by mutual agreement of the parties, provided that Lessors shall agree to extensions to complete the Project construction in the event of delays beyond the control of Lessee. In the event that this Lease is terminated for the failure of Lessee to construct the facility or to complete construction of the facility, Lessee shall, at Lessors' request, restore the property to the extent practical to its condition prior to the commencement of any construction activities by Lessee and as maybe required by applicable law, ordinance or regulations of governmental agencies having jurisdiction over the Project.

4. Approval of Construction Plans. Section 5 of the Lease is modified to the extent necessary to reflect the intention of the parties that, prior to construction, RCJV shall have the right to review and approve all construction plans for Lessee's facility, which approval shall not be unreasonably withheld and shall be conducted in an expeditious and reasonable manner. Failure of RCJV to expeditiously and diligently review and approve said plans shall be deemed a "delay beyond the control of Lessee" under Section 4 of the Lease, as amended hereby.

5. Permanent Disposal. Section 7 of the Lease is hereby modified to include the right of Lessee, at no cost to

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Lessee, to permanently dispose of excess embankment materials resulting from Lessee's construction on the demised premises in locations to be determined by RCJV, provided the Lessee comply with all applicable governmental laws, ordinances and regulations in disposing of such materials. Lessee agrees to dispose of such excess embankment materials or other products of excavation in a reasonable and workmanlike manner so as to minimize any and all present or future expenses associated with rehabilitation or mitigation of such disposal, and to provide at its sole expense any reseeding, revegetation or similar mitigation or rehabilitation measures as may be required by law, or as may be reasonably necessary in order to maintain the existing esthetic condition of Lessor's property.

6. Assignment. Lessors agree that Lessee may assign the Lease, as amended hereby, to either general partner of Lessee, at any time, without further consent of Lessors. It is understood and agreed between the parties that any such assignment shall not serve to release or abrogate the duties and responsibilities of an assigning general partner, and any such assigning general partner shall remain obligated for the fulfillment of all promises, covenants and conditions of this Agreement without regard to such assignment. Lessee shall promptly notify Lessors of any such assignment. Except as so modified, the provisions of Section 9 of the Lease remain unchanged except that Lessors and Lessee mutually agree to

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execute such subordination agreements or similar documents which may be required by Lessee's lender as presently contemplated in said Section 9.

7. Right to Purchase Gravel and Fill Materials.

Lessors hereby grant to Lessee a right to purchase and remove gravel and other fill materials as may be necessary or desirable for the construction and maintenance of Lessee's facilities. Such removal shall be from locations designated by RCJV. The price for such material shall be the established market price therefore. Nothing herein contained shall obligate Lessee to purchase any of such materials from Lessors.

8. Acknowledgment of Rock Creek #1. Lessee acknow-

ledges that the hydroelectric facility known as Rock Creek #1 has been constructed by Lessors and Lessee hereby accepts Rock Creek #1 hydroelectric facility "AS IS" and "AS BUILT."

9. Indemnification Reaffirmation. Lessors and Lessee

hereby ratify the indemnification provisions contained in paragraph 13 of page 4 of the original Lease. The parties agree that the indemnification provision thereof is hereby extended to include and apply to the use of the road access heretofore mentioned in paragraph 2(a) hereof.

10. Extent of Amendment to Lease. Except as modified

herein, Lessors and Lessee hereby ratify and agree to be bound by the terms of the Lease, and hereby declare that the Lease, as modified herein, is in full force and effect and fully binding upon the parties hereto as of the date hereof.

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11. Interconnection of Additional Project. RCJV, or its assigns, may construct an additional hydroelectric facility in the vicinity of Lessee's facility. In the event RCJV, or its assigns do so, Lessee agrees that RCJV, or its assigns, may connect the transmission line serving such additional facility to Lessee's transmission line provided that (a) RCJV, or its assigns, shall bear the total cost of such interconnection; (b) such interconnection shall be made in such a manner as to avoid, in so far as possible, any inconvenience or "disruption: to Lessee's facility; (c) such interconnection is made in accordance with prudent electrical standards; (d) Lessee's project engineer and RCJV mutually agree that such interconnection is feasible given the anticipated capacity and location of Lessee's transmission line, and (e) Lessee uses the Shorock substation for its interconnection to the Idaho Power Company system.

It is understood and agreed that in the event Lessee does not utilize the Shorock substation as herein provided, but does utilize portions of Lessor's existing transmission line, Lessee agrees to pay Lessor those sums as determined by Idaho Power Company as representing Lessee's proportionate share of capital costs and regular maintenance expenses. In the event Lessee doesn't use the Shorock substation, and Lessor desires to construct another hydroelectric project utilizing Lessor's substation and transmission line, Lessor shall pay Lessee a prorata share of the cost of Lessee's substation and transmission

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line and maintenance costs therefore based on nameplate generating capacity.

12. Addendum to Agreement.

(a) Addendum. Bonn-Tech intends to construct a transmission line from its proposed power house to the substation currently existing at RCJV's hydroelectric facility, and to interconnect its transmission line to RCJV's transmission line at said substation as contemplated in Section II of the Agreement. Bonn-Tech and Shorock agree (and RCJV approves) that Bonn-Tech may interconnect its transmission line at the substation under the following conditions:

(((i) Bonn-Tech shall pay to RCJV the amount of Sixty-Four Thousand Dollars (\$64,000.00) as its agreed upon share of capital costs associated with the construction of the substation. Said amount shall be paid from and at the time of the first construction draw from financing obtained by Bonn-Tech from a bank or other financial or lending institution financing the construction of the Bonn-Tech hydroelectric project;

(ii) Bonn-Tech shall be solely responsible for all costs associated with constructing such interconnection, and shall do so in such a manner and at such a time as to avoid, in so far as possible, any disruption or inconvenience to RCJV's facility;

(((iii) Bonn-Tech shall construct such interconnection in accordance with prudent electrical standards; and

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(iv) Bonn-Tech shall pay to RCJV Five Hundred Dollars (\$500.00) per month for its agreed upon, total share of maintenance costs associated with said substation and the transmission line originally constructed in connection therewith. Said amount shall be due and payable on the first day of each month commencing on the first day of the first month after the "First Operation Date" as defined in standard Idaho Power Contracts. Any such amount not paid when due, or within ten (10) business days, shall thereafter earn interest at the rate of eighteen percent (18%) per annum from the date due until paid in full.

(b) Limitation on Addendum. Nothing herein shall be construed as requiring Shorock to permit use of or Bonn-Tech to use said substation as its interconnection facility if such use is determined to be technically infeasible or if Idaho Power Company refuses to allow or approve such interconnection. Nothing herein shall be construed to limit the right of either RCJV or Bonn-Tech to improve such substation or interconnection so as to make such facility technically feasible, at the sole cost and expense of the party desiring to make such improvement.

(c) Ratification of Agreement. Except as modified hereby, RCJV and Bonn-Tech reconfirm the Agreement and that the same is in full force and effect and binding upon said parties and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized or general partners, the day and year first above written.

BONN-TECH, an Idaho general partnership

By: Bonneville Pacific Corporation,
Its General Partner

By L. Wayne Johnson
Its President

ROCK CREEK JOINT VENTURE, an Idaho joint venture

By: Shorock Hydro, Inc.,
a joint venture partner

By John J. Straubhan
Its President

By: TFH Limited Partnership, a joint venture partner

By: Hy-Rock, Inc., its general partner

By Donald A. Jensen
Its President

By: RKT Limited Partnership, a joint venture partner

By: Globe Realty, Inc., its general partner

By James C. Meeker
Its Treas.

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SHOROCK HYDRO, INC., an Idaho
corporation

By John J. Straubhan
Its President

SLC LEASING (WYOMING), INC., a
Wyoming corporation

By William S. Lipsman
Its VICE PRESIDENT

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INTER-DEPARTMENT MEMO — 1

FROM JJ SEIFERT

DATE DECEMBER 26, 1990

TO FILE NO. 47-7771

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

NOT REFILED

AUG 05 1991

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, Manager
Water Right Permits Section

GS:js

AUG 05 1991

ED

August 24, 1990

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

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 Permits
Nos. 47-7771, 01-7022, 01-7058; Assignment and Trust
Agreement for Water Permit No. 01-7063

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 BP Hydro Associates, an Idaho general partnership (BP Hydro), Stewart Title of Idaho, Inc., an Idaho corporation ("Stewart Title"), and The Fuji Bank, Limited, Los Angeles Agency (the "Bank"), pursuant to which BP Hydro 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.

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

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This office has also received an executed copy of (i) a Release terminating the Construction Assignment for permit nos. 47-7771, 01-7022 and 01-7058, and releasing all collateral granted thereunder and (ii) a Consent to Assignment and Subordination Agreement between Idaho Power Company and BP Hydro subordinating the Collateral Assignment of Agreements dated as of December 22, 1988, (the "Original Secondary Assignment"), between BP Hydro 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 BP Hydro, 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 BP Hydro to repay a loan made by the Construction Lenders to finance the cost of construction of the Rock Creek II, Dietrich Drop, and Lower Low Line 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 BP Hydro 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 Releases, 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 Releases, the Consents to Assignment and Subordination Agreement and the Assignments are consented to and approved by the Idaho Department of Water Resources, as of the date 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 BP Hydro 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

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AUG 05 1991

Page 3

respect to the Permit and the secondary collateral assignment to and subordinate security interest of Idaho Power as second lienor 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 BP Hydro 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

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AUG 05 1991

47-7771

52 FERC 102,014

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Rock Creek Hydropower, Inc.
Bonneville Pacific Corporation
BP Hydro Associates

Project No. 6015-037
Idaho

acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheets within 60 days from the date of this order.

ORDER APPROVING TRANSFER OF LICENSE
(Issued July 9, 1990)

Rock Creek Hydropower, Inc. and Bonneville Pacific Corporation seek Commission approval to transfer their license for the Rock Creek No. 2 Project to Rock Creek Hydropower, Inc. and BP Hydro Associates. The project is located on Rock Creek in Twin Falls County, Idaho. The purpose of the transfer is to obtain permanent financing for the project.

Rock Creek Hydropower, Inc. and Bonneville Pacific Corporation have fully complied with the terms of the license and agree to pay annual charges that have accrued to the date of the transfer. Rock Creek Hydropower, Inc. and BP Hydro Associates 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 Rock Creek Hydropower, Inc. and BP Hydro Associates, which shall be subject to all terms and conditions of the license as though they were the original licensee. Rock Creek Hydropower, Inc. and BP Hydro Associates 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 within 30 days from the date of this order. Rock Creek Hydropower, Inc. and BP Hydro Associates shall acknowledge

Dean L. Shumway
Dean L. Shumway
Director, Division
of Project Management

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JUL 17 1990

Department of Water Resources

AUG 05 1991

File 47-7771

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JUN 25 1990

Department of Water Resources
Southern Region OfficeUNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSIONNotice of Application Filed with the Commission
(June 1, 1999)

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

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JUN 8 1990

Department of Water Resources

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JUN 18 1990Department of Water Resources
Western Regional Office

DC-A-6

- a. Type of Filing: Transfer of License
- b. Project No.: 6015-037
- c. Date Filed: May 9, 1990
- d. Applicants: Bonneville Pacific Corporation and Rock Creek Hydropower, Inc. (Transferors) and BP Hydro Associates and Rock Creek Hydropower, Inc. (Transferees)
- e. Name of Project: Rock Creek No. 2
- f. Location: On Rock Creek in Twin Falls County, Idaho
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §791 (a)-825(r)
- h. Applicant Contact:

Bonneville Pacific Corporation and BP Hydro Associates	Mark E. Rinehart, Esq. Bonneville Pacific Corporation 257 East 200 South, Suite 800 Salt Lake City, UT 84111 (801) 363-2520
Rock Creek Hydropower, Inc.	McNeill Watkins II Bishop, Cook, Purcell & Reynolds 1400 L Street, N.W. Washington, DC 20005 (202) 371-5785
- i. Commission Contact: Mr. James Hunter
(202) 357-0843
- j. Comment Date: June 28, 1990
- k. Description of Proposed Action: On August 29, 1986, a major license was issued to Charles D. Howard for the construction, operation, and maintenance of the Rock Creek No. 2 Project, and on January 22, 1988, a transfer of the license was approved to the current Transferors. Bonneville Pacific Corporation now proposes to transfer its interests and obligations under the license to BP Hydro Associates. The proposed transfer will not result in any changes to the development. The Transferees accept all the terms and conditions of the license and agree to be bound thereby to the same extent as though they were the original licensee.
- l. This notice also consists of the following standard paragraphs: B and C.

AUG 05 1991

1777-27

#47-7771

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission
(June 1, 1999)

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

RECEIVED
JUN 8 1990
Department of Water Resources

DC-A-6

- a. Type of Filing: Transfer of License
- b. Project No.: 6015-037
- c. Date Filed: May 9, 1990
- d. Applicants: Bonneville Pacific Corporation and Rock Creek Hydropower, Inc. (Transferors) and BP Hydro Associates and Rock Creek Hydropower, Inc. (Transferees)
- e. Name of Project: Rock Creek No. 2
- f. Location: On Rock Creek in Twin Falls County, Idaho
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §791 (a)-825(r)
- h. Applicant Contact:

Bonneville Pacific Corporation and BP Hydro Associates	Mark E. Rinehart, Esq. Bonneville Pacific Corporation 257 East 200 South, Suite 800 Salt Lake City, UT 84111 (801) 363-2520
Rock Creek Hydropower, Inc.	McNeill Watkins II Bishop, Cook, Purcell & Reynolds 1400 L Street, N.W. Washington, DC 20005 (202) 371-5785
- i. Commission Contact: Mr. James Hunter
(202) 357-0843
- j. Comment Date: June 28, 1990
- k. Description of Proposed Action: On August 29, 1986, a major license was issued to Charles D. Howard for the construction, operation, and maintenance of the Rock Creek No. 2 Project, and on January 22, 1988, a transfer of the license was approved to the current Transferors. Bonneville Pacific Corporation now proposes to transfer its interests and obligations under the license to BP Hydro Associates. The proposed transfer will not result in any changes to the development. The Transferees accept all the terms and conditions of the license and agree to be bound thereby to the same extent as though they were the original licensee.
- l. This notice also consists of the following standard paragraphs: B and C.

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State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

November 2, 1989

BP Hydro Associates
c/o Bonneville Pacific Corp.
257 East 200 South, Suite 800
Salt Lake City, UT 84121

Gentlemen:

Re: Permit No. 47-7771

This office acknowledges receipt of the proof of beneficial use form and fee submitted October 12, 1989. Enclosed is a copy of the order reinstating the permit since the proof was received after the proof due date.

The next step is for the department to conduct the field inspection. I cannot tell you just when the examination will be made, but our regional inspector will contact your representative to schedule a convenient time.

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

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosure

c: Southern Region

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AUG 05 1991

SNAKE RIVER



HYDRO POWER

IDAHO POWER COMPANY

BOX 70 • BOISE, IDAHO 83707

September 21, 1989

RECEIVED
SEP 25 1989

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

Department of Water Resources

RE: Your letter of February 21, 1989 - Secondary
Collateral Assignment for Water Permit
Number 47-7771 - Rock Creek II 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 Rock Creek II Hydro Project Idaho Power Facility No. 31615104.

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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AUG 05 1991

COLLATERAL ASSIGNMENT
OF AGREEMENTS

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

WHEREAS, Assignor and Assignee have entered into a certain Firm Energy Sales Agreement dated July 13, 1987, whereunder, in accordance with the terms and conditions thereof, Assignor agreed to sell, and Assignee agreed to buy, certain electrical power generated by Assignor's hydroelectric project located in Twin Falls County, Idaho (the "Project").

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission (the "Commission") on July 27, 1987, Order No. 21361; and

WHEREAS, on or about September 20, 1988, Assignor 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 Assignor 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, Assignor has 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:

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:

AUG 05 1991

- a. Firm Energy Sales Agreement, Facility No. 31615104, between Assignor and Assignee dated July 13, 1987, a copy of which is attached hereto as Schedule I;
- b. Agreement between Rock Creek Hydropower, Inc. ("RCHPI"), Carl Edwards, Gerald Martens, Charles D. Howard and Bonn-Tech, dated December 18, 1986, a copy of which is attached hereto as Schedule II-A;
- c. First Amendment to Agreements dated April 6, 1987, a copy of which is attached hereto as Schedule II-B;
- d. Second Amendment to Agreements dated September 28, 1987, a copy of which is attached hereto as Schedule II-C;
- e. Memorandum of Lease and Assignment of Lease, dated September 22, 1988, a copy of which is attached hereto as Schedule II-D;
- f. Lease Agreement between Idaho Frozen Foods Corp. and EMH Investments, dated February 7, 1984, a copy of which is attached hereto as Schedule III-A;
- g. Agreement between Cogeneration, Inc. and EMH Investments, dated June 15, 1982, a copy of which is attached as Schedule III-B;
- h. Modification and Extension Agreement and Addendum, dated April 8, 1988, a copy of which is attached hereto as Schedule III-C;
- i. Memorandum of Lease and Assignment of Lease, dated September 22, 1988, a copy of which is attached hereto as Schedule III-D;
- j. Construction Agreement between Assignor and Summit Construction Company, dated July 20, 1988, a copy of which is attached hereto as Schedule IV;
- k. Application for Permit to Appropriate Public Water No. 47-7771, as approved by the Idaho Department of Water Resources and as assigned to Assignor, copies of which are attached hereto as composite Schedule V; and

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AUG 05 1991

1. Assignor's interest in and to the License granted by the Federal Energy Regulatory Commission dated August 29, 1986 relating to the Facility, a copy of which is attached hereto as Schedule VI.

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, II-A, II-B, II-C, II-D, III-A, III-B, III-C, III-D, IV, V and VI 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 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 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 Assignor,

AUG 05 1991

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 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.

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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.

BONNEVILLE PACIFIC CORPORATION

By *Robert H. Pratt*
Its *President* *204*

IDAHO POWER COMPANY

By *C. E. Baisell*
Its *Sr. Vice President*

d/a/00345

NOT RECORDED

AUG 05 1991

1/88

PROOF OF BENEFICIAL USE

ANALYSIS SHEET

Permit No. 47-7771

Date: 10/13/89

General Considerations:

OK Name same as permit
OK Signature the same as permit holder
yes Address change If yes, prepare a data entry
NO Proof received timely
✓ Reinstated

Source of Water:

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

Extent of Use and Rate of Diversion:

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

Measuring Device:

yes Is a measuring device or access port required?
yes Has one been installed?
 Waiver or modification of measuring device requested

Remarks:

Proof REINSTATED

Priority Calculation:

Date proof received	<u>10/12/89</u>	<u>285</u>
Date proof due	<u>9/1/89</u>	<u>- 244</u>
No. of days late		<u>= 41</u>
Priority date	<u>11/16/81</u>	<u>+ 320</u>
NEW PRIORITY DATE	<u>12/27/81</u>	<u>= 361</u>

SEND FILES TO DATA ENTRY AND THEN TO MICROFILM

Address Change
NAME Change

RECEIVED

OCT 12 1989

STATE OF IDAHO
Department of Water Resources
DEPARTMENT OF WATER RESOURCES

For Office Use Only
Fee Received 600.00
Date 10-16-89
Receipt # CO12078
Receipt by AK
Reviewed by AK 10/13/89
Sent to region

PROOF OF BENEFICIAL USE

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

Permit No. 47-07771

Name(s) of Permit Holder: BP HYDRO ASSOCIATES, % BONNEVILLE PACIFIC CORP.

Post Office Address: 257 EAST 200 SOUTH SUITE 800

SALT LAKE CITY, UT 84121 Telephone No. (801) 363-2520

Source of Water: ROCK CREEK

Extent of Use:

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

Irrigation (acres) Other/Remark ELECTRIC POWER

GENERATION (NON CONSUMPTIVE)

Total rate and/or volume for which proof is submitted 202 cfs acre-feet

Show the date water was first diverted and beneficially used under this permit: 12/31/88

Measuring Device: Required? Yes No
Installed? X Yes No

Fee enclosed \$ 600.00
(See License Examination Fee Schedule)

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

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AUG 05 1991

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

BRETT VAN WAGONER (208) 734-0551
(Name) (Telephone Number)

252 DEERE STREET TWIN FALLS, IDAHO 83303-2467
(Address)

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

10-5-89
Date

Elmer Newman ASSIST. TO THE PRESIDENT
Signature of Permit Holder (and title, if appropriate)

NOTE:

not to
Rita

EXAMINATION FEE
OF \$600⁰⁰ WAS SENT
UNDER SEPARATE
COVER (INADVERTENTLY).
PLEASE JOIN THEM
TOGETHER.

THANK YOU

E. Newman

WARNING

CANCELLED OR LAPSED

This permit has been officially CANCELLED or LAPSED.

Ninety days following the date of official action this file will be DESTROYED.

September 14, 1989

BP HYDRO ASSOC.
C/O BONNEVILLE PACIFIC CORP.
257 E. 200 S.
SUITE 800
SALT LAKE CITY, UT 841110000

LAPSE NOTICE

RE: PERMIT NO. 47-07771

Dear Permit Holder:

You are hereby notified that under the provisions of Section 42-218A, Idaho Code, the above referenced water permit has lapsed. This office did not receive either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time. You were provided the proper form in our proof due notice to you dated June 30, 1989.

Your permit cannot be reinstated unless you submit proof of beneficial use or submit an extension of time request showing reasonable cause for delay. Either the completed proof of beneficial use submittal (including the examination fee or a completed field examination report) or the extension request form together with the \$15 fee must be received by this department within sixty days of the date of mailing of this lapse notice or the permit will no longer be of any force or effect.

A proof of beneficial use form and a request for extension of time form are again enclosed for your use. Please note that only one extension of time can be granted unless the project has not been completed because of lack of a necessary approval by a governmental agency or by litigation which might bring title to the water in question.

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosures

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AUG 05 1991

CERTIFICATION OF MAILING

This document was mailed by first class mail on 9-25-1989 at 9:25 AM and was deposited in the United States mail, postage prepaid, addressed to the individual(s) named above.

Bite Fleck

FROM J.J.

DATE 08/03/89

to File nos. 01-7022, 01-7058, 01-7063 and 47-7771

SUBJECT See file no. 01-7022 for miscellaneous correspondence
regarding assignment of these rights.

SIGNATURE

MICROFILMED

AUG 05 1991

138440
June 30, 1989

BONNEVILLE PACIFIC CORP.
C/O DAVID P. HIRSCHI
257 E. 200 S.
SUITE 800
SALT LAKE CITY, UT 841110000

PROOF DUE NOTICE
RE: PERMIT NO. 47-07771

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 September 1, 1989. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

SINCERELY,

Rita Fleck
Secretary/Records Manager

Enclosures

FILED
AUG 05 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

May 26, 1989

RE: Water Right Permit ~~4~~7-7771

BP Hydro Associates
c/o Bonneville Pacific Corp.
257 E. 200 S.
Suite 800
Salt Lake City, UT 84111

Dear Sirs,

You recently received a letter from the Department concerning the above referenced permit, dated May 24, 1989. This letter addresses the review of water right filings listed in the Swan Falls litigation. Upon further review of the file, it was discovered that the letter for this permit was issued in error. Please disregard the Department's letter of May 24, 1989.

Please contact our office if you have questions concerning this matter.

Sincerely,

TIM LUKE
Sr. Water Resource Agent

TL:hm

FILED

AUG 05 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

May 24, 1989

RE: PERMIT NO. 47-7771

Dear PERMIT HOLDER:

Due to the Swan Falls litigation, development proposed by the enclosed permit may have been delayed. The Department is presently reviewing the permit and may authorize completion of development proposed under the permit.

The purpose of this letter is to determine: (1) the extent of development under the permit, and (2) your continued interest in developing or completing development under the permit.

Enclosed are two forms which will help the Department expedite the reprocessing of the permit.

Please complete and return the enclosed questionnaire if you wish to continue with your plans of development or have completed all or a portion of your development before July 1, 1985.

Please complete the enclosed relinquishment form and return it to the Department if you have abandoned or have no interest in continuing with your plans for development of the project.

If the entire project was not completed prior to July 1, 1985, and you still wish to proceed with your plans of development, then you must submit a \$20.00 re-advertisement fee to the Department as required by Water Appropriation Rule 4,2,3. and Section 42-221F, Idaho Code.

Failure to return the questionnaire and pay any required re-advertisement fee within thirty (30) days of the date of this letter is cause for the Department to cancel the permit.

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AUG 05 1991

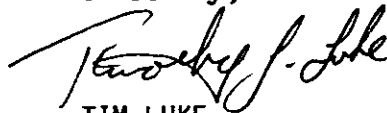
Page 2

If you have questions concerning the content of this letter or about completing the forms, please contact Tim Luke at the address below or by calling directly at 327-7864. The enclosed forms and all other relative information must be returned within thirty (30) days to:

Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720
Attn: Tim Luke - Water Allocation/Trust Water

Please note that a copy of your permit is enclosed. The permit number is shown on the enclosed questionnaire.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tim Luke", written over a horizontal line.

TIM LUKE
Sr. Water Resource Agent

Enclosures

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AUG 05 1991



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

May 15, 1989

Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, UT 84111

BP Hydro Associates
c/o Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, UT 84111

RE: Approval of Assignment of Water Rights

Gentlemen:

You have requested that the Idaho Department of Water Resources approve an assignment of water rights from Bonneville Pacific Corporation to BP Hydro Associates, which, by affidavit, is represented to be an Idaho general partnership. The request relates to Dietrich Drop Hydroelectric Project, Permit Nos. 01-7022 and 01-7058, the Rock Creek II Hydroelectric project, Permit NO. 47-7771, and the Lower Low Line Hydroelectric Project, Permit No. 01-7063. We have reviewed the executed Capital Contributions Agreement under which the water right permits are assigned and we have reviewed the Partnership Agreement which will establish BP Hydro Associates.

The Capital Contributions Agreement in paragraph (b), page three, assigns all rights, titles, interests and obligations to the Dietrich Drop, Rock Creek II and Lower Low Line projects, and attachments to the agreement specifically describe the water right permits. The department recognizes the assignment of the permits to BP Hydro Associates.

For the Rock Creek and Dietrich Drop projects, Bonneville is conveying a "legal" interest in the water rights. A security interest in the water rights is being retained by Stewart Title of Idaho pursuant to Trust Agreements previously entered into with respect to these water rights. For the Lower Line project, Bonneville assigned permit no. 01-7063 to BP Hydro Associates, with clear title, and not subject to a security interest.

We will change our records to show BP Hydro Associates as the owner of the permits.

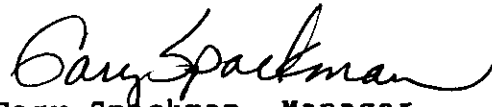
Nothing herein shall modify the rights and obligations of the parties holding the water permits in the State of Idaho and the assignee, BP Hydro Associates, shall be fully obligated to

MICROFILMED

AUG 05 1991

abide by the statutes and regulations of Idaho law and the rules of the Department of Water Resources with respect to the use of water rights within the State of Idaho.

Sincerely,

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

Gary Spackman, Manager
Water Right Permits Section

GS:ds

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AUG 05 1991

Bonneville Pacific Corporation

April 11, 1989

RECEIVED
APR 12 1989

Mr. Gary Spackman
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Department of Water Resources

Re: Assignment of Water Rights -- Rock Creek II,
Dietrich Drop and Lower Low Line (Low Line
Rapids) Projects

Dear Gary:

Bonneville Pacific Corporation has organized a new Idaho general partnership known as BP Hydro Associates (the "Partnership") for the purpose of owning and operating three hydroelectric projects in Idaho known as the Dietrich Drop Project, Rock Creek II Project and Lower Low Line Project. In connection with the establishment of the Partnership, Bonneville desires to convey to the Partnership all of its rights, titles and interests under the water permits relating to these projects as follows:

Dietrich Drop - Permits Nos. 01-7022 and 01-7058
Lower Low Line - Permit No. 01-7063
Rock Creek II - Permit No. 47-7771

It is our understanding that the Partnership qualifies to hold water rights in the State of Idaho pursuant to revised Section 42-206 of the Idaho Code.

Accordingly, we hereby request the Department of Water Resources to modify its records to reflect that BP Hydro Associates is the holder of the above-referenced permits. A copy of the Capital Contribution Agreement between the partners in the Partnership setting forth the proposed assignment of the water rights is delivered herewith for your review.

Should the Department of Water Resources approve the assignment requested herein, we request that the Department of Water Resources execute a letter in form and substance similar to that enclosed herewith and return the same to the undersigned at your earliest convenience.

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AUG 05 1991

Mr. Gary Spackman
April 11, 1989
Page 2

We appreciate your cooperation in this matter.
Please do not hesitate to contact us should you have any
comments or questions regarding the same.

Very truly yours,


David P. Hirschi
General Counsel

DPH: tah

Enclosures

d/a/00810

MICROFILMED

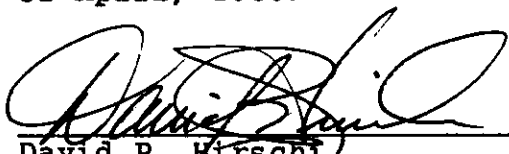
AUG 05 1991

AFFIDAVIT

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

I, DAVID P. HIRSCHI, Vice-President of Bonneville Pacific Corporation hereby certify and confirm that (1) Bonneville Pacific Corporation is a general partner in BP HYDRO ASSOCIATES; (2) BP HYDRO ASSOCIATES is a duly formed Idaho general partnership; and (3) Bonneville Pacific Corporation is a Delaware Corporation duly qualified and in good standing to conduct business in the State of Idaho. A copy of the recent Certificate of Good Standing from the Secretary of State of the State of Idaho is attached hereto in evidence of the foregoing.

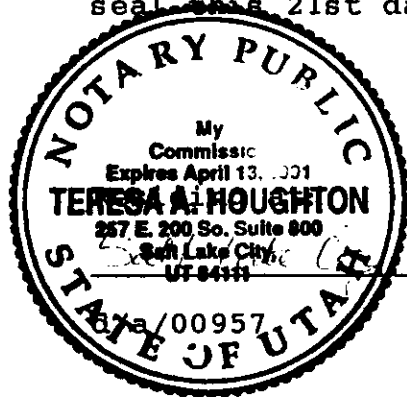
DATED this 21st day of April, 1989.

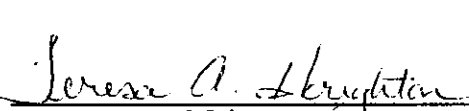


David P. Hirschi
Vice-President and
General Counsel
Bonneville Pacific Corporation

Subscribed and sworn before me, Teresa A. Houghton, a Notary Public in and for said County and State, by David P. Hirschi, known to me to be the Vice-President and General Counsel of Bonneville Pacific Corporation.

IN WITNESS WHEREOF, I have set my hand and official seal this 21st day of April, 1989.





Notary Public
My Commission Expires:
4-13-91

AUG 05 1991



Department of State.

**CERTIFICATE OF CORPORATE STATUS
OF**

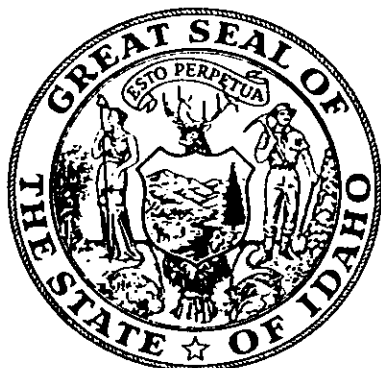
BONNEVILLE PACIFIC CORPORATION

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 Delaware and was issued a certificate of Authority in Idaho on August 13, 1986.

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

Dated September 8, 1988



Pete T. Cenarrusa
SECRETARY OF STATE

by *Angie Hoken*
FILED

AUG 05 1991

AFFIDAVIT

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

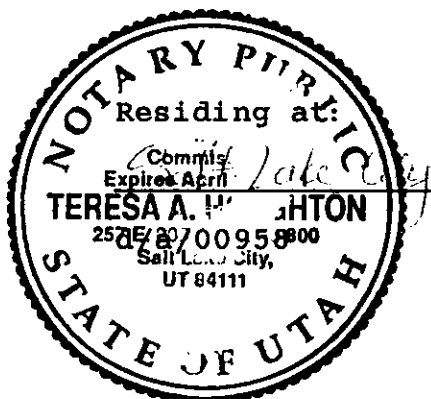
I, J. MICHAEL BRADLEY, President of TET ENERGY INC.
hereby certify and confirm that (1) TET ENERGY INC. is a
general partner in BP HYDRO ASSOCIATES; (2) BP HYDRO ASSOCIATES
is a duly formed Idaho general partnership; and (3) TET ENERGY
INC. is an Idaho corporation duly qualified and in good
standing to conduct business in the State of Idaho. A copy of
the Articles of Incorporation for TET ENERGY INC. recently
filed with the State of Idaho is attached hereto.

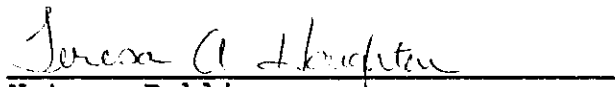
DATED this 21st day of April, 1989.

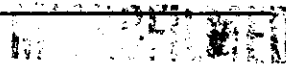

J. Michael Bradley
President
TET ENERGY INC.

Subscribed and sworn before me, Teresa A. Houghton, a
Notary Public in and for said County and State, by J. Michael
Bradley, known to me to be the President of TET ENERGY INC.

IN WITNESS WHEREOF, I have set my hand and official
seal this 21st day of April, 1989.




Notary Public
My Commission Expires:
4-13-91



AUG 05 1991



CERTIFICATE OF INCORPORATION
OF

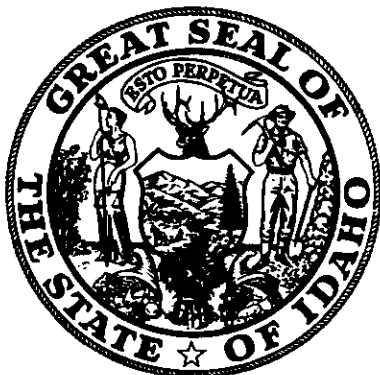
T E T ENERGY INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of the above named corporation, duly signed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated: April 18, 1989

AUG 05 1991



Pete T. Cenarrusa

SECRETARY OF STATE

by: *Ray J. Clark*

ARTICLES OF INCORPORATION

OF

T E T ENERGY INC.

APR 18 2 35 PM '89

SECRETARY OF STATE

The undersigned, acting as incorporator of a corporation under the Idaho Business Corporation Act, adopts the following Articles of Incorporation.

FIRST

The name of the corporation is T E T ENERGY INC.

SECOND

The corporation is a perpetual entity.

THIRD

The corporation is formed and organized to engage in all general business and the transaction of any and all lawful business for which corporations may be incorporated under the Idaho Business Corporation Act and as the board of directors may from time to time determine.

FOURTH

The aggregate number of shares which the corporation has the authority to issue is 10,000,000 shares of common stock, all of one class, at par value of \$1.00 each.

FIFTH

The number of directors of the corporation shall be as specified in the bylaws, and such number may from time to time be increased or decreased in such manner as may be prescribed in the bylaws, provided the number of directors of the corporation shall not be fewer than the number required by law. The initial board of directors shall number one. In case of any increase in the number of directors, the additional directors may be elected by the directors then in office, and the directors so elected shall hold office until the next annual meeting of the stockholders and until their successors are elected and qualified.

A majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

RECORDED

AUG 05 1991

Stockholders of the corporation shall not have preemptive and preferential rights of subscription to any shares of stock of the corporation, whether now or hereafter authorized, or to any obligations of the corporation convertible into stock.

The initial bylaws shall be adopted by the board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors. Such power may be exercised by a majority vote of the board of directors at any annual or special meeting of the board of directors called for that purpose.

The articles of incorporation of this corporation may be amended by a majority vote at any annual or special meeting of stockholders, either upon consideration of a resolution for amendment adopted by the board of directors or upon consideration of a resolution adopted by the holders of not less than ten percent (10%) of all the shares entitled to vote at such meeting.

SIXTH

The location and post office address of the initial registered office of the corporation is 205 N. 10th Street, Suite 200, P.O. Box 1960, Boise, Idaho 83701, and the name of the initial registered agent of the corporation who may be found at that address is Terry E. Coffin.

SEVENTH

The names and post office addresses of the initial directors of the corporation, appointed by the incorporator to serve until the first election of directors, are as follows:

<u>Name</u>	<u>Address</u>
J. Michael Bradley	P.O. Box 100, No. 1 One First Canadian Place Toronto, Canada M5X 1B2

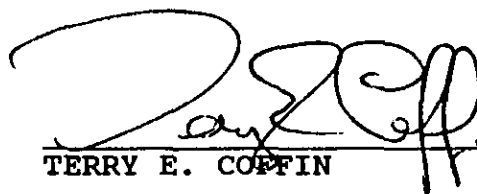
EIGHTH

The name and post office address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
Terry E. Coffin	205 N. Tenth Street Suite 200 P.O. Box 1960 Boise, ID 83701

AUG 05 1991

18th IN WITNESS WHEREOF, I have hereunto set my hand on the
day of April, 1989.


TERRY E. COFFIN

RECEIVED
AUG 05 1991

Bonneville Pacific Corporation

April 21, 1989

RECEIVED
APR 24 1989

Department of Water Resources

Mr. Gary Spackman
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Assignments of Water Rights - Dietrich Drop,
Rock Creek II and Lower Low Line Hydroelectric
Projects

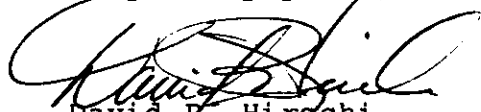
Dear Gary:

In connection with the above-referenced assignments, enclosed please find an executed copy of the Partnership Agreement and Addendum of BP Hydro Associates. Also enclosed, pursuant to your request, are Affidavits of the general partners of BP Hydro Associates verifying that BP Hydro Associates is an existing Idaho general partnership and that the corporate general partners are qualified to do business in the State of Idaho.

Bonneville Pacific Corporation hereby requests the Department of Water Resources to modify its records to reflect that BP Hydro Associates is the holder of the water permits for the above-referenced projects and that the Department issue its consent to the assignments in the form previously provided to you as soon as possible.

Thank you for your cooperation and assistance in this matter.

Very truly yours,


David P. Hirschi
General Counsel

DPH: tbf

Enclosure

d/c/00953

FILED
AUG 05 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

(208) 327-7900

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - [REDACTED]

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

May 1, 1989

Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, Utah 84111

BP Hydro Associates
c/o Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, Utah 84111

RE: Approval of Assignment of Water Rights

Gentlemen:

You have requested that the Idaho Department of Water Resources approve an assignment of water rights from Bonneville Pacific Corporation to BP Hydro Associates, which, by affidavit, is represented to be an Idaho general partnership. The requested relates to the Dietrich Drop Hydroelectric Project, Permit Nos. 01-7022 and 01-7058, the Rock Creek II Hydroelectric project, Permit No. 47-7771, and the Lower Low Line Hydroelectric Project, Permit No. 01-7063. We have reviewed the Capital Contributions Agreement under which such assignment is intended to be made and we have reviewed the proposed Partnership Agreement which will establish BP Hydro Associates.

The Capital Contribution Agreement in paragraph (d), page three, assigns all rights, titles, interests and obligations to the Dietrich Drop, Rock Creek II and Lower Low Line projects. The water right permits are not specifically mentioned in any of the text, but the department will recognize the assignment of the permits in the broad assignment. Recognition of the assignment is conditional upon receipt of fully executed copies of the Capital Contribution Agreement and the Partnership Agreement.

For the Rock Creek and Dietrich Drop projects, Bonneville is conveying a "legal" interest in the water rights. A security interest in the water rights is being retained by Stewart Title of Idaho pursuant to Trust Agreements previously entered into with respect to these water rights. For the Lower Low Line project, Bonneville appears to own clear title which is not subject to a security interest.

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AUG 05 1991

When the executed copies of the Capital Contribution Agreement and the Partnership Agreement are received by the department, we will change our records to show BP Hydro Associates as the owner.

Nothing herein shall modify the rights and obligations of the parties holding the water permits in the State of Idaho and the assignee, BP Hydro Associates, shall be fully obligated to abide by the statutes and regulations of Idaho law and the rules of the Department of Water Resources with respect to the use of water rights within the State of Idaho.

Sincerely,

A handwritten signature in cursive script, reading "Gary Spackman".

Gary Spackman, Supervisor
WR Permits Section Manager

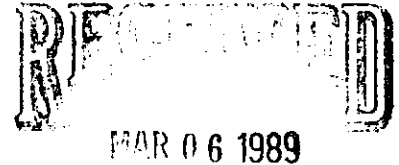
GS:ds

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AUG 05 1991

Bonneville Pacific Corporation

March 2, 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



AUG 05 1991

Mr. Gary Spackman
March 2, 1989
Page 2

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

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AUG 05 1991



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 47-7771 - Rock Creek
II Project

Gentlemen:

This office has received an executed copy of the Assignment and Trust Agreement dated September 22, 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 Collateral Assignment of Agreement which we have received with respect to the above referenced project, that Bonneville Pacific now desires

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AUG 05 1991

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, Manager
Water Right Permits Section

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

REPROFILMED

AUG 05 1991

COLLATERAL ASSIGNMENT
OF AGREEMENTS

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

WHEREAS, Assignor and Assignee have entered into a certain Firm Energy Sales Agreement dated July 13, 1987, whereunder, in accordance with the terms and conditions thereof, Assignor agreed to sell, and Assignee agreed to buy, certain electrical power generated by Assignor's hydroelectric project located in Twin Falls County, Idaho (the "Project").

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission (the "Commission") on July 27, 1987, Order No. 21361; and

WHEREAS, on or about September 20, 1988, Assignor 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 Assignor 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, Assignor has 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:

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:

AUG 05 1991

- a. Firm Energy Sales Agreement, Facility No. 31615104, between Assignor and Assignee dated July 13, 1987, a copy of which is attached hereto as Schedule I;
- b. Agreement between Rock Creek Hydropower, Inc. ("RCHPI"), Carl Edwards, Gerald Martens, Charles D. Howard and Bonn-Tech, dated December 18, 1986, a copy of which is attached hereto as Schedule II-A;
- c. First Amendment to Agreements dated April 6, 1987, a copy of which is attached hereto as Schedule II-B;
- d. Second Amendment to Agreements dated September 28, 1987, a copy of which is attached hereto as Schedule II-C;
- e. Memorandum of Lease and Assignment of Lease, dated September 22, 1988, a copy of which is attached hereto as Schedule II-D;
- f. Lease Agreement between Idaho Frozen Foods Corp. and EMH Investments, dated February 7, 1984, a copy of which is attached hereto as Schedule III-A;
- g. Agreement between Cogeneration, Inc. and EMH Investments, dated June 15, 1982, a copy of which is attached as Schedule III-B;
- h. Modification and Extension Agreement and Addendum, dated April 8, 1988, a copy of which is attached hereto as Schedule III-C;
- i. Memorandum of Lease and Assignment of Lease, dated September 22, 1988, a copy of which is attached hereto as Schedule III-D;
- j. Construction Agreement between Assignor and Summit Construction Company, dated July 20, 1988, a copy of which is attached hereto as Schedule IV;
- k. Application for Permit to Appropriate Public Water No. 47-7712, as approved by the Idaho Department of Water Resources and as assigned to Assignor, copies of which are attached hereto as composite Schedule V; and

RECORDED
AUG 05 1991

1. Assignor's interest in and to the License granted by the Federal Energy Regulatory Commission dated August 29, 1986 relating to the Facility, a copy of which is attached hereto as Schedule VI.

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, II-A, II-B, II-C, II-D, III-A, III-B, III-C, III-D, IV, V and VI 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 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 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

AUG 05 1991

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 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 or enforcement of any other.

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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.

BONNEVILLE PACIFIC CORPORATION

By _____
Its _____

IDAHO POWER COMPANY

By _____
Its _____

d/a/00345

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AUG 05 1991

SCHEDULE I

Firm Energy Sales Agreement between
Assignor and Assignee

(Attached)

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AUG 05 1991

STEWART TITLE OF IDAHO, Inc.

A FUTURA COMPANY



- ☐ 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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AUG 05 1991

Bonneville Pacific Corporation

January 13, 1989

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JAN 16 1989

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

Department of Water Resources

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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AUG 05 1991

Mr. Gary Spackman
January 13, 1989
Page 2

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.

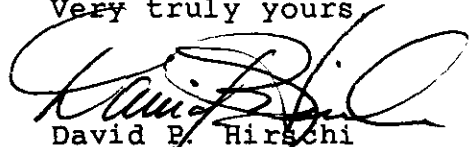
By copy of this letter, I am advising Stewart Title of Idaho, Paul T. Birkeland, counsel for the Banks, and Barton L. Kline, counsel to Idaho Power of our desires with respect to

AUG 05 1991

Mr. Gary Spackman
January 13, 1989
Page 3

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

Very truly yours



David B. 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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AUG 05 1991.

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.

RECEIVED

AUG 05 1991

Mr. Gary Spackman
January 13, 1989
Page 3

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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AUG 05 1991

Mr. Gary Spackman
January 13, 1989
Page 2

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

AUG 05 1991



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

September 29, 1988

Donald C. Shepard, Esq.
Faegre & Benson
2200 Norwest Center
90 South 7th Street
Minneapolis, MN 55402-3901

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

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

Re: Assignment and Trust Agreement for Water Permit
No. 47-7771

Gentlemen:

This office has received an executed copy of the Assignment and Trust Agreement dated September 22, 1988 whereunder Bonneville Pacific Corporation ("Bonneville") assigned its right, title, and interest 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 Rainier National Bank (collectively "Banks").

This office previously received, acknowledged, and accepted the assignment of said permit from the applicant, Charles D. Howard ("Howard") to Bonneville. In addition, this office received an affidavit for water rights to be used for power purposes executed by Robert H. DeBolt of Stewart Title and a sup-

RECORDED

AUG 05 1991

September 29, 1988
Page 2.

porting Affidavit of User of Water Rights for Power Purposes.
executed by David P. Hirschi, Secretary of Bonneville.

Based upon our understanding of the information contained in the above mentioned documentation, the Banks have agreed to provide financing to fund the cost of constructing the Rock Creek II Hydroelectric Project. The Department also understands that, as part of the security for the repayment of the loan made by the Banks, the Banks have required that said permits 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 Bonneville 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, Supervisor
Water Allocation Section

GLS:mrs

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AUG 05 1991



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

September 16, 1988

RE: Permit No. 47-7771

Gary Montgomery
Marcus, Merrick & Montgomery
737 N. 7th St.
Boise, ID 83702-5595

Dear Mr. Montgomery:

We have received a draft copy of an Assignment and Trust Agreement for the above referenced permit. Your letter of 9/15 made reference to a Form Consent which was to be executed by our Department, however, this form was not included in the enclosures.

We cannot accept the Assignment and Trust Agreement as a formal change in ownership of the right to Stewart Title of Idaho and the "Banks", the reason being that the document you delivered has not yet been signed and notarized. Also, since this permit is for power purposes, an affidavit of residency needs to be submitted by the assignee, or in this case trustee. We have enclosed an affidavit of residency form for this action.

Your submittal of the Assignment and Trust Agreement, although not finalized, is sufficient to comply with the provisions of Section 42-205, Idaho Code regarding assignment or conveyance of a power permit and therefore, the closing of this transaction can take place as scheduled. We simply ask that a signed and notarized assignment form (assignment form enclosed) and the affidavit of residency be returned to our office as soon after the transaction as possible so that we can make the appropriate name changes to our computer.

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

Sincerely,


JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosures

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AUG 05 1991

CLAUDE V. MARCUS
CRAIG MARCUS
BARRY MARCUS
GALE M. MERRICK
GARY L. MONTGOMERY
ROBERT C. MONTGOMERY
KELLY J. BEEMAN

LAW OFFICES
MARCUS, MERRICK & MONTGOMERY
MARCUS BUILDING
737 NORTH 7TH STREET
BOISE, IDAHO 83702-5595

TELEPHONE
(208) 342-3563

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SEP 13 1988

Department of Water Resources

September 15, 1988

Gary Spackman, Supervisor
Water Allocation Section
Department of Water Resources
Statehouse Mail
Boise, Idaho 83720

Re: Water Rights - Rock Creek II Project

Dear Gary:

Enclosed herewith please find an Assignment and Trust Agreement relating to the water right on the Rock Creek II Hydroelectric Project. Also enclosed herewith please find a Form Consent to the Assignment and Trust Agreement to be executed by the Idaho Department of Water Resources.

The closing of this transaction is scheduled for September 22, 1988. For that reason, it would be greatly appreciated if you could review this matter and prepare the appropriate form of Idaho Department of Water Resources Consent prior to that date.

If you have questions or need additional information, please don't hesitate to call and I'll be happy to assist in any way I can.

Thank you very much for your assistance in this matter.

Best regards,

MARCUS, MERRICK & MONTGOMERY

Gary
GARY L. MONTGOMERY

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AUG 05 1991

GLM:mrs
Encs.
cc: David P. Hirschi, Esq.

DRAFT

For Discussion Purposes Only
Bonneville Pacific CorporationDate 9-13-88

ASSIGNMENT AND TRUST AGREEMENT

This Assignment and Trust Agreement (hereinafter called the "Assignment"), dated as of September 22, 1988, is hereby entered into by Bonneville Pacific Corporation 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. 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 amended by a First Amendment to Credit Agreement dated September 1, 1988, and as supplemented and modified by a Project Lending Agreement ("Project Lending Agreement"), dated as of September 22, 1988, among Assignor, the Banks and the Agent (the Credit Agreement, as amended and 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 \$3,500,000 to finance the construction of a certain hydroelectric project known as the Rock Creek II Hydroelectric Project in Twin Falls County, Idaho (the "Project").

B. Charles D. Howard ("Howard") has filed with the Department of Water Resources of the State of Idaho ("Department") an Application for Permit to Appropriate Public Waters No. 47-7771 and the Department approved such application on September 15, 1982 (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 Assignment of Permit dated September 24, 1987, Howard assigned to Assignor its entire right, title and interest in and to the Permit, a copy of which Assignment 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.

AUG 05 1991

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

AUG 05 1991

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 ten (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, 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 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.

RECORDED

AUG 05 1991

12. The Trustee may resign at any time by giving at least ninety (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 sixty (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 arrangement 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.

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.

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.

AUG 05 1991

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.

BONNEVILLE PACIFIC CORPORATION

By: _____
Its: _____

STEWART TITLE OF IDAHO,
INC., as Trustee

By: _____
Its: _____

NORWEST BANK MINNESOTA,
NATIONAL ASSOCIATION

By: _____
Its: _____

FILED

AUG 05 1991

By: _____
Its: _____

By: _____
Its: _____

By: _____
Its: _____

On this ____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ of Bonneville Pacific Corporation ("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.

Notary Public
Residing at: _____
My Commission Expires: _____

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AUG 05 1991

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ 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.

STATE OF _____)
 : ss.
COUNTY OF _____)

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ 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: _____

UNRECORDED

AUG 05 1991

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 1988, 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: _____

STATE OF MINNESOTA)
: ss.
COUNTY OF HENNEPIN)

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ 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.

Notary Public
Residing at: _____
My Commission Expires: _____

RECORDED

AUG 05 1991

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 1988, before me _____, a notary public, personally appeared _____ known or identified to me to be the _____ 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.

Notary Public
Residing at: _____
My Commission Expires: _____

69dph

EXPIRED
AUG 05 1991

EXHIBIT A

APPLICATION FOR PERMIT TO APPROPRIATE
PUBLIC WATERS NO. 47-7771

(Attached)

RECORDED

AUG 05 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant Charles D. Howard Phone 1-208-734-4888
Post office address 1139 Falls Ave. East Twin Falls, Idaho 83301
2. Source of water supply Rock Creek which is a tributary of Snake River
3. Location of point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25 Township 9S
Range 16E B.M. Twin Falls County, additional points of diversion if any: SW⁴ of NW⁴, NW⁴ of NW⁴, Section 25
4. Water will be used for the following purposes:
Amount 200 cfs for Generate Power purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for Industrial purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for Fire Protection purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 202 cubic feet per second and/or b. acre-feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Diversion, to penstock, power
PLANT
FLAT Transmission line
b. Height of storage dam None feet, active reservoir capacity None acre-feet; total reservoir capacity None acre-feet, materials used in storage dam: NA
Period of year when water will be diverted to storage No Storage to inclusive.
(Month/Day) (Month/Day)
c. Proposed well diameter is NA inches; proposed depth of well is NA feet.
7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years (minimum 1 year - maximum 5 years).
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25 Township 9S
Range 16E B.M.
(2) Amount of power to be generated: 2200 horsepower under 110 feet of head.
(3) List number of each kind of livestock to be watered NA
b. Name of municipality to be served Power sold to Idaho Power Co., or number of families to be supplied with domestic water NA
(5) If water is to be used for other purposes describe: Fire Protection, (1 cfs)
Industrial (1 cfs) Temporary Engine Cooling

FILED
AUG 05 1991

11/16/1981

Received by T.C.B. Date 11-16-81 Time 11:30 AM
Preliminary check by JP Fee \$ 1735⁰⁰ # 20655
Receipted by T.C.B. Date 11-16-81
Publication prepared by manager Date 11/25/81
Published in times news
Publication dates 12/3 + 12/10/81
Publication approved manager Date 12/1/81
Protests filed by: None

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by ADA

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. 47-7771, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 1987.
- 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: An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

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.

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

This project shall be operated in a manner that will not conflict or interfere with the future diversion of water for irrigation or other beneficial consumption.

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

Witness my hand this 15th day of September, 1982.

L. Glen Sayton
Chief, Operations Bureau

RECEIVED

AUG 05 1991

NA

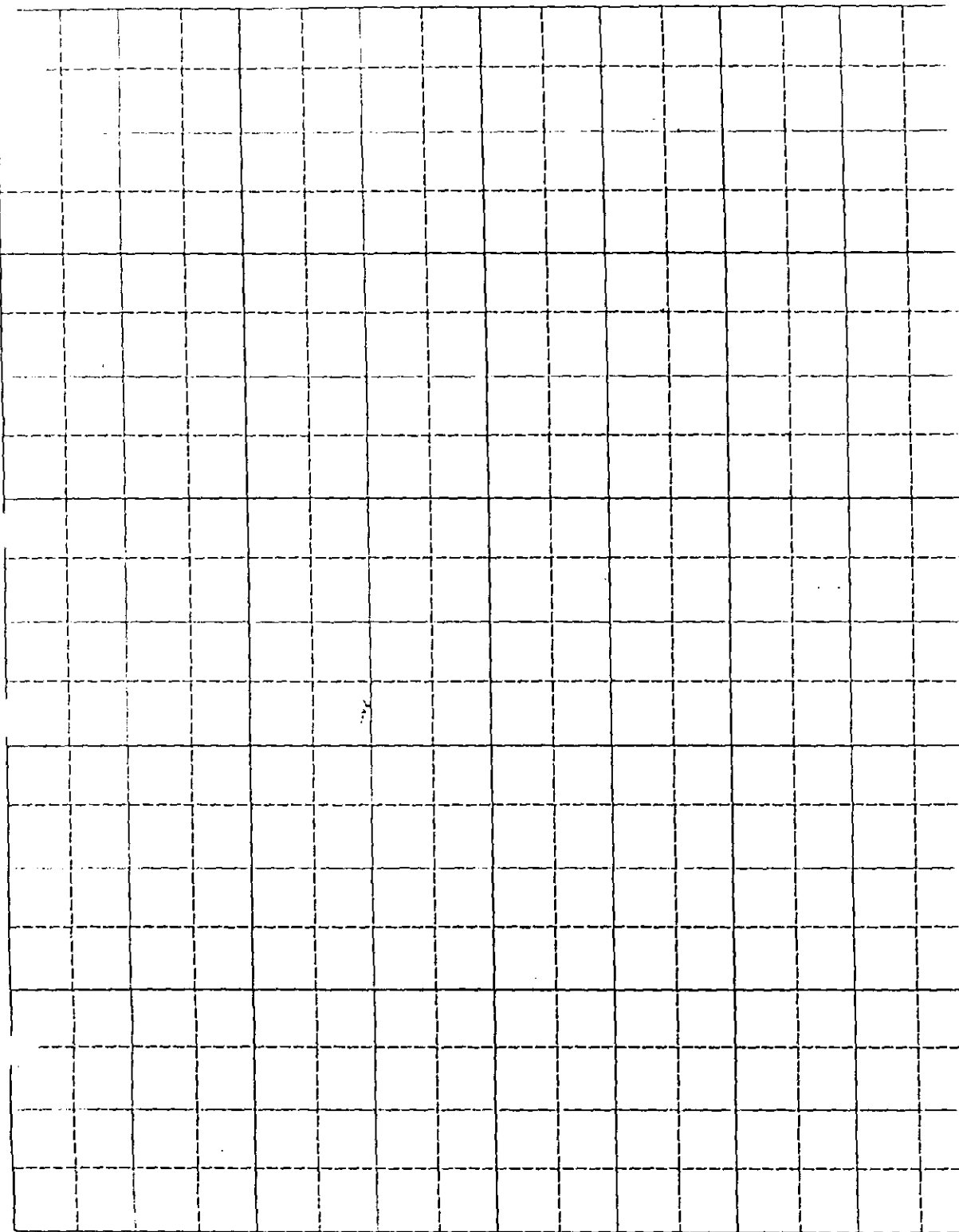
Total number of acres to be irrigated None

9. a. Who owns the property at the point of diversion ANNA BELLE SHARP, S.W. NW, - SEC 25
 b. Who owns the land to be irrigated or place of use HOME, DONALD / SAM STEADLEY SE
NEA ROSALEE DINGWALL AND
B. CAM RUN
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the
 applicant to make this filing will negotiate a lease or purchase

10. Remarks Applicant will apply for a exemption to the Federal Energy
Regulatory Commission. Applicant will apply to State of Idaho
Clearinghouse for review. Minimum stream flows for fisheries will be
maintained.
Point of diversion may be changed as noted in Item #3.

RECEIVED
AUG 05 1991

11. Map of proposed project show the proposed point of diversion, place of use, section number, township and range number. See Attached figures # 1, 2, and 3



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.

Charles D. Howard
(Applicant)

11/16/64
NOV 15 1964

EXHIBIT B

ASSIGNMENT OF PERMIT

(Attached)

EXHIBIT B

AUG 05 1991

State of Idaho
Department of Water Resources

ASSIGNMENT OF PERMIT

I, CHARLES D. HOWARD, hereby assign to BONNEVILLE PACIFIC
PRESIDENT - RCHPL
CORPORATION

Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 47-7771
to appropriate the public waters of the State of Idaho.

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

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

Made this 24 day of SEPTEMBER, 19 87.

Charles D. Howard
Permit Holder
PRESIDENT
ROCK CREEK HYDROPOWER INC.
Carl V. Edwards
SECRETARY
RCHPL

State of Idaho)
County of Idaho) 69.

On this 24 day of September, 19 87, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same. Charles D. Howard Carl V. Edwards

seal

Edith L. Andersson
Notary Public residing at
Shangerville, Idaho

My commission expires:
Aug. 1988

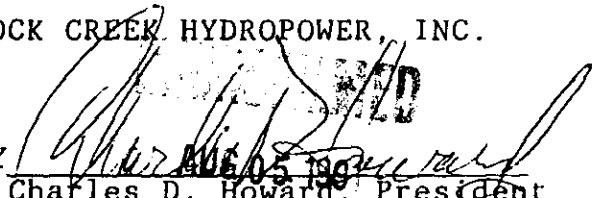
AUG 05 1991

AFFIDAVIT IN SUPPORT OF
ASSIGNMENT OF WATER RIGHTS

I, Charles D. Howard, President of Rock Creek Hydropower, Inc., being duly sworn, deposes and says, that Rock Creek Hydropower, Inc., the assignor of Permit No. 47-7771, to which this affidavit relates, owns in fee simple or controls by long-term lease or perpetual easement all of the real property underlying the proposed improvements to be constructed by Bonneville Pacific Corporation in connection with the development, construction, operation and maintenance of the Rock Creek No. 2 Hydroelectric Project. Rock Creek Hydropower, Inc. has leased all of said real property to Bonneville Pacific Corporation for a term of thirty-five (35) years pursuant to that certain Agreement dated December 18, 1986, as amended and assigned. Copies of said Agreement plus all amendments thereto and assignments thereof, are available to the Department of Water Resources upon request.

To the best of my knowledge, after due inquiry, all lands and permissions from land owners necessary for the construction, operation and maintenance of the Rock Creek NO. 2 Hydroelectric Project have been obtained and all agreements with respect thereto are in full force and effect.

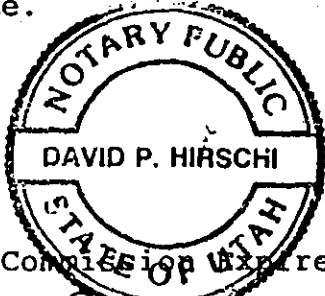
ROCK CREEK HYDROPOWER, INC.

BY 
 Charles D. Howard, President

Stamp: FILED, JUN 05 1990

STATE OF IDAHO ~~UTAH~~)
: ss.
COUNTY OF ~~TWIN FALLS~~
~~SALT LAKE~~

On this 7th day of October, 1987, personally appeared before me Charles D. Howard, the signer of the above instrument, who duly acknowledged to me that he executed the same.



My Commission Expires:

8-20-91


NOTARY PUBLIC
Residing at: Centerville Utah

280d

MICROFILMED

-2- AUG 05 1991

EXHIBIT C

DEPARTMENT OF WATER RESOURCES OF THE STATE OF
IDAHO APPROVAL OF ASSIGNMENT OF PERMIT

(Attached)

UNRECORDED

AUG 05 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

Governor

R. KEITH HIGGINSON

Director

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

October 14, 1987



RE: Permit No. 47-7771

Bonneville Pacific Corp.
257 E. 200 S., Suite 800
Salt Lake City, UT 84111

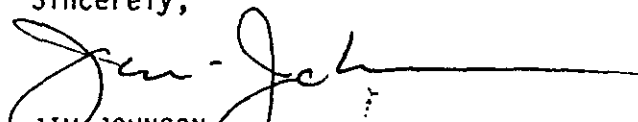
Dear Permit Holders:

This office acknowledges receipt of the Assignment of the above referenced permit to you.

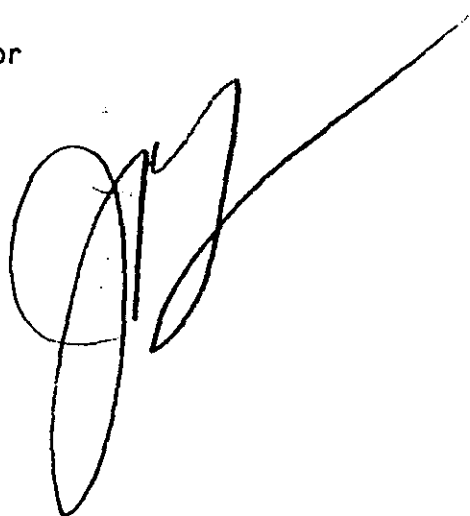
Enclosed for your records is a copy of the permit. Be sure to note the conditions of approval on the fourth page that identify requirements necessary for developing the permit into a licensed water right.

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

Sincerely,


JIM JOHNSON
Water Rights Supervisor

JJ:sc
Enclosure



FILED

AUG 05 1991

State of Idaho
Department of Water Resources
ASSIGNMENT OF PERMIT

I, CHARLES D. HOWARD, hereby assign to BONNEVILLE PACIFIC
PRESIDENT - KCHPL
CORPORATION 257 East 200 South Suite 800
Address Salt Lake City, Utah 84111

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 47-7771
to appropriate the public waters of the State of Idaho.

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

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

Made this 24 day of SEPTEMBER, 19 87.

Charles D. Howard
Permit Holder
PRESIDENT
Carl V. Edwards ROCK CREEK HYDROPOWER INC.
SECRETARY
RCHIT

State of Idaho)
County of Idaho) 69.

On this 24 day of September, 19 87, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged to me
that he (she) (they) executed the same. Charles D. Howard Carl V. Edwards

Edith L. Andersson
Notary Public residing at
Orangeville, Idaho

My commission expires:
Aug 1988

FILED
AUG 05 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

For Office Use Only

\$15 FEE Received 48Date 7-29-87Receipt # 44101

REQUEST FOR EXTENSION OF TIME

JUL 27 1987 To provide additional time in which to submit proof
of beneficial use on a water right permit

Department of Water Resources

CHARLES D. HOWARD

(Name)

of 1139 Falls Ave. Fair - 2nd Fl

(Address)

State of IDAHO, deposes and says:That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public Water of the
State of Idaho No. 47-7771

That under the terms and conditions of said permit, work thereunder was required to be completed on or before

SEPTEMBER 1, 1987

That he has heretofore performed the following work described under said permit:

(This must be filled out if no work has been completed put none.)

ENGINEERING, FERC LICENSE, LEGAL FEE,FINANCIALS

Costing \$

\$150,000

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:

FROM APRIL 1984 TILL AUG 1986, LICENSE APPLICATION
WAS BEING PROCESSED BY THE FEDERAL ENERGY COMMISSION
(FERC). DELAYED AT FERC BECAUSE OF COURT
RULINGS AND CHALLENGES BY IDAHO POWER CO. - ISSUED AUG 1986Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations
under said permit to SEPT 1, 1989(1 yr. minimum
5 yrs. maximum)

(Signature)

CHARLES D. HOWARD

* IF OTHER THAN HOLDER, Power of Attorney must be supplied

FEE: \$15.00

SEP 25 1987

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within
which to submit proof of beneficial use is extended to September 1, 1989.

SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL CONCERNING THIS EXTENSION.

Signed this

31st

day of

August

, 1987

Chief, Operations Bureau

ATTACHMENT OF CONDITIONS OF APPROVAL

For Extension of Time
of Permit No. 47-7771

1. The permit holder shall maintain in Rock Creek between the diversion structure and the tailrace, a continuous minimum flow of 41 cubic feet per second (cfs) in October, November, February, and March, 31 cfs in December and January, and 82 cfs from April 1 through September 30, as measured immediately downstream from the diversion dam, or the inflow at the diversion, whichever is less.

2. Upon the future finding and order of the Director that measuring devices are required to insure the minimum flow is being provided, the permit holder shall install and maintain the devices or recorders as specified by the Department.

Witness my hand this 31st day of August, 1987.

A. Glen Saxton

Chief, Operations Bureau

RECORDED

SEP 25 1987

FILED

SEP 25 1991

RECEIVED
JUN 28 1988

Bonneville Pacific Corporation
June 28, 1988

Department of Water Resources

Mr. R. Keith Higginson, Director
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Your Letter of June 14, 1988 -- Rock Creek II
Permit No. 47-7771

Dear Mr. Higginson:

Ray Hixson of this office has asked that I review your letter of June 14, 1988, relating to Permit No. 47-7771; FERC Project No. 6015-007 -- Rock Creek II Hydroelectric Project.

We are pleased to learn that the Department of Water Resources has decided not to appeal the FERC denial of a rehearing with respect to the further development of water rights in the Snake River and its tributaries pursuant to the Idaho State Water Plan. Based upon this action, we are in agreement with the language which you proposed be placed on a water license issued in connection with this project.

It has always been Bonneville's intention to comply with the State Water Plan, and we have accepted water licenses containing language similar to that proposed in your letter of June 14, 1988, with respect to other hydroelectric projects developed by Bonneville in Idaho.

We appreciate your Department's cooperation in allowing this project to go forward.

Please feel free to contact me or Ray should you have any questions or comments regarding this matter.

Very truly yours,


David P. Hirschi
General Counsel

DPH:tah

cc: Raymond L. Hixson
Robert L. Wood
James S. Goff
John A. McTear
508d67

MICROFILMED

AUG 05 1991



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

June 14, 1988

Raymond Hixson, President
Bonneville Pacific Corp.
257 East 200 South, Suite 800
Salt Lake City, UT 84111

Re: Permit No. 47-7771; FERC Project No. 6015-007; Rock Creek

Dear Ray:

The Department of Water Resources issued a permit to Charles D. Howard in September, 1982, authorizing the diversion of 200 cfs from Rock Creek, Twin Falls County, for hydropower purposes. Mr. Howard subsequently applied for a license with the Federal Energy Regulatory Commission (FERC). The Department requested FERC to condition the FERC license to insure that the project would not interfere with further development of water on the Snake River and its tributaries, pursuant to the Idaho State Water Plan. FERC denied the request and also denied a subsequent appeal.

The Department has decided not to appeal the FERC denial to the federal courts. The decision not to appeal, however, does not change the Department's position that hydropower uses must be subordinated to upstream consumptive uses of water pursuant to Idaho Code § 42-203B(6).

Please be advised that if a water license is issued, it will be conditioned with language similar to the following:

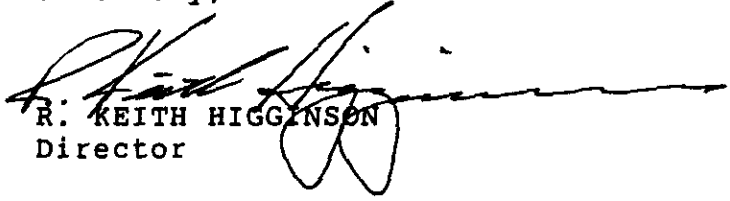
"Hydropower use under permit no. 47-7771 shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that are initiated later in time than the priority of permit no. 47-7771 and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the state of Idaho initiated later in time than the priority of the permit."

You should also understand that despite any lack of subordination language in the project's FERC license diversion and use of water through the project facilities shall be specifically subordinate to all upstream consumptive use rights.

AUG 05 1991

If you have any questions on this matter, please call me.

Sincerely,


R. KEITH HIGGINSON
Director

GS:jf

CC: Southern Region

RECEIVED

AUG 05 1991

INTER-DEPARTMENT MEMO — 1

FROM

Phil

DATE

4-27-88

TO

NORM

SUBJECT

ROCK C. NO. 2 Hydro Project - FERC Proj. No. 6015
(Water Permit No. 47-7771)

Please see the attached note from Keith stating
he would like to have a letter sent to the
Project owners highlighting the fact ~~that~~ their
water right is subordinated under state law.
Perhaps Gary or Glen would be able to draft
this letter.

Phil

SIGNATURE

~~6len~~ → Gary S _____

Please drop the letter
as requested.

PLM

FROM Phil Rossier

DATE 4-26-88

TO file ROCK C. No. 2 Project No. 6015

SUBJECT Decision NOT to Appeal

I discussed the need to appeal the Order issued by FERC on March 3, 1988 denying the Department's appeal to the Commission.

We decided for both legal and policy reasons it was not necessary or appropriate to appeal the Commission's decision to the 9th Cir. in this case. The Dept does not wish to stop the project, and failure to appeal will not hurt our position in the Overseas Bank appeal.



SIGNATURE

Keith 4-26-88

Do you approve
of the decision not
to appeal?

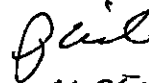
Phil

Phil —

Do we need to appeal?

No. Do memo
for file. DSC.
w/ Chief & Norm.

NCH


4-25-88

RECORDED
AUG 05 1991

4-27-88
I WOULD LIKE TO SEND EITHER A LETTER
OR ~~THE~~ SUBORDINATION ORDER (PERMIT) TO THE

ROCK CREEK NO. 2 PROJECT SPECIFYING THAT
EVEN THOUGH WE HAVE NOT APPEALED THEY
SHOULD UNDERSTAND THAT THE USE OF WATER
IS SUBORDINATED AND NO WATER MAY BE
DIVERTED THROUGH PROJECT FACILITIES UNLESS
THEY AGREE TO SUCH SUBORDINATION.

Permit: 47-7771

RKA

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Charles D. Howard) Project Nos. 6015-009

ORDER DENYING APPEALS

(Issued March 3, 1988)

By order issued August 29, 1986, 1/ the Director, Office of Hydropower Licensing (Director), granted a major license to Charles D. Howard for the Rock Creek No. 2 Project No. 6015, to be located on Rock Creek in Twin Falls County, Idaho. On September 29, 1986, the Idaho Department of Water Resources (IDWR) and the Idaho Power Company (IPC) filed separate appeals of the Director's order. IDWR contends on appeal that the Director's order should have included a condition requested by IDWR subordinating project water rights to future upstream uses. IPC contends that the order's conclusions that there was a need for the power to be produced by Project No. 6015, that the project would be economically beneficial, and that the project was potentially financially feasible were in error. The appeals filed by IDWR and IPC incorporate and are based on the arguments made by IDWR and IPC in their requests for rehearing of the Commission's July 30, 1986 order 2/ issuing a license for the Horseshoe Bend Project No. 5376.

The arguments raised by IDWR and IPC in this proceeding were considered and rejected by us in our January 25, 1988 order denying IDWR's and IPC's requests for rehearing in the Project No. 5376 proceeding. 3/ Since IDWR and IPC have not raised any new arguments in relation to Project No. 6015, we will deny their appeals in this proceeding for the same reasons discussed in our January 25, 1988 order in the Project No. 5376 proceeding.

1/ 36 FERC ¶ 62,266 (1986).

2/ 36 FERC ¶ 61,135 (1986).

3/ See 42 FERC ¶ 61,072 (1988).

RECEIVED
AUG 17 1988

Department of Water Resources

Project No. 6015-009

-2-

The Commission orders:

The appeals filed on September 29, 1986, by the Idaho Department of Water Resources and the Idaho Power Company in the above-captioned proceeding are denied.

By the Commission.

(S E A L)

Lois D. Cashell

Lois D. Cashell,
Acting Secretary.

AUG 05 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

Governor

R. KEITH HIGGINSON

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

October 14, 1987

RE: Permit No. 47-7771

Bonneville Pacific Corp.
257 E. 200 S., Suite 800
Salt Lake City, UT 84111

Dear Permit Holders:

This office acknowledges receipt of the Assignment of the above referenced permit to you.

Enclosed for your records is a copy of the permit. Be sure to note the conditions of approval on the fourth page that identify requirements necessary for developing the permit into a licensed water right.

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

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc
Enclosure

MICROFILMED

MAR 10 1988

Permit No. 47-7771

ASSIGNMENT REVIEW CHECK LIST

1. Signature of Permit Holder? Yes
2. Notary? Yes
3. a. Full Assignment? Yes
b. Partial Assignment?
4. "No assignment" condition on permit? No
5. Commencement of Works received? ~~Yes~~ No - FERC - DELAY
 - a. Commencement of works requested?
 - b. Show Cause Order drafted & sent? N/A
 - c. Cancellation necessary? NO
6. Affidavit of residency required? Yes -
7. Extension granted due to litigation? No
(If yes, commencement of works is not required.)

1. Type permit summary sheet. Sharla —
2. Coding sheet. " —
3. Acknowledgement letter type. #1
4. Copy to region. Sharla —

Date 10-8-87

Employee Jen

September 2, 1987

Rock Creek Hydropower, Inc.
1139 Falls Avenue East, Suite 2
Twin Falls, ID 83301

Gentlemen:

Re: Permit No. 47-7771

This office acknowledged receipt of the assignment conveying the above referenced permit to you. The department has changed its records and enclosed is a copy of the permit for your records.

Enclosed is a copy of the request for extension of time. The time within which to submit proof of beneficial use is extended to September 1, 1989. Note the conditions of approval as set forth on the second page.

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

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

MICROFILMED

SEP 25 1987

STAFF REVIEW SHEET - EXTENSION OF TIME

Permit No. 47-7771

Reviewed by [Signature]

Date 8-18-87

BASIC INFORMATION

- Y Date stamp received
Y Extension received timely
 (not prior to 6 month before proof due date or after reinstatement period)
Y Fee received and receipted
Y Name and signature same as permit
Y Address change (indicate on coding sheet)

BASIS FOR EXTENSION REQUEST

- Has adequate work been completed to demonstrate due diligence?
 Has the cost incurred been adequate to demonstrate an intent to complete the project?

No Has the permit been involved in litigation?

- a. Swan Falls _____ Dismissed from Swan Falls _____
 Other _____ Identify _____
 b. Is supporting documentation needed to complete the file? _____
 Requested _____
 c. Calculate the period of delay

Date litigation completed _____

Date litigation began _____

Total period of delay = _____

Present proof due date + _____

NEW PROOF DUE DATE = _____

Y Is delay by a government agency?

Is supporting documentation needed to complete the file? Yes
 Requested? _____

ACTION TAKEN

Recommend approval based on delay by fed. agency. The delay from 4-1-1986 to 1-1-1986 = 9 mos, 2 yrs. Deliv b/p due date 1-1-86
Date rec issued 1-1-1986 = 1-1-1986
app for extension 1-1-86

Special conditions or remarks:

N/A Reinstate Date extension received _____ = _____
 Proof due date _____ = _____
 No. of days late _____ = _____
 Priority date _____ = + _____
 ADJUSTED PRIORITY DATE _____ = _____

- Prepare coding sheet
 Change rolodex cardf

Permit No. 47-7771

ASSIGNMENT REVIEW CHECK LIST

1. Signature of Permit Holder? Yes
2. Notary? Yes
3. a. Full Assignment? Yes
b. Partial Assignment?
4. "No assignment" condition on permit? NO
5. Commencement of Works received? Yes
 - a. Commencement of works requested?
 - b. Show Cause Order drafted & sent?
 - c. Cancellation necessary?
6. Affidavit of residency required? Yes - rec'd
7. Extension granted due to litigation? N/A
(If yes, commencement of works is not required.)

1. Type permit summary sheet. ✓
2. Coding sheet. ✓
3. Acknowledgement letter type.
4. Copy to region. ✓

Shorla—
Shorla—
Rita
Shorla

Date 7-31-87

Employee Jaw.

INTER-DEPARTMENT MEMO — 1

DATE **RECEIVED**
JUL 24 1987

FROM *Lois Holmes - Southern*
TO *State Office - Water Alloc.*
SUBJECT *47-7771 - Assignment.*

Department of Water Resources

What I told Mr Howard was that it didn't appear that 42-205-210 applied to Lessees who are not Potential Owners of the Water Permit through the lease agreement.

MICROFILMED
SEP 23 1987

LH

SIGNATURE

Howard & Associates

Professional Engineer - Land Surveyor

RECEIVED

JUL 21 1987

Department of Water Resources
Southern Region Office

Department of Water Resources
State Office 450 W. State Street
Statehouse
Boise, Idaho 83720

7-21-87

re: permit # 47-7771

Dear Sirs:

I am submitting the following to your department.

1. Assignment of permit 47-7771 to an Idaho Corporation
Rock Creek Hydropower Inc.
2. Affidavit that Rock Creek Hydropower Inc. is an Idaho
corporation.

Rock Creek Hydropower Inc. is going to lease water right #47-7771 to an Idaho general partnership Bonn-Tech. Loren Holmes manager of your Twin Falls office informed me that according to Idaho law, the Idaho Department of Water Resources does not approve such leases. I am however, requesting that your department acknowledge Rock Creek Hydropower Inc.'s intention to lease permit #47-7771 to Bonn-Tech.

Thank you



Charles D. Howard
permit holder

- attached: 1. assignment of permit
2. affidavit of residency

MICROFILMED

SEP 25 1987

733-7171

1139 Falls Ave. E. Suite #2

Twin Falls, Idaho

83301



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

EXTENSION OF TIME

July 29, 1987

Howard & Associates
1139 Falls Ave. E. Suite 2
Twin Falls, ID 83301

PERMIT NO. 47-7771

We are in receipt of the \$15 extension fee for Extension(s) of Time to provide additional time in which to submit proof of beneficial use on a water right permit.

Your request for extension(s) of time is being reviewed by staff. You will be informed of our decision when review has been completed.

Enclosed is our receipt No. 44101.

Roberta Garrett
Records Supervisor

Enclosure

MICROFILMED

SEP 25 1987

Handwritten initials or mark.

Handwritten: 47-7771
9-15-86

RECEIVED
SEP 9 1986

86 FERC 162, 266

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION AUG 27 1986

-2- Department of Water Resources

Charles D. Howard

Project No. 6015-007

ORDER ISSUING LICENSE
(Major Project - SMW or Less)
(Issued August 29, 1986)

Charles D. Howard has filed a license application under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Rock Creek No. 2 Project, located in Twin Falls County, Idaho, on Rock Creek. The project would occupy lands of the United States administered by the Bureau of Land Management.

Notice of the application has been published. The motions to intervene that have been granted and the comments filed by agencies and individuals have been fully considered in determining whether to issue this license, as discussed below.

Idaho Power Company asked that a need for project output be shown. The need for project power and its economic feasibility are discussed in the attached Environmental Assessment (EA). The Commission has also discussed these issues raised by IPC in its recent license order for the Horseshoe Bend Project No. 5376. 36 FERC 161,135 (1986).

A proposed project is economically feasible so long as its projected levelized cost is less than the long-term levelized cost of alternative energy to any utility in the region that can be served by the project. Staff has calculated the projected alternative energy cost in the region to be 73.1 mills per kilowatt hour as of the date the Rock Creek No. 2 Project is expected to go on line. This cost is based on the generic coal-fueled steam-electric plant forecasted by the Northwest Power Planning Council in its proposed resources portfolios to come on line about the year 2002. Since the levelized cost of energy from the Rock Creek No. 2 project is significantly less than this cost the project is economically feasible.

The applicant proposes to sell the power generated by the project to Idaho Power Company. The Idaho Public Utility Commission (IPUC) has established a 35-year levelized cost for Idaho Power Company of 47 mills per kilowatt hour for projects going on line in 1987. This rate is lower than the estimated levelized cost of the Rock Creek No. 2 project of 53.2 mills per kilowatt hour. The proposed project thus might not be financially feasible if it has to depend on a power sales contract with Idaho Power Company at the established rates. However, the project power could also be sold to other utilities in the Northwest or California whose currently established avoided costs range up to 80 mills per kilowatt hour.

Based on projected regional costs and the currently established rates in the region, staff is reasonably confident that there will be a market for the project power at prices sufficient to support construction within the time constraints of the license.

The Idaho Department of Water Resources (IDWR) requested that the Commission condition the license to insure that the project would not interfere with developments on the Snake River and its tributaries pursuant to the Idaho State Water Plan. This request is not granted for the reasons given by the Commission in the Horseshoe Bend license order where IDWR requested the inclusion of the same condition.

Summary of Findings

An EA was issued for this project. Background information, analysis of impacts, support for related license activities, and the basis for a finding of no significant impact on the environment are contained in the EA attached to this order. Since this license is not a major federal action significantly affecting the quality of the human environment.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if constructed, operated, and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the Safety and Design Assessment attached to this order.

The Director, Office of Hydropower Licensing, concludes that the project would not conflict with any planned or authorized development, and would be best adapted to comprehensive development of the waterway for beneficial public uses.

The Director orders:

(A) This license is issued to Charles D. Howard (licensee) for a period of 50 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Rock Creek No. 2 Project. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G:

Exhibit G-	FERC No. 6015-	Showing
1	19	Project Location
2	20	Alignment Plan View

(2) Project works consisting of: (a) a 9.5-foot-high, 40-foot-long concrete diversion dam with crest elevation 3,306 feet; (b) a concrete intake structure with an overall length of 88 feet; (c) a 66-inch-diameter, 2,700-foot-long steel penstock; (d) a 30-foot-wide, 50-foot-long, 14-foot-high concrete powerhouse containing three generating units, rated at 1.1 MW, 0.52 MW, and 0.28 MW; (e) a concrete tailrace with a normal water surface elevation of 3,161 feet; (f) the 2.4-kV generator leads; (g) a 2.4/4.16-kV, 2MVA transformer; (h) a 4,700-foot-long, 4.16-kV transmission line connecting to an existing Idaho Power Company substation; (i) access facilities including a 14-foot-wide, 44-foot-long steel bridge, 20,000 feet of existing gravel road, and 2,700 feet of proposed gravel road; and (j) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F recommended for approval in the attached Safety and Design Assessment.

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

(C) The Exhibit G described above and those sections of Exhibits A and F recommended for approval in the attached Safety and Design Assessment are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-2, (October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," except article 20. The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued:

- a. For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 2,530 horsepower.
- b. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 1.6 acres of its lands, a reasonable annual charge as determined by the Commission in accordance with its regulations in effect from time to time.

Article 202. 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 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).

Article 203. The licensee shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which result from maintenance, operation, or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

Article 301. The licensee shall commence construction of project works within two years from the issuance date of the license and shall complete construction of the project within four years from the issuance date of the license.

Article 302. The licensee shall, at least 60 days prior to start of construction, submit one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe and adequate project.

Article 303. The licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall submit to the Commission's Regional Director and Director, Division of Inspections, one copy each of the approved cofferdam construction drawings and specifications and the letter(s) of approval.

Article 304. The licensee shall within 90 days of completion of construction file with the Commission for approval revised Exhibits A, F, and G to describe and show the project as built.

Article 305. The licensee shall, at least 60 days prior to start of construction, submit one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of the contract drawings and specifications for a system to automatically shut off flow to the conduit or penstock at the diversion headworks, in the event of a conduit or penstock failure. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe shut down of the conduit and penstock and thereby prevent serious environmental damage.

Article 401. The licensee, after consultation with the Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, Bureau of Land Management, and Soil Conservation Service, shall prepare and file with the Commission within 6 months from the date of issuance of this license, a plan to control erosion and dust, to stabilize slopes, and to minimize the quantity of sediment or other potential water pollutants resulting from construction and operation of the project, including spoil disposal. The plan shall also include: functional design drawings and map locations of control measures; an implementation schedule; monitoring and maintenance programs for project construction and operation, including procedures for emergency situations (rock falls and pipeline failures); and provisions for periodic review of the plan and for making any necessary revisions to the plan. Documentation of agency consultation on the plan and copies of any agency recommendations shall be included in the filing.

In the event that the licensee does not concur with any agency recommendations, the licensee shall provide a discussion of the reasons for not concurring, based on actual site geological, soil, and groundwater conditions. The Commission reserves the right to require changes to the plan. Unless the Director, Office of Hydropower Licensing, directs otherwise, the licensee may commence ground-disturbing or spoil-producing activities at the project 90 days after filing the above plan.

Article 402. The licensee shall operate the Rock Creek No. 2 Project in an instantaneous run-of-river mode for the protection of fish and wildlife resources. The licensee, in operating the project in an instantaneous run-of-river mode, shall at all times maintain a discharge from the project so that flow in Rock Creek, as measured immediately downstream from the project tailrace, approximates the instantaneous sum of inflow at the diversion structure. Instantaneous run-of-river operation may be temporarily modified if required by operating emergencies beyond control of the licensee, and for short periods upon mutual agreement between the licensee and the Idaho Department of Fish and Game.

Article 403. The licensee shall maintain in Rock Creek between the diversion structure and the tailrace, a continuous minimum flow of 41 cubic feet per second (cfs) in October, November, February, and March, 31 cfs in December and January, and 82 cfs from April 1 through September 30, as measured immediately downstream from the diversion dam, or the inflow at the diversion, whichever is less, for the protection of fish and wildlife resources in Rock Creek. This flow regime may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee and the Idaho Department of Fish and Game.

Article 404. The licensee, after consultation with the Idaho Department of Fish and Game, and within 6 months of the date of issuance of this license, shall install a streamflow gage in Rock Creek immediately upstream of the powerhouse outfall. The licensee shall monitor streamflows and maintain records of daily minimum and maximum flow releases from the diversion dam for each water year (October 1 through September 30). The licensee shall provide these daily records of each year to the Idaho Department of Fish and Game by December 31, for the preceeding water year and more often if requested by the agency.

Article 405. The licensee, after consultation with the Idaho Department of Fish and Game and within 6 months from the date of issuance of this license, shall file for Commission approval functional design drawings of the fish screening structure for the intake and of the design features of the tailrace to prevent the attraction and entry of fish. The filing shall include documentation of consultation and comments of the consulted

agencies on the drawings. The licensee shall file as-built drawings with the Commission within 6 months after completing construction.

Article 406. The licensee, after consultation with the Idaho Department of Fish and Game and within 6 months from the date of issuance of this license, shall file for Commission approval functional design drawings of fish passage facilities for the Rock Creek No. 2 Project and a plan to monitor the operation of the fish passage facilities. The filing shall include documentation of agency consultation and agency comments on the drawings and monitoring plan. The licensee shall file as-built drawings with the Commission within 6 months after completion of construction.

Article 407. The licensee, after consultation with the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game and within 6 months from the date of issuance of the license, shall file a transmission line design plan, prepared in accordance with the guidelines set forth in "Suggested Practices for Raptor Protection on Power Lines", Raptor Research Report No. 4, Raptor Research Foundation, Inc., 1981. The plan shall include detailed design drawings of the transmission line, clearly showing phase spacing, configuration, and grounding practices, a construction schedule, and agency comments on the adequacy of the design plan. Unless the Director, Office of Hydropower Licensing, instructs otherwise, licensee may commence construction of transmission line facilities 90 days after filing the plan.

Article 408. The licensee, after consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, and within 6 months from the date of issuance of this license, shall file for Commission approval a wildlife mitigative plan. The plan shall include specific measures to revegetate disturbed areas with native plant species beneficial to wildlife and measures to mitigate the loss of riparian vegetation. An implementation schedule and agency comments on the plan shall be included in the filing.

Article 409. The licensee shall, prior to any future construction at the project, consult with the Idaho State Historic Preservation Officer (SHPO) and the Bureau of Land Management (BLM) about the need for cultural resource survey and salvage work. Documentation of the nature and extent of consultation, including a cultural resources management plan and a schedule to conduct any necessary investigation prior to such construction, and a copy of a letter from the SHPO accepting the plan, shall be filed with the Commission within 6 months prior to any construction activity in the location of such investigations. The licensee shall make available funds in a reasonable amount for any such work as required. If any previously unrecorded archeological or historic 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 mitigative plan for the protection of significant archeological or historic resources. If the licensee, the SHPO, and BLM cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the licensee to conduct, at its own expense, any such work found necessary.

Article 410. 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 processes, the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 411. (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 watercraft 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 vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric

transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

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

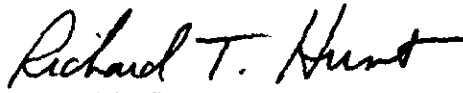
(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

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

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(E) The relief requested in the motions to intervene by Idaho Power Company and Idaho Department of Water Resources is denied.

(F) This order is issued under authority delegated to the Director and is final unless appealed under Rule 1902 to the Commission by any party within 30 days from the issuance date of this order. Filing an appeal does not stay the effective date of this order or any date specified in this order. The licensee's failure to appeal this order shall constitute acceptance of the license.



Richard T. Hunt
Director, Office of
Hydropower Licensing

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

Rock Creek No. 2 Hydroelectric Project
FERC No. 6015-007--Idaho
March 28, 1986

I. APPLICATION

On August 31, 1984, Charles D. Howard (applicant) applied for a major license of 5 megawatts (MW) or less, for the Rock Creek No. 2 Hydroelectric Project.

The project would be located on Rock Creek, a tributary of the Snake River, approximately 4 miles from Twin Falls, in Twin Falls County, Idaho (figure 1). Approximately 1.6 acres of lands administered by the Bureau of Land Management would be affected.

II. PURPOSE AND NEED FOR POWER

A. Purpose

The proposed project would provide an estimated average of 10,453,000 kilowatt hours (kWh) of electrical energy per year, at a 63-percent plant factor, to the Idaho Power Company or to another northwest utility.

B. Need for Power

Available data suggest that because of population growth and a continuing demand for amenities, growth in the demand for electric power and energy will continue. Assuming positive load growth and an existing resource base, a reliability need for additional resources can be projected to exist in the future for any power system. Additional resources would have to be obtained in the future for any system in order to meet projected additional load requirements with the degree of reliability required for present systems. The timing of the need would vary in different systems, depending upon such factors as the rates of load growth, the load characteristics, the available existing power resources, and the reliability criteria established for each system.

Installation of a power resource before a reliability need exists can be justified if, over the life of the resource, the early installation of the resource will provide benefits compared to the installation of the most likely alternative power resource when a reliability need occurs. The early installation of a hydroelectric resource and the use of hydroelectric energy to displace more expensive thermal energy generation, coupled with the incremental deferral of a thermal capacity alternative, can produce

economic benefits. Fossil-fueled conservation and reduced atmospheric impacts of fossil-fueled combustion are additional benefits of hydroelectric displacement and deferral of the thermal generation.

In the 1985 Northwest Conservation and Electric Power Plan, the Northwest Power Planning Council (Council) projects a regional need for additional power resources by 1992, based on a mid-high growth rate forecast and by 1996, based on a mid-low growth rate forecast (the two equally likely and most probable growth rate scenarios). The Bonneville Power Administration forecast, released in December 1984, and the Pacific Northwest Utilities Conference Committee forecast, issued in March of 1985, show regional energy deficits for mid-range load forecasts in the 1997-1998 and 1995-1996 periods, respectively. Individual systems within the region also indicate resource deficits exist prior to the regional deficits.

The staff's economic analyses show a need for the project. From the time the project becomes operational until it is needed to meet increased regional power needs, the proposed project would be available to lessen the use of existing fossil-fueled electric generating plants located in the Pacific Northwest, California, and the Southwest, thus conserving nonrenewable resources and reducing the emission of noxious byproducts caused by the combustion of fossil fuels.

In accordance with the 1980 Pacific Northwest Electric Power Planning and Conservation Act (Northwest Act), the Council also prescribed a spectrum of resources to meet power needs through the year 2005 for each of the respective load forecast scenarios. In both the mid-low and mid-high forecast scenarios, these resources include cost-effective conservation, hydroelectric generating resources, and thermal generating resources to strengthen secondary energy. Additional cogeneration and coal-fired resources are included to meet the mid-high forecast scenario.

Since the Northwest Act grants a higher priority to the use of renewable-resource generation than to the use of fossil-fueled generation, the installation of reliable, cost-effective, and environmentally acceptable hydroelectric resources to defer the thermal generation included in the Council plan is justifiable under the Northwest Act.

Continuing modifications to increase the carrying capacity of transmission lines connecting the Pacific Northwest, California, and the Southwest will allow a significantly greater transfer of power than has occurred historically and will provide an expanded market for economic project power.

C. Hydroelectric Power and Resource Utilization Evaluation

The staff made an independent study of the hydropower potential of the Rock Creek No. 2 Project and found that the applicant's proposed installed capacity, estimated average annual generation, selection of size and type of generation units, and construction cost estimate are reasonable.

The staff finds that the project is economically feasible based on fuel savings from off-loading existing coal-fired, steam-electric plants in the Pacific Northwest until 2002 and by producing equivalent power from a steam-electric plant thereafter. For the analysis, staff used a levelized power value of 73.1 mills/kWh, a levelized tax savings of 5.8 mills/kWh, and a levelized annual cost of 53.2 mills/kWh, giving a net annual benefit of 25.7 mills/kWh.

The staff incorporated the minimum flows proposed by the applicant into the estimates of annual generation and into the project's economics. The 1.9-MW capacity would make good use of the flow and hydraulic head of the site.

The proposed project does not conflict with any proposed or existing developments of Rock Creek, makes good use of the flow and fall of the creek, and would be best adapted to the comprehensive development of Rock Creek upon compliance with the terms and conditions of the license.

III. PROPOSED PROJECT AND ALTERNATIVES

A. Proposed Project

1. Project Description

The proposed project would consist of: (1) a 9.5-foot-high, 40-foot-long concrete diversion dam; (2) a concrete intake structure; (3) a 66-inch-diameter, 2,700-foot-long steel penstock; (4) a 1,500-square foot powerhouse, containing three units with a total generating capacity of 1.9 MW; (5) a concrete tailrace; (6) a 4,700-foot-long, 4.16-kilovolt, aerial transmission line; and (7) access facilities, including a 44-foot-long, steel bridge, 20,000 feet of existing gravel road, and 2,700 feet of proposed gravel road. Principal project features are shown in figure 2. The project would be operated in a run-of-river mode, with a hydraulic capacity of 190 cubic feet per second (cfs).

2. Proposed Mitigative Measures

The applicant proposes the following mitigative measures: (1) releasing a minimum flow of 41 cfs in October and November, 31 cfs in December and January, 41 cfs in February and March, and 82 cfs in April through September; (2) constructing self-cleaning screens to prevent fish from entering the penstock; (3) designing the diversion and inlet to prevent air entrainment in the penstock; (4) installing fish passage facilities; (5) using a transmission line design that would prevent raptor electrocutions; (6) scheduling instream construction activities during periods of low flows; (7) using riprap in the tailrace to reduce erosion in the tailrace; (8) revegetating disturbed areas with native vegetation; and (9) painting the penstock a natural brown to allow it to blend into the landscape.

B. Alternatives to the Proposed Project

Hydroelectric projects are unique in the electric power generation field because of their rugged machinery, high reliability, low operation and maintenance costs, long life, and use of a renewable resource. These characteristics, plus a guaranteed market under the Public Utilities Regulatory Policies Act and tax advantages such as rapid depreciation and energy credits, have made small hydroelectric project development an attractive business venture and have fostered a considerable amount of competition for the more feasible hydroelectric projects.

There exists a finite number of economically feasible hydroelectric sites. Generally, hydro sites are selected based on the availability of adequate streamflow, favorable topography (a sharp vertical drop in a short horizontal distance), accessibility, power transmission distance, and minimum streamflow and fishery requirements. This site has been selected for development by the applicant, and the alternative is not to construct the project.

If the project is not constructed, the power that would have been developed will be provided by nonrenewable fuels, a negative influence on energy independence. It is presumed that projects that would use nonpassive renewable resources other than hydropower, such as wind, biomass, or solar photovoltaic power generation, will be installed when commercially and economically feasible. Whether the project is built or not, the installation of projects that would use passive renewable resources, such as solar water or space heating will continue, and conservation efforts will continue, until the market is saturated or until these installations become uneconomical.

C. Alternative of No Action

No action would mean that the potential hydropower of the proposed project would not be used; there would be no construction and no alteration of the existing environment.

IV. CONSULTATION AND COORDINATION

A. Agency Consultation

The Commission's regulations require prospective applicants to consult with the appropriate resource agencies before filing an application for license. This constitutes an initial step in compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Consultation must be complete and must be documented in accordance with the Commission's regulations. After the Commission accepts the application, concerned entities may submit formal comments during the public notice period. The following entities commented on the application for the Rock Creek Project, in response to a public notice dated December 11, 1984.

<u>Commenting Entities</u>	<u>Date of Letter</u>
Idaho Department of Health and Welfare	January 18, 1985
Department of the Interior	February 8, 1985
<u>Intervenor</u>	
Idaho Power Company	February 4, 1985
Idaho Department of Water Resources	February 8, 1985

The applicant responded to the commenting entities by letter dated February 21, 1985.

B. Pacific Northwest Electric Power Planning and Conservation Act

Under Section 4(h) of the Northwest Act, the Council developed the Columbia River Basin Fish and Wildlife Program (Program) to protect, mitigate, and enhance fish and wildlife resources associated with the development of hydroelectric projects. The Program contains a framework for assessing the impacts of new hydroelectric development on fish and wildlife resources and lists a number of general mitigative measures that should be implemented for any new development.

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

The Program states that authorization for new hydroelectric projects should include conditions of development that would mitigate the impacts of the project on fish and wildlife resources.

The applicant proposes ways to mitigate adverse impacts and agrees with the consulted agencies on mitigative measures. Further, the applicant must satisfy the intent of the Program by providing adequate mitigative measures. Moreover, the Commission has the authority to order, where practical, alterations of project structures and operations in order to take into account the Council's Program. Accordingly, the staff concludes that the proposed project does not conflict with the applicable provisions of the Council's Program.

V. ENVIRONMENTAL ANALYSIS

A. Proposed Project

1. General Description of the Locale

Rock Creek originates in Cassia County, about 30 miles southeast of Twin Falls, and flows northwest to the Snake River. About 3 miles southeast of Twin Falls, Rock Creek enters a well-defined canyon that continues through Twin Falls and through the project area to its confluence with the Snake River. Lands surrounding Rock Creek support agriculture and desert shrub vegetation.

The semiarid climate of the project area is characterized by hot, dry summers, cold winters, and windy springs. Average annual precipitation is about 10 inches.

The proposed project would have no direct or indirect effects on recreation, visual resources, and socioeconomic resources. A discussion of other resource concerns follow.

2. Geology and Soils

Affected Environment: The proposed project would be located in southern Idaho on the Rock Creek canyon bottom, about 1 1/4 miles

upstream from its confluence with the Snake River. Bedrock in the area consists of basalt lava flows. The diversion dam, penstock, diversion access road, and powerhouse would be located on relatively soil-free rock talus at the base of the steep canyon walls. The Rock Creek canyon rim is unstable; the basalt rimrock is commonly fractured by tension cracks (Howard, 1984). Rock falls are the source of the talus on the lower canyon slopes.

Environmental Issues and Concerns: Soils, though relatively uncommon or thin in the proposed major construction areas, would be very susceptible to erosion and to loss of sediment during excavation and other soil-disturbing construction activities. Canyon rim failures and rock falls would present hazards to project features. The applicant would set structures away from the rim and away from tension cracks to eliminate hazards on the rim; would place structures away from alcoves and runout slopes to eliminate serious hazards within the canyon; and would use flow barriers to alleviate damage from rock falls if future problems arise (Howard, 1984). Erosion and sedimentation, however, would also occur in the event of a pipeline failure or break caused by rock falls or shifting of the talus.

Conclusions and Recommendations: The applicant has proposed some general measures to reduce erosion and sedimentation, but has not provided a specific erosion, sediment, and slope-stability control plan for the project. The applicant could adequately minimize the erosion, sedimentation, and effects of unstable slope conditions at the project by using suitable design measures and construction techniques in conjunction with the proposed general measures. The licensee should consult with appropriate resources agencies in preparing and implementing a detailed erosion, sediment, and slope-stability control plan for the project.

Unavoidable Adverse Impacts: Minor erosion and sedimentation would be unavoidable during construction.

3. Water Resources

Affected Environment: At the proposed project site, Rock Creek drains about 300 square miles. The natural flow of Rock Creek is supplemented during fall and early winter by return flow in the form of irrigation water from adjacent cropland that produces higher than expected flow for streams in southeastern Idaho. Flows in Rock Creek, as measured at a Geological Survey gage located 1,000 feet downstream of the proposed powerhouse, exceed 135 cfs 90 percent of the time; 205 cfs 50 percent of the time; and 290 cfs 10 percent of the time. The average discharge during the 6 years of record was 200 cfs. From 1975 to 1984, flows ranged from a

daily minimum of 70 cfs to a daily maximum of 2,120 cfs. This maximum flow was artificially induced by the failure of an irrigation canal in May 1978. Low flows typically occur in February and March; high flows typically occur in August, September, and October.

The diversion dam would raise the existing water level by 4 feet, creating an impoundment with a surface area of 0.14 acre, a gross storage capacity of 0.56 acre-feet, a maximum depth of 9.5 feet, and a mean depth of 4 feet.

The Idaho Department of Health and Welfare (DHW) classifies the water quality of Rock Creek as poor because of elevated water temperatures in summer and high levels of bacteria, nutrients, and turbidity. Wastes from municipal, industrial, and agricultural sources have contributed to the poor water quality of Rock Creek. Federal and state resource agencies are trying to improve the water quality of Rock Creek.

The ranges of specific water quality data for Rock Creek are: water temperature, 37.4 to 67.1 degrees Fahrenheit (°F); dissolved oxygen (DO), 8.4 to 12.2 milligrams per liter (mg/l); pH, 8.4 to 8.6; fecal coliform, 88 to 1,200 coliforms per 100 milliliters; total nitrogen, 2.4 to 4.4 mg/l; and total phosphorus, 0.06 to 0.39 mg/l.

Environmental Issues and Concerns: Project construction would erode surface soils and would resuspend streambottom sediments, causing minor, short-term increases in turbidity. Operating the proposed project would reduce the volume of water flowing through the 2,700-foot-long bypass reach and would adversely affect water quality. Reduced discharges to the bypass reach could cause higher water temperatures and could reduce DO concentrations during the summer.

Conclusions and Recommendations: Implementing a plan to control erosion and sedimentation, as discussed in Section V.2, would minimize the amount of sediment introduced to Rock Creek and would reduce turbidity.

As recommended by DHW, the licensee should release sufficient flows into the bypass reach to maintain DO and water temperature at levels in compliance with the Idaho water quality standards for Rock Creek. The specific flow regime is discussed in the following section on fishery resources.

The Idaho Department of Fish and Game (DFG) recommends that the applicant take measures to prevent gas supersaturation in the tailrace discharge (letter from Jerry M. Conley, Director, Idaho

Department of Fish and Game, Boise, Idaho, September 12, 1984). Gas supersaturation should be prevented in the project discharge; the applicant agrees to design the diversion and intake structures to prevent air entrainment in the penstock.

On October 11, 1984, DHW granted water quality certification for the proposed project, under Section 401 of the Clean Water Act.

Unavoidable Adverse Impacts: Some erosion, sedimentation, and turbidity problems would be unavoidable during project construction. Operating the project would cause minor, long-term changes in DO concentrations and water temperature in the 2,700-foot-long bypass reach.

4. Fishery Resources

Affected Environment: Game species of fish in Rock Creek are rainbow trout (*Salmo gairdneri*) and brown trout (*S. trutta*). Nongame species include speckled dace (*Rhinichthys osculus*), mottled sculpin (*Cottus bairdi*), largescale sucker (*Castomus macrocheilus*), reidside shiner (*Richardsonius balteatus*), and common carp (*Cyprinus carpio*).

DFG rates the fishery resource in the project reach of Rock Creek as substantial. In 1978, DFG classified Rock Creek as a value class III stream, which indicates the occurrence of habitat that is occasionally used by a highly valued fish population of high interest or the occurrence of an essential habitat for a relatively low-valued population of a fish species of high interest. The classification means that there is a moderate potential for either restoration of the habitat or reclamation to an equal or higher valued fishery.

In September 1982, DHW conducted an angler survey as part of a biological assessment of Rock Creek. The results of the survey show that the hourly catch rate of trout is poor compared to the rate of other streams in southeastern Idaho, and that anglers rate the trout fishing in Rock Creek as average. Efforts to improve the water quality of Rock Creek have improved the trout fishery; eventually, Rock Creek may be upgraded to a value class II stream (personal communication, Bob Bell, Regional Fishery Manager, Idaho Department of Fish and Game, Jerome, Idaho, March 13, 1986).

No federally listed threatened or endangered aquatic species occur within the project area (letter from John P. Wolfen, Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Department of the Interior, September 17, 1984).

Environmental Issues and Concerns: Construction activities would temporarily increase turbidity levels in Rock Creek. Rochester

et al. (1984) state that construction-related sedimentation and turbidity may reduce the visibility of sight-feeding fish, disrupt spawning, and smother aquatic fish food organisms. The applicant's success in stabilizing slopes and minimizing long-term erosion would determine long-term increases in sedimentation.

The applicant's diversion of up to 200 cfs for project operation would reduce flows and would reduce the available habitat for the fishery resources. Flow reduction in many western streams affects fishery resources by reducing usable habitat (Loar and Sale, 1981). Reducing discharges to the bypass reach might elevate the summer water temperatures of Rock Creek, which are at the upper range of optimum temperatures for trout during that period. Bell (1984) found that growth is retarded in all coldwater species of fish when water temperatures are in excess of 68 °F.

Conclusions and Recommendations: Implementing a plan to control erosion and sedimentation, as discussed in Section V.2, would protect the fishery resources from increases in turbidity.

DFG recommends that the applicant release minimum flows from the diversion according to the following flow regime schedule to protect the fishery resources.

Month	Flow in cfs
October and November	41
December and January	31
February and March	41
April through September	82

The applicant agrees to follow the schedule of minimum flow releases recommended by DFG and as noted earlier, proposes to operate the project in a run-of-river mode.

An instream minimum flow release must be maintained to protect the fishery resource in Rock Creek. The licensee should implement the schedule of minimum flow release recommended by DFG and should operate the project in a run-of-river mode. The licensee should also install a stream gage to monitor the minimum flow releases.

DFG recommends that the applicant provide self-cleaning fish screens at the project intake to prevent entrainment of fish in the penstock, and the applicant agrees. Appropriately designed self-cleaning fish screens should be attached to the intake structure to minimize impingement and prevent entrainment. The design features of the tailrace should prevent the attraction and entry of fish.

DFG also recommends that upstream fish passage facilities be installed at the diversion in the event the diversion proves to be a barrier

to trout migration. The applicant agrees to install a fish ladder at the diversion during the initial construction of the project. The licensee should install an appropriately designed fish ladder at the diversion to allow the upstream movement of resident trout.

Unavoidable Adverse Impacts: Fish populations would experience a minor, short-term impact as a result of instream construction activities.

5. Terrestrial Environment

Affected Environment: The majority of the project area is characterized by shrub communities, which are dominated by big sagebrush (*Artemisia tridentata*), greasewood (*Sarcobatus vermiculatus*), and shadscale (*Atriplex confertifolia*). Riparian communities found along Rock Creek consist of isolated stands of cottonwood (*Populus* spp.), willow (*Salix* spp.), and tamarisk (*Tamarix chinensis*) (Howard, 1984).

Mule deer (*Odocoileus hemionus*) are found in the project vicinity. Other mammals include cottontail rabbit (*Sylvilagus nuttalli*), coyote (*Canis latrans*), raccoon (*Procyon lotor*), and porcupine (*Erethizon dorsatum*) (Howard, 1984). Raptors expected to occur in the project vicinity include golden eagle (*Aquila chrysaetos*) and prairie falcon (*Falco mexicanus*).

No federally listed threatened or endangered plant or animal species are known to occur in the project area (letter from John P. Wolflin, Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Department of the Interior, September 17, 1984).

Environmental Issues and Concerns: Constructing the penstock and access road would cause the loss of approximately 5 acres of sparsely vegetated talus slopes, which have limited value to wildlife. Installing the transmission line poles would affect less than 2 acres of shrub vegetation. Construction of the powerhouse and diversion structure has the potential to disturb less than 1 acre of riparian habitat; riparian habitat is valuable wildlife habitat (Brinson et al., 1981), especially in arid regions, and is very limited in Idaho (Boccard, 1980). Increased noise levels and human activity during the 3-month construction period would temporarily disrupt the normal activities of local wildlife population in and adjacent to the project area. The transmission line, if not properly designed, would pose an electrocution hazard to large raptors.

Conclusions and Recommendations: The applicant's proposal to reseed disturbed areas with native plant species would minimize

long-term impacts to wildlife habitat; however, no specific details of the proposal have been provided. The licensee should provide a plan that describes revegetation methods, plant species used, and revegetation monitoring, and that provides for the replacement of any lost riparian habitat.

The design of the transmission line in accordance with accepted raptor guidelines (Raptor Research Foundation, Inc., 1981), as proposed by the applicant, would adequately protect large raptors from electrocution. The applicant has not provided specific design drawings of the proposed line, however. The licensee should prepare a specific transmission line design plan that outlines measures to protect raptors.

Unavoidable Adverse Impacts: Human activity and noise levels during the construction period would have a minor, short-term effect on local wildlife populations.

6. Cultural Resources

Affected Environment: No archeological or historic sites have been identified in the project area that are listed in, eligible for, or potentially eligible for inclusion in the National Register of Historic Places (letter from Thomas J. Green, State Archeologist, State Historic Preservation Office, Idaho State Historical Society, Boise, Idaho, July 10, 1984).

Environmental Issues and Concerns: Archeological or historic sites discovered during construction could be affected by the project.

Conclusions and Recommendations: If the licensee discovers archeological or historic sites during construction, the licensee should halt construction in the vicinity of the sites, should consult the State Historic Preservation Officer about the significance of such sites, and should implement any necessary measures to avoid or to mitigate impacts to significant sites.

Unavoidable Adverse Impacts: None.

B. Cumulative Impacts

1. Rock Creek Basin

Rock Creek is a tributary of the Upper Snake River Basin, an area from Weiser, Idaho, upstream to headwaters in Yellowstone National Park, Wyoming (figure 1).

The land surrounding the project area is irrigated by a network of irrigation canals that receive water diverted from the Snake River at the Milner Dam, located 30 miles east of the proposed project.

Flows in Rock Creek, therefore, are supplemented by seepage from the numerous irrigation canals, several seep tunnels, and natural springs in the area.

The staff, in reviewing hydropower applications for the Upper Snake River Basin, has identified visual quality, recreation, waterfowl, and value class I fishery as important resources for the mainstem Upper Snake River and its tributaries; these resources are not found in the Rock Creek Basin.

2. Proposed and Existing Hydroelectric Development

In addition to the proposed Rock Creek No. 2 Project, there are two exempted projects and a pending exemption application for the Rock Creek Basin (figure 1). The exempted projects are the Rock Creek Project (FERC No. 6450) located downstream from the proposed project, and the Jay A. Moyle/KTFI Creek Project (FERC No. 6663), upstream from the proposed project, on a small tributary to Rock Creek. The pending exemption (FERC No. 8961) is the Lower Low Line Project, which would be located upstream of the proposed project on an nearby irrigation canal.

3. Target Resources

A target resource is an important resource that could be affected by two or more proposed hydropower projects. The staff, after reviewing data from existing and proposed hydropower projects in the basin and considering comments from federal and state resource agencies and the public, identified resident trout as a target resource for the part of the Rock Creek Basin in which the proposed project would be located.

The species of concern in Rock Creek are rainbow trout and brown trout. As discussed in Section V.4, DFG classified Rock Creek in the project area as value class III, or substantial fishery resource, and this classification may be upgraded in the future. The resident trout fishery in Rock Creek, however, does not compare with that found in the nearby Upper Snake River where trophy-size rainbow trout are caught by anglers.

4. Environmental Impacts to Target Resources

The operation of the project without appropriate mitigative measures could exert stress on the resident trout populations in the project area, as discussed in Section V.4. The applicant proposes to maintain the minimum flows in the bypass reach that are recommended by DFG, and to construct and to operate a fish ladder and self-cleaning fish screens at the project. Similar mitigative measures have also been included as mandatory conditions set by fish and

wildlife agencies for the exempted Rock Creek Project (FERC No. 6450), located downstream from the proposed project (personal communication, Bob Bell, Regional Fishery Manager, Idaho Department of Fish and Game, Jerome, Idaho, March 12, 1986). A 1985 report prepared by several fish and wildlife agencies and other independent groups places the Rock Creek No. 2 Project in a 2A category, a ranking which indicates that significant adverse effects to fish and wildlife could be reduced to an insignificant level if proper mitigative procedures are implemented (Columbia River Inter-tribal Fish Commission et al., 1985).

The implementation of the proposed mitigative measures at the Rock Creek No. 2 Project would ensure that project operation would result in insignificant impacts to resident trout. For this reason, the staff concludes that the construction and operation of the Rock Creek No. 2 Project would have no potential for causing cumulative adverse impacts to resident trout populations in the Rock Creek Basin.

C. Alternative of No Action

Implementation of the no-action alternative would not change the existing physical or biological components of the area. It would, however, preclude the opportunity to use the renewable water resource of Rock Creek to generate electricity.

D. Recommended Alternative

The proposed project is the preferred alternative because electricity generated from a renewable resource would be sold to the Idaho Power Company, thus lessening the use of existing fossil-fueled, stream-electric plants, and because the environmental impacts that would result from constructing and operating the project would be minor and would be adequately mitigated.

VI. FINDING OF NO SIGNIFICANT IMPACT

Construction activities would result in short-term, minor increases in erosion, sedimentation, and turbidity levels in Rock Creek, minor impacts to fish populations, and localized disturbances to wildlife populations. Mitigative measures proposed by the applicant and recommended by the staff would adequately protect the environmental resources of Rock Creek.

The project would not affect any federally listed threatened or endangered species. Similarly, no sites or structures listed or eligible for listing on the National Register of Historic Places would be affected.

In accordance with the National Environmental Policy Act of 1969, this environmental assessment was prepared for the Rock Creek No. 2 Hydroelectric Project. On the basis of the record and of the staff's independent environmental analysis, issuance of a license for the project would not constitute a major federal action significantly affecting the quality of the human environment.

VI. LITERATURE CITED

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- Loar, J.M., and M.J. Sale. 1981. Analysis of environmental issues related to small-scale hydroelectric development: instream flow needs for fishery resources. ORNL/TM-7861. Oak Ridge National Laboratory, Oak Ridge, Tennessee. 123 pp.
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SAFETY AND DESIGN ASSESSMENT
ROCK CREEK NO. 2 PROJECT
FERC NO. 6015-007-IDAHO

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VII. LIST OF PREPARERS

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James Hastreiter--Water Resources and Fishery Resources (Fishery Biologist; M.S., Natural Resources).

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Timothy Looney--Hydroelectric Power and Resource Utilization Evaluation (Civil Engineer; B.S. Engineering).

John Mitchell--Editor (Writer-editor; B.S., Social Science).

Edwin Slatter--Cultural Resources (Archeologist; Ph.D., Anthropology).

George Taylor--Cumulative Impacts (Ecologist; M.S., Biology).

Martin Thorpe--Need for Power (Electrical Engineer; BSEE).

I. EVALUATION OF DESIGN, CONSTRUCTION AND PERFORMANCE

The project is classified as low hazard, subject to the Portland Regional Office recommendation. The proposed diversion structure would impound an insignificant amount of water and its failure would not endanger downstream life or property.

II. EXHIBITS

The following parts of Exhibit A and the following Exhibit F drawings conform to the Commission's rules and regulations and should be included in the license:

Exhibit A - Section titled "Project Features".

<u>Exhibit F</u>	<u>FERC No. 6015-</u>	<u>Showing</u>
F-2	6	Alignment Plan View
F-3	7	Penstock Plan and Cross-Section
F-4	8	Penstock Plan and Cross-Section
F-5	9	Penstock Plan and Cross-Section
F-6	10	Penstock Plan and Cross-Section
F-7	11	Penstock Plan and Cross-Section
F-8	12	Inlet Structure
F-9	13	Inlet Structure
F-10	14	Inlet Structure

F-11	15	Inlet Structure
F-12	16	Flow Control Structure
F-13	17	Flow Control Structure
F-14	18	Powerhouse Plan and Section

FEDERAL POWER 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.

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

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

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

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

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

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

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

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

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity

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

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

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

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

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

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

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

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

Article 21. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 22. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 23. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 24. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 25. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment

of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 26. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 27. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 28. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 29. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 30. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 31. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

- 12 -

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.

138703
CERTIFIED MAIL
June 30, 1987

HOWARD, CHARLES D.
1139 FALLS AVE. EAST
TWIN FALLS, ID 83301

PROOF DUE NOTICE

RE: Permit No. 47-7771

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 September 1, 1987. (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 completed 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, or the permit will no longer be of any force nor effect.

Sincerely,

RITA FLECK
Secretary/Records Manager

Enclosures

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SEP 25 1987



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

SEPTEMBER 1, 1985

DEAR PERMIT HOLDER:

ACCORDING TO OUR RECORDS, YOU ARE THE HOLDER OF A WATER PERMIT ON WHICH PROOF OF BENEFICIAL USE OF WATER WAS NOT SUBMITTED BEFORE JULY 1, 1985, WHICH INDICATES YOUR PROJECT IS NOT COMPLETE. THEREFORE, YOU NEED TO BE AWARE OF CHANGES IN IDAHO LAW, EFFECTIVE JULY 1, 1985, WHICH IMPACT ALL WATER PERMITS ISSUED BY THIS DEPARTMENT.

SPECIFICALLY, PURSUANT TO SECTION 42-203D, IDAHO CODE, THE DEPARTMENT MUST REVIEW ALL PERMITS FOR WHICH DEVELOPMENT OF WATER USE WAS NO COMPLETED ON OR BEFORE JULY 1, 1985, TO DETERMINE IF THEY MEET THE NEW REQUIREMENTS OF CHAPTER 2, TITLE 42, IDAHO CODE. RULES AND REGULATIONS GOVERNING THE RE-EVALUATION OF PERMITS ARE NOT YET FINALIZED. HOWEVER, IF YOU COMPLETED THE DEVELOPMENT UNDER YOUR PERMIT BEFORE JULY 1, 1985, YOU SHOULD SUBMIT A PROOF OF BENEFICIAL USE STATEMENT, STATING THAT THE PROJECT WAS COMPLETED BEFORE JULY 1, 1985 SO THAT YOUR PERMIT WILL NOT BE SUBJECT TO THE REVIEW REQUIREMENTS OF SECTION 42-203D, WHICH READS AS FOLLOWS:

42-203D. REVIEW OF PERMITS - OPPORTUNITY FOR HEARING. - (1)THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THE EFFECTIVE DATE [JULY 1, 1985] OF THIS SECTION, EXCEPT TO THE EXTENT A PERMIT HAS BEEN PUT TO BENEFICIAL USE PRIOR TO JULY 1, 1985, TO DETERMINE WHETHER THEY COMPLY WITH THE PROVISIONS OF CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PROPOSED USE DOES NOT SATISFY THE CRITERIA OF CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL EITHER CANCEL THE PERMIT OR IMPOSE THE CONDITIONS REQUIRED TO BRING THE PERMIT INTO COMPLIANCE WITH CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PERMIT SATISFIES THE CRITERIA ESTABLISHED IN CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL ENTER AN ORDER CONTINUING THE PERMIT.
(2)THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR HEARING IN ACCORDANCE WITH SECTION 42-1701A, IDAHO CODE, AND SECTIONS 67-5209 THROUGH 67-5215, IDAHO CODE, FOR EACH HOLDER OF A PERMIT THAT IS PROPOSED EITHER TO BE CANCELLED OR MADE SUBJECT TO NEW CONDITIONS.

YOU MAY OBTAIN PROOF OF BENEFICIAL USE FORMS FROM THE DEPARTMENT. IF YOU HAVE ANY QUESTIONS, PLEASE LET US KNOW.

SINCERELY,

L. GLEN SAXTON
CHIEF, OPERATIONS BUREAU

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FEB 14 1985

Department of Water Resources

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

February 7, 1985

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

Dear Secretary Plumb:

Enclosed is an original and 14 copies of the Idaho Department of Water Resources Motion to Intervene in Project No. 6015-007.

Sincerely,

A handwritten signature in cursive script that reads "Clive J. Strong".

Clive J. Strong
Deputy Attorney General
Chief, Natural Resources
Division

CJS:ams
Enclosures

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SEP 25 1987

JIM JONES
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 334-2400

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

PHILLIP J. RASSIER
DAVID J. BARBER
Deputy Attorneys General
Idaho Department of Water Resources
450 West State Street
Boise, Idaho 83720
Telephone: (208) 334-4448

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF APPLICATION)	Project No. 6015-007
FOR MAJOR LICENSE ON ROCK)	
CREEK II.)	MOTION TO INTERVENE OF
_____)	IDAHO DEPARTMENT OF
	WATER RESOURCES

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

The Idaho Department of Water Resources, hereinafter (Department), by and through its undersigned counsel, Clive J. Strong, and David J. Barber, Deputy Attorneys General, respectfully moves the Federal Energy Regulatory Commission for an order permitting the Department to intervene as a party for all purposes in the above-referenced project proceeding pursuant to Rule 214, 18 CFR 385.214.

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SEP 25 1987

Statement of Department's Interest and
Grounds for Intervention

I.

The Idaho Department of Water Resources (Department) is a duly established executive department of the State of Idaho. Idaho Code § 42-1701 (1977); Idaho Code § 67-2402 (1980). The names and addresses of persons designated for service of documents in connection with this motion and all further proceedings are as follows:

1. Phillip J. Rassier
David J. Barber
Deputy Attorneys General
Idaho Department Water Resources
450 West State Street
Boise, Idaho 83720
2. Clive J. Strong
Deputy Attorney General
Chief, Natural Resources Division
Statehouse, Room 210
Boise, Idaho 83720

II.

The Constitution of the State of Idaho provides that the waters of the State are subject to the regulation and control of the State. Idaho Constitution, Article XV, §§ 1, 3.

III.

The Department is that agency in state government designated to supervise the appropriation of the waters of

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SEP 25 1987

the State and allotment of waters to those persons diverting the same for beneficial purposes. Idaho Code § 42-101, 42-1701, 42-1805 (1977). The Director of the department is authorized to represent the State in all matters pertaining to the appropriation of water in the State of Idaho. Idaho Code §§ 42-1701, 42-1805 (1977).

IV.

The State Water Plan prepared by the Idaho Water Resource Board provides for a comprehensive plan for the allocation of the waters within the State of Idaho.

V.

The policy of the State of Idaho is to subordinate all rights to the use of water for power purposes to assure an adequate water supply for other beneficial uses.

VI.

Charles D. Howard has applied to the Commission under Part I of the Federal Power Act for a major license to construct a hydroelectric facility on Rock Creek in Twin Falls County, Idaho.

VII.

The Department's participation in the Commission proceeding on the Rock Creek II Project No. 6015-007 is in the public interest.

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SEP 25 1987

Position of the Idaho Department of Water
Resources

VIII.

The Department's position is that any new license issued to Charles Howard should be consistent with the state water right for the project, which provides that it shall be subordinate to all upstream depletionary uses. Specifically, the Department requests the Commission to include the following provision in any license issued to Charles D. Howard for the Rock Creek II project:

The project shall be operated in such manner as will not conflict with the future depletion and flow of the waters of the Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such water above the back water created by the project, as needed for upstream development in the public interest in a manner compatible with the Idaho State Water Plan.

Grounds for Department's Position

IX.

The grounds for the Department's position are as follows:

1. The applicant's state water license provides that it shall be subordinate to upstream consumptive uses.
2. The Idaho Water Resource Board has adopted a policy requiring that all hydropower projects be subordinated to upstream consumptive uses.

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SEP 25 1987

3. The operation of the Rock Creek II project without a condition subordinating the license to upstream consumptive uses in conformance with the state water policy would not be in the public interest.

X.

This motion conforms to the requirements of Rule 214.

Relief

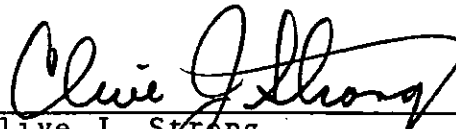
XI.

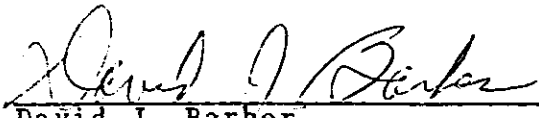
For the reasons given above, the Department respectfully requests as follows:

1. The Department's motion to intervene be granted.
2. For such other and further relief as the Commission may deem just and proper.

DATED this 7th day of February, 1985.

JIM JONES
Attorney General
State of Idaho


Clive J. Strong
Deputy Attorney General
Chief, Natural Resources
Division


David J. Barber
Deputy Attorney General
Department of Water Resources

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VERIFICATION OF MOTION

STATE OF IDAHO)
) ss:
County of Ada)

Normman C. Young, being first duly sworn upon oath,
states as follows:

I am the duly appointed Director of the Idaho
Department of Water Resources and authorized to act on
behalf of the said Department, that I have read the
foregoing motion and know the contents thereof, and that
the statements contained therein are true and correct of
my own knowledge.


Norman C. Young, Administrator
Resource Administration Div.
Idaho Department of Water
Resources

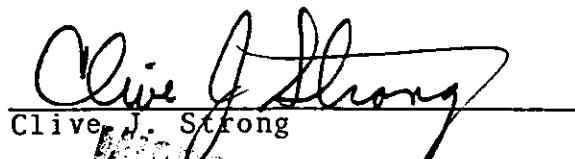
SUBSCRIBED AND SWORN to before me on this 7th day of
February, 1985.


Notary Public for Idaho
Residing at: Boise, Idaho

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the
foregoing document, Motion to Intervene of Idaho
Department of Water Resources, upon each person designated
on the official service list compiled by the Secretary of
this proceeding. 7th

DATED this 7th day of February, 1985.


Clive J. Strong

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SEP 25 1987

Int 47-7771 permit

P-6015-007

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission

(December 11, 1984)

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

- a. Type of Application: Major License
- b. Project No: 6015-007
- c. Date Filed: August 31, 1984
- d. Applicant: Charles D. Howard
- e. Name of Project: Rock Creek No. 2
- f. Location: On Rock Creek in Twin Falls County, Idaho, partially on lands of the United States administered by the Bureau of Land Management
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§791(a) - 825(r)
- h. Contact Person: Charles D. Howard, 1139 Falls Avenue East, Suite B, Twin Falls, Idaho 83301
- i. Comment Date: February 8, 1985
- j. Description of Project: The proposed project would consist of: (1) a 9.5-foot-high, 40-foot-long concrete diversion dam with crest elevation 3,306 feet; (2) a concrete intake structure with an overall length of 88 feet; (3) a 66-inch-diameter, 2,700-foot-long steel penstock; (4) a 30-foot-wide, 50-foot-long, 14-foot-high concrete powerhouse containing three generating units, rated at 1.1 MW, 0.52 MW, and 0.28 MW; (5) a concrete tailrace with a normal water surface elevation of 3,161 feet; (6) a 4,700-foot-long, 4.16-kV transmission line connecting to an existing Idaho Power Company substation; and (7) access facilities including a 14-foot-wide, 44-foot-long steel bridge, 20,000 feet of existing gravel road, and 2,700 feet of proposed gravel road. The estimated project cost, as of August 1984, is \$2,240,000.

This application has been accepted for filing as of March 30, 1984, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd. et al., 28 FERC 161,062, issued July 18, 1984. The Applicant had a preliminary permit for this project.
- k. Purpose of Project: Project output would be sold to Idaho Power Company.
- l. This notice also consists of the following standard paragraphs: A9, B and C
- m. License or Conduit Exemption -- Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular

SEP 25 1984
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application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

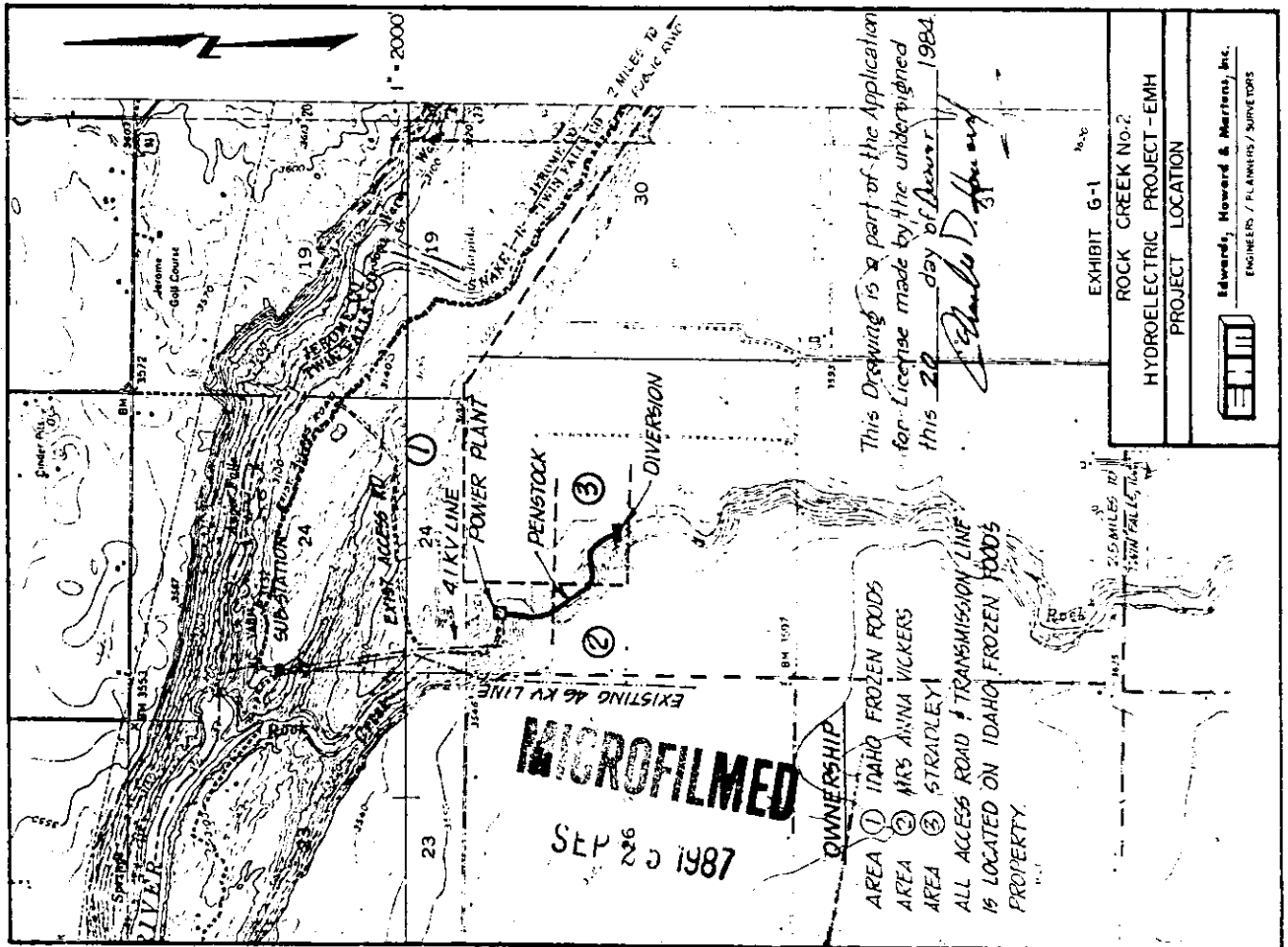
- A9. Notice of intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

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

- C. Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and those 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, Director, Division of Project Management Branch, Office 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.

Kenneth F. Plumb
Secretary

SEP 25 1987
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission
(May 21, 1984)

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: ~~Exemption~~ from Licensing (5MW or Less)
- b. Project No: 6015-004
- c. Date Filed: March 30, 1984
- d. Applicant: Charles D. Howard
- e. Name of Project: Rock Creek #2
- f. Location: On Rock Creek in Twin Falls County, Idaho
- g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. §§2705 and 2708 as amended.
- h. Contact Person: Charles D. Howard
Falls Professional Center, Suite B
1139 Falls Avenue East
Twin Falls, Idaho 83301
- i. Comment Date: JUN 29 1984
- j. Description of Project: The proposed project would consist of: (1) a 9.5-foot-high concrete diversion structure with spillway crest elevation 3,306 feet; (2) a 62-inch-diameter, 2,700-foot-long steel penstock; (3) a 20-foot by 30-foot concrete and block powerhouse containing one generating unit rated at 0.6 MW and a second unit rated at 1.3 MW, producing together an average annual output of 11.8 GWh; (4) a concrete tailrace with a normal water surface elevation of 3,160 feet; (5) a 4,500-foot-long, 2.3-kV transmission line connecting to an existing Idaho Power Company line; and (6) a 24-foot-wide, 3,000-foot-long gravel access road.
- k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

SEP 25 1984

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No response req'd
DUE 6/5/84

Correct

A1. Exemption for Small Hydroelectric Power Project under SMW Capacity -- Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A9. Notice of intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

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SEP 25 1981

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

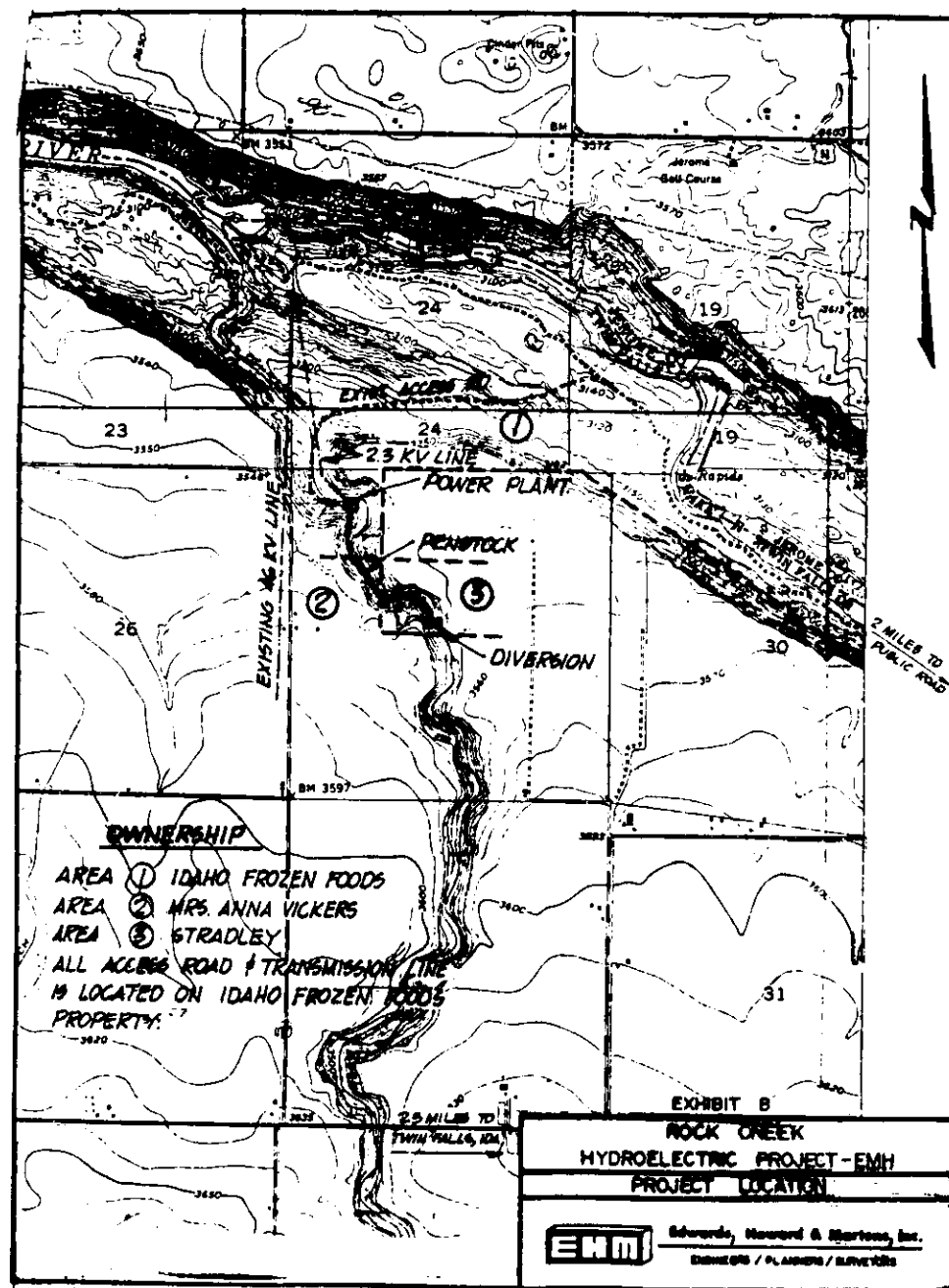
C. Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management, 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.

RECEIVED
SEP 25 1987

D3a. Agency Comments - The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, 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

SEP 25 1987
NOTIFIED



UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

20 FERC ¶62,210

44-7771

- 2 -

AUG 11 1982

Department of Water Resources

Charles D. Howard

Project No. 6015-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued August 5, 1982)

The Permittee 1/ filed an application for preliminary permit under Section 4(f) of the Federal Power Act (Act), 16 U.S.C. 797(f), for the proposed water power project as described in the attached public notice. 2/

Notice of the application was published in accordance with Section 4(f) of the Act and the Commission's regulations. All protests that have been submitted, petitions to intervene that have been granted, together with all comments filed by Federal, State, and local agencies have been fully considered in determining whether to issue this permit. No party or agency commenting on the application objected to the issuance of the permit.

Effects of This Preliminary Permit:

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

- 1/ In this, "Permittee" refers to the applicant or applicants named in the caption for this proceeding.
- 2/ Authority to act on this matter is delegated to the Director, Division of Hydroelectric Licensing, Office of Electric Power Regulation, under 5.308 of the Commission's regulations, 45 Fed. Reg. 12121 (1980), as amended by Order No. 112 in Docket No. 88-1-5, issued November 21, 1980, FERC Statutes and Regulations 30, 45 Fed. Reg. 79024).

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

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

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

Term of Permit:

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

DC-A-12

RECEIVED
SEP 25 1982

It is ordered that:

(A) A preliminary permit is issued to the Permittee for the proposed project as described in the attached notice, for a period effective the first day of the month following the month in which this permit is issued, and ending either 18 months from the effective date or on the date that an application for license submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject to the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

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

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

Article 8. The Permittee shall submit in triplicate at the close of each six-month period from the effective date of this permit, to the Director, Office of Electric Power Regulation, with a copy to the FERC Regional Engineer for the Region in which the proposed project would be located (the Commission's authorized representative for the purposes of this permit), or to any other officer the Commission may designate, and a copy, if requested, to any agency consulted, accurate statements of the progress of all investigations, consultations, and studies accomplished during the period and of work contemplated under this permit for the ensuing period.

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

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

Article 11. The Permittee shall coordinate the studies for the proposed project authorized by this permit with the Regional Director of the Bureau of Reclamation, Department of the Interior for the region in which the proposed project would be located.

Article 12. During the development of the fish and wildlife report pursuant to Article 10, the Permittee shall take into account the regional fish and wildlife plan developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act. Any inconsistencies with the regional plan must be specifically addressed in any fish and wildlife report of any subsequent application for license or exemption.

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This order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this permit or of any other date specified in this order, except as specifically ordered by the Commission.

-5-

Donald M. Cora
Donald M. Cora
Director, Division of
Hydropower Licensing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Charles D. Howard) Project No. 6015-000

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT
(March 16, 1982)

Take notice that Charles D. Howard (Applicant) filed on February 22, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. §§ 81(a) - 825(r)) for Project No. 6015 to be known as the Rock Creek Hydro Project located on Rock Creek in Twin Falls County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Charles D. Howard, 1139 Falls Avenue East, Falls Professional Center, Suite 3, Twin Falls, Idaho 83301.

Project Description - The proposed project would consist of: (1) a 5-foot high diversion structure; (2) a 48-inch diameter, 2,600-foot long penstock; (3) a powerplant to contain three generating units with a combined rated capacity of 12,000 kW, operating under a head of 130 feet; (4) a 9.5-mile long transmission line to extend to an existing line. The average annual energy output is estimated at 2,725,000 kWh.

Proposed Scope of Studies under Permit - A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which it would conduct engineering, environmental and economic feasibility studies and prepare an application for an FERC license. The estimated cost of conducting these studies and preparing an application for an FERC license is \$38,000.

Competing Applications - Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before MAY 25 1982, the competing application itself, or a notice of intent to file such an application (see: 18 C.F.R. § 4.30 et. seq. (1981); and Docket No. RM1-15, issued October 29, 1981, 46 Fed. Reg. 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before MAY 25 1982, and should specify the type of application for licensing. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 C.F.R. § 4.30 et. seq. or § 4.101 et. seq. (1981), as appropriate).

Project No. 6015-000

- 2 -

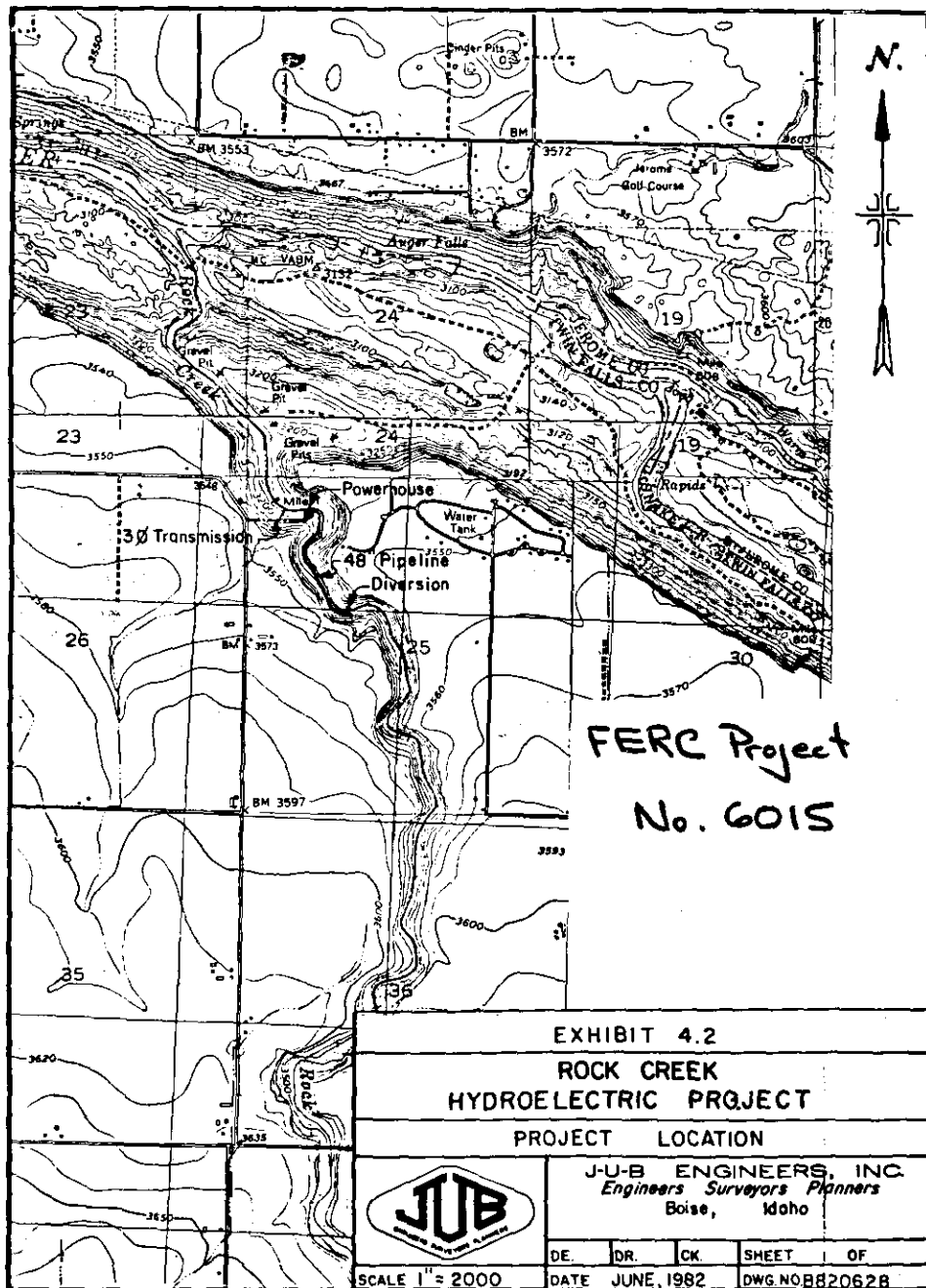
Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than JUL 28 1982.

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

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 3.8 or 3.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before MAY 25 1982.

Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "PROTESTING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and three copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 226 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 2-8 RS at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary



Form P-1
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF PRELIMINARY PERMIT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47-7771
RECEIVED

MAR 22 1982

Department of Water Resources

Project No. 6015-000

- 2 -

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 6015-000

Charles D. Howard

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT
(March 16, 1982)

Take notice that Charles D. Howard (Applicant) filed on February 22, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 825(f)] for Project No. 6015 to be known as the Rock Creek Hydro Project located on Rock Creek in Twin Falls County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Charles D. Howard, 1139 Falls Avenue East, Falls Professional Center, Suite B, Twin Falls, Idaho 83301.

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Proposed Scope of Studies under Permit - A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which it would conduct engineering, environmental and economic feasibility studies and prepare an application for an FERC license. The estimated cost of conducting these studies and preparing an application for an FERC license is \$35,000.

Competing Applications - Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before MAY 25 1982, the competing application itself, or a notice of intent to file such an application [see: 18 C.F.R. § 4.30 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 Fed. Reg. 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before MAY 25 1982, and should specify the type of application for licensing. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 C.F.R. § 4.30 et. seq. (1981); et. seq. (1981), as appropriate].

DC-A-32

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than MAY 25 1982.

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

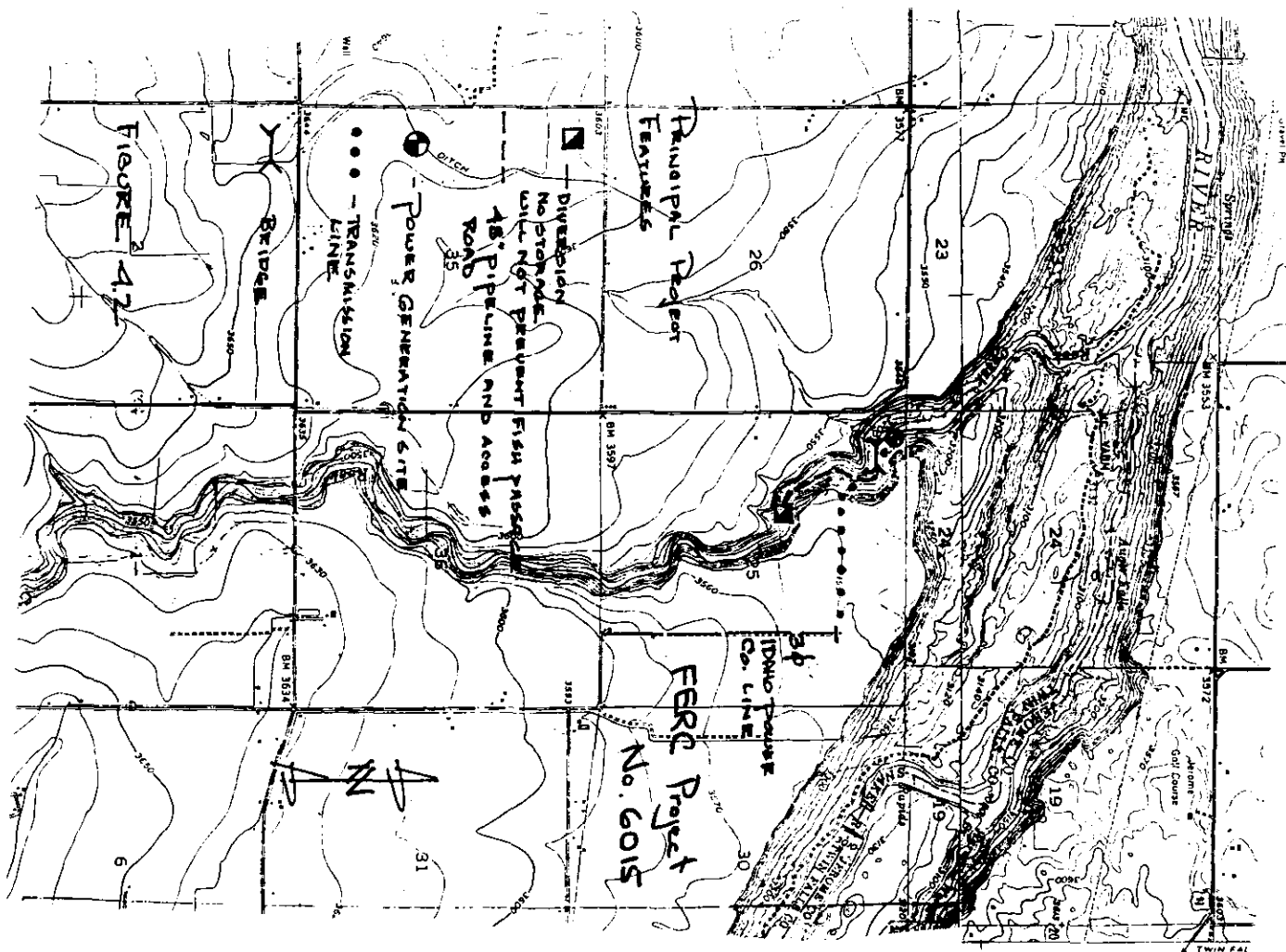
Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before MAY 25 1982.

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Kenneth F. Plumb
Secretary

RECEIVED

MAY 25 1982



FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426
EQUAL OPPORTUNITY EMPLOYER

MICROFILMED

SEP 25 1987

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FEDERAL ENERGY REGULATORY COMMISSION
FERC-351
FIRST CLASS MAIL



Dept of Water Resources P-6015
State House
Boise, Idaho 83720

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440

HOWARD, CHARLES D.
1139 FALLS AVE. EAST
TWIN FALLS, ID 83301

SEPTEMBER 28, 1982

RE: PERMIT NO. 47-7771

DEAR PERMIT HOLDER:

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

BE SURE TO NOTE THE SPECIAL CONDITION REQUIRING YOU TO INSTALL A MEASURING DEVICE, OR AN ACCESS PORT TO PROVIDE FOR THE INSTALLATION OF MEASURING EQUIPMENT BY THE DEPARTMENT. ENCLOSED PLEASE FIND A LIST OF MEASURING DEVICE OPTIONS, AND SPECIFICATIONS FOR THE INSTALLATION OF THE ACCESS PORT.

SINCERELY,

DAVID R. TUTHILL, JR., P.E.
SUPERVISOR, WATER ALLOCATION SECTION

ENCLOSURE

MICROFILMED



Edwards, Howard & Martens, Inc.

ENGINEERS / PLANNERS / SURVEYORS

1139 Falls Ave. E., Suite B
Twin Falls, Idaho 83301
Phone 734-4888

IN THE FIELDS OF:

PLANNING
SURVEYING
HIGHWAYS
WATER
SEWAGE
STRUCTURAL
SUBDIVISIONS
AIRPORTS
BRIDGES

August 25, 1982

AUG 26 1982

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

Department of Water Resources

Attention: L. Glen Saxton

RE: Permit No. 47-7771

Dear Mr. Saxton:

Please find herein a copy of FERC Permit for project No. 6015-000 which is the same project as state permit 47-7771. I am hereby requesting that you grant final approval to the above referred to state permit.

Respectfully yours,

EDWARDS * HOWARD * MARTENS, INC.


Charles D. Howard, P.E., L.S.

CDH/bn
cc: file

encl.

MICROFILMED

Charles D. Howard

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Project No. 6015-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued August 5, 1982)

The Permittee 1/ filed an application for preliminary permit under Section 4(f) of the Federal Power Act (Act), 16 U.S.C. 797(f), for the proposed water power project as described in the attached public notice. 2/

Notice of the application was published in accordance with Section 4(f) of the Act and the Commission's regulations. All protests that have been submitted, petitions to intervene that have been granted, together with all comments filed by Federal, State, and local agencies have been fully considered in determining whether to issue this permit. No party or agency commenting on the application objected to the issuance of the permit.

Effects of This Preliminary Permit:

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

- 1/ In this, "Permittee" refers to the applicant or applicants named in the caption for this proceeding.
- 2/ Authority to act on this matter is delegated to the Director, Division of Hydropower Licensing, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), as amended by Order No. 112 in Docket No. RM81-5, issued November 21, 1980, FERC Statutes and Regulations ¶ 30,211 (45 Fed. Reg. 79024).

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

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

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

MICROFILMED

It is ordered that:

(A) A preliminary permit is issued to the Permittee for the proposed project as described in the attached notice, for a period effective the first day of the month following the month in which this permit is issued, and ending either 18 months from the effective date or on the date that an application for license submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject to the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

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

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

Article 8. The Permittee shall submit in triplicate at the close of each six-month period from the effective date of this permit, to the Director, Office of Electric Power Regulation, with a copy to the FERC Regional Engineer for the Region in which the proposed project would be located (the Commission's authorized representative for the purposes of this permit), or to any other officer the Commission may designate, and a copy, if requested, to any agency consulted, accurate statements of the progress of all investigations, consultations, and studies accomplished during the period and of work contemplated under this permit for the ensuing period.

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

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

Article 11. The Permittee shall coordinate the studies for the proposed project authorized by this permit with the Regional Director of the Bureau of Reclamation, Department of the Interior for the region in which the proposed project would be located.

Article 12. During the development of the fish and wildlife report pursuant to Article 10, the Permittee shall take into account the regional fish and wildlife plan developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act. Any inconsistencies with the regional plan must be specifically addressed in any fish and wildlife report of any subsequent application for license or exemption.

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this order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this permit or of any other date specified in this order, except as specifically ordered by the Commission.

Donald M. Corso
Donald M. Corso
Director, Division of
Hydropower Licensing

Project No. 6015-000

- 2 -

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Charles D. Howard) Project No. 6015-000

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT
(March 16, 1982)

Take notice that Charles D. Howard (Applicant) filed on February 22, 1982, an application for Preliminary Permit pursuant to the Federal Power Act, 16 U.S.C. § 81(a) - § 81(r) for Project No. 6015 to be known as the Rock Creek Hydro Project located on Rock Creek in Twin Falls County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Charles D. Howard, 1139 Falls Avenue East, Falls Professional Center, Suite 7, Twin Falls, Idaho 83301.

Project Description - The proposed project would consist of: (1) a 5-foot high diversion structure; (2) a 42-inch diameter, 2,600-foot long penstock; (3) a powerhouse to contain three generating units with a combined rated capacity of 12,000 kW, operating under a head of 103 feet; (4) a 0.7-mile long transmission line to extend to an existing line. The average annual energy output is estimated at 8,700,000 kWh.

Proposed Scope of Studies under Permit - A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which it would conduct engineering, environmental and economic feasibility studies and prepare an application for an FERC license. The estimated cost of conducting these studies and preparing an application for an FERC license is \$35,000.

Competing Applications - Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before MAY 25 1982, the competing application itself, or a notice of intent to file such an application [see: 18 C.F.R. § 4.10 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 Fed. Reg. 55245, November 9, 1981.]

Commission will accept applications for license or exemption licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before MAY 25 1982, and should specify the type of application for licensing. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 C.F.R. § 4.10 et. seq. or § 4.101 et. seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than MAY 25 1982.

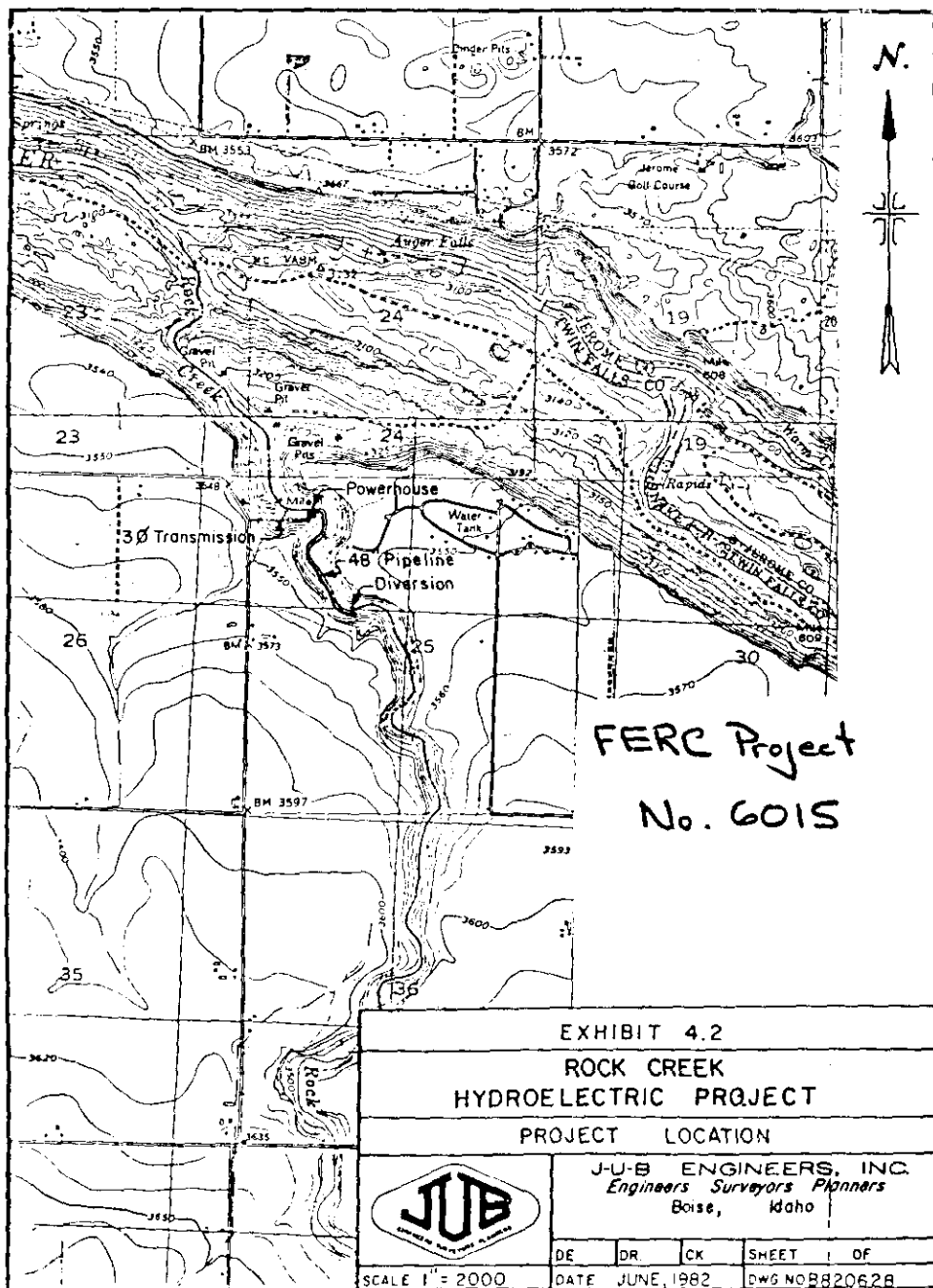
Agency Comments - Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before MAY 23 1982.

Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMPEX", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and a Docket Number of this notice. Any of the above named documents must be filed by providing the original and three copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 226 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 2.8 RS at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary

RECEIVED
MAY 25 1982



Form P-1
 (Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF PRELIMINARY PERMIT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAILED
JUN 10 1960

Edwards, Howard Martens, Inc.

1139 Falls Avenue

Twin Falls, Idaho 83301

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State of Idaho
Department of Water Resources
ATTN: L. Glen Saxton
Statehouse
Boise, Idaho 83720



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

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

April 6, 1982

RE: Application for Permit No. 47-7771

Charles D. Howard
1139 Falls Ave. East
Twin Falls, ID 83801

Dear Mr. Howard:

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 withhold 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,

LENN SAXTON
Chief, Operations Bureau

LS:kw

Microfilm

INTER-DEPARTMENT MEMO — 1

FROM TERRY G. Blau

DATE 12-2-81

TO File #

SUBJECT Financial Statement Review

I have reviewed The Financial Statements of Charles D. Howard and E.M. H Investments as well as The individual partners of E.M. H. Investments, and have determined that They have Sufficient Financial Resources to complete the proposed project.

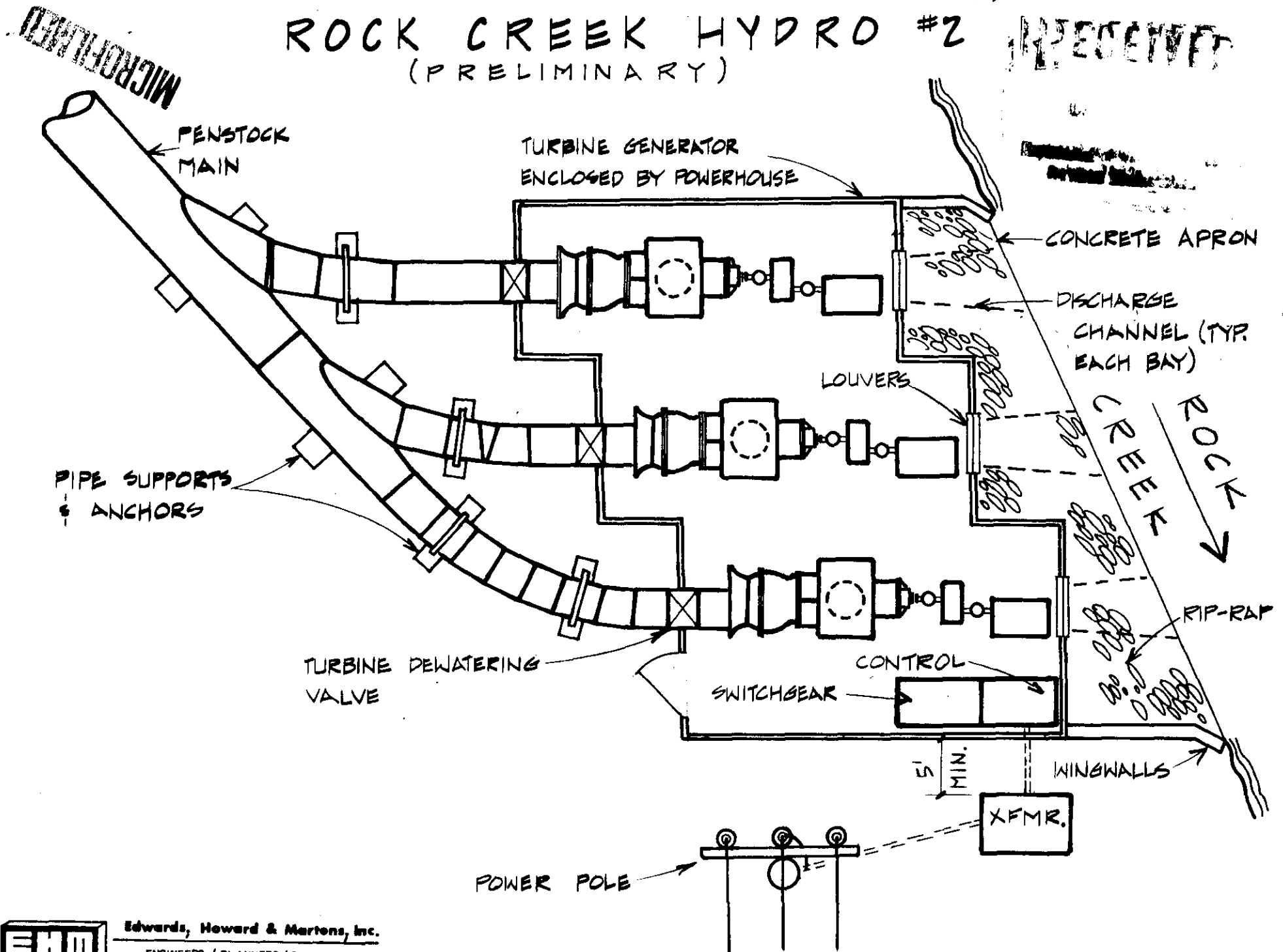
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Terry G. Blau
SIGNATURE

ROCK CREEK HYDRO #2

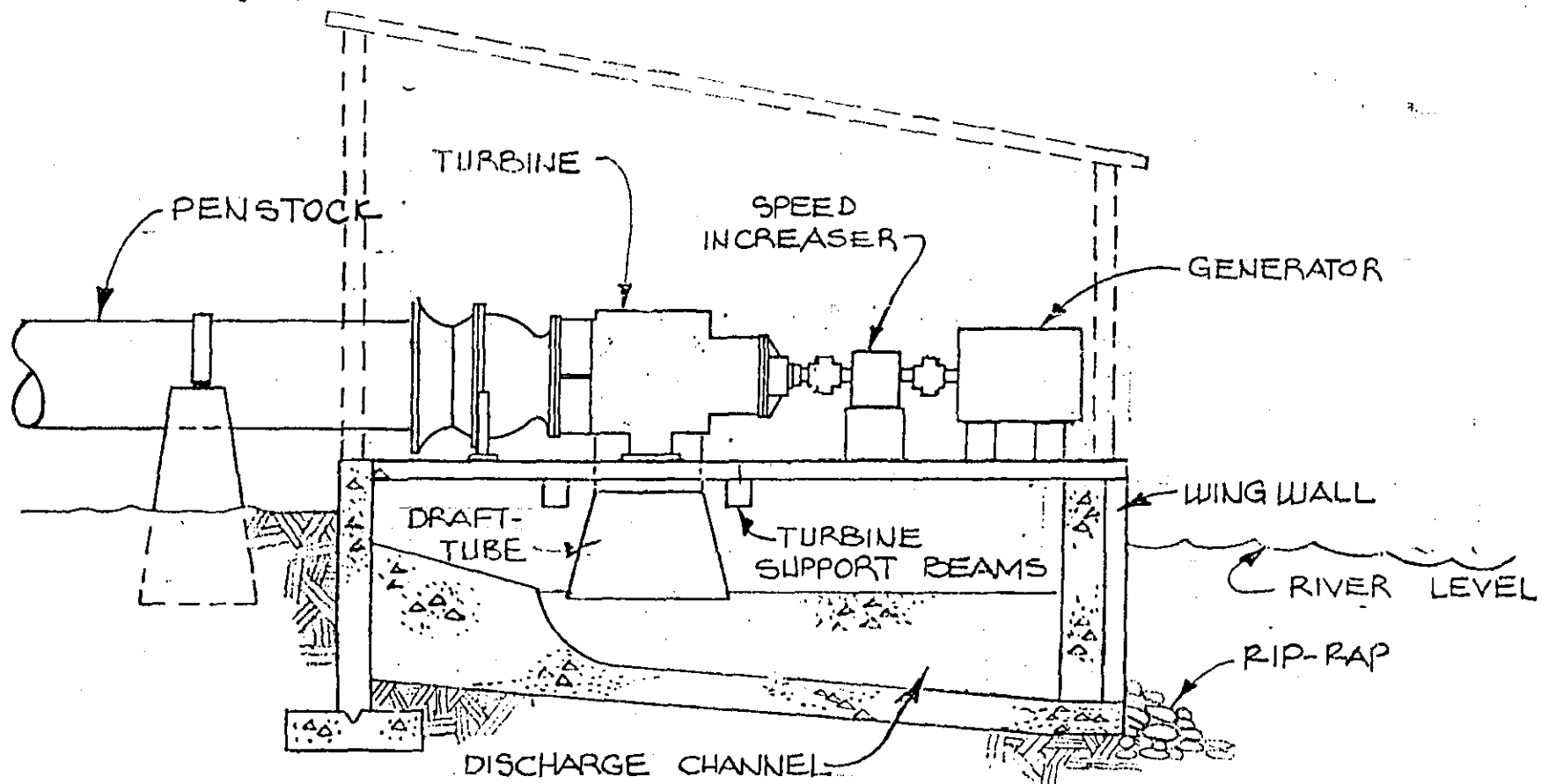
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Edwards, Howard & Martens, Inc.
ENGINEERS / PLANNERS / SURVEYORS

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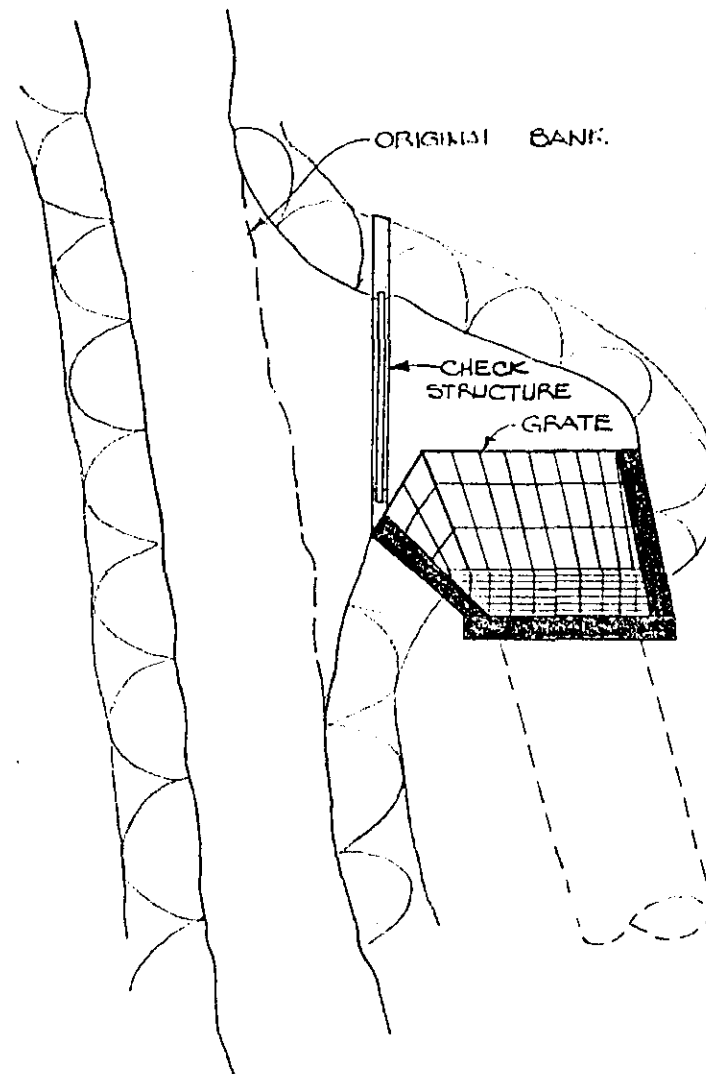
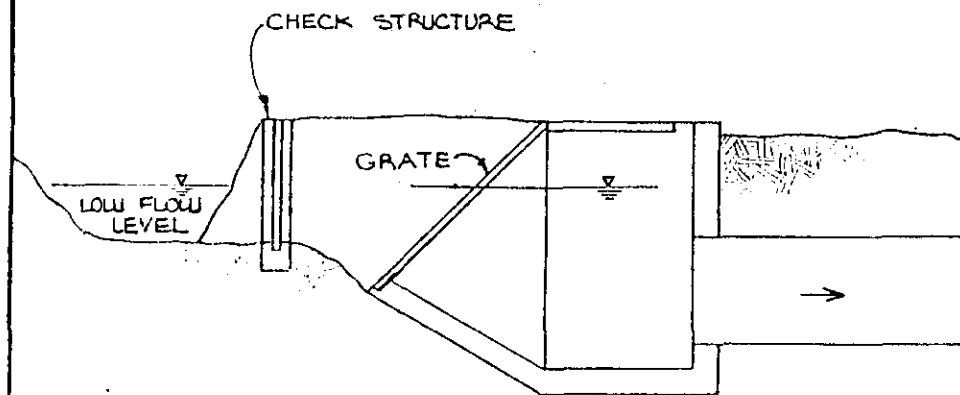


TYP. TURBINE ELEVATION

SKETCH C

ROCK CREEK HYDRO
DIVERSION STRUCTURE

SKETCH A



ITEMIZED ESTIMATE

1.	Turbine/Generator - Turbine coupled to a generator through a speed increaser - 3 - 400 KW @ 143,496/ea	\$430,488.00
2.	Appurtenant Equipment	66,000.00
3.	Station Electric Equipment	52,800.00
4.	Power House (including excavation)	59,400.00
5.	Switchgear and Controls	72,600.00
6.	Civil Works (riprap, wingwalls)	13,200.00
7.	Diversion (including excavation)	43,888.00
8.	Access Road - Powerhouse (south) -.5 mi	50,000.00
	Powerhouse (north) -.3 mi	15,000.00
9.	Penstock - .5 mile (48" steel pipe)	290,400.00
10.	Bridge - 65' x 12' (concrete)	18,000.00
11.	Transmission lines - .9 miles @ 15,000/mi	13,500.00
12.	Federal Licensing	3,000.00
13.	Engineering and Administration	112,827.00
14.	Contingency 15%	<u>186,165.00</u>
	TOTAL	\$1,427,268.00

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Edwards, Howard & Martens, Inc.

ENGINEERS / PLANNERS / SURVEYORS

1139 Falls Ave. E., Suite B
Twin Falls, Idaho 83301
Phone 734-4888

IN THE FIELDS OF:

PLANNING
SURVEYING
HIGHWAYS
WATER
SEWAGE
STRUCTURAL
SUBDIVISIONS
AIRPORTS
BRIDGES

December 2, 1981

Mr. Terry G. Blau
Idaho Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

RE: Application for permit

Dear Mr. Blau:

Enclosed is the additional information that you requested in your letter dated November 17, 1981.

The application for permit was filed under the name Charles D. Howard. However, the project will be developed by EMH Investments, a partnership. The principals of this partnership are Carl V. Edwards, Gerald Martens, and Charles D. Howard.

Individual financial and partnership statements are enclosed. The capital required to construct this project will be provided by a commercial loan from Idaho First National Bank.

Respectfully yours,

EDWARDS * HOWARD * MARTENS, INC.

Charles D. Howard, P.E./L.S.

CDH/bn
cc: file

encl.

RECEIVED
DEC 10 1981

E. M. H. INVESTMENTS

PARTNERSHIP AGREEMENT

This Agreement of Partnership, made and entered into on this First day of April, 1977, between Carl V. Edwards, Grangeville, Idaho, Gerald Martens, Jerome, Idaho, and Charles D. Howard, Twin Falls, Idaho.

The said parties hereto, having mutual confidence in each other, hereby form with each other a partnership, upon the terms, covenants and conditions hereinafter set forth.

PURPOSE

The partnership shall be for the purpose of engaging in and carrying on the business of investing and any other business related thereto.

NAME OF PARTNERSHIP

The firm name of the partnership shall be E. M. H. Investments.

PLACE OF BUSINESS

The principal place of business shall be Twin Falls, Idaho.

DURATION

(A) DURATION: This partnership shall commence on the First day of April, 1977, and shall continue until dissolved by mutual consent and agreement.

(B) OPTION TO TERMINATE: It shall be at the option of a majority of the partners to terminate said partnership by mutual agreement at any time they may elect to do so.

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CONTRIBUTIONS

(A) PARTNERSHIP CAPITAL: The capital of the partnership shall consist of any assets, so stated "EMH INVESTMENTS".

(B) WHEN CONTRIBUTIONS TO BE MADE: Contribution to the capital of the partnership or promisory note by each partner shall be made as required by majority of partners.

(C) EFFECT OF FAILURE TO MADE CONTRIBUTION: If a partner does not make his entire contribution or promisory note to the capital of the partnership on, or before, December 31, the year requested by majority of partners, this agreement of partnership is void. Any contribution of capital of the partnership theretofore made by any partner shall be returned, along with interest accrual, to the partner who has made such contribution.

(D) WITHDRAWALS FROM CAPITAL: No partner shall withdraw any part of the capital of the partnership without the consent, in writing, of all other partners.

PARTNERSHIP PROPERTY

(A) PARTNERSHIP PROPERTY: All property originally paid, or brought into, or transferred to the partnership as capital contributions of the partners, of subsequently acquired by purchase or otherwise on account of the partnership, is partnership property.

(B) PROPERTY TO BE IN PARTNERSHIP NAME: The title to all partnership property shall be held in the name of the partnership.

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RIGHTS, DUTIES AND LIABILITIES OF PARTNERS

(A) DILIGENCE AND APPLICATION TO PARTNERSHIP BUSINESS: As per the time schedule agreed upon by all partners, all of said partners will, at all times, during the continuance of the partnership, diligently employ themselves in the partnership and carry on the same for the greatest advantage to its interest. Each and every one of the partners shall apply to the best of his ability all of his experiences, training and talents in the performance of such work as may be required in the furtherance of the business of the partnership.

(B) PAYMENT OF SEPARATE DEBTS OF PARTNERS: INDEMNIFICATION: Each partner shall pay separate debts punctually and shall indemnify the other partners and the capital and property of the partnership against the same and all expenses on account thereof.

(C) FEES CHARGED: Fees to be charged shall be determined initially by the partner performing the services after consulting at least one other partner, or under whose supervision the work was done. All statements for fees shall be reviewed by the managing partner prior to mailing.

(D) ACCOUNTING FOR FEES AND COMPENSATION RECEIVED: Unless otherwise agreed by all partners, each actively participating partner shall account to the firm for all compensation received and attributable to his personal services, including by way of example but without limitation, salaries of all kinds, fees for services, appraisal fees, director's fees, and fees for serving as trustee, guardian, executor, or other fiduciary.

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MANAGEMENT OF BUSINESS

(A) RIGHTS OF MANAGEMENT: All partners have equal rights in the management and conduct of the partnership business, except as provided in this agreement.

(B) CONTRACTS: Subject to any limitations and restrictions imposed by this agreement, in consultation with each partner, for the purposes of the business aforesaid, shall have equal power to use the name of the firm, and to bind the same, in making contracts and purchasing goods, and in otherwise trading, buying, selling, and managing on behalf of said partnership.

(C) CONTRACTS: LIMITATIONS ON AUTHORITY: A partner shall not purchase or enter into a contract for the purchase of real or personal property exceeding the value of \$1,000.00 without the previous consent in writing of all other partners. If a partner shall purchase or enter into a contract for the purchase of such property without first having obtained the written consent of all other partners, the other partners shall have the option either to take such real or personal property on account of the partnership, or to let such property remain the separate property of the partner who shall have so purchased or entered into the contract to purchase such property.

(D) LEASES: CONVENANCES: All leases or conveyances of real or personal property on behalf of the partnership must be executed by all partners.

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(E) RELEASE OR DISCHARGE OF OBLIGATIONS DUE PARTNERSHIP: No partner shall, without the consent of the other partners, compound, release, or discharge any debt which shall be due or owing to the partnership, without receiving the full amount thereof.

(F) EMPLOYMENT AND DISMISSAL OF PERSONNEL: No partner shall hire or dismiss, except in case of gross misconduct, any person in the employment of the partnership without the consent of the other partners.

(G) INDEMNITY BY PARTNERSHIP: The partnership will indemnify each partner in respect of payments made and personal liabilities reasonably incurred by each partner in the ordinary and proper conduct of the partnership business, or for the preservation of its business or property.

(H) BANK DEPOSITS AND ACCOUNTS: All partnership funds shall be deposited in the name of the partnership in accounts in the Idaho First National Bank, at Blue Lakes Branch, Twin Falls, State of Idaho.

PROFITS AND LOSSES

(A) SHARING OF PROFITS: The partners shall be entitled to the net profits arising from the operation of the partnership business that remain after the payment of all expenses of conducting the business of the partnership. Each partner shall be entitled to the share of the profits specified below:

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<u>NAME</u>	<u>AMOUNT</u>
<u>Carl V. Edwards</u>	<u>1/3</u>
<u>Gerald L. Martens</u>	<u>1/3</u>
<u>Charles D. Howard</u>	<u>1/3</u>

(B) LOSSES: All losses which shall occur in the operation of said business shall be paid out of the capital of the partnership and profits arising therefrom, or, if the same shall be deficient, by the partners in the following shares:

<u>NAME</u>	<u>AMOUNT</u>
<u>Carl V. Edwards</u>	<u>1/3</u>
<u>Gerald L. Martens</u>	<u>1/3</u>
<u>Charles D. Howard</u>	<u>1/3</u>

(C) WITHDRAWALS: IN ANTICIPATION OF PROFITS: The partners shall have the right to withdraw out of the business in anticipation of their respected profits such sums as may by them be jutually agreed upon, but such sums are to be drawn only after there has been entered on the books of the copartnership a dated agreement, including the amount to be drawn by the respective partners, the times at which sums shall be drawn, and any conditions or matters mutually agreed upon; and the signature of all partners shall be affixed thereon.

BOOKS OF ACCOUNT: ANNUAL ACCOUNTING

(A) BOOKS OF ACCOUNT: Books of account shall be kept by the partners and proper entries made therein of all the sales, purchases, receipts, payments, engagements, transactions,

UNRECORDED

and property of the partnership.

(B) PLACE WHERE BOOKS AND RECORDS TO BE KEPT: The said books of account, and all securities, papers, and writings of the partnership shall be kept at the principal place of business at 1139 Falls Avenue East, Twin Falls, State of Idaho, or in such other place where the business shall be carried on, and each partner shall have free access at all times to examine and copy the same.

(C) ANNUAL ACCOUNTING: On December 31, of every year a general accounting shall be made by the partners of all the sales, purchases, receipts, payments, engagements, and transactions of the partnership during the then preceding year, and of all the capital, property, engagements, and liabilities for the time being of the partnership.

NOTICE TO PARTNERS

All notices to the partners pursuant to this agreement shall be in writing and shall be deemed effective when given by personal delivery or delivery by the United States Postal System.

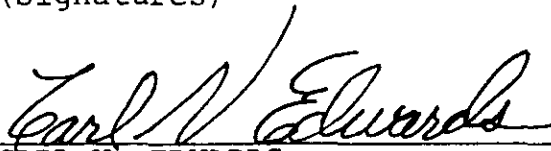
AMENDMENTS

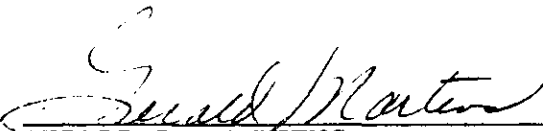
This agreement, except with respect to vested rights or partners, may be amended at any time by a 100% vote as measured by the interest in the sharing of profits and losses.

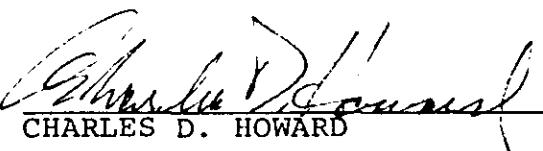
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IN WITNESS WHEREOF, The partners have executed this agreement
on the day and year first above written.

(Signatures)


CARL V. EDWARDS


GERALD L. MARTENS


CHARLES D. HOWARD

(Acknowledgements)

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POWER CALCULATIONS FOR APPLICATION NO. 47-7771

$$P = \text{Kilowatts} \quad .74 \times \text{hp} \quad 2200 = 1628 \text{ kW} \quad \text{proposed}$$

$$Q = \text{cfs} = 200$$

$$H = \text{feet} = 110$$

$$e = \text{efficiency} \quad ?$$

$$e = \frac{P(11.8)}{QH} = \frac{1628(11.8)}{200(110)} = \underline{.87} =$$

Based on the above calculations the proposed project must have an 87 % efficiency.

REASONABLE

4-5-82

jeni

MICKLETHED

NOTICE OF APPLICATION FOR WATER RIGHT

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

42-2221-

HOWARD, CHARLES D.

1139 FALLS AVE. EAST, TWIN FALLS, ID 83301

Source: ROCK CREEK tributary to SNAKE RIVER

Date Filed: 11/16/1981

Amount: 202.00 CFS

Diversion Point: SENW SWNW NWNW Sec 25 T 09S R 16E, TWIN FALLS Co.

Use: INDUSTRIAL	(1.00 CFS) from 01/01 to 12/31
POWER	(200.00 CFS) from 01/01 to 12/31
FIRE PROTECTION	(1.00 CFS) from 01/01 to 12/31

Place of Use: NWNW Sec 25 T 09S R 16E

Diversion Means: DIVERSION TO PENSTOCK, POWER PLANT, TRANSMISSION LINE

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301 and received on or before DECEMBER 21, 1981.

A. KENNETH DUNN

Director

Published 12/3 & 12/10/81.

MICROFILMED

019.8 IN 12:52
legal notice to start
Thursday, December 3,
1981.

**NOTICE OF
APPLICATION FOR
WATER RIGHT**

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

47-7771

HOWARD, CHARLES D.
1139 FALLS AVE. EAST,
TWIN FALLS, ID 83301
Source: ROCK CREEK
tributary to SNAKE
RIVER

Date Filed: 11/16/1981

Amount: 202.00 CFS

Diversion Point: SENW

SWNW NWNW Sec 25 T

09S R 16E, TWIN FALLS

Co.

Use: INDUSTRIAL (1.00
CFS) from 01/01 to 12/31

POWER: (200.00 CFS)
from 01/01 to 12/31

FIRE PROTECTION (1.00
CFS) from 01/01 to 12/31

Place of Use: NWNW

Sec 25 T 09S R 16E

Diversion Means:

DIVERSION TO

PENSTOCK, POWER

PLANT, TRANSMISSION

LINE

*ok
mwp
12/1/81*

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region

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

NOVEMBER 25, 1981

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

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billing to this office before DECEMBER 21, 1981.

Yours truly,

Mary A. Hill
Secretary

Encl.

MICROFILMED

POINT OF DIVERSION AND STREAM INDEX INFORMATION

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
SE NW	25	09S	16E	--	--	001.5

IDAHO STREAM CODE INDEX

0272.0414.-----

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
SW NW	25	09S	16E	--	--	001.3

IDAHO STREAM CODE INDEX

0272.0414.-----

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
NW NW	25	09S	16E	--	--	001.0

IDAHO STREAM CODE INDEX

0272.0414.-----

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
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IDAHO STREAM CODE INDEX

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
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IDAHO STREAM CODE INDEX

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