State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 29-07772

Priority: August 01,1984

Maximum Diversion Rate: 75.00 CFS
Maximum Diversion Volume: 42,900.0 AF

It is hereby certified that MARSH VALLEY DEVELOPMENT INC
5203 S 11TH E
IDAHO FALLS ID 83404 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 05, 1984; and has submitted Proof of Beneficial Use on December 07, 1994. An examination indicates that the works have a diversion capacity of 250.4 cfs of water from:

SOURCE
PORTNEUF RIVER **Tributary:** SNAKE RIVER

and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL DIVERSION VOLUME
POWER	01/01 to 12/31	75.00 CFS	42,900.0 AF

LOCATION OF POINT(S) OF DIVERSION:
PORTNEUF RIVER L3 SE¼NW¼ Sec. 22, Twp 09S, Rge 37E, B.M., BANNOCK County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S 37E 20			X														
			L 6														

CONDITIONS OF APPROVAL

1. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.

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

3. Use of water under this right shall be non-consumptive.

4. Use of water under this water right will be regulated by the watermaster of State Water District No. 29.

5. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.

6. Use of water under this approval shall comply with applicable water quality standards of the Department of Environmental Quality.

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AUG 0 8 2001

State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 29-07772

7. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 10468-000 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

8. Prior to diverting water pursuant to this right, measuring devices and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works. Additional measuring devices may also be required for the accurate measurement of water diverted, water returned and water available to satisfy this and other water rights.

9. The adequacy of the project design to protect public and employee safety during all phases of construction and operation of the project shall be reviewed and certified by a professional engineer licensed to practice in the state of Idaho.

10. A minimum flow of ten (10) cfs or the entire available stream, if less than ten cfs, must be maintained within the bypass reach at all times, except as specified in the FERC license.

11. A shutdown bypass shall be constructed at the power plant site. The operation of the power system shall not alter normal flow characteristics of the Portneuf River.

12. The right holder shall be responsible for the cost of installing or retrofitting any diversion works, located between the project point of diversion and the downstream point of discharge, which is detrimentally affected by the hydropower diversion.

13. For purposes of interim distribution pending judicial determination, any senior unadjudicated water right, including those perfected through the beneficial use method, for which a claim is made in the pending Snake River Basin Adjudication (SRBA) shall be delivered prior to this right, provided the water is being beneficially used and provided the use is consistent with the right as recommended in the Directors Report when filed with the district court in the SRBA pursuant to Section 42-1411, Idaho Code.

14. Right 29-07578 is also diverted through the point of diversion described above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 25TH day of June, 2001.

MICROFILMED
AUG 0 8 2001

Acting for KARL J. DREHER
Director

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 29-07772

Date of Priority: August 01,1984

Maximum Diversion Rate: 75.00 CFS
Maximum Diversion Volume: ~~35,100.0 AF~~ 42,900.0 AF

Comes now MARSH VALLEY DEVELOPMENT INC
5203 S 11TH E
IDAHO FALLS ID 83404 and represents to the Director of the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 29-07772, and requests that the permit be changed as follows:

Source: PORTNEUF RIVER **Tributary:** SNAKE RIVER

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
POWER	01/01 to 12/31	75.00 CFS	~~35,100.0 AF~~ 42,900.0 AF

LOCATION OF POINT(S) OF DIVERSION:

PORTNEUF RIVER L3 SE¼NW¼ Sec. 22, Twp 09S, Rge 37E, B.M., BANNOCK County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S 37E 20			X L6														

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 4 day of June, 2001.

(Signature)

RECEIVED
JUN 18 2001
Department of Water Resources

MICROFILMED
AUG 08 2001

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT

(For Licensing Purposes)
WATER RIGHT NO. 29-07772

FOR DEPARTMENT USE ONLY

Preliminary check by ____ Fee = 50.00 Receipted by jm # C053434 Date 4/30/01

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, Karl J. Dreher, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 29-07772 with the following:

CONDITIONS OF APPROVAL

1. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.

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

3. Use of water under this right shall be non-consumptive.

4. Use of water under this water right will be regulated by the watermaster of State Water District No. 29.

5. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.

6. Use of water under this approval shall comply with applicable water quality standards of the Department of Environmental Quality.

7. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 10468-000 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

8. Prior to diverting water pursuant to this right, measuring devices and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works. Additional measuring devices may also be required for the accurate measurement of water diverted, water returned and water available to satisfy this and other water rights.

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AUG 0 8 2001

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JUN - 8 2001
Department of Water Resources

9. The adequacy of the project design to protect public and employee safety during all phases of construction and operation of the project shall be reviewed and certified by a professional engineer licensed to practice in the state of Idaho.

10. A minimum flow of ten (10) cfs or the entire available stream, if less than ten cfs, must be maintained within the bypass reach at all times, except as specified in the FERC license.

11. A shutdown bypass shall be constructed at the power plant site. The operation of the power system shall not alter normal flow characteristics of the Portneuf River.

12. The right holder shall be responsible for the cost of installing or retrofitting any diversion works, located between the project point of diversion and the downstream point of discharge, which is detrimentally affected by the hydropower diversion.

13. For purposes of interim distribution pending judicial determination, any senior unadjudicated water right, including those perfected through the beneficial use method, for which a claim is made in the pending Snake River Basin Adjudication (SRBA) shall be delivered prior to this right, provided the water is being beneficially used and provided the use is consistent with the right as recommended in the Directors Report when filed with the district court in the SRBA pursuant to Section 42-1411, Idaho Code.

14. Right 29-07578 is also diverted through the point of diversion described above.

Witness my hand this 25TH day of JUNE, 2001.

Acting for KARL J. DREHER
Director

RECEIVED
JUN 26 2001
Department of Water Resources

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AUG 08 2001

WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Application	29-07772	Marsh Valley Hydroelectric Co	75.0
Full Assignment	29-07772	Marsh Valley Development Inc	75.0

RECEIVED
JAN 22 1993

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 29-07772	
	ORDER OF
IN THE NAME OF MARSH VALLEY DEVELOPMENT INC.	**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 October 1, 1994; and,

WHEREAS, the Department notified the permit holder on July 31, 1994, by certified mail that proof was due and instructed the permit holder of the steps to be taken to submit the proof of beneficial use; and,

WHEREAS, the Department notified the permit holder on October 11, 1994, that the permit had lapsed for failure to submit an acceptable proof of beneficial use or extension of time; and,

WHEREAS, Section 42-218a, 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 holder has provided a reasonable showing why the permit should be reinstated by submitting an acceptable proof of beneficial use on December 7, 1994;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 29-07772 be REINSTATED with an advance in priority to August 1, 1984.

Dated this 12th day of December, 1994.

L. GLEN SAXTON
Chief, Water Allocation Bureau

Form No. 217
7/94

FOR OFFICE USE ONLY
Amt. of Fee $: _____
Receipt No. _____
Receipt By: _____
Date Receipted: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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DEC 07 1994
Department of Water Resources

PROOF OF BENEFICIAL USE

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

1. Permit No. 29-07578 & 29-07772 Telephone No. _____

2. Name(s) of Permit Holder(s): Marsh Valley Development Inc.

3. Mailing Address: 5203 South 11th East, Idaho Falls, ID 83404

4. Source of Water: Portneuf River If GROUNDWATER (well), Date Drilled: mo._____ / yr._____

   a. Well Driller: _____ Drilling Permit Number: ____ - ____ - ____ - ____

   b. *OPTIONAL:*
   Pump Horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft): _____

5. Use(s) (as authorized by the water right permit):

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

   Irrigation (No. of acres): _____ Other: Power

6. Total rate of diversion and/or volume for which proof is submitted: ~~250~~ 75 cfs OR _____ acre feet

7. Measuring Device Requirement: **(refer to the approval conditions on your permit and respond accordingly)**
   (This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

   Measuring Device: Is a measuring device required? Yes ✓ or No ____
   Has the measuring device been installed? Yes ✓ or No ____

   Flow Measurement Port: Is a flow measurement port required? Yes ____ or No ____
   Has the measurement port been installed? Yes ____ or No ____

8. Fee Enclosed: $ _____ (See Fee Schedule on back of the instructions for filing proof of beneficial use)

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

   Name: _____ Telephone Number: _____

   Address: _____

10. The information given on this form 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.

Signature of permit holder: _____ Date: 12/2/94
(Include your title, if on behalf of company of organization)
President

RECEIVED
DEC 2 1992
Department

State of Idaho

Department of Water Resources

ASSIGNMENT OF PERMIT

Marsh Valley Hydroelectric Company hereby assigns to Marsh Valley Development, Inc., whose principal place of business is at 2988 Tipperary Lane, Idaho Falls, Idaho 83404, all of Marsh Valley Hydroelectric Company's right, title and interest in and to Permits No. 29-7772 and 29-7578 to appropriate the public waters to the State of Idaho.

Executed this 29th day of January, 1992.

MARSH VALLEY HYDROELECTRIC COMPANY

By Lyndon Green
President

STATE OF IDAHO)
: ss
County of Bannock)

On this 29th day of January, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Lyndon Green, known or identified to me to be the President of Marsh Valley Hydroelectric Company, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Randall C. Budge
NOTARY PUBLIC FOR IDAHO,
Residing at Pocatello.
My Commission Expires: 10/11/94

(SEAL)

JAN 22 1993

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 29-07772

Proposed Priority: June 5, 1984 Maximum Diversion Rate: 75.00 CFS
This is to certify, that **MARSH VALLEY HYDRO ELECTRIC CO.**
MC CAMMON, ID 83250
has applied for a permit to appropriate water from:

PORTNEUF RIVER tributary of **SNAKE RIVER**

and a permit is **APPROVED** for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
POWER	01/01 to 12/31	75.00 CFS

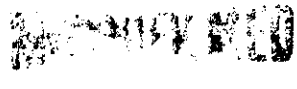
LOCATION OF POINT(S) OF DIVERSION: SENW Sec. 22, Township 09S, Range 37E
BANNOCK County

PLACE OF USE: POWER

TWN	RGE	SEC	
09S	37E	21	NWNW

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **October 1, 1994.**
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
5. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
6. This permit is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this permit. Failure to comply with these provisions is cause for immediate cancellation of this permit.
7. Water used under this permit if discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.



JAN 2 2 1993

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 29-07772

CONDITIONS/REMARKS:

8. The water right acquired under this permit for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
9. This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
10. Use of water under this permit shall be non-consumptive.
11. Prior to diverting water pursuant to this permit, measuring devices and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works. Additional measuring devices may also be required for the accurate measurement of water diverted, water returned and water available to satisfy this and other water rights.
12. The Director retains jurisdiction of the permit and any license subsequently issued, to require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
13. The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director on the date of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
14. Use of water under this permit is under the control of the watermaster of State Water District No. 29, Portneuf River.
15. A minimum flow of ten (10) cfs or the entire available stream if less than ten cfs must be maintained within the bypass reach at all times, except as specified in the FERC license.
16. A shutdown bypass shall be constructed at the power plant site. The operation of the power system shall not alter normal flow characteristics of the Portneuf River.
17. The permit holder shall be responsible for the cost of installing or retrofitting any diversion works, located between the project point of diversion and the downstream point of discharge, which is detrimentally affected by the hydropower diversion.

JAN 2 2 1993

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 29-07772

CONDITIONS/REMARKS:

18. The adequacy of the project design to protect public and employee safety during all phases of construction and operation of the project shall be reviewed and certified by a professional engineer licensed to practice in the state of Idaho.
19. Prior to operation of the hydropower facility, the permit holder shall provide an operation plan to the Department for review and approval. The operation plan shall provide for the protection of public safety and ensure adequate bypass and maintenance of the Portneuf River regime.
20. For purposes of interim distribution pending judicial determination, any senior unadjudicated water right, including those perfected through the beneficial use method, for which claim is made in the pending Snake River Basin Adjudication ("SRBA" - Twin Falls County Case No. 39576) shall be delivered prior to the right under this permit, provided the water is being beneficially used and provided the use is consistent with the right as recommeded in the Director's Report when filed with the district court in the SRBA pursuant to Section 42-1411 Idaho Code.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this

24th day of September, 1990.

for R. Keith Higginson, Director

JAN 22 1991

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 26, 2001

MARSH VALLEY DEVELOPMENT INC
5203 S 11TH E
IDAHO FALLS ID 83404

RE: License No. 29-7772 - Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The license is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a $100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

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

Sincerely,

Kari Lynn Dinneen

for Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure(s) (includes copy of approved amendment application)

MICROFILMED

AUG 0 8 2001

CERTIFICATE OF MAILING

I hereby certify that on June 26, 2001 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved License) to the person(s) listed below:

RE: WATER RIGHT NO. 29-7772

MARSH VALLEY DEVELOPMENT INC
5203 S 11TH E
IDAHO FALLS ID 83404

Kari Lynn Townsend
Secretary

MICROFILMED
AUG 0 8 2001

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

MICROFILMED
AUG 0 8 2001

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MICROFILMED
AUG 0 8 2001

Memorandum

To: Files 29-07578 and 29-07772

From: Kay Walker KW

RE: Annual Volume Recommendations

Date: March 30, 2001

In review of the additional information submitted by Mr. Brockway on 3/8/2001 (in response to request of 2/27/2001) we decided to use the total annual volume diverted in 1997 as the basis for the proposed licenses. Mr. Brockway submitted daily production records for the power plant for calendar year 1997 which the permit holder stated was the best water year since the plant was put into production. In 1997 the plant used an annual volume of 117,494.6 af. Pursuant to Application Processing Memorandum No. 6 we are to limit diversion volumes to a maximum of 3 significant figures so we are recommending 117,000 af under both permits. I found that we can allow a volume of 81,900 af for Permit 29-07578 and 35,100 af for Permit 29-07772.

81,900 + 35,100 = 117,000 af.

6/25/01 —
allow 143,000. AF for both rights

29-7578 = 100,100.0 AF
29-7772 = 42,900.0 AF
143,000.0 AF KW

MICROFILMED

AUG 0 8 2001

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JUN ' 6 2001

Department of Water Resources

MARSH VALLEY HYDROELECTRIC COMPANY
5203 SOUTH 11TH EAST
IDAHO FALLS, IDAHO 83404
208-522-8069 FAX 208-522-8223
E-mail: ted@tsorenson.net

MEMORANDUM

TO: Kay Walker
Sr Water Resource Agent
IDWR
P.O. Box 83720, Boise, Idaho 83720-0098

DATE: June 4, 2001

FROM: Ted S. Sorenson PE

SUBJECT:
Permits 29-07578 and 29-07772

REMARKS:
Here are the signed amendments as requested in your letter of May 4, 2001.
As I stated in my previous letter- I believe the total volume allowed/limited should be higher than 35,100 + 81,500 = 117,000 A.F. The 117,000 A.F reflects the highest year since start up in 1993 which was 1997. My feasibility and investment was based on analyses of water years 1950 thru 1990. The peak year was 1984. Because I enlarged the canal (see attached) the 1984 year would accumulate 193,273 A.F. Am I to be limited in the future because I've built to handle 193,273 A.F but not yet received it after only 8 years of operation? Regards

SIGNED: Ted Sorenson

MICROFILMED

AUG 0 8 2001

RECEIVED
Department of Water Resources

1/09/91

Marsh Valley Hydro
T.S. Sorenson P.E.

Turbine Analyses--Frances
Generator--Syncr.
Rated KW- 1700.00

Static Head 101.00

Penstock Hazen Williams	Segment	Diameter Inch	Length FT	Friction Factor
	1	60.00	550.00	130.00
	2	48.00	0.00	100.00

Year: 1984

Month	Flow CFS	Net Head FT	Effic. %	KW	KW-HR X 1000	Mills KW-HR	Revenue	Flow Acre-ft
Jan	237.20	97.88	84.7%	1663.5	1237.7	54.49	$67,441	14,706
Feb	235.90	97.91	84.7%	1655.0	1122.1	54.49	$61,141	13,210
Mar	245.50	97.67	84.7%	1719.9	1279.6	54.49	$69,726	15,221
Apr	~~207.80~~ 250	98.55	84.7%	1469.0	1057.7	54.49	$57,632	~~12,465~~ 15,000
May	~~130.00~~ 250	99.97	83.8%	922.3	686.2	54.49	$37,391	15,306
Jun	~~50.00~~ 200	100.83	82.8%	353.3	254.4	54.49	$13,862	12,000
Jul	49.80	100.83	83.5%	354.8	264.0	54.49	$14,383	3 088
Aug	35.20	100.91	83.5%	251.0	186.7	54.49	$10,175	2,182
Sep	210.00	98.51	82.9%	1451.5	1045.1	54.49	$56,947	12,600
Oct	199.20	98.74	84.4%	1404.7	1045.1	54.49	$56,947	12,135
Nov	223.10	98.21	84.7%	1571.6	1131.6	54.49	$61,660	13,386
Dec	226.30	98.14	84.4%	1586.0	1180.0	54.49	$64,299	14,103
	Subtotal				10490.0		$571,603	

TOTAL (5.0% Downtime Allowance) 9965.5 $543,023

Maximum Output 1719.9 KW

Overall Plant Factor 66.9%

Total 143,273

NOTES

Flow Data Source; USGS # 13073000
Minimum bypass flow 10 cfs year-round
Maximum turbine capacity 250 cfs
Maximum canal capacity 250 cfs enlarged to 950 cfs TSS
Irrigation requirements:
Jan,Feb,Mar,Apr 1-15: 0 cfs
Apr 15-30: 80 cfs
May 1-20: 120 cfs
May 20-31,June,July,Aug,Sep 1-15: 200 cfs
Sep 15-30: 40 cfs
Oct: 20 cfs
Nov,Dec 0 cfs

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

May 4, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

MARSH VALLEY DEVELOPMENT INC
ATTN: TED S SORENSON
5203 S 11 E
IDAHO FALLS ID 83404

RE: Permits 29-07578 and 29-07772

Dear Mr. Sorenson:

We are in receipt of your letter of April 26, 2001, regarding the above referenced permits. Please note that we received your amendment fees, in the amount of $100.00, but we did not receive the signed license amendment forms. I have included new amendment forms for your use, in case the previous ones were misplaced. Please submit the amendment forms at your earliest convenience.

In regard to your concerns regarding the conditions we proposed to attach to your licenses, we find that we can remove Condition No. 7, as you requested. I have removed this condition from the enclosed amendment forms per your request. If you recall, this condition stated "The director retains jurisdiction to require a by pass flow for maintenance of fish, wildlife, riparian and aquatic habitat." You were correct when you stated this condition was not on the permits when approved and should not be added at this time.

In regard to the proposed volume of water to be licensed, we find we cannot allow more than proposed unless you can submit documentation that shows you have used more than this amount since your system went online. We based the proposed volumes on information submitted by Charles E. Brockway on March 6, 2001. Since your project was not on line during water years 1982 and 1983, we cannot base your licenses on the water flows for those years. If you wish to submit additional documentation that shows your plant has used a greater volume of water since going online, we would be happy to review that information. Please submit any additional documentation that you may have within the next 30 days. We will withhold licensing these permits until June 4, 2001 to allow you time to gather and submit additional information.

If you have any further questions or concerns regarding the licensing of these permits, please do not hesitate to contact our office.

Sincerely,

KAY WALKER
Sr. Water Resource Agent

KW:k
Enclosures

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RECEIVED

APR 30 2001

Department of Water Resources

MARSH VALLEY DEVELOPMENT, INC.
5203 South 11th East
Idaho Falls, Idaho 83404

Phone: 208-522-8069
Fax: 208-522-8223
E-mail: 308-522-8223

April 26, 2001

no amendment items

Kay Walker
Senior Water Resource Agent
State of Idaho
Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

RE: Water Right Permit Nos. 29-07578 and 29-07772

Dear Mrs. Walker:

Enclosed please find the enclosed amendments for points of diversion and points of use. Also enclosed is a check for $100.00.

In reviewing the conditions of approval I have the following concerns:

1. Condition of approval No. 7 states "The director retains jurisdiction to require a by pass flow for maintenance of fish wildlife raparian and aquatic habitat. This condition was not included in the original permit to appropriate water. The original permit contained a requirement for "a minimum flow of 10 CFS or the entire available stream flow of less than 10 CFS must be maintained within the bypass reach at all times except as specified in the FERC license. This requirement is also covered under item 11 of the new conditions of approval. This new condition of approval leaves open the amount of water to generate hydropower and would have been a major concern to finance the project in 1992 and will be a major concern for refinancing in the future. Being that it was not in the original permit, I request that it be removed. -OK

2. The permitted volume of diversion under both permits totals some 81,900 plus some 35,100 equals 117,000 acre-feet. This amount of permitted

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total volume to be diverted in the year approximates water year 1997. However, the power plant when built in 1992 was projected on the previous 70 years of flow data as modeled by the adjacent USGS flow measuring gage. As I remember, the model showed that water years 1982 and 1983 were greater in terms of energy produced and, therefore, of water used than 1997, which the permit proposes. Therefore, if we are limited to this 117,000 acre feet in the future, I have been impacted on my financial viabilityof the plant. The plant can divert up to 182,500 acre feet of water per year at the rate of 250 CFS if it is available. Therefore, I request that the volume be increased to 127.750 acre feet for 29-0758 and 54,750 acre feet for 29-07772 as this is the amount that can and would be used on wetter years if the water is available.

Please give consideration to these items and I thank you in advance for your consideration.

Very Truly Yours,

Ted S. Sorenson, P.E.

TSS/ptj
Enc.

2000letters\Walker.ltr

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

April 3, 2001

MARSH VALLEY DEVELOPMENT INC
5203 S 11TH E
IDAHO FALLS ID 83404

RE: Water Right Permit No. 29-07772

Dear Permit Holder:

The Department of Water Resources is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit. The examiner who verified your water use reported that certain elements of the permit have been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

Based on the examiner's report, the following elements were developed differently than described on your permit:

_____ **Point(s) of Diversion**

_✓_ **Place(s) of Use**

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the $50.00 filing fee within 14 days.

If you have any questions, please call me at 208-327-7944.

Sincerely,

Kay Walker

KAY WALKER
Sr. Water Resource Agent

Enclosure

4-19-2001 allow 2 extra weeks for submittal of amendment - see note in file 29-07578. kw

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LICENSE REVIEW CHECKLIST

Permit No. 29-7772 Date: 2-9-2001 Reviewer: Kay Walker

Change/OK

Name/Address ok - fix zip code

Source ok
Point of Diversion: ok

Does change clarify original intended source? If no, void permit.
Change (P39/P49) Add (P45/P44) Feds (P40)

W32 (multiple in 1/4/1/4)
W36 (overlap)
W59 (subdivision description)

Place of Use change

Change (P41/P49) Add (P41/P44) Feds (P43)

W60 (subdivision description)
W27 (ppu acre limit)

Overlaps: Right(s): 29-07578 - also in lic process
File reviewed ✓ Profile reports printed _____

P/D & P/U amend (P37) Feds (P48)

Rate of Diversion:

Permitted rate 75. cfs
Fee Limit N/A cfs
Measured _____ cfs
Theoretical _____ cfs

Recommended Total Diversion Rate _____

Season of Use per new Standards
N/A

Water Uses ok Change (P46)

Irrigation	____ cfs	____ af
Stockwater	____ cfs	____ af
Domestic	____ cfs	____ af
Power	75. cfs	35,100 af
____	____ cfs	____ af
Total	75. cfs	35,100 af

Irrigation - overlap(R58-R61, **R62-R65, R66-R69**)
supp. Gw (WB7/065/104)
overlap spec combined rts (W35)
>1 acre (W31)
Domestic (W01/wb5/070/071/075)
Power (W42 or W43/025/027/R22 or R23)
Fish (042)
Fire (077)
Water Quality (081/R07)
Payette – (W22/047/27A)
Stockwater for US (R37)

Volume Determination
____ cfs x 1.9835 x ____ days = _____ af (vs) _____ acres x _____ (FHR) = _____ af

Remarks: _____

Additional Conditions
yes Watermaster Control 29
yes GW Measurement/Measuring Device
____ Other
Trust (052/R55 – remove 051)
Non-trust (048/049)

GW Dist? Ø
Water Msmt. Dist? Ø
Crit. GWMA? Ø
GWMA? Ø
Government Lots? yes

Advance Priority? ____yes
✓ no
If yes, explain why below.

SRBA Claim? not req'd

Adjust memo yes

Amend Letters _____ **P87, S06** **Second Amendment Notice** _____ **S06**

contract 11/21/86 + 35 yrs
2021

BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics
Hydrology
Water Resources

CHARLES E. BROCKWAY, PH.D., P.E.

CHARLES G. BROCKWAY, PH.D., P.E.

2016 NORTH WASHINGTON STREET • SUITE 4

TWIN FALLS, IDAHO 83301

208•736•8543

FAX: 736•8506

RECEIVED
MAR - 9 2001
Department of Water Resources

March 6, 2001

Mr. Shelley Keen, Supervisor
Water Allocations Section
Idaho Department of Water Resources
1301 North Orchard
P.O. Box 83720
Boise, ID 83720-0098

Subject: Beneficial Use Exam Permit Nos. 29-07578, 29-07772

Dear Shelley:

I too reviewed the Water District 29 records for flows through the Portneuf Marsh Valley Canal and found them lacking in data sufficient to determine reasonable flows for licensing the Marsh Valley Hydro project.

The best estimate of flows actually diverted through the hydro system can be determined from plant records and the discharge/kw relationships developed for the plant during the beneficial use field exam.

Mr. Ted Sorenson furnished daily production records for the plant for calendar year 1997, which he indicated is the best water year since the plant was put into production. Based on this data, I prepared the attached spreadsheet to calculate average monthly production and discharge based on the calibrated discharge v. output relationship. The estimated total annual volume for 1997 was 117,495 af.

The Portneuf Marsh Valley Canal was enlarged during the construction of the power plant to transport all existing water rights plus the design discharge of the power plant according to plant construction records. Therefore, whenever the flow of the river is adequate to fill all irrigation and stockwater water rights plus the hydro right including the bypass flow of 10 cfs, the canal has adequate capacity to deliver the total 250.4 cfs design flow to the turbines.

According to past plant records, flows are oftentimes available during the summer months for hydro production when irrigation demand is down or river flows are high due to good water years or rainstorms.

It is therefor possible that the full plant discharge capacity could be available in some years for the full season, although that has not occurred to date.

The plant is not over designed so it seems reasonable to allow the potential annual volume based on the allowed combined rate of diversion of 250.0 cfs for the full year or 180,992 acre feet per year.

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I have added my recommendation of annual volume to the Beneficial Use Field Report and am returning it for final processing.

Sincerely,

Charles E. Brockway

cc: Marsh Valley Development Inc.

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AUG 0 8 2001

Marsh Valley Hydro

1997 Daily average KW plant output

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
1	1,251	1,557	1,480	1,756	1,562	1,587	156	-	-	1,233	1,656	1,158
2	1,306	1,538	1,542	1,689	1,565	1,597	(3)	-	-	1,254	1,350	1,151
3	1,621	1,513	1,523	1,735	1,238	1,573	(4)	-	-	1,300	1,174	1,109
4	1,609	1,490	1,510	1,711	1,166	1,461	-	-	-	1,278	1,140	1,108
5	1,565	1,493	1,489	1,664	1,313	1,489	-	-	-	1,251	1,136	1,113
6	1,338	1,411	1,576	1,672	1,666	1,249	-	-	-	1,246	1,136	1,126
7	1,197	1,377	1,609	1,641	1,622	1,250	-	-	-	1,302	1,139	1,137
8	1,264	1,284	1,615	1,635	1,679	1,564	-	-	-	1,237	1,140	1,163
9	1,234	1,342	1,607	1,668	1,506	1,567	-	-	-	1,534	1,139	1,145
10	1,229	1,379	1,597	1,649	1,408	1,568	-	-	-	1,558	1,131	1,077
11	1,234	1,409	1,720	1,599	1,399	1,563	-	-	-	1,622	1,137	1,040
12	1,186	1,396	1,725	1,562	1,411	1,514	-	-	-	1,623	1,141	1,080
13	944	1,368	1,673	1,535	1,317	1,558	-	47	-	1,573	796	1,016
14	1,034	1,359	1,729	1,524	1,306	1,592	-	215	-	1,566	1,124	1,079
15	1,316	1,460	1,714	1,522	1,625	1,575	-	363	(7)	1,568	1,084	1,128
16	1,273	1,492	1,744	1,658	1,581	1,542	-	407	293	1,559	1,080	1,016
17	1,290	1,510	1,727	1,679	961	1,528	-	386	545	1,587	1,118	1,079
18	1,318	1,529	1,622	1,715	299	1,500	-	297	548	1,565	1,129	1,128
19	1,315	1,511	1,676	1,715	1,204	1,476	-	110	658	1,553	1,150	1,116
20	1,310	1,492	1,740	1,652	1,365	1,254	-	273	668	1,540	1,149	1,055
21	1,330	1,482	1,699	1,619	1,315	1,271	-	364	929	1,531	1,075	1,083
22	1,303	1,484	1,720	1,569	1,435	1,199	-	285	935	1,529	1,153	1,105
23	1,323	1,526	1,721	1,645	1,474	1,164	-	160	931	1,500	1,146	1,052
24	1,238	1,467	1,671	1,635	1,418	1,103	-	119	1,012	1,574	1,155	1,091
25	1,324	1,496	1,674	1,670	1,519	792	-	128	1,309	1,558	1,158	1,064
26	1,448	1,143	1,767	1,673	1,602	408	-	5	1,227	1,595	1,146	1,035
27	1,496	1,555	1,737	1,647	1,575	383	-	-	1,296	1,628	1,184	1,038
28	1,369	1,508	1,732	1,574	1,585	367	-	-	1,298	1,621	1,182	1,055
29	1,323	-	1,672	1,590	1,476	297	-	-	1,337	1,614	1,163	1,066
30	1,280	-	1,686	1,581	1,577	-	-	-	1,317	1,604	1,159	1,065
31	1,423	-	1,721	-	1,551	-	-	-	-	1,315	-	1,064

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Avg. kw	1312.5806	1308.7	1658.5	1586.6	1410.3	1193.2	4.8	101.9	461.1	1484.4	1115.1	1088.5
Avg cfs**	192.5	192.0	238.1	228.6	205.4	176.7	20.0	32.8	80.2	215.2	166.4	162.9
Monthly af	11,835.6	11,803.8	14,640.8	14,057.4	12,627.7	10,867.4	1,230.8	2,017.9	4,931.3	13,229.1	10,234.5	10,018.3

** Based on generator calibration CEB Q=19.385 +0.131879*KW (See Beneficial Use Field Report GENVQ.XLS)

Total annual af 117,494.6 for 1997

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Rated Generator Outpu 250.4 cfs

Max Annual Volume= 181,281 af assuming plant operating at capacity

Permitted discharge 250 cfs

Annual Volume 180,992 af assuming plant operting at full permitted discharge

Note: Canal is sized to transport total irrigation and stock water rights plus hydropower right.
In wet years, irrigators sometimes shut off due to rain or to allow additional discharge through the hydro plant from which they derive revenue.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

February 27, 2001

C E BROCKWAY PE
BROCKWAY ENGINEERING
2016 WASHINGTON NORTH
TWIN FALLS ID 83301

RE: Permit Nos. 29-07578 and 29-07772

Dear Mr. Brockway:

We have been reviewing the above referenced permits and find we do not have enough information to complete the licensing process. The beneficial use field report that you submitted contains no information regarding the volume of water that has been used in the hydropower facility. Beneficial Use Examination Rule 035.01.J exempts only municipal and fire protection uses from the requirement to report an annual volume based on actual use during the authorized development period. We are, therefore, returning the field exam to you to compile information regarding the amount of water actually diverted and used in the facility so an annual volume can be determined for this system.

We have reviewed the records submitted by Water District No. 29 for the 1992 - 1993 seasons and find they do not contain enough information. The water district records only contain information regarding the amount of water delivered to the canal company during the irrigation season and do not address the non-irrigation season.

If you have any questions regarding this matter, please feel free to contact me at 327-7946 or Kay Walker at 327-7944.

Sincerely,

SHELLEY W. KEEN
Supervisor, Water Allocation Section

CC: MARSH VALLEY DEVELOPMENT INC
ATTN: TED SORENSEN
5203 S 11TH E
IDAHO FALLS ID 83404

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AUG 0 8 2001

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 23, 2001

Ted S. Sorensen
Marsh Valley Development, Inc.
5203 South 11th East
Idaho Falls, ID 83404

RE: Licensing of Permits 29-07578 and 29-07772

Dear Mr. Sorensen:

This morning I received your request for licensing of water appropriation permits 29-07578 and 29-07772. We will begin reviewing the files to determine if water right licenses can be issued. Due to the volume of documentation associated with these permits, it may take several days, possibly up to a few weeks, to thoroughly review the files.

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

Sincerely,

Shelley Walter Keen
Water Rights Supervisor

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S:\SKeen\NAMELTRS\sorensen2907578.doc

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JAN 22 2001
Department of Water Resources

Marsh Valley Development, Inc.
5203 South 11th East
Idaho Falls, Idaho 83404

Phone: (208) 522-8069
Fax: (208) 522-8223
e-mail: sorenson@ida.net

January 18, 2001

Glen Saxton, Chief
Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

RE: Permits 29-07578 and 29-07772

Dear Mr. Saxton:

This letter is written to inquire as to the issuance of the license for these two permits. Proof of beneficial use according to my records was filed on December 5, 1994. On December 9, 1994 we received a Proof Acknowledgment Letter. Please advise as to the status of the issuance of the license for these two permits.

Very Truly Yours,

Ted S. Sorenson

TSS/ptj

C:\My Documents\Word Perfect\Ted's Letters\Saxton1.ltr.wpd

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Form 219
6/92

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DEC 07 1994
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit Nos 29-07578, 29-07772

1. Owner: Marsh Valley Development Inc Phone No. 208-522-8069

Current Address: 5203 South 11th East Idaho Falls, ID 83404

2. Accompanied by: Ted Pilling EXAM DATE: 10/22/94

Address: 9058 Crystal Springs Rd. McCammon ID 83250 Phone No. 208-254-3615

Relationship to Permit Holder: Plant Manager

3. Source: Portneuf River tributary to Snake River

B. OVERLAP REVIEW

1. Other water rights with the same place of use: None

2. Other water rights with the same point of diversion: _____

C. DIVERSION AND DELIVERY SYSTEM

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

Ident No.	Gov't Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		SE	NW		22	9S	37E	Bannock	USGS 7.5' QUAD

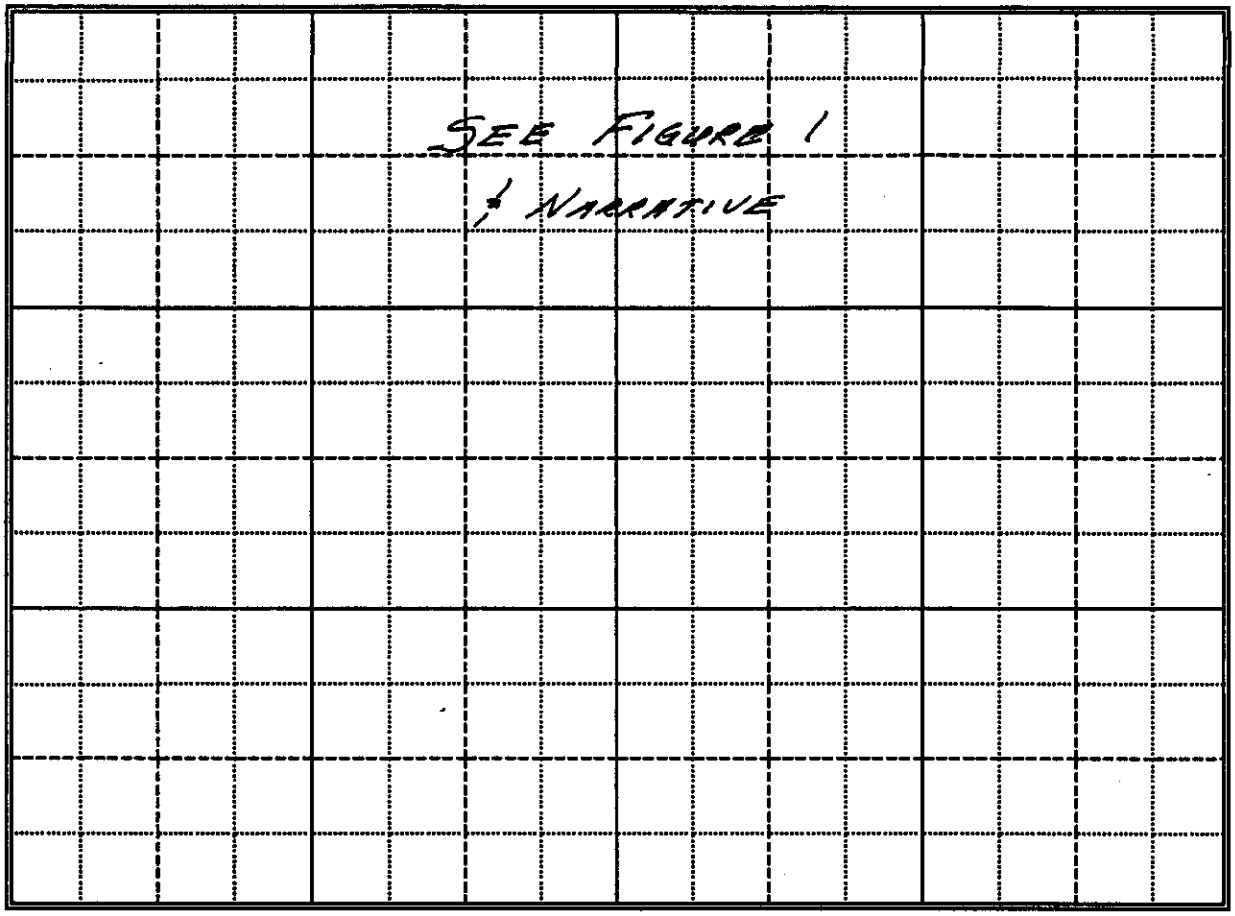
2. **Place(s) of Use:** Indicate Method of Determination USGS 7.5' QUAD

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9S	37E	20			P														

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3. **Delivery System Diagram**: Inc .te all major components and distances b. ,en components. Indicate weir size/ditch size/pipe i.d. as applicable.



Scale: 1" = _____.

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

____ Aerial Photo Attached (required for irrigation of 10+ acres)

✓ Photo of Diversion and System Attached

4.

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

Code to correspond with No. on map and aerial photo

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
15' Parshall Flume						
and Turbine rating						

2. **Measurements:** See Narrative

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E. NARRATIVE/REMARKS/COMMENTS

Attached

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

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F. FLOW CALCULATIONS X Additional Computation Sheets Attached

Measured Method:

Based on turbine rating and Parshall flume - discharge v. generation
See narrative and computation sheet

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

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

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

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

2. Volume Calculations for Other Uses:

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
Power (29-07578)	01/01	12/31	175.0	
Power (29-07772)	01/01	12/31	75.0	
		Totals:	250.0	

2. Recommended Amendments

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

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

I. AUTHENTICATION

Field Examiner's Name Charles E. Brockway Date 12/3/94

Reviewer _____ Date _____

REGISTERED PROFESSIONAL ENGINEER CHARLES E. BROCKWAY STATE OF IDAHO SEAL 12/3/94

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AUG 08 2001

WATER RIGHTS EXAMINER'S REPORT-NARRATIVE

Permit Nos.

Owner: March Valley Hydro Electric Co.

Examiner C. E. Brockway P.E.

Dated December 1, 1994

The field examination for beneficial use on Permit Nos. 29-07578 and 29-07772 was performed on October 22, 1994.

The water supply for the Marsh Valley hydroelectric facility includes a diversion from the Portneuf River consisting of two, 10 ft wide vertical slide gates, Photo #1, and a two mile long power canal. The diversion structure is located in the SE1/4, NE 1/4 Sec 22 T9S R37E BM. Figure 1 shows the diversion, power canal and power plant. The gate structure meets the requirements for a lockable controlling works as required under condition 11 of both permits. The power canal is jointly used by the Portneuf Marsh Valley Canal Co. with hydroelectric generation occurring during the non-irrigation season. Inflow to the project is measured through a 15 ft Parshall flume in the power canal approximately 0.75 mile downstream of the diversion, Photo #2. This measuring device meets the requirements under Condition 11 of the permits. At the time of the exam, the head reading on the flume was 0.81 ft. which corresponds to a discharge of 41.2 cfs.

Diversion from the power canal and the power plant are located in the SW 1/4 NE 1/4 Sec 20 T9S R37E. Flow to the powerhouse is diverted from the canal through a gated diversion structure, Photo #3, into the penstock. Flow can be bypassed down the irrigation canal for stock water or a 42 inch diameter shutdown bypass pipe allows return of power plant flow to the river. This satisfies Condition 16 of the permits. The penstock drops approximately 100 ft to the powerhouse and thence into the tailrace and returns to the Portneuf river, Photo #4. .

The penstock serves two turbines coupled to a single generator unit with capacities and specifications taken from nameplate data as shown in Table 1.

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Table 1 Turbine Nameplate Data

	Turbine #1 (North)	Turbine #2 (south)
Manufacturer	Hangchow Electrical Equipment Works, Peoples Republic of China	Hangchow Electrical Equipment Works, Peoples Republic of China
Type	HLD06A-WJ-71	HLA244-WJ-84
Speed	514.3 Rev/min	514.3 Rev/min
Power	580 Kw	1232 Kw
Standard No.	JB626-80	JB626-80
Head	29.87 meters	29.87 meters
Serial No	91121-2	91121-4
Flow Rate	2.26 m^3/s	4.81 m^3/s
Date	91.10	91.10

The generator nameplate data is shown in Table 2

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Table 2 Generator Nameplate Data

Manufacturer	Ideal Electric Mansfield Ohio	Phase	3
Serial No.	911054-01	Hz	60
Frame	11320-29	Rev/min	518
Type	ATG	Amps	291
Code	0	Volts	4160
Kw	1650	Duty	Continuous
Volts	4150	SF	1.15

The power plant for the Marsh Valley Hydro project consists of two (2) turbines coupled to a single generator unit with a combined nameplate hydraulic capacity of 7.07 m^3/s.(250.4 cfs), Photo #5, The forebay maximum water level elevation is maintained by hydraulic gates and an overflow spillway in the power canal..

Flow available for power generation has been below average since the project went on line in March 1992. Power plant log sheets maintained by the plant operator were obtained to determine historical generation and discharge measurements. The pertinent logs are attached to this narrative. Concurrent recorded discharge and kilowatts generated were extracted from the log sheets to determine a discharge rating for the turbine generator system. Figure 2 shows the generation and discharge data utilized and the comparison with the rated generation capacity and discharge. The concurrent discharge and Kw data used to determine the fitted curve on Figure 2 is limited to Kw output below 1065 Kw. However, the r^2 value for the linear fit is 0.74 which is reasonable. The extrapolated fitted curve shows a discharge of 258.4 cfs at the rated generator output of 1812 Kw. The manufacture's rated discharge is shown as the lower line in Figure 1 and indicates a rated discharge of 250.4 cfs at 1812 Kw.. This line shows approximately 8 to 10 cfs lower discharge than the fitted curve for the same Kw output. The difference is likely due to seepage in the power canal or leakage through the gates in the power canal controlling the forebay elevation

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On November 5, 1994, short term, high flow tests were conducted to determine system generation capacity. Short term storage in the power canal was used and both turbines were coupled to the generator. Recorded power generation for a sequence of 4 tests was 1782Kw, 1451Kw, 2005Kw, 2003Kw, and 1994Kw.(see attached power plant log and narrative). The 2005Kw power generation corresponds to an estimated 277 cfs from the manufacture's rated curve and 284 cfs from the fitted curve based on canal flow at the Parshall flume. This was a short term test, but does confirm that the facility is capable of generating in excess of the manufacturers rated output and with a flow considerably in excess of the rated discharge.

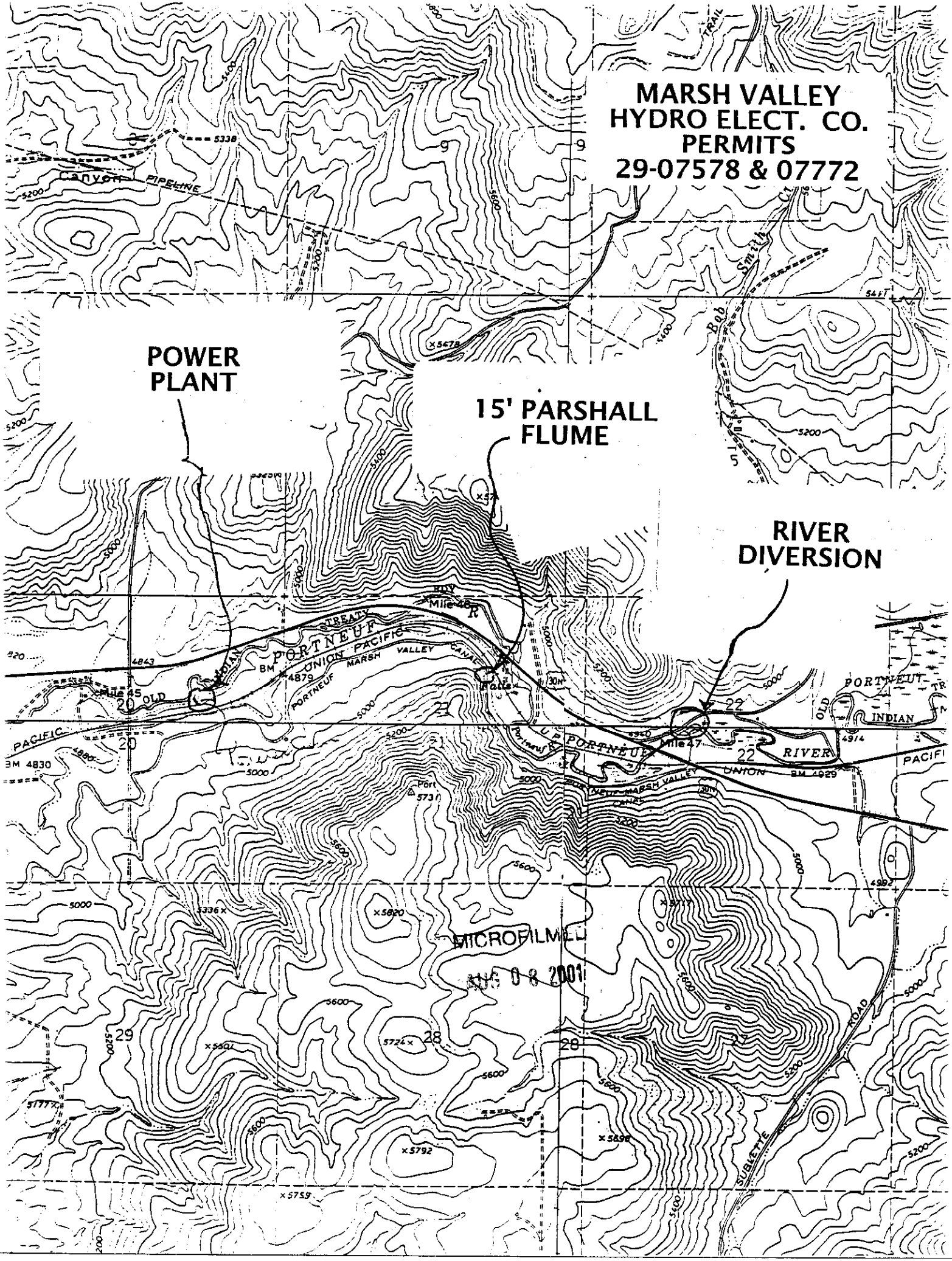
Historically, the flow available for diversion from the Portneuf river during the non-irrigation season has exceeded the rated 250.4 cfs and the power canal has the capacity to deliver that amount to the turbines. Maximum flows in February, March and April of the Portneuf River at Topas , just upstream of the power diversion, in excess of 400 cfs are common(Water Resources Data for Idaho, 1993)

These permits include Condition 15 which requires a minimum bypass flow of 10 cfs or the entire available stream if less than 10 cfs. The bypass reach has a rated discharge section approximately 500 feet upstream of the tailrace. This section was rated on March 23, 1993 by C.E. Brockway P.E. A copy of the rating curve is attached. At the time of this exam, the bypass gage read 0.45 ft which corresponds to a discharge of 10.0 cfs.

At the time of the exam, only the No 1 turbine was operating and the generator output was 325 Kw which is considerably less than the rated output for the project.

Based on the turbine rating and historical Kw generation, the recommended combined discharge for licensing is the permitted discharge of 250 cfs under permits 29-07772(75.00 cfs) and 29-07578(175.00 cfs).

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MARSH VALLEY
HYDRO ELECT. CO.
PERMITS
29-07578 & 07772
POWER
PLANT
15' PARSHALL
FLUME
RIVER
DIVERSION
Canyon
PIPELINE
Bob Smith
UNION PACIFIC
PORTNEUF
MARSH VALLEY
CANAL
INDIAN
TREATY
OLD
PACIFIC
RIVER
ROAD
SUBLETTE
Mile 45
Mile 46
Mile 47
BM 4879
BM 4830
BM 4929
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GENVQ.XLS

MARSH VALLEY HYDRO BENEFICIAL USE EXAM FIGURE 2

CORRELATION OF CANAL DISCHARGE WITH GENERATOR OUTPUT

15 FT PARSHALL FLUME IN POWER CANAL

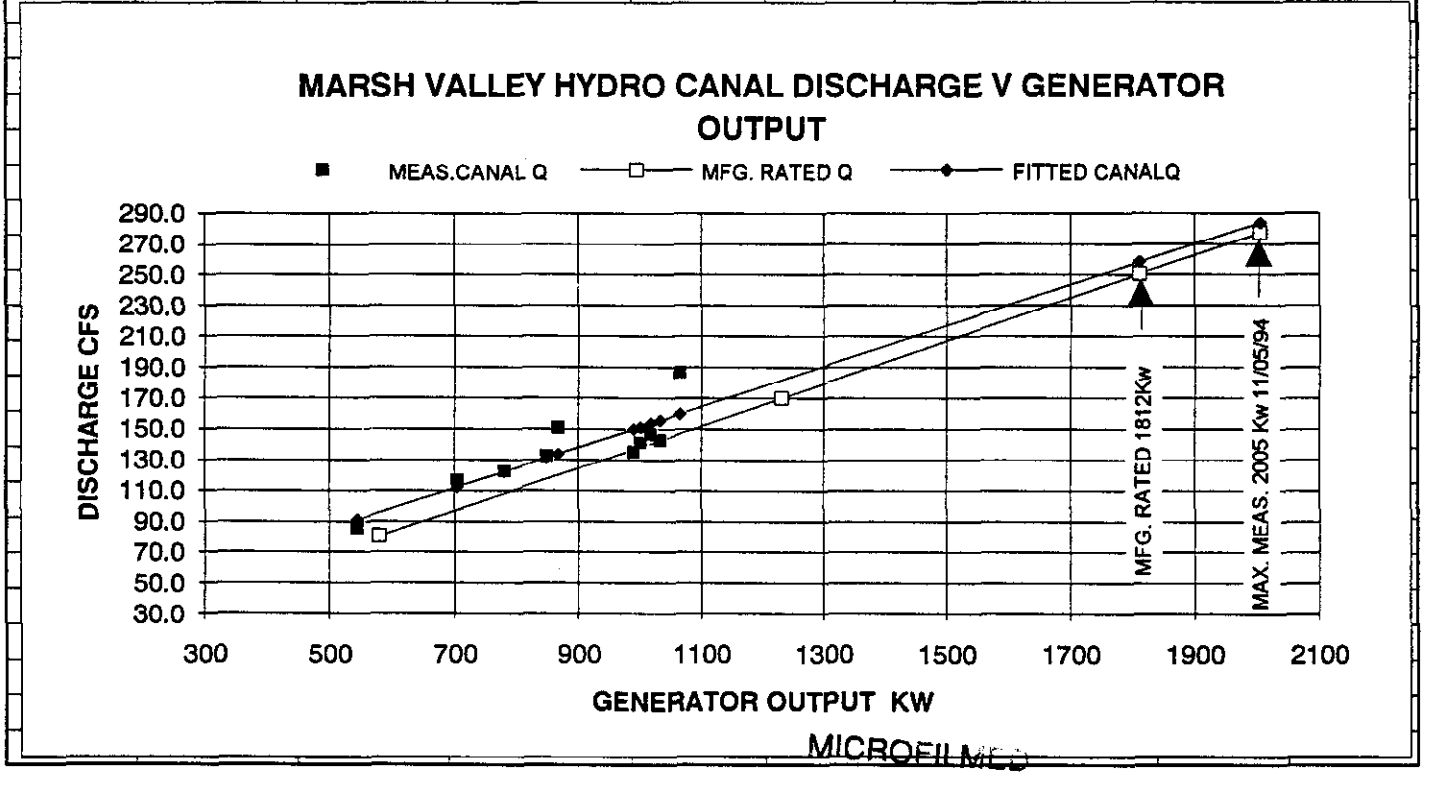
DISCHARGE EQUATION Q= 57.81 *H^ 1.6

DATA FROM COMPANY RECORDS

COMPILED BY C.E. BROCKWAY P.E. 23-Oct-94

CANAL DISCHARGES USED ENTIRELY THROUGH POWER PLANT

TURBINE #1 RATED A		2.28	M^3/SEC=	80.5	CFS	580	KW	
TURBINE #2 RATED A		4.81	M^3/SEC=	169.9	CFS	1232	KW	
MAXIMUM RATED Q		7.09	M^3/SEC=	250.4	CFS	1812	KW	
DATE	PARSHALL	GENERAT	DISCHARGE					
	FLUME	OUTPUT				RATED K	MFG. RATED Q	
	FT	KW	MEAS.CANAL	FTITED CANAL Q		580	80.5	
		GEN KW	CFS			1232	169.9	
2/18/94	1.68	849	132.6	131.4		1812	250.4	
2/25/94	2.08	1065	186.6	159.8		2005	277	<<PROJECTED
3/4/94	1.28	544	85.8	91.1	BYPASSING?SEE LOG			
3/11/94	1.82	867	150.7	133.7				
3/18/94	1.75	1001	141.5	151.4	MAX RECORDED			
3/25/94	1.70	990	135.1	149.9	1674	240.2		
4/2/94	1.76	1033	142.8	155.6			LINEAR FIT KW V Q	
4/8/94	1.79	1017	146.7	153.5			0.131879	19.38512 #N/A
4/16/94	1.60	780	122.6	122.3			0.027676	24.89515 #N/A
4/22/94	1.55	705	116.6	112.4			0.739471	14.04484 #N/A
		1812		258.4			22.70672	8 #N/A
11/5/94		2005		283.8	<<SHORT TERM TEST			
10/22/94	0.81	325	41.3	62.2	BYPASSING FOR STOCK			



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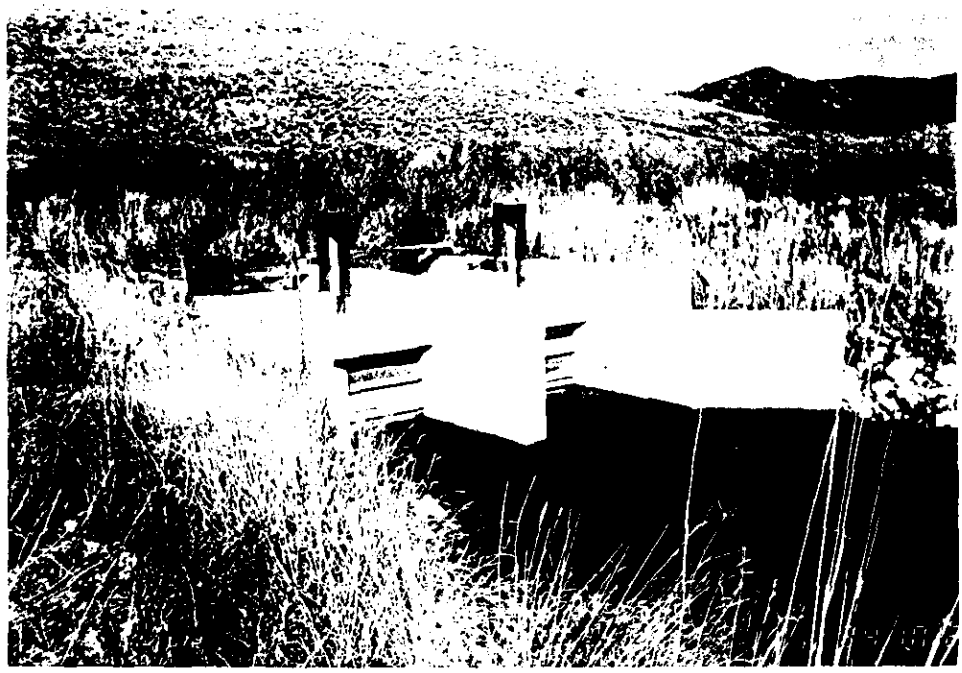


Photo #1 Permits 29-97578 and 29-07772 Diversion Structure from Portneuf River



Photo # 2 Permits 29-97578 and 29-07772-15 ft. Parshall Flume in Power Canal

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Photo #3 Permits 29-97578 and 29-07772 Penstock Diversion from Power Canal



Photo # 4 Permits 29-97578 and 29-07772-15 ft. Power Plant and Tailrace in Portneuf River

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Photo #5 Permits 29-97578 and 29-07772 Generator and Turbines in Power Plant

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MARSH VALLEY HYDRO DISCHARGE RATINGS

FROM CURRENT METER MEASUREMENTS BY C.E. BROCKWAY P.E. MARCH 23, 1993

STAFF GAGE DATA

BENCH MARK IS STEEL PIPE WITH INDIAN ALLOTMENT CORNER MARKER

ADJACENT TO ACCESS ROAD APPROXIMATELY 100 FEET NORTH OF BRIDGE

UPPER STAFF GAGE AT CURRENT METER STATION, 50 YES UPSTREAM OF ACCESS BRIDGE

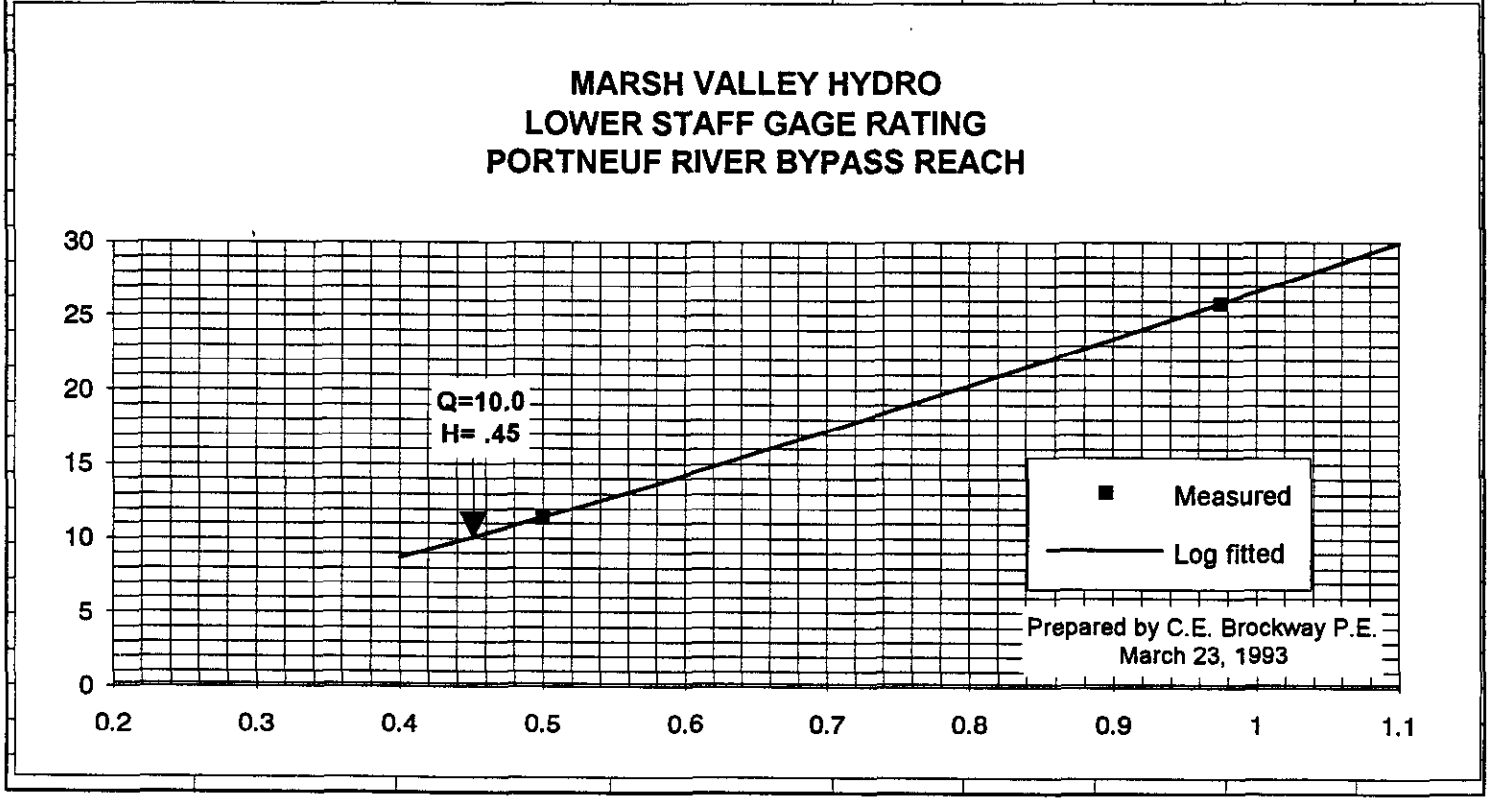
SURVEYED ELEVATION OF ZERO OF UPPER STAFF GAGE= 86.03 FT

LOWER STAFF GAGE APPROXIMATELY 30 FT DOWNSTREAM OF BRIDGE

SURVEYED ELEVATION OF ZERO OF LOWER STAFF GAGE= 85.80 FT

ELEVATION OF TOP OF CHANNEL STEEL NE CORNER OF BRIDGE= 96.35ft

UPPER GAGE	LOWER GAGE	DISCHARGE
FEET	FEET	CFS
1.59	0.5	11.37
1.835	0.975	25.84



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(4RS)

D+13.5 — 5.5 + D

HYDRO — DEV

.3 — Nov 1 - Logged plant, cleaned trashracks, D.P. tried to fully close Downey valve.

1-5 — Nov. 2 - Logged plant, cleaned trashracks, ~~cleaned~~ M°C. head gate, lowered River Gate, Visited S.B., dropped off Logs, Hours.

1 — Nov. 3: Logged plant, cleaned trashracks, M°C = 0.38 Called around looking for forming material prices, got them, room. 0.5

M.F. 0.28

Nov. 4 - M°C - 0.37, D - 1.27 Drove camel, raised River Gate, cleaned trashracks, consulted w/ Hes about upcoming work, Logged Plant.

2

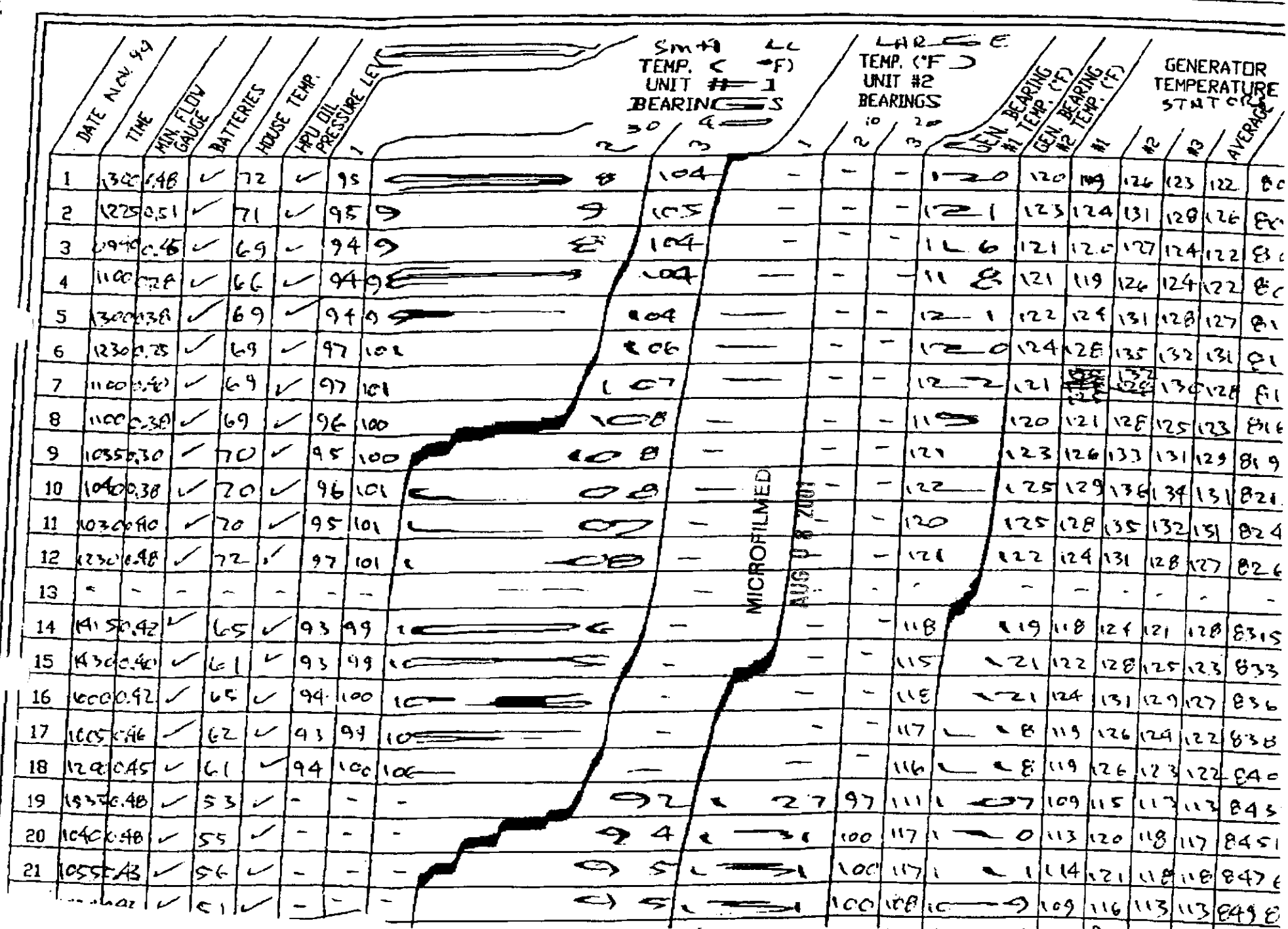
Nov 5. — R.S = 4 hrs — Logged plant, cleaned trashracks, opened & closed River gate, connected Surface Sensor, ran High Knob (on 2-3 generators at a time. 176 kw, 145 kw, 200 kw, 200 kw, 199 kw. Cleaned trashracks constantly while R.S. played with the controls. Two shutdowns tonight due to Low Head (about -2'!). Had to play with the Programming and babysit the gates manually because the Automatic Sensors are flat screwy and don't work unless creating slope changes every few time to keep up with the world!

(4RS) 4

1

Nov 6: Logged powerplant, cleaned trashracks

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	DATE NOV 94	TIME	MIN. FLOW GAUGE	BATTERIES	HOUSE TEMP.	HPU OIL PRESSURE LEV	SMALL TEMP. (°F) UNIT #1 BEARINGS 1	2	3	LARGE TEMP. (°F) UNIT #2 BEARINGS 1	2	3	GEN. BEARING #1 TEMP. (°F)	GEN. BEARING #2 TEMP. (°F)	GENERATOR TEMPERATURE STATOR (°F) #1	#2	#3	AVERAGE
1	13	0.48	✓	72	✓	95			104	—	—	—	120	120	119	126	123	122
2	1225	0.51	✓	71	✓	95			105	—	—	—	121	123	124	131	128	126
3	0949	0.45	✓	69	✓	94			104	—	—	—	116	121	120	127	124	122
4	1100	0.48	✓	66	✓	94			104	—	—	—	118	121	119	126	124	122
5	1300	0.38	✓	69	✓	94			104	—	—	—	121	122	124	131	128	127
6	1230	0.35	✓	69	✓	97	101		106	—	—	—	120	124	126	135	132	131
7	1100	0.40	✓	69	✓	97	101		107	—	—	—	122	121	126	132	130	128
8	1100	0.38	✓	69	✓	96	100		108	—	—	—	119	120	121	126	125	123
9	1055	0.30	✓	70	✓	95	100		108	—	—	—	121	123	126	133	131	129
10	1040	0.38	✓	70	✓	96	101		108	—	—	—	122	125	129	136	134	131
11	1030	0.40	✓	70	✓	95	101		107	—	—	—	120	125	128	135	132	131
12	1230	0.48	✓	72	✓	97	101		108	—	—	—	121	122	124	131	128	127
13	*	—	—	—	—	—	—		—	—	—	—	—	—	—	—	—	—
14	1450	0.42	✓	65	✓	93	99		106	—	—	—	118	119	118	124	121	120
15	1430	0.40	✓	61	✓	93	99		106	—	—	—	115	121	122	128	125	123
16	1600	0.42	✓	65	✓	94	100		106	—	—	—	115	121	124	131	129	127
17	1605	0.46	✓	62	✓	93	99		106	—	—	—	117	118	119	126	124	122
18	1245	0.45	✓	61	✓	94	100		106	—	—	—	116	118	119	126	123	122
19	1537	0.48	✓	53	✓	—	—	—	92	27	97	111	107	109	115	117	113	
20	1040	0.48	✓	55	✓	—	—	—	94	26	100	117	110	113	120	118	117	
21	1055	AB	✓	56	✓	—	—	—	95	26	100	117	111	114	121	118	118	
	[illegible]		✓	61	✓	—	—	—	95	26	100	118	110	109	116	113	113	

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12-02 94 20:05 RORY T:2082549345 P:02

E	RUN TIME HOURS-MINUTES	HEAD LEVEL	SCREEN LEVEL	WICKET #1 (%)	WICKET #2 (%)	VOLTAGE	AMPS	KV	KILOWATT-HR KW-HR	COOL WATER	SEAL WATER	SUMP PUMPS	OIL LEVEL GEN BRGS	OIL LEVEL #1	OIL LEVEL #2	TRASH PENSTOCK	RIVER HEADGATES	DOWNEY FLUME	McCAMMON FLUME	OPERATOR	COMMENTS
8006	17.6	6.5	44	-	4260	147	258	6,266,126	✓	✓	✓	✓	✓	✓	✓	-	-	-	TP	NOW 5, BOTH TURBINES
3029	18.0	6.1	55	-	4211	150	339	6,273,993	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	RHNIGHTK.COS TODAY 1752, HS
3051	16.9	5.5	57	-	4249	164	343	6,281,420	✓	✓	✓	✓	✓	✓	✓	-	-	-	TP	2005, 2003, 1994
3076	17.7	6.1	54	-	4248	164	390	6,291,314	✓	✓	✓	✓	✓	✓	✓	✓	1.27	0.57	TP	TRP END
3107	17.8	4.8	66	-	4252	169	429	6,301,922	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	K.W.H GENERATION
3122	21.9	7.2	71	-	4230	173	492	6,311,448	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	
3145	22	6.9	68	-	4232	171	466	6,322,032	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	
3169	22	6.2	68	-	4200	173	465	6,333,171	✓	✓	✓	✓	✓	✓	✓	✓	-	.935	TP	
92	21	5.2	66	-	4257	172	463	6,344,060	✓	✓	✓	✓	✓	✓	✓	✓	-	.936	TP	
216	22	3.5	66	-	4246	171	456	6,355,415	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	
240	22	4.9	63	-	4245	170	439	6,365,985	✓	✓	✓	✓	✓	✓	✓	✓	.528	.934	TP	
265	17	13	59	-	4243	167	403	6,377,249	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	SICK
15	16	11	57	-	4254	166	382	6,389,708	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	
339	13	7	76	-	4264	175	513	6,410,012	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	
60	11	5	76	-	4273	176	503	6,420,891	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	1307 KW
83	12	5	81	-	4249	176	522	6,432,965	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	1245 KW 2 100%
109	11	4	91	-	4250	178	534	6,446,530	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	SWITCHING TO LOWER TURBINE
32	11	3	-	46	4253 4255	172	478	6,458,362	✓	✓	✓	✓	✓	✓	✓	✓	1.40	off	TP	
51	11	3	-	49	4250	176	523	6,468,721	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	
76	10	1	-	50	4259	177	556	6,483,677	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	
8	10	1	-	52	4255	180	563	6,496,235	✓	✓	✓	✓	✓	✓	✓	✓	-	-	TP	

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	DATE	TIME	MIN. FLOW GAUGE	BATTERIES	HOUSE TEMP.	HPU OIL PRESSURE LEVEL	TEMP. (°F) UNIT #1 BEARINGS 1	2	3	TEMP. (°F) UNIT #2 BEARINGS 1	2	3	GEN. BEARING #1 TEMP. (°F)	GEN. BEARING #2 TEMP. (°F)	GENERATOR TEMPERATURE STATORS #1	#2	#3	AVERAGE	HOURS RUNNING	HEAD LEVEL	SCREEN LEVEL	WICKET #1 (%)	WICKET #2 (%)	VOLTAGE *	AMPS *	KV *	KV-HR	COOL WATER	SEAL WATER	SUMP PUMPS	OIL LEVEL GEN. BRGS.	OIL LEVEL #1	OIL LEVEL #2	TRASH PENSTOCK	RIVER HEADGATES	DOWNEY FLUME	McCAMMON FLUME	OPERATOR
1																																					
2																																					
3																																					
4																																					
5																																					
6																																					
7																																					
8																																					
9																																					
10																																					
11	1440	A5	✓	63°	✓	67	67	62	103	128	106	119	120.2	132.8	134.5	138.4	138	550.2	13.04	8.66		60.3	42.94 Temp	199	754	4,457,187	✓	✓	✓	✓	✓	✓	TP	TP	—	—	TP	
12	1050	0A2	✓	58°	✓	—	—	—	100.0	127	104	116.3	103	115.6	122.5	121.0	120.0	552.3	12.70	7.59		56	42.3	188	660	4,471,453	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
13	0830	0.45	✓	57°	✓	—	—	—	100.8	129	105	112.9	113.2	120.4	127.0	125.6	124	554.7	12.10	9.09		55	42.46	190	682	4,487,155	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
14	1095	0.45	✓	60°	✓	—	—	—	101.4	128	105	116.8	115.6	127.9	134.2	135.0	131	557.1	12.71	9.32		56.05	42.23	192	702	4,503,767	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
15	0920	0.45	✓	60°	✓	—	—	—	101.6	128	105	117.3	112.0	119.6	124.0	124.8	123	559.3	12.04	8.94		53.36	42.37	187	652	4,519,425	✓	✓	✓	✓	✓	✓	—	—	—	—	TP	
16	1205	0.43	✓	65°	✓	—	—	—	102.7	129	106	123.4	119.3	135.5	142.2	140.9	139	561.8	13.59	7.97	—	59.20	42.54	196	754	4,537,847	✓	✓	✓	✓	✓	✓	—	—	—	—	TP	
17	0930	0.43	✓	68°	✓	—	—	—	103.5	129	107	126.1	123.7	139.8	146.7	145.4	144	564.0	12.57	8.00	—	55.82	42.70	195	708	4,553,192	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
18	0945	0.50	✓	68°	✓	—	—	—	103.9	128	107	122.7	127.4	148.4	152.2	151.4	150	566.4	13.80	10.66	—	62.96	42.52	209	848	4,573,474	✓	✓	✓	✓	✓	✓	✓	✓	1.66	—	TP	
19	1140	0.43	✓	67°	✓	—	—	—	104.2	128	107	121.5	124.8	142.1	148.7	147.7	147	569.0	12.57	9.63	—	58.25	42.67	201	769	4,594,587	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
20	1140	0A1	✓	61°	✓	—	—	—	101.8	128	106	119.0	116.4	129.3	131.8	130.1	128	571.4	13.42	10.91	—	53.62	42.36	189	666	4,612,138	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
21	1120	A1	✓	63	✓	—	—	—	103.5	130	107	121.2	123.1	138.2	144.9	143.8	142	573.8	13.34	10.36	—	61.15	42.37	193	768	4,629,419	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
22	1	41	✓	62°	✓	—	—	—	102.6	131	107	119.7	119.6	130.9	136.8	139.5	133	576.1	13.28	10.66	—	54.45	42.46	189	668	4,645,982	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
23	0955	0A1	✓	62°	✓	—	—	—	102.9	131	107	119.2	120.5	131.4	137.8	136.9	134	578.4	13.59	10.65	—	57.57	42.37	191	687	4,662,252	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
24	1020	0A1	✓	64°	✓	—	—	—	103.7	131	108	122.0	123.2	138.6	148.9	144.2	142	580.9	13.63	10.91	—	60.77	42.52	198	745	4,679,895	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
25	1115	0A1	✓	66°	✓	—	—	—	106.3	132	109	125.5	124.0	139.2	145.5	145.4	162	583.3	?	?	—	8.97	42.40	235	1065	4,693,628	✓	✓	✓	✓	✓	✓	✓	✓	2.08	—	TP	
26	0900	Top	✓	70°	✓	89.1	92	103	104.0	126	106	123.2	132.9	130.5	148.3	189.7	187	585.2	12.40	6.27	8 7855	64.49	42.46	263	1270	4,723,655	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
27			10:00 PM 2-24-94 Plant OFF for Alarm 4Hrs. Turbine turning 90 to 100 RPM Not Good EM Rec																																			
28			36 Blockout - Low Head - Low RW (High Tailwater) Diff. Screen plugged Switch																																			
27	0920	wind	✓	68°	✓	86.5	90	101	106.5	122	106	119.3	126.2	135.9	139.2	142	141	586.8	12.01	4.72	100	OPEN	42.10	323	1674	4,747,351	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
28	1125	—	✓	75°	✓	92.5	94	103	111.9	129	110	126.5	139.6	204.8	211.2	212.3	209	594.2	13.21	6.52	76.61	85.84	42.16	317	1623	4,786,152	✓	✓	✓	✓	✓	—	✓	✓	—	—	TP	
29																																					
30																																					
31																																					

NOTE: ALL TEMPERATURES ARE FAHRENHEIT DEGREES (°F)

FERC NO. 10468 MARSH VALLEY HYDROELECTRIC FACILITY MONTH Feb 1994

MICROFILMED AUG 08 2001

TIME	TIME	MIN. FLOW GAUGE	BATTERIES	HOUSE TEMP.	HPU OIL PRESSURE (PSI)	UNIT #1 BEARINGS TEMP. (°F) 1	2	3	UNIT #2 BEARINGS TEMP. (°F) 1	2	3	GEN. BEARING #1 TEMP. (°F)	GEN. BEARING #2 TEMP. (°F)	GENERATOR TEMPERATURE #1	#2	#3	AVERAGE	HOURS RUNNING	HEAD LEVEL	SCREEN LEVEL	VICKET #1 GATE	VICKET #2 GATE	VOLTAGE	AMPS	KV	KV-HR	COOL WATER	SEAL WATER	SUMP PUMPS	OIL LEVEL GEN.	OIL LEVEL #1	OIL LEVEL #2	TRASH PENST.	RIVER HEADL	DOWNEY FLW	McCAMMON FL	OPERATOR	
	0955	1.78	✓	76°	✓	813	90	102	105.2	122	107	113.2	126.0	209.1	215.8	214.3	216	5915	13.13	7.35	90.13	91.69	4213	335	1732	4,824,856	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
																																					working
			working	on #2		ran w/	Pony	+ vent	fan.	Disconnected	#2,	Hi	Line	1820																						TP	working
	0910	1.23	✓	68°	✓	97.5	100	105	—	—	—	115.5	116.4	118.1	125.5	122.3	122	5973	23.87	24.47	100	—	4235	177	544	4,903,905	✓	✓	✓	✓	✓	✓	✓	1.92	—	TP	"
						brought	to	temp	before	going	off	-line	to	work	up	#2																					on line
	1030	0.45	✓	73°	✓	92.0	95	103	108.5	125	108	124.8	124.4	155.9	166.6	163.1	161	6022	13.33	9.07	58.16	64.18	4245	250	1174	4,949,027	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
	1040	0.38	✓	73°	✓	94.7	94	103	108.1	126	108	122.5	122.2	152.5	160.3	160.3	157	6046	13.59	9.63	58.68	58.0	4263	241	1110	4,972,131	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	1020	0.41	✓	74°	✓	90.5	94	104	106.8	126	108	125.2	119.6	144.8	152.9	151.9	148	6069	13.62	9.01	55.90	56.50	4240	232	1037	5,997,411	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
	1105	0	✓	73°	✓	89.5	92	103	106.5	126	108	122.5	119.4	144.4	152.3	151.4	149	6093	13.68	11.02	64.27	59.48	4254	229	1014	5,021,439	✓	✓	✓	✓	✓	✓	✓	—	—	TP	Shutdown
	0925	0.51	✓	72°	✓	87.5	91	104	102.1	124	105	121.6	119.5	143.5	150.1	150.1	149	6116	13.08	10.89	59.99	52.05	4240	225	986	5,044,465	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	1031 KW;
	1600	0.40	✓	75°	✓	89.4	92	104	103.9	125	106	123.6	118.2	140.4	148.1	147.1	146	6140	13.00	11.26	56.57	50.93	4224	222	967	5,068,738	✓	✓	✓	✓	✓	✓	✓	1.82	—	TP	canal muck
	1130	0.40	✓	72°	✓	88.4	91	103	103.0	125	106	123.0	119.0	143.6	151.1	150.1	149	6166	13.28	11.01	62.87	53.05	4247	230	1028	5,093,868	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	0955	0.40	✓	73°	✓	87.9	91	103	101.7	120	105	120.5	119.8	131.8	147.0	146.5	145	6188	13.36	11.20	62.13	48.54	4240	220	938	5,115,247	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
	0955	0.38	✓	74°	✓	87.9	91	104	102.6	124	106	119.3	121.5	145.3	152.2	152.2	149	6212	12.75	10.00	67.31	50.25	4251	226	984	5,137,845	✓	✓	✓	✓	✓	✓	✓	—	—	TP	Ingham Diversion
	1045	0.91	✓	76°	✓	—	—	—	108.7	127	110	126.9	123.3	131.9	159.3	159.0	157	6236	13.81	10.66	—	74 to 80	4236	236	1070	5,162,750	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
	1115	0.43	✓	80°	✓	—	—	—	109.0	126	110	130.6	125.6	138.0	163.8	166.3	162	6261	13.73	10.25	—	72.86	4258	232	1040	5,188,487	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
	0955	0.42	✓	77°	✓	—	—	—	108.0	127	109	125.5	119.7	139.6	147.2	146.9	143	6283	13.22	8.87	—	75.75	4233	236	1072	5,212,273	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
	0950	0.42	✓	80°	✓	—	—	—	107.9	127	109	130.9	122.3	141.7	159.5	159.1	155	6307	13.12	9.95	—	70.45	4264	228	1001	5,236,820	✓	✓	✓	✓	✓	✓	✓	—	1.75	—	TP	metal on wire
	1115	0.42	✓	75°	✓	—	—	—	107.8	127	109	125.5	118.1	143.9	153.4	152.9	151	6333	13.12	9.61	—	74.13	4226	234	1061	5,263,071	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	0945	0.41	✓	71°	✓	—	—	—	105.8	127	108	124.5	113.6	132.2	141.2	143.3	142	6353	13.06	10.40	—	69.86	4244	225	987	5,286,028	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	1000	0.42	✓	72°	✓	—	—	—	106.8	127	108	124.4	118.5	145.1	153.3	151.6	148	6379	13.63	10.05	—	70.46	4240	225	986	5,310,015	✓	✓	✓	✓	✓	✓	✓	✓	—	—	TP	
	0940	0.42	✓	77°	✓	—	—	—	108.0	128	109	128.1	117.5	142.2	149.8	149.1	148	6403	13.38	8.24	—	71.22	4240	225	987	5,333,091	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	0925		✓	69°	✓	—	—	—	109.7	127	107	121.1	111.3	131.4	139.0	138.3	137	6427	13.69	11.11	—	71.69	4216	225	994	5,357,061	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	0945		✓	67°	✓	—	—	—	108.7	128	107	121.8	112.5	133.2	140.6	139.7	139	6450	13.32	10.81	—	67.37	4256	218	922	5,379,510	✓	✓	✓	✓	✓	—	✓	✓	—	—	TP	water-Sp Ring
	0925	0.42	✓	70°	✓	—	—	—	106.3	128	108	124.4	118.1	143.8	151.4	150.A	148	6475	13.33	8.98	—	73.25	4244	226	990	5,403,232	✓	✓	✓	✓	✓	✓	✓	—	1.70	—	TP	
	0940	0.42	✓	71°	✓	—	—	—	106.8	128	109	124.4	117.0	140.8	148.2	147.2	146	6499	12.87	10.99	—	67.64	4241	217	924	5,426,283	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	1105	0.40	✓	70°	✓	—	—	—	106.6	128	109	124.4	116.2	135.3	142.7	141.5	140	6524	13.11	10.32	—	65.30	4246	210	855	5,449,742	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	1235	0.35	✓	72°	✓	—	—	—	108.1	128	109	125.5	119.4	141.9	151.5	151.3	149	6550	13.24	9.93	—	69.92	4232	219	933	5,472,814	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	water
	0900	0.48	✓	70°	✓	—	—	—	107.6	128	105	119.1	118.1	137.9	145.0	143.8	141	6576	13.22	10.51	—	66.72	4264	211	868	5,490,372	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	Low
	0930	0.43	✓	70°	✓	—	—	—	107.6	128	105	122.7	116.2	131.9	139.1	137.9	137	6595	13.14	10.26	—	64.97	4224	206	830	5,511,887	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	
	0907	0.42	✓	74°	✓	—	—	—	108.0	129	110	125.3	117.3	137.8	146.A	144.1	143	6618	13.16	9.46	—	67.73	4241	217	886	5,532,448	✓	✓	✓	✓	✓	✓	✓	—	—	—	TP	

NOTE: ALL TEMPERATURES ARE FAHRENHEIT DEGREES (°F)

FERC NO. 10468 MARSH VALLEY HYDROELECTRIC FACILITY MONTH March 1997

MICROFILMED
AUG 08 2001

ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 29-07772 Reviewed by [signature] Date 12-9-94

GENERAL CONSIDERATIONS

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

TYPES OF USE

power

Correct Uses? yes

SOURCE OF WATER

✓ Surface water source

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

LICENSE EXAMINATION FEE

no Required? exam submitted
____ Amount Submitted
____ Correct?

MEASURING DEVICE

yes Required?
yes Installed?
____ Waiver requested?

PRIORITY CALCULATION

Date proof received	12-7-94	341
Date proof ~~due~~ lapsed	10-11-94	- 284
No. of days late		= 57
Priority Date	6-5-84	+ 156
New Priority Date	8-1-84	213

DEFICIENCIES OR ACTION ITEMS

Reinstate & advance priority to August 1, 1984

Proof acceptable

DATA ENTRY

New Address ____ Proof Made 12/7/94

State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 9, 1994

MARSH VALLEY DEVELOPMENT
5203 S 11TH E
IDAHO FALLS ID 83404

PROOF ACKNOWLEDGEMENT LETTER

RE: PERMIT NO. 29-07772

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit.

Enclosed is an order reinstating your permit since proof of beneficial use was received after the proof due date. Please note that the priority date has been advanced to August 1, 1984.

The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the EASTERN Regional Office in Idaho Falls, at (208)525-7161.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary

Enclosure

c: IDWR - Region

MICROFILMED
AUG 08 2001

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.

October 11, 1994

MARSH VALLEY DEVELOPMENT INC
5203 S 11TH E
IDAHO FALLS ID 83405

LAPSE NOTICE

RE: PERMIT NO. 29-07772

Dear Permit Holder:

You are hereby notified that under the provisions of Section 42-218A, Idaho Code, the above referenced permit has lapsed and is of no further force nor effect. The department provided the proper forms to you in our proof due notice dated July 31, 1994. No further construction or additional development is authorized under this permit unless it is reinstated.

The permit can only be reinstated if you submit an acceptable proof of beneficial use or an acceptable request for extension of time to the department within sixty (60) days of the mailing of this lapse notice. An acceptable proof of beneficial use submittal must include the examination fee or a completed field examination report. A request for extension of time must be accompanied by a fifty dollar ($50.00) fee.

Enclosed again for your use are a proof of beneficial use form and a request for extension of time form. 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 government agency or by litigation which may bring title to the water in question.

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosures

MICROFILMED
AUG 0 8 2001

CERTIFICATION OF MAILING
I hereby certify that on 10/11/94
~~a copy~~/an original of this document was deposited in the United States mail, postage prepaid addressed to the individual(s) named above.

July 31, 1994

MARSH VALLEY DEVELOPMENT INC
5203 S 11TH E
IDAHO FALLS ID 83405

PROOF DUE NOTICE

RE: PERMIT NO. 29-07772

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before October 1, 1994. (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.

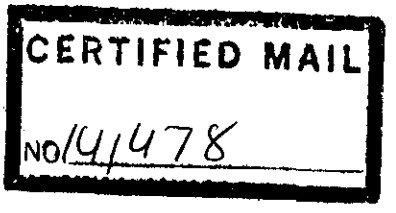
Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the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

SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

MICROFILMED
AUG 0 8 2001



RSH VALLEY DEVELOPMENT II
5203 South 11th East
Idaho Falls, Idaho 83404
(208) 529-2469
(208) 522-8223 fax

RECEIVED
JUL 14 1993
Department of Water Resources
Eastern District Office

July 12, 1993

State of Idaho
Department of Water Resources
150 Shoup Ave., Suite 15
Idaho Falls, ID 83402

RE: Marsh Valley Development, Inc.
Change of Address
Permit Numbers 29-7772 and 29-7578

Dear Sir or Madam:

This letter is to inform you that effective May 27, 1993 the mailing address for Marsh Valley Development, Inc. will be as follows:

Marsh Valley Development, Inc.
5203 South 11th East
Idaho Falls, ID 83405

Please correct your records.

Sincerely yours,

Gayle A. Sorenson

GAS/mjm

MICROFILMED
AUG 08 2001

RECEIVED
JUN 0 1 1993
Department of Water Resources

May 27, 1993

Marsh Valley Development, Inc.
5203 South 11th East
Idaho Falls, ID 83404

State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-7866

Re: Marsh Valley Development, Inc.
Change of Address
Permit Nos.: 29-7772 & 29-7578

Dear Sir or Madam:

This letter is to inform you that effective May 27, 1993 the mailing address for Marsh Valley Development, Inc. will be as follows:

Marsh Valley Development, Inc.
5203 South 11th East
Idaho Falls, ID 83405

Please correct your records.

Sincerely yours,

Gayle A. Sorenson

Gayle A. Sorenson

Database updated 6-4-93. CS
pr ff

MICROFILMED
AUG 0 8 2001

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 19, 1993

MARSH VALLEY DEVELOPMENT INC
2988 TIPPERARY LN
IDAHO FALLS ID 83404

Re: Permit Nos. 29-07578 & 29-07772

Dear Permit Holder(s):

We acknowledge receipt of the correspondence transferring ownership of the above referenced water right to you. We have modified our computer records to reflect this change in ownership.

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

Sincerely,

Brenda L. Miller

BRENDA L. MILLER
Water Resource Agent

BLM:cz

RECEIVED
JAN 2 2 1993

MARSH VALLEY DEVELOPMENT, INC.
550 Linden Drive
Idaho Falls, Idaho 83401
(208) 522-8069
(208) 522-8223 fax

January 5, 1993

RECEIVED
JAN 8 1993
Department of Water Resources

Brenda L. Miller
Idaho Dept. of Water Resources
Statehouse Mail
Boise, Idaho 83720-9000

RE: ASSIGNMENT OF PERMIT NOS 29-7578 & 29-7772

Dear Ms. Miller:

Enclosed is the "Certificate of Corporate Status of Marsh Valley Development, Inc." you need to complete the assignment process. We will appreciate your completing this as soon as possible.

Thank you.

Sincerely yours,

Gayle A. Sorenson

Gayle A. Sorenson

Encl.

JAN 22 1993

State of Idaho

Department of State

CERTIFICATE OF CORPORATE STATUS

OF

MARSH VALLEY DEVELOPMENT, INC.

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

I FURTHER CERTIFY That the records of this office show that the above named corporation was incorporated under the laws of Idaho and was issued a certificate of incorporation in Idaho on March 23, 1987.

I FURTHER CERTIFY That the corporation is in goodstanding on the records of this office.

Dated: December 14, 1992

GREAT SEAL OF THE STATE OF IDAHO ESTO PERPETUA

Pete T. Cenarrusa

SECRETARY OF STATE

By Sheryl Reeves JAN 22 1993

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 10, 1992

GAYLE A SORENSON
MARSH VALLEY DEVELOPMENT INC
2988 TIPPERARY LN
IDAHO FALLS ID 83404

RE: ASSIGNMENT OF PERMIT NOS 29-7578 & 29-7772

Dear Mrs. Sorenson:

We are in receipt of the correspondence concerning transferring ownership of the above referenced permits to Marsh Valley Development, Inc.

Before we can process the assignment, according to Section 42-206, Idaho Code, we must have proof that Marsh Valley Development is authorized to conduct business in the state of Idaho.

Once the required documentation is received, I will complete the assignment process.

Sincerely,

Brenda L. Miller
Water Resource Agent

JAN 22 1993

I RSH VALLEY DEVELOPMENT, II
2988 Tipperary Lane
Idaho Falls, Idaho 83404
(208) 529-2469

RECEIVED
DEC 2 1992
Department of Water Resources

November 30, 1992

State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-7866

Re: Assignment of Permit No's 29-7772 and 29-7578

Dear Sir or Madam:

Enclosed is an Assignment of Permit for the above described permits. Please stamp and file the same and send us acknowledgement.

Thankyou for your consideration.

Sincerely,

Gayle A. Sorenson

DEC 2 2 1993

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
MARIE T. FEELEY
ROBERT M. FOLLETT

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

R. VERN KIDWELL, OF COUNSEL

November 7, 1990

RECEIVED
NOV 8 1990
Department of Water Resources

Norman C. Young, Administrator
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Water Right Permit No. 29-7772

Dear Mr. Young:

Thank you for your letter of November 2, 1990, with regard to the Department's position as to the diversion and beneficial use of the Portneuf River which has been a matter of contention between the irrigators and the hydropower developer. We appreciate your letter, as well as the issuance of the permit. I am hopeful that this matter will be concluded in an appropriate manner.

Very truly yours,

Donald L. Harris

Donald L. Harris

#6066.00/srr

JAN 22 1993

PRA
Norm

SORENSON ENGINEERING
CONSULTING ENGINEER
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069
FAX 208-522-8223

RECEIVED
SEP 24 1990
Department of Water Resources

September 20, 1990

R. Keith Higginson
Director, Idaho Department of Water Resources
Statehouse Mail
1301 North Orchard
Boise, ID 83720

RE: MARSH VALLEY HYDROELECTRIC PROJECT
WATER RIGHT APPLICATION #29 7578 29 7772

Dear Mr. Higginson:

This letter is written concerning the above referenced permit. The project has been placed "on hold" pending the issuance of the water right. We would appreciate issuance of this water right as soon as possible. We understand that the appeal for late intervention by parties as represented by Kenneth Arment was denied.

We would appreciate receiving the permit within the next thirty days.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:mbk

JAN 22 1993

Glen —
what is status
of
issued yet

RECEIVED
SEP 28 1990
Department of Water Resources

Lyndon Green
Marsh Valley Hydroelectric Company
1791 East South
McCammon, ID 83250

September 20, 1990

R. Keith Higginson
Director, Idaho Department of Water Resources
Statehouse Mail
1301 North Orchard
Boise, ID 83720

RE: MARSH VALLEY HYDROELECTRIC PROJECT
WATER RIGHT APPLICATION #29-7578 AND 29-7772

Dear Mr. Higginson:

This water right application has ben held up for some time pending an appeal for late intervention by parties represented by Mr. Ken Arment. This intervention was denied by the district court.

The water right is the "last piece" prior to proceeding with the project. We would be most grateful if the water right could be issued by October 15, 1990, if at all possible.

Your help in this matter is sincerely appreciated.

Very truly yours,

Lyndon Green

Lyndon Green
Marsh Valley Hydroelectric

TSS:mbk

JAN 2 2

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

October 2, 1990

Permit No. 29-7772

Marsh Valley Hydro Electric Co.
McCammon, ID 83250

Dear Permit Holder:

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

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

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

Sincerely,

JIM JOHNSON, Supervisor
Water Right Permits Section

JJ:js

JAN 22

Form No. 202a
4/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY Gary Spackman DATE 5/6/88 APPLICATION NUMBER 29-7578 29-7772

REQUIRED INFORMATION

- [x] Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.) No names of directors & officers
- [x] Address
- [x] Source (See USGS Quad for names of water sources)
- [x] Point of Diversion (10 acres for spring, lot & block descriptions for subdivisions, local name, flow and/or volume) Two apps. list different P.O.D.'s
- [x] County
- [x] Quantity (flow and/or volume)
- [x] Period of Use (Question about period of use outside of irrigation use)
- [x] Nature of proposed use (Include description of use.) – OK
- [x] Description of diverting works Need more for hydropower
- [x] Time required for beneficial use of water
- [x] Place of use or acres irrigated Discrepency in PU's
- [x] Map
- [x] Signature (If applicant is corp. partnership, or minicipality, title of signator is required)
- [x] Fee
- [x] Yes [ ] No* In form to receipt

ADDITIONAL INFORMATION

- [x] Overlapping place of use (Describe spurce & relationship to present application on the back.) Appears to be same diversion as Partnent-Marsh Valley Irrigation Co. except different description
- [ ] Overlapping point of diversion →
- [ ] Yes [ ] No Field check required Maybe
  Field check by _____
- [ ] Yes [ ] No Field report attached
- [ ] Yes [x] No Critical groundwater area
- [ ] Yes [x] No Groundwater management area
- [ ] Yes [x] No Send dam safety information
- [x] Yes [ ] No Send power requirement letter Yes
- [ ] Yes [x] No Send fish farm requirement letter
- [x] Yes [ ] No Power residency affidavit
- [x] Yes [ ] No Power efficiency form
- [ ] Yes [x] No Within trustwater boundary (If yes, attach trust water supplementary analysis sheet.)
- [x] Yes [ ] No Diversion greater than 5 cfs or 500 acre ft. (If yes, attach large diversion supplementary analysis sheet.)
- [ ] See reverse side for additional information

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT _____

_____

_____ Date Requested _____

PROCESSING

☑ Yes ☐ No ... form for advertising
☑ Yes ☐ No Statewide advertising
☐ Yes ☐ No Fee amount, receipt date & No. recorded on application

SEND COPIES TO

☐ Idaho Dept. of Health & Welfare
☐ Idaho Dept. of Fish & Game
☐ Idaho Dept. of Lands
☐ Adjudication Bureau Unit
☐ U.S. BLM
☐ U.S. Forest Service
☐ Water District
☐ Other _____

→ Should have been done earlier.

FINAL REGIONAL PROCESSING REVIEW

☑ Yes ☐ No Affidavit of publication received
☐ Yes ☐ No Application published correctly. If not, record action taken.

☑ Yes ☐ No Publication dates & paper, recorded on application
☑ Yes ☐ No Protests received Withdrawn
Final date for protest _____
☑ Yes ☐ No Protests, dates, resolution of protest, recorded on application
☐ Yes ☐ No Recommendations attached
☑ Yes ☐ No Measuring device required
☐ Yes ☑ No Access port required
☑ Yes ☐ No Will water be delivered by watermaster? If yes, what Dist. 29
☐ Yes ☐ No Special conditions of approval or cover letter below. _____

☐ See below for additional information

Date of priority recommended 6-5-1984
By _____ Date _____

STATE OFFICE REVIEW P14, P08, P17 01J 05(29) 26A 48 49 04 08A 09E 17G 17K 25 27

☐ See below for additional information

By kw Date 9/4/90

ADDITIONAL INFORMATION

OK to allow 5 yrs. to develop App. in NON-TRUST area.

Form No.
7/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CHECKLIST OF REQUIREMENTS
LARGE DIVERSION SUPPLEMENTARY
ANALYSIS SHEET*

EFFECT ON EXISTING RIGHTS

☐Yes ☑No Springs/surface streams with 5 or less existing users
- ☐Identify number of impacted rights
- ☐Name and address of users
- ☐Location of points of diversion
- ☐Nature of use of the existing rights

☐Yes ☐No Groundwater
- ☐Plat showing proposed well and any other wells &/or springs within ½ mile radius

☐Yes ☐No Statement of design construction, or operation techniques which will be used to reduce impact on existing rights

Probably need knowledge of diversion works -

SUFFICIENCY OF WATER SUPPLY

Water Requirements of Proposed Project
- ☑Required diversion rate during peak use (Maximum rate) 225 cfs
- ☐Required diversion rate during average use period
- ☐Annual volume None (But no water available?)
- ☑Season of use → Do we need a statement?
- ☑Volume to be consumptively used/year

Quantity of Water Available from Source
- ☑Flow rates for surface water sources available during peak and average water demand period
- ☐Properties of aquifers
- ☐Other sources available for supplementation

GOOD FAITH, DELAY OR SPECULATION

☑Copies of deeds, leases, easements, and right-of-ways from _____

☑Power applications affidavit form 205/206 is required (~~[illegible]~~) OK

☑Yes ☐No Other needed permits, licenses, or approvals required. If yes, FERC License.

FINANCIAL RESOURCES

- ☐Current certified financial statement - Not really
- ☐Financial commitment letter/financial statement from committed party - No.
- ☐Project design/plans along with cost estimation to complete project - No.

*For applications of more than 5 cfs. or more than 500 AF.

LOCAL PUBLIC INTEREST

Comments received from:

☐ City	☐ Idaho Fish & Game	☐ Irrigation District
☐ County	☐ Idaho Health & Welfare	☐ Canal Company
☐ Reservations	Division of Environment	☐ Other_____

Project impacts/implications report

COMMENTS

POWER CALCULATIONS FOR APPLICATION NO. 29-7772

P = Kilowatts 444. .74 X hp 600

Q = cfs 75.

H = feet 88.

e = efficiency

License Issued 12/1/89

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

$e = \frac{P(11.8)}{QH} = \frac{444(11.8)}{75 \times 88} = \frac{5239.2}{6600} = 0.79$

Based on the above calculations the proposed project must have an 79 % efficiency.

****

OVERLAP REVIEW

P/D 29-00049, 29-00050, 29-00051, 29-00052 } all Portneuf River

P/U 29-00054 irrig.
29-00055 "
29-00057 "
29-00058 "

~~BYPASSED AREA~~ Recommend P14

JAN 22 1993

KW 9/4/90

BEFORE THE

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

RECEIVED
AUG 30 1990
Department of Water Resources

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-7578 AND 29-7772 IN THE NAME OF MARSH VALLEY HYDRO ELECTRIC COMPANY.	)	PETITION FOR ISSUANCE OF PERMITS

COMES NOW Marsh Valley Hydro Electric Company, by and through counsel of record Donald L. Harris, and petitions the Department for the immediate issuance of Permits Nos. 29-7578 and 29-7772. The basis of this Petition is the Director's findings on July 11, 1989 and October 17, 1989. Those decisions having been affirmed on appeal by the Honorable Alan M. Schwartzman, District Judge, in Case No. 93069 in the Memorandum Decision filed August 17, 1990.

There appears no remaining reason that the permits not be issued.

DATED this 29th day of August, 1990.

HOLDEN, KIDWELL, HAHN & CRAPO

Donald L. Harris
Attorneys for Petitioner

RECORDED
JAN 22 1993

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 21st day of August, 1990.

Document Served: PETITION FOR ISSUANCE OF PERMITS

Attorneys Served:

Kenneth R. Arment, Esq. (Mail)
BRADY, SAETRUM & LERMA, CHARTERED
First Interstate Center
P. O. Box 1398
Boise, Idaho 834701-1398

Donald L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO

1309i/cm/srr

JAN 2 2 1993

Kent W. Foster, Esq.
Donald L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS ~~FOR TRANSFER~~ NOS. 29-7578 and 29-7772.

R E S P O N S E

COMES NOW Donald L. Harris, of the firm Holden, Kidwell, Hahn & Crapo and pursuant to the Department's instruction, provides notice that counsel represent Marsh Valley Hydro Electric Company and Ted S. Sorenson, P.E., d/b/a Sorenson Engineering.

DATED this 18th day of May, 1990.

Donald L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO

RECEIVED
MAY 18 1990
Department of Water Resources
Eastern District Office

RECEIVED
MAY 18 1990
Department of Water Resources
Eastern District Office

RECEIVED
MAY 30 1990
Department of Water Resources

FILED
JAN 22 1993

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 18th day of May, 1990.

Document Served: R E S P O N S E

Individuals Served:

Kenneth R. Arment, Esq. (MAIL)
BRADY, SAETRUM & LERMA, CHTD.
P.O. Box 1398
Boise, Idaho 83701-1398

Ted S. Sorenson, P.E. (MAIL)
SORENSON ENGINEERING
550 Linden Drive
Idaho Falls, Idaho 83401

Donald L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO

#6066.00
8598h/srr

2 9-7578
2, -7772

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Marsh Valley Hydroelectric Company) Project No. 10468-001

NOTICE OF INTENT TO ACT AND
ACCEPTING LATE-FILED APPEAL

(April 2, 1990)

Lava Irrigation Company, Dempsey Irrigation Company, Topaz Irrigation Company, Fish Creek Irrigating Company, Jim Andrus, Ken Andrus, and Max Hall (Irrigators) have filed an appeal of the November 30, 1989 order of the Director, Office of Hydropower Licensing, issuing a license to Marsh Valley Hydroelectric Company for the proposed Marsh Valley Project No. 10468. 49 FERC ¶ 62,192 (1989). Irrigators' appeal was late-filed. Upon consideration, there appears to be good cause for accepting their appeal for consideration on its merits. This notice does not constitute a grant or denial of the appeal on its merits in whole or in part.

Further time is required to consider the issues raised on appeal. The Commission intends to act on appellants' appeal, which shall not, therefore, be deemed denied by operation of law pursuant to 18 C.F.R. § 385.1902(c) (1989).

By direction of the Commission.

(S E A L)

Lois D. Cashell,
Secretary.

JAN 2 2 1993

29-1578
29-1772

Bail
File please

RECEIVED
APR 3 1990
Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Marsh Valley Hydroelectric Company) Project No. 10468-001

NOTICE OF EXTENSION OF TIME

(March 29, 1990)

On March 14, 1990, Marsh Valley Hydroelectric Company (Marsh Valley) filed a motion for an extension of time to file an answer to an appeal filed March 5, 1990, in the above-proceeding on behalf of Lava Irrigation Company, Dempsey Irrigation Company, Topaz Irrigation Company, Fish Creek Irrigating Company, Jim Andrus, Ken Andrus and Max Hall (Lava Irrigators). In its motion, Marsh Valley states that additional time is needed because of the extensive nature of the issues raised in the appeal and because the company experienced a delay in its receipt of a copy of the filing.

Upon consideration, notice is hereby given that an extension of time for filing an answer is granted to and including March 30, 1990.

Lois D. Cashell
Secretary

JAN 22 199

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

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

March 16, 1990

Ted Sorenson
550 Linden Dr.
Idaho Falls, ID 83401

RE: Applications Nos. 29-7578 and 29-7772; in the Name of Marsh Valley Hydro Electric Company

Dear Mr. Sorenson:

Please find enclosed an Order Denying Petition for Issuance of License (Permit) and Order Denying Motion for Sanctions on the above referenced applications.

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

Respectfully,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

JAN 2 2 1993

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

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

March 16, 1990

Randall C. Budge
Racine, Olson, Nye, Cooper & Budge
P.O. Box 1391
Pocatello, ID 83204-1391

RE: Applications Nos. 29-7578 and 29-7772; in the Name of Marsh Valley Hydro Electric Company

Dear Mr. Budge:

Please find enclosed an Order Denying Petition for Issuance of License (Permit) and Order Denying Motion for Sanctions on the above referenced applications.

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

Respectfully,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

JAN 2 2 1993

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

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

March 16, 1990

Kenneth Arment
Brady, Saetrum, & Lerma
First Interstate Center
877 West Main St., Suite 800
P.O. Box 1398
Boise, ID 83701-1398

RE: Applications Nos. 29-7578 and 29-7772; in the Name of Marsh Valley Hydro Electric Company

Dear Mr. Arment:

Please find enclosed an Order Denying Petition for Issuance of License (Permit) and Order Denying Motion for Sanctions on the above referenced applications.

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

Respectfully,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

JAN 22 1993

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

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

March 16, 1990

Donald Harris
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

RE: Applications Nos. 29-7578 and 29-7772; in the Name of Marsh Valley Hydro Electric Company

Dear Mr. Harris:

Please find enclosed an Order Denying Petition for Issuance of License (Permit) and Order Denying Motion for Sanctions on the above referenced applications.

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

Respectfully,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

JUN 2 2 1993

LAW OFFICE
BRADY, SAETRUM & LERMA
CHARTERED
FIRST INTERSTATE CENTER
877 WEST MAIN STREET SUITE 800
P.O. BOX 1398
BOISE, IDAHO 83701-1398
(208) 345-8400
Facsimile (208) 345-8790

MICHAEL G. BRADY
RODNEY R. SAETRUM*
JOHN J. LERMA
KENNETH R. ARMENT
DAVID E. DAY**
MICHAEL E. POWERS
KENT V. REYNOLDS

*Also licensed in Utah
**Also licensed in Oregon

OFFICES IN
TWIN FALLS, IDAHO
303 SHOSHONE STREET NORTH
83301
(208) 734-0801

March 13, 1990

RECEIVED
MAR 14 1990
Department of Water Resources

Gary Spackman
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

Re: In the Matter of Applications for Permit Nos. 29-7578 and 29-7772 in the name of Marsh Valley Hydro Electric Company
Case No. 93069

Dear Gary:

Enclosed please find a copy of the conformed copy of our Notice of Appeal to FERC with regard to Applicant's proposed hydropower project on the Portneuf River. We have already served Ted Sorenson and Randy Budge with the Notice of Appeal, as these individuals were the designated agents on the FERC application. Accordingly, while we are copying this letter to the applicants, we will not be sending an additional copy of our Notice of Appeal. Mr. Akbar at FERC has informed us that the Notice of Appeal is currently being investigated by an attorney with FERC.

Don Harris of the law firm of Holden, Hahn, Kidwell & Crapo has represented that he has appeared as of record for the applicant in the above-referenced matter before the IDWR. Would you please notify us when this appearance was made and provide us with a copy. Also, if true, may we substitute Mr. Harris for the three other individuals currently on IDWR's required certificate of mailing?

MICROFILMED
JAN 22 1993

Thank you for your attention to this matter.

Very truly yours,

BRADY, SAETRUM & LERMA,
CHARTERED

Kenneth R. Arment

KRA:ts
cc: Randy Budge
Kent Foster
Ted Sorenson
Lava Irrigation District

RECEIVED
JAN 22 1993

RECEIVED MAR 1 2 1990

FILED
OFFICE OF THE SECRETARY
90 MAR -5 AM 9:31
FEDERAL ENERGY
REGULATORY
COMMISSION

RECEIVED
MAR 14 1990
Department of Water Resources

BRADY, SAETRUM & LERMA, CHARTERED
Kenneth R. Arment
First Interstate Center
877 West Main Street, Suite 800
P. O. Box 1398
Boise, Idaho 83701-1398

TELEPHONE (208) 345-8400

Attorneys for Lava Irrigation Company; Dempsey Irrigation Company; Topaz Irrigation Company; Fish Creek Irrigating Company; Jim Andrus; Ken Andrus; and Max Hall

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of Application for Major License of Marsh Valley Hydroelectric Company, for the Marsh Valley Project.	Project No. 10468-000 **NOTICE OF APPEAL**

TO: Federal Energy Regulatory Commission

COMES NOW, Lava Irrigation Company, Dempsey Irrigation Company, Topaz Irrigation Company, Fish Creek Irrigating Company, Jim Andrus, Ken Andrus, and Max Hall ("Lava Irrigators") and appeals the Federal Energy Regulatory Commission's ("FERC") order issuing license for the above-referenced project, due to FERC's failure to comply with constitutional, statutory and administrative due process safeguards. The license issued by FERC demonstrates that it failed to consider the Lava Irrigators' timely filed Motion to Intervene and also failed to notify the Lava Irrigators of the FERC final decision.

RECEIVED
JAN 22 1993

This Notice of Appeal also consists of the Affidavit of Kenneth R. Arment filed herein with attached documents. These documents reveal that a Ms. Crawford accepted service of the Lava Irrigators' Motion for Intervention on August 30, 1988, at 8:25 a.m. FERC employees have been unresponsive to the requests by the attorney for Lava Irrigators with regard to the obvious failure of FERC to comply with due process requirements. Accordingly, Lava Irrigators request that FERC revoke the license and reopen the administrative proceeds to include consideration of the Lava Irrigators' Motion to Intervene. The Lava Irrigators also request a hearing to be held at Lava Hot Springs, Idaho, with regard to the issues raised in their Motion to Intervene.

DATED this 2 day of March, 1990.

BRADY, SAETRUM, & LERMA,
CHARTERED

By _____
Kenneth R. Arment
Attorneys for Lava Irrigators

RECEIVED
JAN 22 1993

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2 day of March, 1990, I caused a true and correct copy of the foregoing instrument to be deposited in the United States mail, postage prepaid to:

Randy Budge
Attorney at Law
P. O. box 1391
Pocatello, ID 83204-1391

Ted Sorenson
550 Linden Drive
Idaho Falls, ID 83401

Fred E. Springer
Federal Energy Regulatory Commission
Office of Hydropower Licensing
825 N. Capitol St., NE
Washington, D.C. 20426

Kenneth R. Arment

FILED
JAN 22 1993

FILED
OFFICE OF THE SECRETARY

90 MAR -5 AM 9:33

FEDERAL ENERGY
REGULATORY
COMMISSION

BRADY, SAETRUM & LERMA, CHARTERED
Kenneth R. Arment
First Interstate Center
877 West Main Street, Suite 800
P. O. Box 1398
Boise, Idaho 83701-1398

TELEPHONE (208) 345-8400

Attorneys for Lava Irrigation Company; Dempsey Irrigation Company; Topaz Irrigation Company; Fish Creek Irrigating Company; Jim Andrus; Ken Andrus; and Max Hall

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of Application for Major License of Marsh Valley Hydroelectric Company, for the Marsh Valley Project.	)))))	Project No. 10468-000 **AFFIDAVIT OF KENNETH R. ARMENT**

KENNETH R. ARMENT, being first duly sworn upon oath, deposes and says that:

1. Attached and incorporated herein by reference as Exhibit "A" to this Affidavit are copies received from Airborne Freight Corporation documenting the delivery of Lava Irrigators' Motion to Intervene with 15 copies to the attention of Lois D. Cashell at the Federal Energy Regulatory Commission at 825 North Capitol Street, N.E., Washington, D.C. 20426. The documents reveal that a Ms. Crawford accepted delivery of the documents on August 30, 1988, at 8:25 a.m.

ACCEPTED FILED
JAN 22 1993

2. Attached and incorporated hereby by reference as Exhibit "B" is a letter from Affiant to Mohammad Akbar documenting the telephone conference with Mr. Akbar and Affiant which occurred on February 5, 1990. Mr. Akbar represented that he would investigate the matter and inform Affiant of the Lava Irrigators' procedural options. Affiant has received no response from Mr. Akbar with regard to his February 5, 1990, telephone conference or his February 9, 1990, letter. Attached to the letter are invoices from the express mail carrier documenting shipment of the original and 15 copies of Lava Irrigators' Motion to Intervene and a copy of the notice of an application for license listing the comment date as August 31, 1988.

3. Attached and incorporated hereby by reference as Exhibit "C" is a recomprised copy of the Motion to Intervene which is a true and correct copy of the original except for the absence of Affiant's firm's letterhead on the title page and redesignation of the attached exhibits which was sent to FERC via Airborne Express.

4. Attorneys for the applicant have admitted receiving a copy of Lava Irrigators' Motion to Intervene pursuant to the Certificate of Mailing contained in the original Motion to Intervene.

5. To the best of Affiant's knowledge, construction of the project has not yet been initiated.

RECEIVED
JAN 22 1993

DATED this 2 day of March, 1990.

BRADY, SAETRUM, & LERMA,
CHARTERED

By Ken Arment
Kenneth R. Arment
Attorneys for Lava Irrigators

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN to before me this 2nd day of March, 1990.

Tamara Swander
Notary Public for Idaho
Residing at Emmett, Idaho
My Commission Expires: 3/18/94

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2 day of March, 1990, I caused a true and correct copy of the foregoing instrument to be deposited in the United States mail, postage prepaid to:

Randy Budge
Attorney at Law
P. O. box 1391
Pocatello, ID 83204-1391

Ted Sorenson
550 Linden Drive
Idaho Falls, ID 83401

Fred E. Springer
Federal Energy Regulatory Commission
Office of Hydropower Licensing
825 N. Capitol St., NE
Washington, D.C. 20426

Ken Arment
Kenneth R. Arment

JAN 22

RECEIVED FEB 2 1990

SHIPMENT NO.	PIECE/WT	DEST / ROUTE	TIME	SIGNATURE	STAT
74602 3703	1/1		$7.21	1	
35492 4684	1/2		8.01	2	
10666 85050	1/5		8.05	3	
397978291	1/1		8.25	4	
77412 4002	1/2		8.25	5	
542370415	1/1		8.27	8	
33333 2344	1/1		8.28	7	
739980111-026	1/1		8.30	8	
88276 872-007	1/1		8.32	9	
82391 5492	1/1		8.34	10	
89121 1403	1/1		8.38	11	
001389255 516	1/1		8.43	12	
33264 3980	1/1		8.43	13	
001304717 945	1/1		8.47	14	
11/90 64-94	1/1		8.47	15	
249 536 651	1/1		8.49	16	
001125615 735	1/3		8.50	17	
82184 9980	1/1		8.53	18	

EXCEPTIONS DESCRIBE BELOW ALL EXCEPTIONS THAT REQUIRE CLARIFICATION. Refer to Route Line Number.

LOSS & DAMAGE
1-800-833-1378
INSIDE WASHINGTON STATE
1-800-[illegible]

JAN 2 2 1993

RECEIVED BY DRIVER, X	DATE	TIME	NO. OF SHIPMENTS	PIECES	WEIGHT
VERIFIED BY	TIME	NO. OF STOPS	TOTAL PIECES COUNTED	PAGE	0 PAGES

EXHIBIT A

AIRBILL NUMBER	DATE	CHARGES	TARIFF DEST.	DECLARED VALUE
601 774124002	08/29/88	PREPAID	DCA CTL-DCA	

AIRBORNE
AIRBORNE FREIGHT CORPORATION
P.O.BOX 662/SEATTLE WASHINGTON 98111

SHIPPER AND CONSIGNEE

S BRADY SAETRUM TINGEY — DAY JOYCE — 3- 13406264
1501 TYRELL — BOISE — ID 83706 — 10292
C FEDERAL ENERGY REG COMMIS — 3- 3240535
825 N CAPITOL ST NE — WASHINGTON — DC 20426 — 02856

BILL TO

13406264 A 01
BRADY SAETRUM TINGEY

1501 TYRELL
BOISE ID 83706

FACSIMILE

INVOICE

BOI 940 24200000

REQ. PIECES	DESCRIPTION OF PIECES AND CONTENTS	REF LAVA/MARSH VAUL	WEIGHT	RATE
1	ORIGINAL & 15 MOTION INTE SENT BY: KENNETH ARMENT ATTN: LOIS D CASHELL		6	E125LD CHG

OTHER CHARGES
A.ASSEMBLY FEE
B.DISTRIBUTION FEE
C.PRIORITY
D.EXTRA SERVICE
E.OTHER (SEE DESCRIPTION AREA)

A

FREIGHT CHARGES	DV/VAL	A/C PICK UP	A/C DELIVERY	EX. VAL./INSUR.	OTHER		
40.00	1					$ 40.00	774124002
ADVANCES	CHARGES/ADVANCES DEST.	SURFACE FWD.	C.O.D. FEE	C.O.D. →		PAY THIS AMOUNT	REFER TO THIS NUMBER WHEN MAKING INQUIRIES

NO OTHER STATEMENT WILL BE RENDERED. TARIFF REGULATIONS REQUIRE PAYMENT WITHIN 15 DAYS.

DISPOSITION				DATE	TIME
LD RS CRAWFORD	001495515	1		08/30/88	825

RECEIVED
JAN 22 1993

X

LAW OFFICE
BRADY, SAETRUM & LERMA
CHARTERED
FIRST INTERSTATE CENTER
877 WEST MAIN STREET SUITE 800
P.O. BOX 1398
BOISE, IDAHO 83701-1398
(208) 345-8400
Facsimile (208) 345-8790

MICHAEL G. BRADY
RODNEY R. SAETRUM*
JOHN J. LERMA
KENNETH R. ARMENT
DAVID E. DAY**
MICHAEL E. POWERS
KENT V. REYNOLDS

*Also licensed in Utah
**Also licensed in Oregon

OFFICES IN
TWIN FALLS, IDAHO
303 SHOSHONE STREET NORTH
83301
(208) 734-0801

February 9, 1990

Mohammed Akbar
Hydropower Licensing
Federal Energy Regulatory Commission
825 N. Captial Street, N.E.
Washington, D.C. 20426

Re: Marsh Valley Hydroelectric Company
Project No. 10468-000

Dear Mr. Akbar:

The purpose of this letter is to confirm our telephone conference on February 5, 1990, wherein I notified you that FERC had apparently misplaced our Motion to Intervene with the appropriate number of copies in the above-referenced matter. We did not receive notice of the issuance of the license for the above-referenced project until February 1, 1990, through a pleading filed by the applicant in a state administrative proceeding. The review of the license itself reveals that FERC did not consider the issues raised in our Motion to Intervene.

Enclosed are copies of billing and order receipts from an overnight air express carrier which indicates the documents were delivered to FERC on or before the published intervention deadline of August 31, 1988. (A copy of published notice for the project are also enclosed.) Airborne Express is currently in the process of retrieving stored computer data which will reveal which FERC employee signed for a receipt of our Motion to Intervene. Attorneys for the applicant have also indicated that they received a copy of our Motion to Intervene in 1988.

Please let us know whether FERC will reopen this matter on its own volition or whether it will be necessary to file an Appeal with FERC.

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JAN 22 1993

EXHIBIT B

Thank you for your attention to this matter. We look forward to hearing from you.

Very truly yours,

BRADY, SAETRUM & LERMA,
CHARTERED

Kenneth R. Arment

KRA:ts
cc/enc: Don Harris
Phil Rassier
Vera Avery

FILMED
2 1993

FORMAT 12935

AIRBORNE EXPRESS

SENDER'S AIRBORNE EXPRESS ACCOUNT NO. 13406264

ORIGIN BOI AIRBILL NO. 774124002

2 FROM (COMPANY NAME)
BRADY SAETRUM TINGEY

ADDRESS
ATT JOYCE
1501 TYRELL

CITY: BOISE | STATE: ID | ZIP CODE (REQUIRED): 83706

SENT BY (NAME/DEPT.): Kenneth R. Arment | PHONE: 208 345 8400

3 TO (COMPANY NAME)
Federal Energy Regulatory Commission

ADDRESS
825 N. Capital Street, N.E.

CITY: Washington | STATE: DC | ZIP CODE (REQUIRED): 20426

ATTN. (NAME/DEPT.): Lois D. Cashell | PHONE:

BILLING REFERENCE INFORMATION TO APPEAR ON INVOICE
Lava/Marsh Valley

RECEIVER'S AIRBORNE EXPRESS ACCOUNT NO.

THANK YO
FOR SHIPPIN
AIRBORNE
EXPRESS!

4 TYPE OF PACKAGING
- [X] EXPRESS/AD PACK ENVELOPE
- [ ] LETTER EXPRESS (UP TO 8 OZ.)
- [ ] EXPRESS PACK BOX/TUBE
- [ ] MAG TAPE PACK

DESCRIPTION OF CONTENTS: Original and 15 copies of Motion to Intervene

NO. OF PACKAGES | WEIGHT (LBS.) | DIMENSIONS (IN.) L W H

COD
$. (SUBJECT TO ITEM 15 ON REVERSE SIDE) SENDER'S C.O.D.

CHECK ONLY ONE: [ ] DECLARED VALUE [ ] FULL INSURANCE
$. VALUE FOR CARRIAGE (SUBJECT TO ITEMS 4 & 7 ON REVERSE SIDE)

5 BILL CHARGES TO (ASSUMED SENDER UNLESS OTHERWISE SPECIFIED)
- [X] SENDER
- [ ] RECEIVER
- [ ] 3RD PARTY _____ AIRBORNE EXPRESS ACCOUNT NO.
- [ ] PAID IN ADVANCE $_____
- CHECK NUMBER _____

TYPE OF SPECIAL SERVICE (EXTRA CHARGES MAY APPLY)
- [ ] SPECIAL PICKUP
- [ ] SATURDAY DELIVERY
- [ ] SPECIAL DELIVERY _____ TIME
- [ ] HOLD AT AIRBORNE FOR PICKUP (NO CHARGE)
- [ ]

THIS NON-NEGOTIABLE AIRBILL IS SUBJECT TO THE TERMS AND CONDITIONS CONTRACT SET FORTH ON THE REVERSE SIDE OF THIS COPY. AIRBORNE SHALL BE LIABLE IN ANY EVENT FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMA INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF INCOME. AIRBOR LIABILITY, IN THE ABSENCE OF A HIGHER DECLARED VALUE FOR CARRIAGE, IS LIM TO $9.07 PER POUND, PER PIECE OF CARGO LOST, DAMAGED, DELAYED, MISDELIVE OR OTHERWISE ADVERSELY AFFECTED.

6 SENDER'S SIGNATURE DATE
X Caroline Hopinga Jones 8/29/88

EXECUTIVE OFFICES
P.O. BOX 662
SEATTLE, WA 98111
FED I.D. NO 91-0837469

ORIGIN 774124002 AIRBILL NO. | AIRBORNE SIGNATURE X | DATE RECEIVED | TIME RECEIVED | NO. OF SHPTS. | PICKUP LOCATION: [ ] REQUEST DOOR [ ] AIRBORNE TERMINAL | DROP BOX [ ] [NO.] | [ ] CARRIER'S TERMINAL | [ ] OTHER | ROUTE

RECEIVED
JAN 22 1993

AIRBORNE EXPRESS.

MAIL PAYMENT TO:
P.O. BOX 91001, SEATTLE, WA 98111
SEND OTHER CORRESPONDENCE TO:
BOX 662, SEATTLE, WA 98111
PHONE 1-800-722-0081 TELEX 32-9543
IN WASHINGTON STATE 1-800 635-6606

ORIGINAL INVOICE

SHIPPED 8/29/88 | AIRBILL NUMBER BOI 774124002

SENDER CUST. NO. 13406264
BRADY SAETRUM TINGEY
DAY JOYCE
1501 TYRELL
BOISE ID 83706
SENT BY: KENNETH ARMENT
REF. NO. LAVA/MARSH VALLEY

RECEIVER CUST. NO. 3240533
FEDERAL ENERGY REG COMMIS
825 N CAPITOL ST NE
WASHINGTON DC 20426
ATTN: LOIS D CASHELL

DUE DATE 9/15/88 (M | D | Y)

TERMS OF CARRIAGE: PREPAID

BILL TO: SENDER

BILL TO CUST. NO. 13406264
BRADY SAETRUM TINGEY
DAY JOYCE
1501 TYRELL
BOISE ID 83706

NO. OF PIECES	DESCRIPTION	ACTUAL WEIGHT	DIM. WEIGHT	RATE
1	ORIGINAL & 15 MOTION INTE	6		CHG A

OTHER SERVICES/CHARGES DESCRIPTION

SCALE COMMODITY NO. E-125DD
TARIFF DESTINATION DCA
RECEIVED AT SD | NO. OF SHPTS. 1
DECLARED VALUE
OTHER CHG. CODE | C. PRIORITY SERVICE D. EXTRA SERVICE E. OTHER (SEE DESCR.)

PAID SEP 2 2 1988
#3042

17220 EVE

PICKUP INCL.
DELIVERY INCL.
FREIGHT CHARGE 40.00
ADVANCE ORIGIN
ADVANCE DESTINATION
COD FEE
COD AMOUNT
EX. VALUE/INSURANCE
OTHER

INVOICE DATE	REFER TO THIS NUMBER WHEN REMITTING →	AIRBILL NO.	PAY THIS AMOUNT →	TOTAL
8/31/88		774124002		$ 40.00

FED. I.D. NO. 91-0837469 SCAC-AIRB 204CEN (10/87)

THANK YOU FOR SHIPPING WITH AIRBORNE EXPRESS.

PLEASE RETAIN THIS PORTION OF THE INVOICE FOR YOUR RECORDS.

JAN 2 2 1993

PUBLIC NOTICE
UNITED STATES OF AMERICA
FEDERAL ENERGY
REGULATORY COMMISSION
Notice of Application
Filed with the Commission
(July 20, 1988)

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.: 10468-000 c. Date filed: September 4, 1987 d. Applicant: Marsh Valley Hydroelectric Company, an Idaho Corporation e. Name of Project: Marsh Valley f. Location: On the Portneuf River in Bannock County, Idaho near the town of McCammon. T9S., R.37E., Section 20, Boise Meridian g. Filed Pursuant to: Federal Power Act 16 U.S.C. Sections 791 (a) - 825(r) h. Applicant Contact: Ted S. Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522-8069, Randall C. Budge, Attorney at Law, Center Plaza, Corner First & Center, Pocatello, ID 83204 i. FERC Contact: Ms. Deborah Frazier-Stutely j. Comment Date: August 31, 1988 k. Competing Application: Project No. 10242-000. Date Filed: January 12, 1987 l. Description of Project: The proposed run-of-river project would consist of: (1) an existing 10-foot-high diversion dam at elevation 4,921 feet, diverting water from the Portneuf River into: (2) the existing 11,670-foot-long Portneuf-Marsh Valley Irrigation Canal; (3) a 7-foot-high concrete diversion structure located on the existing Portneuf-Marsh Valley Canal at elevation 4,911 feet; (4) an intake structure; (5) a 500-foot-long, 60 or 72-inch-diameter penstock; (6) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW operating under an average head of 96 feet; (7) a 50-foot-long tailrace discharging into the Portneuf River; (8) a 0.5-mile-long, 12.4-kV transmission line, tying into an existing Utah Power and Light Company's line; and (9) appurtenant facilities. m. Purpose of Project: Project power will be sold to Utah Power & Light Company n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1. A3. Development Application - Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for a 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, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must 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. section 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,' 'RECOMMENDATIONS FOR TERMS AND CONDITIONS,' 'NOTICE OF INTENT TO FILE COMPETING APPLICATION,' 'COMPETING APPLICATIONS,' 'PROTEST' or 'MOTION TO INTERVENE,' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application. D1. Agency Comments - Agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state of which the project is located, affected Indian tribes, and states are requested to provide coments and recommendations for terms and conditions pursuant to the Federal Power Act (Act), as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission, along with the recommendations, to comply with the requirement in Section 313 (b) of the Federal Power Act, 16 U.S.C. 8251(b), that the Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, the Commission will presume that the agency has none. One copy of an agency's response must also be sent to the applicant's representatives.

/S/Lois D. Cashell
Acting Secretary
August 1, 1988
No. 34

JAN 22 1993

Kenneth R. Arment

Lava Irrigation Company; Dempsey Irrigation Company; Topaz Irrigation Company; Fish Creek Irrigating Company; Jim Andrus; Ken Andrus; and Max Hall

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of Application for Major License by Marsh Valley Hydroelectric Company, for the Marsh Valley Project.	Project No. 10468-000 MOTION TO INTERVENE

TO: Lois D. Cashell, Acting Secretary
Federal Energy Regulatory Commission

Lava Irrigation Company; Dempsey Irrigation Company; Topaz Irrigation Company; Fish Creek Irrigating Company; Jim Andrus; Ken Andrus; and Max Hall ("Portneuf Irrigators"), by and through their undersigned counsel, Kenneth R. Arment of Brady, Saetrum, Tingey, Day & Joyce, Chartered, respectfully move the Federal Energy Regulatory Commission ("Commission") for an order permitting the Portneuf Irrigators to intervene as parties for all purposes in the above-referenced project proceeding pursuant to Rule 214, 18 C.F.R. §385.214.

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EXHIBIT C

GROUNDS FOR INTERVENTION

1. The Portneuf Irrigators consist of riparian land owners, irrigators, irrigation companies and neighbors of the project site which are not presently represented in the above-referenced proceeding by any party, and their interests will not be represented in this matter unless their Motion to Intervene is granted.

2. Participation of the Portneuf Irrigators in the Commission's proceeding on the project is in the public interest because of the Portneuf Irrigators' concerns on the effect of the project upon electrical power supply, beneficial public uses of water, irrigation uses, flood control, water supply and recreational and other purposes.

POSITION OF PORTNEUF IRRIGATORS

1. The Portneuf Irrigators are concerned with several aspects of the proposed project. Attached to this motion as Exhibit "A," are copies of petitions signed by individuals directly and indirectly seeking involvement in the petition proceedings, which are incorporated herein by reference.

2. Among the concerns of the Portneuf Irrigators is the issue of whether the Applicant, Marsh Valley Hydro Electric Co., has provided adequate notice of its application. Attached and incorporated herein by reference as Exhibit "B" is a copy of the notice published in the local newspaper. The Commission should note that the Applicant has referred to itself as "Marsh Valley

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Hydroelectric Company," which is the name of a competing applicant under Project No. 10242-000. A copy of a letter from the competing applicant explaining the identity of the two applicants is attached hereto as Exhibit "C" and incorporated herein by reference. A certificate from the Secretary of State of the State of Idaho establishing that "Marsh Valley Hydroelectric Company" is not an Idaho corporation, is attached hereto and incorporated herein as Exhibit "D."

3. Additional concerns of the Portneuf Irrigators is the fact that the Applicant is a wholly owned subsidiary of two irrigating companies, namely the Portneuf-Marsh Valley Canal Co., Ltd. and the McCammon Ditch Company. Both of these underlying Idaho corporations have violated their corporate charters and articles of incorporation by performing ultra vires acts in the creation and operation of the applicant corporation. Certified copies of the articles of incorporation showing relevant portions indicating the corporate purpose of the underlying irrigation companies, from the Secretary of State of the State of Idaho, are attached as Exhibits "E" and "F" and are incorporated herein by reference. Under each companies articles, Section or Article II provides the corporate purposes. In each case the stated corporate purposes are very limited. In accordance with Idaho law, activities performed by a corporation outside of its corporate powers are deemed ultra vires. Such is the case with the creation of the applicant corporation, Marsh Valley Hydroelectric Co.

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Riley v. Callihan Mining Co., 28 Idaho 525 at 540-542, 155 P. 665 (1916). Idaho Code §30-1-7 provides that ultra vires acts of a corporation may be challenged at any time in a proceeding by a shareholder against the corporation, by the corporation itself or by the attorney general of the State of Idaho. As indicated earlier, the Applicant is a wholly owned subsidiary of the two underlying irrigation companies. A certified copy of Applicant's articles of incorporation is attached hereto and incorporated herein as Exhibit "G." Even in the event that the Portneuf Irrigators do not have standing to directly challenge the ultra vires acts of the creation of the Applicant, said act should be considered by the Commission as the ultra vires acts may be challenged at any time in the future by shareholders of the corporation, the corporation itself or the attorney general for the State of Idaho, and such insecurity, the failure to comply with applicable state law on business regulations and the speculative nature of the application should be considered before the Commission grants an exclusive license to an applicant less the public interest be violated.

4. The Portneuf Irrigators are concerned due to the Applicant's representation in its water right applications that it was seeking an exemption or minor license from the Commission, and the representation that additional diversion structures would not be required for the project. Portneuf Irrigators note that Section 3 in the Applicant's notice of application, indicates that

JAN 22 1993

construction of a seven foot high concrete diversion structure is required for the project. The Portneuf Irrigators include riparian land owners whose land will be flooded if the level of the river is raised in any degree. Prior construction of diversion structures by the holding companies of the Applicant have resulted in the flooding and taking of real property without compensation.

5. Idaho is a prior-appropriation water rights state as opposed to a riparian water rights state. The Applicant has provided no assurance that the prior water rights of the Portneuf Irrigators will be protected from potential harm by the construction of the project. Specifically, under a 1922 water right decree in the case of Union Grain and Elevator Co., Case No. 2203 in the District Court of the Fifth Judicial District of the State of Idaho, the Portneuf-Marsh Valley Canal, because it diverts more than 30 cfs from the Portneuf River, was required to have an automatic measuring device installed. Id. at 77. This is the same canal which the proposed project is to be located on. Yet the Applicant and its parent corporations have refused to abide by the State Court decree for a period in excess of 60 years. This lack of compliance with the court decree by the parent corporations of the Applicant is relevant to these proceedings on the issue of the public interest of the proposed project.

6. An issue of public debate in the community of the project is whether the licensing and operation of the project will result

JAN 22 1993

in increased electricity billings shouldered by the members of the community, including the Portneuf Irrigators. There is great concern in the community whether the establishment of the project is within the public interest.

7. Finally, the Portneuf Irrigators have received no assurances that the project will not interfere with prior, superior water rights during the irrigation season between April 15th and November 15th of each year.

PRAYER FOR RELIEF

For the reasons given above, the Portneuf Irrigators respectfully request as follows:

1. That the Motion for Intervene of the Portneuf Irrigators be granted for all purposes.

2. That a copy of all pleadings filed with the Commission in this matter and a copy of all progress reports or other documents that the Applicant files or has already filed with the Commission regarding this project be sent to the interventionists at the following address:

Kenneth R. Arment
BRADY, SAETRUM, TINGEY, DAY
& JOYCE, CHARTERED
P.O. Box 1398
Boise, Idaho 83701

3. That the Commission conduct a public hearing in the local community to consider public interest comments and input on the advisability of and conditions for the proposed project.

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4. That the Commission require the Applicant to republish notification of its application in its correct name.

5. That should the Commission issue a major license for the project, that the license be conditioned upon the restrictions that it will not raise the level of the Portneuf River and that it will not interfere with prior vested property rights.

6. That prior to the Commission's consideration of a major license for this Applicant, that the parent corporations of the Applicant be required to mend their articles of incorporation and corporate charters to protect public interest values at stake in granting such an exclusive license, and that the actions of the Applicant should also be governed accordingly.

7. That as a condition for any license, that the Applicant be required to install and maintain an automatic measuring device on the Portneuf-Marsh Valley Canal.

8. For such other and further relief as the Commission may deem just and proper.

DATED this _____ day of August, 1988.

BRADY, SAETRUM, TINGEY, DAY
& JOYCE, CHARTERED

By _____
Kenneth R. Arment
Attorney for Lava Irrigation Company; Dempsey Irrigation Company; Topaz Irrigation Company; Fish Creek Irrigating Company; Jim Andrus; Ken Andrus; and Max Hall

FILED
JAN 22 1993

CERTIFICATE OF MAILING

I hereby certify that on the ____ day of August, 1986, I caused a true and correct copy of the above and foregoing MOTION TO INTERVENE to be mailed, postage prepaid, to:

Mr. Ed S. Sorenson, P.E.
550 Linden Drive
Idaho Falls, ID 83401

Mr. Randall C. Budge
Attorney at Law
Center Plaza
Corner First and Center
Pocatello, ID 83204

Director
Division of Project Review
Office of Hydropower Licensing
Federal Energy Regulatory
Commission, Room 204-RB
825 North Capitol Street, N.E.
Washington, DC 20426

Kenneth R. Arment

MOTION TO INTERVENE - 8
KRA:ch

2 1993

WE THE UNDER[illegible]NED HEREBY PETITION THE DEPARTME[illegible] OF WATER RESOURCES TO NOT APPROVE MARCH VALLEY HYDROELECTRIC COMPANY APPLICATION #29-7578 FOR 175 cfs. AND #29-7772 FOR 75cfs. DURING THE TIME OF YEAR WE ARE IRRIGATING, THAT BEING APRIL 15 THROUGH NOVEMBER 15, EACH YEAR. ALSO FEDERAL ENERGY REGULATORY COMMISSION NOT APPROVE THEIR APPLICATION #10468-000 BECAUSE OF THE INTERFERENCE WITH OUR EXISTING WATER RIGHTS AND THE FACT THAT WE HAVE BEEN USING THIS WATER BEYOND THE WATERING SEASON SINCE THE BEGINNING OF THESE DECREED RIGHTS.

Topaz Irrigation Company

NAME	ADDRESS	AMOUNT WATER DECREE
William M. Carpenter	Lava Hot Springs Ida.	47 Shares in Topaz Irrig. Co. 2.02 feet in Bonneville Ditch
Brett Carpenter	Lava Hot Springs, Ida.	45 Shares in TOPAZ
Dean Day	Lava Hot Springs Idaho	75 Shares of Topaz
Glenn Fagnant	Box 293 Lava Hot Springs, Id. 83246	12 shares Topaz Irrig.
Neil Hall	Box 6 Lava Hot Springs, Id. 83246	15 Shares Topaz Irrig.
Albert Roberts	Box 695 Lava Hot Springs, Ida.	66 Shares Topaz Irrig.
Gordon S. Hickman	12258 Lava Hot Springs Id.	35 Shares Topaz
Kim J. Andrus	6222 So. Dempsey Rd. Lava Id	69 -- Shares Topaz.
John S Andrus Jr.	R+1. Lava Hot Spgs. Id.	131 Shares Topaz
Nick Hall Pres. Lava Cemetery	Lava Hot Springs, Idaho 83246	5 shares Topaz
Harold C. Miller	376 So 17th Pocatello	102 Shares. Topaz-Dempsey
Lynn Bowman	Rt 2 Box 67 Pocatello	Dempsey & Topaz
		124 shares total

RECEIVED
JAN 22 1993

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EXHIBIT A

WE THE UNDEF NED HEREBY PETITION THE DEPARTME OF WATER RESOURCES TO NOT APPROVE MARCH VALLEY HYDROELECTRIC COMPANY APPLICATION #29-7578 FOR 175 cfs. AND #29-7772 FOR 75cfs. DURING THE TIME OF YEAR WE ARE IRRIGATING, THAT BEING APRIL 15 THROUGH NOVEMBER 15, EACH YEAR. ALSO FEDERAL ENERGY REGULATORY COMMISSION NOT APPROVE THEIR APPLICATION #10468-000 BECAUSE OF THE INTERFERENCE WITH OUR EXISTING WATER RIGHTS AND THE FACT THAT WE HAVE BEEN USING THIS WATER BEYOND THE WATERING SEASON SINCE THE BEGINNING OF THESE DECREED RIGHTS.

NAME	ADDRESS	AMOUNT WATER DECREE
Steve Wickham (Mabey Place & Pebble Development Place)	Box 16 Bancroft Ida. 83217	3.5 & 3.2 Rts.
Kenneth Ziegler		
Bancroft Id 83217		
Evelyn M. Ruger	Box 7 Bancroft Ida 83217	3.5 SF Pebble Creek
Dan Mabey	Open Heart Ranch Bancroft 83217	3.5 SF "
Dona Rae Mabey	" " " "	" "
James B Mabey	" " " "	" "
3.5		

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JAN 22 1993

WE TH[illegible]DERSIGNED HEREBY PETITION THE DEPA[illegible]T OF WATER RESOURCES TO NOT APPROVE MARCH VALLEY HYDROELECTRIC COMPANY APPLICATION #29-7578 FOR 175 cfs. AND #29-7772 FOR 75cfs. DURING THE TIME OF YEAR WE ARE IRRIGATING, THAT BEING APRIL 15 THROUGH NOVEMBER 15, EACH YEAR. ALSO FEDERAL ENERGY REGULATORY COMMISSION NOT APPROVE THEIR APPLICATION #10468-000 BECAUSE OF THE INTERFERENCE WITH OUR EXISTING WATER RIGHTS AND THE FACT THAT WE HAVE BEEN USING THIS WATER BEYOND THE WATERING SEASON SINCE THE BEGINNING OF THESE DECREED RIGHTS.

NAME	ADDRESS	AMOUNT WATER DECREE
Lava Irrigation Co. President Shane Quick	Lava Hot Springs, Idaho 83246	22.76 cfs
Golden Avery	Box 484 Lava Hot Springs, Ida 83246	
[illegible]	Box 214 Lava Hot Spgs Id. 83246	
[illegible]	[illegible]	
Anna Mae Stewart	Box 702 Lava Hot Spgs Id. 83246	
John E. Whitehead	Box 710 Lava Hot Spgs 83246	
Dana L. Kiding	8745 E. Rt. 1 Lava Hot Springs 83246	
Lavera Larsen	Lava Hot Springs Ida	
William Field	P.O. Box 134 Lava Hot Springs Idaho	
Ray Settles	Box 504 Lava Hot Spgs ID	
Phillo Nelson	Box #612 Lava Hot Spgs. Ida	
J.R. Irwin	Box 636 Lava Hot Springs	Ida.
Calvin A. Rowell	Box 183 Lava Hot Springs,	Idaho - 83246
William J. Crawford	Box 154 Lava Hot Springs,	Ida - 83246 - 6 1/2 Shares
Dan N. Dimick Leaser Hozan Ranch	Box 383 Lava	26 Shares
Gillian Potter	366 Adams American Falls	Lava Irrigation Decree
Ellis Christiansen	Box 48 Lava Hot Springs, Idaho 83246	1.9 C.F.S. May 1, 1887
Lynden Symons	Box 604 Lava Hot Spgs, Ida	+21 shares in Dempsey Irrig. canal company
Harold Nichols	Box 515 Lava Hot Springs	Dempsey Irrigation
Jan A Bowles for State Board	Lava Hot Springs, Idaho	55 Shares Lava Irrig. Tract

JAN 22 1993

WE THE UNDERSI D HEREBY PETITION THE DEPARTMENT . WATER RESOURCES TO NOT APPROVE MARSH VALLEY HYDROELECTRIC CO. APPLICATION #29-7578 FOR 175cfs., and #29-7772 FOR 75cfs. DURING THE TIME OF YEAR WE ARE IRRIGATING, THAT BEING APR.15 THROUGH NOVEMBER 15, EACH YEAR.

NAME	ADDRESS	AMOUNT WATER DECREE
Jim Andrus	Rt. 1, Lava Hot Springs, Idaho	7.30 feet
Red Pulling	9252 Crystal Sp. Rd McCammon Id	70 inches
Donald Willmore	Box 81, Lava Hot Springs, Idaho 83246	
Arkansas Ranches by Darrell Christine	8450 So Bob Smith Rd Lava Hot Springs, Id	62. inches
[illegible]	Lava Hot Springs Id.	177.1 inches
Grant N. Egley	Lava Hot Springs, Idaho	2 ft. Blue Spring Creek

RECEIVED
JAN 22 1979

PUBLIC NOTICE
UNITED STATES OF AMERICA
FEDERAL ENERGY
REGULATORY COMMISSION
Notice of Application
Filed with the Commission
(July 20, 1988)

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.: J0468-000 c. Date filed: September 4, 1987 d. Applicant: Marsh Valley Hydroelectric Company, an Idaho Corporation e. Name of Project: Marsh Valley f. Location: On the Portneuf River in Bannock County, Idaho near the town of McCammon, T9S., R.37E., Section 20, Boise Meridian g. Filed Pursuant to: Federal Power Act 16 U.S.C. Sections 791 (a) - 825(r) h. Applicant Contact: Ted S. Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522-8069, Randall C. Budge, Attorney at Law, Center Plaza, Corner First & Center, Pocatello, ID 83204 i. FERC Contact: Ms. Deborah Frazier-Stutely j. Comment Date: August 31, 1988 k. Competing Application: Project No. 10242-000. Date Filed: January 12, 1987 l. Description of Project: The proposed run-of-river project would consist of: (1) an existing 10-foot-high diversion dam at elevation 4,921 feet, diverting water from the Portneuf River into: (2) the existing 11,670-foot-long Portneuf-Marsh Valley Irrigation Canal; (3) a 7-foot-high concrete diversion structure located on the existing Portneuf-Marsh Valley Canal at elevation 4,911 feet; (4) an intake structure; (5) a 500-foot-long, 60 or 72-inch-diameter penstock; (6) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW operating under an average head of 96 feet; (7) a 50-foot-long tailrace discharging into the Portneuf River; (8) a 0.5-mile-long, 12.4-kV transmission line, tying into an existing Utah Power and Light Company's line; and (9) appurtenant facilities. m. Purpose of Project: Project power will be sold to Utah Power & Light Company n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1. A3. Development Application - Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for a 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, and must include an unequivocal statement of intent to submit. If such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must 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. section 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,' 'RECOMMENDATIONS FOR TERMS AND CONDITIONS,' 'NOTICE OF INTENT TO FILE COMPETING APPLICATION,' 'COMPETING APPLICATIONS,' 'PROTEST' or 'MOTION TO INTERVENE,' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application. D1. Agency Comments - Agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state of which the project is located, affected Indian tribes, and states are requested to provide coments and recommendations for terms and conditions pursuant to the Federal Power Act (Act), as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission, along with the recommendations, to comply with the requirement in Section 313 (b) of the Federal Power Act, 16 U.S.C. 8251(b), that the Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, the Commission will presume that the agency has none. One copy of an agency's response must also be sent to the applicant's representatives.

S/Lois D. Cashell
Acting Secretary
August 1, 1988
No. 34

DOCUMENT MAILED
JAN 22 1993

EXHIBIT B

Norm ltr

ENERGY NATIONAL CORPORATION

P.O. Box 1929
1930 Mesquite Avenue, Suite 12
Lake Havasu City, Arizona 86403
Telephone (602) 855-1615

RECEIVED
NOV 24 1987
Department of Water Resources

November 20, 1987

Mr. Keith Higginson, Director
Idaho State Department of Water Resources
Water Rights Division
Statehouse Mail
Boise, Idaho 83720

Dear Mr. Higginson:

Marsh Valley Hydroelectric Company, a Utah partnership, is presently the "first in time" applicant for a Federal Energy Regulatory Commission Hydropower License for it's Marsh Valley Diversion Hydroelectric Project, (No. 10242-000) on the Portneuf-Marsh Valley Canal, Portneuf River, Idaho.

Michael J. Graham of Energy National Corporation is the authorized agent of Marsh Valley Hydroelectric Company.

It has come to our attention that a competing applicant, "Marsh Valley Hydro Electric Company", of McCammon, Idaho, has filed an application for water rights (Nos. 29-7578, 29-7772) with your office. This competing application is for the water rights to the river on the same diversion and canal as our project.

We have requested the proper water right application forms from your office, and would appreciate the opportunity to participate in any hearings or procedures to protest the water right application filed by Marsh Valley H.C. of McCammon. It is our intent to file an application with your office for a water right for our Marsh Valley Diversion project No. 10242-000.

While our company is currently a Utah partnership, we are in the process of forming an Idaho Corporation.

As the first-in-time FERC applicant, we would respectfully request that no water right be issued at this time for these waters at this location, until the FERC license has been issued on this project. This would allow the FERC procedures to be completed, and still be in conformance with State of Idaho requirements.

Thank you for your consideration in this matter.

Sincerely,

M. Graham

Michael J. Graham
President and Agent

Our Ref: 10242-WR.001

EXHIBIT C

JAN 22 1993

State of Idaho

Department of State

CERTIFICATE

MARSH VALLEY HYDROELECTRIC COMPANY

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

I FURTHER CERTIFY That the records of this office fail to show that a corporation by the above name as ever being qualified to do business in the State of Idaho as a foreign corporationor incorporated under the laws of the State of Idaho as a domestic corporation, and is, therefore, not qualified to transact business in the State of Idaho as a corporation as of this date.

I FURTHER CERTIFY That the records of this office do show a corporation by the name of MARSH VALLEY HYDRO ELECTRIC CO., an Idaho corporation, filed in this office on the 29th day of March, 1983.

Dated August 18, 1988

Pete T. Cenarrusa

PETE T. CENARRUSA
Secretary of State

Corporation Clerk

EXHIBIT 1 1993

PETE T. CENARRUSA
SECRETARY OF STATE
STATE CAPITAL
BOISE, IDAHO

State of Idaho

Department of State.

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

I FURTHER CERTIFY That the annexed is a full, true and complete transcript of articles of amendment of articles of incorporation, of McCAMMON DITCH COMPANY, an Idaho corporation, received and filed in this office on the 25th day of March, 1954, as appears of record in this office as of this date.

Dated: August 18, 1988

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

by: Angie Hatch

JAN 2 2 1993

CCC 583

EXHIBIT E EXHIBIT E

State of Idaho

Department of State

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION

I, IRA H. MASTERS ~~J. Da/Cy PRICE~~ Secretary of State of the State of Idaho, and legal custodian of the corporation records of the State of Idaho, do hereby certify that the

McCAMMON DITCH COMPANY

a corporation organized and existing under and by virtue of the laws of the State of Idaho, filed in this office on the 25th day of March, 1954,

original articles of amendment, as provided by Sections 30-146, 30-147 Idaho Code enlarging purposes and increasing number of shares of common stock from twelve of the par value of $400.00 each to four hundred eighty shares of the par value of $10.00 each.

and that the said articles of amendment contain the statement of facts required by law, and are recorded on Film No. 84 of Record of Domestic Corporations of the State of Idaho.

I THEREFORE FURTHER CERTIFY, That the Articles of Incorporation have been amended accordingly.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State. Done at Boise City, the Capital of Idaho, this 25th day of March, in the year of our Lord one thousand nine hundred fifty-four, and of the Independence of the United States of America the One Hundred Seventy-[illegible]

Secretary of State

UNOFFICIAL DOCUMENT

JAN 22 1993

EXHIBIT E

ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION OF

THE McCAMMON DITCH COMPANY

WHEREAS, it is deemed advisable to amend Article II of the Articles of Incorporation of The McCammon Ditch Company so as to enlarge upon the purpose for which said corporation is organized, and Article V defining who may be elected to the Board of Directors of said corporation, and Article VI providing that the amount of capital stock of said corporation shall be $4,800.00 divided into 480 shares of common stock having a par value of $10.00 per share;

NOW, THEREFORE, BE IT RESOLVED that Article II of the Articles of Incorporation of The McCammon Ditch Company be, and the same is hereby, amended to read as follows:

ARTICLE II

The purposes for which this corporation is formed are as follows:

a. To operate, control or manage an irrigation project or canal system for the purpose of furnishing water to its shareholders, and not for profit or hire;

b. To purchase, lease, take, appropriate, hold, own or otherwise acquire and to maintain and operate water and irrigation rights and acquire, purchase, lease, take, appropriate, own, hold, build, maintain and operate for the stockholders of this corporation, dams, canals, ditches, laterals, flumes, pipelines, and all other works necessary or convenient for the appropriation, diversion, storage, transportation, and distribution or use of water for irrigation, manufacturing, industrial, and domestic uses, and for any other purpose for which water may be applied;

c. To borrow money, execute notes and mortgages therefor, and to lend money and to take notes and mortgages to secure the repayment of the same, to acquire real estate and personal property necessary in the operation of said corporation, and to manage, rent, control, or otherwise deal in real and personal property;

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JAN 22 1993

d. To purchase, hold and use, from time to time, as it may see fit, any shares of its own stock, together with the water rights represented thereby, using for such purposes any part of its surplus, but while this corporation holds the same, it shall not be entitled to vote such stock, but shall be entitled to resell the same, together with the water right represented thereby.

e. To do everything that is necessary and convenient in conducting and operating the business for which this corporation is organized.

BE IT FURTHER RESOLVED That Article V of the Articles of Incorporation of The Mc Cammon Ditch Company be, and the same is hereby, amended to read as follows:

ARTICLE V

The business and prudential affairs of this corporation shall be managed by a Board of five (5) Directors, all of whom shall be stockholders of said corporation.

BE IT FURTHER RESOLVED That Article VI of the Articles of Incorporation of The McCammon Ditch Company be, and the same is hereby, amended to read as follows:

ARTICLE VI

That the amount of capital stock of this corporation shall be $4,800.00, divided in 480 shares of common stock of the par value of $10.00 each.

At the specialmeeting of the shareholders of The McCammon Ditch Company, a corporation, held on the 23rd day of February, 1954, at the hour of two o'clock p.m. of said day, thirty (30) days notice of the proposed business having been given by mail, all of the foregoing resolutions were adopted by the affirmative vote of more than two-thirds (2/3) of the total number of shares of stock outstanding.

JAN 22 1993

The undersigned hereby certify that this is a true and correct report of the number of days' notice given by mail of the meeting of the stockholders of the said The McCammon Ditch Company, a corporation, of the resolution adopted at said meeting; that the same was adopted by at least two-thirds (2/3) of the outstanding capital stock of said corporation.

Leo A. Hawkins

W. McLeroy Argyle

Lyndon Green

Ned Allen

Henry A. Lacomack

Constituting and being a majority of the Board of Directors of said corporation.

JAN 9 2

STATE OF IDAHO)
) ss.
County of Bannock)

LEO HANSON and ZINA G. ORGILL, each being separately sworn, upon his oath, deposes and says:

That on the 23rd day of February, 1954, at the hour of two o'clock p.m. of said day, a meeting of the stockholders of The McCammon Ditch Company, a corporation, was held at the office of said corporation, in McCammon, Bannock County, Idaho; that the said LEO HANSON is the President and acted as chairman of said meeting, and that Zina G. Orgill is the Secretary and acted as Secretary of said meeting;

That he has read the above and foregoing Articles of Amendment setting forth the proceedings of said meeting and the action taken at such meeting, and the facts as to the calling of said meeting, and giving notice thereof, and as to adjournment, and the facts stated in the foregoing certificate are true of his own knowledge.

Leo A. Hanson

Zina G. Orgill

SUBSCRIBED AND SWORN to before me this 23 day of ~~February~~ March, 1954.

Glen E. Cook
NOTARY PUBLIC FOR IDAHO
Residing at McCammon, Idaho

(SEAL)

My commission expires:
10 January 1954

JAN 22 1993

Amendment enlarging purposes and increasing number of shares of common stock from twelve of the par value of $400.00 each to 480 shares of the par value of $10.00 each.

STATE OF IDAHO
DEPARTMENT OF STATE
Secretary's Office
Boise, Idaho

RECORDED

Approved, filed, and admitted to the records of Articles of Incorporation of the State of Idaho and certificate issued

INDEXED

PHOTOGRAPHED

this 25th day of March, 19 54

at 8:30 o'clock A. M.

FEES PAID

Filing $ 5.00
Recording 1.40
Certificate 3.00
~~Income tax~~
TOTAL $ 9.40

IRA H. MASTERS
SECRETARY OF STATE
By Paula L. Fleenor
CORPORATION CLERK

Filed by Merrill & Merrill
Attorneys, Pocatello

PETE T. CENARRUSA
SECRETARY OF STATE
STATE CAPITOL
BOISE, IDAHO

State of Idaho

Department of State.

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

I FURTHER CERTIFY That the annexed is a full, true and complete transcript of articles of incorporation, of PORTNEUF-MARSH VALLEY CANEL COMPANY, LIMITED, an Idaho corporation, received an filed in this office on the 21st day of September, 1908, as appears of record in this office as of this date.

Dated:

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

by: Angie Hakes

JAN 22 1993

CCC 583

EXHIBIT F

ARTICLES OF INCORPORATION

OF

PORTNEUF-MARSH VALLEY CANAL COMPANY, LIMITED.

KNOW ALL MEN BY THESE PRESENTS: That, whereas the Portneuf-Marsh Valley Irrigation Company, Limited, a corporation organized and existing under and by virtue of the laws of the State of Idaho, under the provisions of an act of Congress, approved August 18, 1894, commonly known as the "Carey Act", as amended, and pursuant to the laws of the State of Idaho, and of the rules and regulations of the State Board of Land Commissioners of the State of Idaho, did enter into a contract with the State of Idaho bearing date of June 3, 1908, for the reclamation of certain lands in said contract described situated in the County of Bannock in said State;

AND WHEREAS, it is now proposed to organize a corporation for the operation and management of the irrigation system to be constructed under said contract of June 3, 1908;

NOW, THEREFORE, the undersigned have voluntarily associated themselves together to form a corporation under the laws of the State of Idaho and do hereby certify:

-1-

That the name of the said corporation is the Portneuf-Marsh Valley Canal Company, Limited.

-2-

That the purpose for which said corporation is formed is the management and operation of the irrigation system, as such, to be constructed by the Portneuf-Marsh Valley Irrigation Company, Limited, under said agreement of June 3, 1908, when and as the same may be turned over to it for operation by said Portneuf-Marsh Valley Irrigation Company, Limited, and for that purpose and to the extent therefor required:

(a) To provide a convenient method of transferring the ownership and control of the dams, reservoir, canals, irrigation system and all rights, franchises and privileges pertaining thereto and connected

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therewith, constructed or to be constructed by said Portneuf-Marsh Valley Irrigation Company, Limited, pursuant to said agreement of June 3, 1908, as the same shall be completed and turned over by said Portneuf-Marsh Valley Irrigation Company, Limited, to this corporation, representing and comprising the purchasers of shares and water rights in said irrigation system; to determine the rights of said purchasers of said shares and water rights as between themselves and between said purchasers and the said Portneuf-Marsh Valley Irrigation Company, Limited; to operate and maintain said irrigation system and works as the same shall be completed and turned over to it during the period of construction and subsequent thereto; to levy and collect tolls, charges and assessments for the carrying on and maintaining of said irrigation system and management and operation thereof.

(b) When and as the same may be completed and turned over to it by the said Portneuf-Marsh Valley Irrigation Company, Limited, to acquire the management, ownership and control, and to operate and maintain: (1) said irrigation and reservoir system;(2) those certain water rights and appropriations made and secured to said Portneuf-Marsh Valley Irrigation Company, Limited, under and by virtue of Permit number 3317, of record in the office of the State Engineer of the State of Idaho, appropriating water from Portneuf River in said State; and (3) rights of way for dams, reservoir, main and distributing laterals acquired, owned or held by said Portneuf-Marsh Valley Irrigation Company, Limited by virtue of said contract of June 3, 1908.

(c)When and as such irrigation system may be turned over to it by the Portneuf-Marsh Valley Irrigation Company, Limited, for operation, to distribute the waters diverted by and a part of the said irrigation system and to which this company may be entitled, among the stockholders thereof; to maintain, operate and keep in repair said irrigation system; to fix, charge and collect from its stockholders and

JAN 2 2 1993

all users of water from the said irrigation system, tolls, rentals, assessments and maintenance charges based upon the number of shares of stock held by such person or proportioned to the amount of water used, or owned, or the number of acres irrigated by each person or by any one or more or by all of such methods, and to impose and collect fines and penalties for the failure of its stockholders or water users to pay the tolls, rentals, assessments or maintenance charges when the same become due.

(d) To take, purchase, lease, hire, or otherwise acquire, own and hold such real and personal property or any interests or rights therein as may be required in the business of this corporation, namely, the management and operation of said irrigation system when and as it is turned over to it; and, to enter into such contracts and agreements as the directors may deem necessary or proper in conducting the business for which this corporation is formed, as above set forth.

-5-

The place where the principal office of the company shall be located, and where its principal place of business shall be transacted is Downey, Bannock County, Idaho.

-4-

That the term for which it is to exist is fifty years from and after the date of incorporation.

-5-

That the number of directors of the company shall be five (5).

-6-

That the amount of the authorized capital stock of the corporation shall be twenty thousand dollars ($20,000.00) divided into twenty thousand shares of the par value of one dollar ($1.00) each.

-7-

That the amount of said capital stock actually subscribed, the names of the persons by whom the same has been subscribed, and their residences, are as follows:

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JAN 22 1993

-4-

NAME	RESIDENCE	NUMBER OF SHARES
E. C. Crooker	Downey, Idaho,	40
Edwin Snow	Boise, Idaho	40
T. M. Edwards	Downey, Idaho,	40
L. W. Johnson	Downey, Idaho,	40
George T. Hyde,	Downey, Idaho,	40.

IN WITNESS THEREOF, we have hereunto set our hands and seals this 17th day of September, 1908.

E. C. Crooker (SEAL)

Edwin Snow (SEAL)

George T. Hyde (SEAL)

L. W. Johnson (SEAL)

T. M. Edwards (SEAL)

State of Idaho
ss.
County of Ada

On this 16th day of September, 1908, before me J. H. Peterson a Notary Public in and for said County and State, personally appeared Edwin Snow to me known and known to me to be the person 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 notarial seal on the day and year in this certificate above written.

J. H. Peterson
Notary Public.

State of Idaho,
ss.
County of Bannock,

On this 17 day of September, 1908, before me William Lamereaux a Notary Public in and for said county and State, personally appeared E. C. Crooker George T. Hyde L. W. Johnson and T. M. Edwards, to me known and known to me to be the persons whose names are subscribed to the within instrument, and they severally acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and official seal the day and year in this certificate first above written.

William Lamereaux
Notary Public.

STATE OF IDAHO,
County of Bannock. } ss.

I, E. G. Gallet, Clerk of the District Court, Ex-Officio Auditor and Recorder of Bannock County, Idaho, do hereby certify that the within and foregoing is a full, true and correct copy of the original Articles of Incorporation of the Portneuf Marsh Valley Canal Company Limited as shown by the records of my office.

Witness my hand and official seal this 18th day of September, 1908

E. G. Gallet
Clerk District Court, Ex-Officio Auditor and Recorder.

By M. A. Hyde *Deputy.*

JAN 22 1993

5879

Bitterroot-March Valley
Canal Company, Ltd.

DEPARTMENT OF STATE,
Secretary's Office,
Filed this 21st day of
Sept. 1908 at 10
o'clock A. M. and Recorded in Book
"N" of Corporations
on page 524
Records of the State of Idaho.

Secretary of State.

PETE T. CENARRUSA
SECRETARY OF STATE
STATE CAPITAL
BOISE, IDAHO

State of Idaho

Department of State

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

I FURTHER CERTIFY That the annexed is a full, true and complete transcript of articles of incorporation, of MARSH VALLEY HYDRO ELECTRIC CO., an Idaho corporation, received and filed in this office on the 29th day of March, 1983, including all amendments thereto, as appears of record this office as of this date.

Dated:

GREAT SEAL OF THE STATE OF IDAHO — ESTO PERPETUA

Pete T. Cenarrusa

SECRETARY OF STATE

by: Denise Hakes

CCC 583

EXHIBIT G

JAN 22 1993

State of Idaho

Department of State

CERTIFICATE OF INCORPORATION
OF

MARSH VALLEY HYDRO ELECTRIC CO.

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 MARSH VALLEY HYDRO ELECTRIC CO. 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: March 29, 1983

GREAT SEAL OF THE STATE OF IDAHO — ESTO PERPETUA

Pete T. Cenarrusa

SECRETARY OF STATE

by: _____

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JAN 22 1993

ARTICLES OF INCORPORATION

OF

MARSH VALLEY HYDRO ELECTRIC CO.

The undersigned, acting as incorporators of a corporation under the Idaho Business Corporation Act, adopt the following Articles of Incorporation for such corporation;

1. NAME: The name of the corporation is MARSH VALLEY HYDRO ELECTRIC CO.

2. DURATION: The period of its duration is perpetual.

3. PROFIT: This is a profit corporation.

4. PURPOSES: The purpose or purposes for which the corporation is organized are:

A. To construct, own, operate and maintain a hydro electric generation plant together with all facilities, equipment, fixtures and appurtances thereto;

B. to acquire, hold, own and maintain all noncunsumptive water rights for power generation, right of ways, easements, licenses and such other things as may be necessary and useful for the construction, ownership and operation of a hydro electric generation plant; and

C. to transact any and all other lawful business for which corporations may be incorporated under the Idaho Business Corporation Act.

5. AUTHORIZED SHARES: The aggregate number of shares which the corporation shall have authority to issue is FIVE HUNDRED (500) shares without par value.

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JAN 22 1993

6. ASSESSABLE SHARES: All shares of this corporation are assessable for the purpose of paying expenses, conducting business or paying debts, and the corporation shall have the power to levy and collect assessments upon such shares in a manner and form and to the extent provided by Idaho Law. Each stock certificate issued by the corporation shall have a provision for assessment noted conspicuously on the face thereof.

7. PRE-EMPTIVE RIGHTS: Shareholders shall have full pre-emptive rights to acquire unissued stock.

8. BUSINESS AFFAIRS: Provisions for the regulation of the internal affairs of the corporation are such as may be provided by the Corporation's By-Laws, including restrictions on transfer of shares.

9. REGISTERED AGENT AND OFFICE: The address of the initial registered office of the corporation is:

McCammon, Idaho 83250

and the name of the initial agent registered at the address is:

Lyndon Green

10. BOARD OF DIRECTORS: The number of directors consisting the initial Board of Directors of the corporation is six (6), and the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors are elected and shall qualify are:

Keith Bennett
Downey, Idaho 83234

Mike Egan
Arimo, Idaho 83214

JAN 2 2 1993

John Bowen
Downey, Idaho 83234

Lyndon Green
Star Route, Box 37
McCammon, Idaho 83250

Robert Henderson
Arimo, Idaho 83214

Harold C. Raymond
McCammon, Idaho 83250

11. INCORPORATORS: The name and address of each incorporator is:

McCammon Ditch Company
McCammon, Idaho 83250

Portneuf Marsh Valley Canal Co., Ltd.
Downey, Idaho 83234

DATED this 23rd day of March, 1983.

McCAMMON DITCH COMPANY

By: Lyndon Green
PRESIDENT - LYNDON GREEN

ATTESTED:

By: Harold C. Raymond
SECRETARY - HAROLD C. RAYMOND

PORTNEUF MARSH VALLEY CANAL CO., LTD.

By: Keith Bennett
PRESIDENT - KEITH BENNETT

ATTESTED:

By: John Bowen
SECRETARY - JOHN BOWEN

MICROFILMED
JAN 22 1993

STATE OF IDAHO)
: ss
County of Bannock)

I, Randall C. Budge, a Notary Public, do hereby certify that on this 23rd day of March, 1983, personally appeared before me LYNDON GREEN and HAROLD C. RAYMOND, who, being by me first duly sworn, declared that they are the President and Secretary, respectively, of McCAMMON DITCH COMPANY, that they signed the foregoing documents as officers of the corporation and that the statements therein are true.

Randall C. Budge
NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello, Id.
My Commission Expires: 83204 - 10/15/8

(SEAL)

STATE OF IDAHO)
: ss
County of Bannock)

I, Randall C. Budge, a Notary Public do hereby certify that on this 23rd day of March, 1983, personally appeared before me KEITH BENNETT and JOHN BOWEN, who, being by me first duly sworn, declared that they are the President and Secretary, respectively, of the PORTNEUF MARSH VALLEY CANAL CO., LTD., that they signed the foregoing document as officers of the corporation and that the statements therein contained are true.

Randall C. Budge
NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello, Id.
My Commission Expires: 10/15/84

(SEAL)

RECORDED
JAN 2 1993

No. 72417

Articles of Incorporation

MARSH VALLEY HYDRO ELECTRIC CO.

500 shs npv
Perpetual

STATE OF IDAHO
Department of State
Boise, Idaho

Approved, filed and admitted to the corporation records of the State of Idaho

Date March 29, 1983
Time 8:36 am

FEES PAID
Filing $ 60.00
Tax $ 10.00

Pete T. Cenarrusa
SECRETARY OF STATE

By: Deputy

ENTERED
MAR 30 1983

ccr82015
INV 20813

Registered Agent:
Lyndon Green
McCammon, Idaho 83250

Filed By:
Randall C. Budge
Racine, Olson, Nye & Cooper
PO BOx 1391
Pocatello, Idaho 83204

FILMED APR 6 1993 ROLL 1550

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JAN 22 1993

Kent W. Foster, Esq.
Donald L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

RECEIVED
FEB 15 1990
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR TRANSFER NOS. 29-7578 and 29-7772.	RESPONSE TO OBJECTION TO PETITION FOR ISSUANCE OF LICENSE AND MOTION FOR SANCTIONS

COMES NOW Marsh Valley Hydro Electric Company by and through counsel of record, Donald L. Harris, and responds to the objection filed on behalf of Lava Irrigation Company, Dempsey Irrigation Company, Topaz Irrigation Company, Fish Creek Irrigating Company, Jim Andrus, Ken Andrus and Max Hall filed by Kenneth R. Arment. Counsel for the parties which attempted to intervene but whose intervention was filed late and which are not technically parties before the Department of Water Resources in this matter, allege several so-called improprieties.

Mr. Arment apparently does not wish undersigned counsel and his firm to appear on behalf of Marsh Valley Hydro Electric Company even though counsel has appeared for the record on the

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appeal for Marsh Valley Hydro Electric Company (Marsh Valley). Regardless of whether Mr. Arment agrees with that decision, undersigned counsel are counsel of record on the appeal and before the Department.

It is Marsh Valley's position that there was no impropriety in filing for record with the Department notice that the FERC permit had been issued and ironically it is through Marsh Valley's service upon Mr. Arment that his clients' became aware of the issuance of the license by FERC. In his objection counsel alleges "Further, Attachment 'A' to this objection and motion reveals there is [sic] outstanding issues of the validity of the FERC license." All Attachment "A" demonstrates is that FERC, for whatever reason, did not consider their Motion to Intervene. It does not demonstrate that there are any outstanding issues as to the validity of the FERC license.

With regard to the alleged impropriety requiring sanctions, Marsh Valley submits that a letter was written by Kent W. Foster of the firm and Ted Sorenson regarding the issues raised by Marsh Valley that were before the Department. Such letters are not subject to any sanction by the Department and do not rise to the level of an improper ex parte communication.

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With regard to one minor point, Marsh Valley apologizes to the Department for referring to it as the "Court" though its adjudicatory responsibilities are somewhat similar to a court, counsel recognizes that this matter is before the Department.

DATED this 13th day of February, 1990.

Donald L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO

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JAN 22 1993

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 13th day of February, 1990.

Document Served: RESPONSE TO PETITION FOR ISSUANCE OF LICENSE AND MOTION FOR SANCTIONS

Attorneys Served:

Kenneth R. Arment, Esq. (MAIL)
BRADY, SAETRUM & LERMA, CHARTERED
First Interstate Center
877 West Main Street, Suite 800
P. O. Box 1398
Boise, Idaho 83701-1398

Mr. Ted Sorenson (MAIL)
550 Linden Drive
Idaho Falls, Idaho 83401

Donald L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO

#6066.00
6522h/srr

FEB 22 1990

LAW OFFICE
BRADY, SAETRUM & LERMA
CHARTERED
PARKCENTER POINTE
1501 TYRELL LANE
P.O. BOX 1398
BOISE, IDAHO 83701-1398
(208) 345-8400
Facsimile (208) 345-8790

MICHAEL G. BRADY
RODNEY R. SAETRUM
JOHN J. LERMA
KENNETH R. ARMENT
DAVID E. DAY
MICHAEL E. POWERS

OFFICES IN
TWIN FALLS, IDAHO
101 SHOSHONE STREET NORTH
83301
(208) 734-0801

February 9, 1990

RECEIVED
FEB 12 1990
Department of Water Resources

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

Re: Application Nos. 29-7578 and 29-7772

Dear Mr. Higginson:

Please file the enclosed Objection to Petition For Issuance of License and Motion for Sanctions in the above-referenced matter.

Thank you.

Very truly yours,

BRADY, SAETRUM & LERMA,
CHARTERED

Kenneth R. Arment

KRA:ts
cc/enc: Randy Budge
Kent Foster
Ted Sorenson

APPROVED
JAN 2 2 1993

BRADY, SAETRUM & LERMA, CHARTERED
Kenneth R. Arment
First Interstate Center
877 West Main Street, Suite 800
P. O. Box 1398
Boise, Idaho 83701-1398

TELEPHONE (208) 345-8400

Attorneys for Petitioners

BEFORE THE

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

LAVA IRRIGATION COMPANY; DEMPSEY IRRIGATION COMPANY; TOPAZ IRRIGATION COMPANY; FISH CREEK IRRIGATING COMPANY; JIM ANDRUS; KEN ANDRUS; and MAX HALL, Petitioners, vs. MARSH VALLEY HYDRO ELECTRIC COMPANY; PORTNEUF-MARSH VALLEY CANAL CO., LTD.; and McCAMMON DITCH COMPANY, Respondents.	Application Nos. 29-7578 29-7772 **OBJECTION TO PETITION FOR ISSUANCE OF LICENSE AND MOTION FOR SANCTIONS**

COMES NOW, Lava Irrigation Company; Dempsey Irrigation Company; Topaz Irrigation Company; Fish Creek Irrigating Company; Jim Andrus, Ken Andrus; and Max Hall ("Portneuf River Irrigators") and object to Marsh Valley's "Petition for Issuance of License." "Marsh Valley moves [sic] the Court" [sic] for an Order that licenses in the above-referenced matter be issued

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JAN 22 1993

because the Federal Energy Regulatory Commission ("FERC") has issued a license for the project which was attached to the Petition.

Marsh Valley sites no rule, law, or case authority for its "Petition for Issuance of License." This "Petition" is ill-founded and unwarranted. Further, Attachment "A" to this objection and motion reveals there is outstanding issues of the validity of the FERC license. The Department has its own independent requirements and obligations under Idaho law and may not ignore its duties because of a related FERC Order.

Portneuf River Irrigators also object to the representation of Donald L. Harris of Holden, Kidwell, Hahn & Crapo that he is counsel of record for Marsh Valley Hydro Electric Company. Randy Budge is attorney of record for Applicant in these proceedings.

Portneuf River Irrigators also move that the Department order appropriate sanctions against Ted Sorenson and his attorneys and agents who have continued to send ex parte documentation and unsubstantiated and false representations to the Department without notice to the Portneuf River Irrigators as required by the Department's rules and Idaho law. Attachment "B" consists of two such examples, the latter of which is patently untrue as exhibited by the record on file with the Ada County District Court. This same record reveals that the Applicant has again decided not to address the comments which were timely filed. The Portneuf River Irrigators also request the Department

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JAN 22 1993

to provide them with notice of all documentation sent on behalf of Applicant which does not comply with the Department's notice requirements.

DATED this 9th day of February, 1990.

BRADY, SAETRUM & LERMA,
CHARTERED

By _____
Kenneth R. Arment
Attorneys for Petitioners

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of February, 1990, I caused a true and correct copy of the foregoing instrument to be deposited in the United States mail, postage prepaid to:

Randy Budge
Attorney at Law
P. O. box 1391
Pocatello, ID 83204-1391

Petitioners include the following on their certificate of mailing only because the Director has indicated that they are to be served all pleadings, and "technical data" in this matter. Petitioners protest the inclusion of these individuals as they are not parties, interveners, or designated agents with regard to the Petitions.

Kent Foster
Holden, Kidwell, Hahn & Crapo
Idaho First National Bank Bldg.
P. O. Box 51030
Idaho Falls, ID 83405

Ted Sorenson, P.E.
550 Linden Drive
Idaho Falls, ID 83401

_____
Kenneth R. Arment

MICROFILMED
JAN 22 1993

LAW OFFICE
BRADY, SAETRUM & LERMA
CHARTERED
FIRST INTERSTATE CENTER
877 WEST MAIN STREET SUITE 800
P.O. BOX 1398
BOISE, IDAHO 83701-1398
(208) 345-8400
Facsimile (208) 345-8790

MICHAEL G. BRADY
RODNEY R. SAETRUM*
JOHN J. LERMA
KENNETH R. ARMENT
DAVID E. DAY**
MICHAEL E. POWERS
KENT V. REYNOLDS

*Also licensed in Utah
**Also licensed in Oregon

OFFICES IN
TWIN FALLS, IDAHO
303 SHOSHONE STREET NORTH
83301
(208) 734-0801

February 9, 1990

Mohammed Akbar
Hydropower Licensing
Federal Energy Regulatory Commission
825 N. Captial Street, N.E.
Washington, D.C. 20426

Re: Marsh Valley Hydroelectric Company
Project No. 10468-000

Dear Mr. Akbar:

The purpose of this letter is to confirm our telephone conference on February 5, 1990, wherein I notified you that FERC had apparently misplaced our Motion to Intervene with the appropriate number of copies in the above-referenced matter. We did not receive notice of the issuance of the license for the above-referenced project until February 1, 1990, through a pleading filed by the applicant in a state administrative proceeding. The review of the license itself reveals that FERC did not consider the issues raised in our Motion to Intervene.

Enclosed are copies of billing and order receipts from an overnight air express carrier which indicates the documents were delivered to FERC on or before the published intervention deadline of August 31, 1988. (A copy of published notice for the project are also enclosed.) Airborne Express is currently in the process of retrieving stored computer data which will reveal which FERC employee signed for a receipt of our Motion to Intervene. Attorneys for the applicant have also indicated that they received a copy of our Motion to Intervene in 1988.

Please let us know whether FERC will reopen this matter on its own volition or whether it will be necessary to file an Appeal with FERC.

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JAN 22 1993

ATTACHMENT "A"

Thank you for your attention to this matter. We look forward to hearing from you.

Very truly yours,

BRADY, SAETRUM & LERMA,
CHARTERED

Kenneth R. Arment

KRA:ts
cc/enc: Don Harris
Phil Rassier
Vera Avery

RECEIVED
JAN 2 2 1993

FORMAT 12935S

AIRBORNE EXPRESS

SENDER'S AIRBORNE EXPRESS ACCOUNT NO. 1 13406264

ORIGIN BOI AIRBILL NO. 774124002



2 FROM (COMPANY NAME)
BRADY SAETRUM TINGEY

ADDRESS
DAY JOYCE
1501 TYRELL

CITY: BOISE | STATE: ID | ZIP CODE (REQUIRED): 83706

SENT BY (NAME/DEPT.): Kenneth R. Arment | PHONE: 208 345 8400

BILLING REFERENCE INFORMATION TO APPEAR ON INVOICE
Lava/Marsh Valley

3 TO (COMPANY NAME)
Federal Energy Regulatory Commission

ADDRESS
825 N. Capital Street, N.E.

CITY: Washington | STATE: DC | ZIP CODE (REQUIRED): 20426

ATTN. (NAME/DEPT.): Lois D. Cashell | PHONE:

RECEIVER'S AIRBORNE EXPRESS ACCOUNT NO.

THANK YOU FOR SHIPPING AIRBORNE EXPRESS!

4 TYPE OF PACKAGING
- [X] EXPRESS/AD PACK ENVELOPE
- [ ] LETTER EXPRESS (UP TO 8 OZ.)
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- [ ] MAG TAPE PACK

DESCRIPTION OF CONTENTS: Original and 15 copies of Motion to Intervene

NO. OF PACKAGES | WEIGHT (LBS.) | DIMENSIONS (IN.) L W H

C O D $. (SUBJECT TO ITEM 15 ON REVERSE SIDE) SENDER'S C.O.D.

CHECK ONLY ONE [ ] DECLARED VALUE [ ] FULL INSURANCE $. VALUE FOR CARRIAGE (SUBJECT TO ITEMS 6 & 7 ON REVERSE SIDE)

5 BILL CHARGES TO (ASSUMED SENDER UNLESS OTHERWISE SPECIFIED)
- [X] SENDER
- [ ] RECEIVER
- [ ] 3RD PARTY _____ AIRBORNE EXPRESS ACCOUNT NO.
- [ ] PAID IN ADVANCE $ _____
- CHECK NUMBER _____

TYPE OF SPECIAL SERVICE (EXTRA CHARGES MAY APPLY)
- [ ] SPECIAL PICKUP
- [ ] SATURDAY DELIVERY
- [ ] SPECIAL DELIVERY _____ : TIME
- [ ] HOLD AT AIRBORNE FOR PICKUP (NO CHARGE)
- [ ]

THIS NON-NEGOTIABLE AIRBILL IS SUBJECT TO THE TERMS AND CONDITIONS C CONTRACT SET FORTH ON THE REVERSE SIDE OF THIS COPY. AIRBORNE SHALL NC BE LIABLE IN ANY EVENT FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF INCOME. AIRBORNE LIABILITY, IN THE ABSENCE OF A HIGHER DECLARED VALUE FOR CARRIAGE, IS LIMITE TO $9.07 PER POUND, PER PIECE OF CARGO LOST, DAMAGED, DELAYED, MISDELIVERE OR OTHERWISE ADVERSELY AFFECTED.

6 SENDER'S SIGNATURE: X Cornelia Hoisington DATE: 8/29/88

EXECUTIVE OFFICES
P.O. BOX 662
SEATTLE, WA 98111
FED I.D. NO. 91-0837469 SCAC

ORIGIN 774124002 AIRBILL NO. X AIRBORNE SIGNATURE | DATE RECEIVED | TIME RECEIVED | NO. OF SHPTS. | PICKUP LOCATION: SENDER'S DOOR, AIRBORNE TERMINAL, DROP BOX (NO.), CARRIER'S TERMINAL, OTHER | ROUTE

RECEIVED
JAN 22 1993

AIRBORNE EXPRESS

MAIL PAY TO:
P.O. BOX 91001, SEATTLE, WA 98111
SEND OTHER CORRESPONDENCE TO:
BOX 662, SEATTLE, WA 98111
PHONE 1-800-722-0081 TELEX 32-9543
IN WASHINGTON STATE 1-800-635-6606

ORIGINAL INVOICE

SHIPPED: 8/29/88
AIRBILL NUMBER: BOI 774124002

SENDER CUST. NO. 13406264
BRADY SAETRUM TINGEY
DAY JOYCE
1501 TYRELL
BOISE ID 83706
SENT BY: KENNETH ARMENT
REF. NO. LAVA/MARSH VALLEY

RECEIVER CUST. NO. 3240533
FEDERAL ENERGY REG COMMIS
825 N CAPITOL ST NE
WASHINGTON DC 20426
ATTN: LOIS D CASHELL

DUE DATE: 9/15/88 (M | D | Y)

TERMS OF CARRIAGE: PREPAID

BILL TO: SENDER

BILL TO — CUST. NO. 13406264
BRADY SAETRUM TINGEY
DAY JOYCE
1501 TYRELL
BOISE ID 83706

NO. OF PIECES	DESCRIPTION	ACTUAL WEIGHT	DIM. WEIGHT	RATE	A
1	ORIGINAL & 15 MOTION INTE	6		CHG	

OTHER SERVICES/CHARGES DESCRIPTION

SCALE COMMODITY NO.: E-125DD
TARIFF DESTINATION: DCA
RECEIVED AT: SD
NO. OF SHPTS.: 1
DECLARED VALUE:
OTHER CHG. CODE: (C. PRIORITY SERVICE, D. EXTRA SERVICE, E. OTHER (SEE DESCR.))

PAID SEP 22 1988
#3042

17220 EVE

PICKUP: INCL.
DELIVERY: INCL.
FREIGHT CHARGE: 40.00
ADVANCE ORIGIN:
ADVANCE DESTINATION:
COD FEE:
COD AMOUNT:
EX. VALUE/INSURANCE:
OTHER:

INVOICE DATE: 8/31/88
REFER TO THIS NUMBER WHEN REMITTING → AIRBILL NO. 774124002
PAY THIS AMOUNT → TOTAL $ 40.00

FED. I.D. NO. 91-0837469 SCAC-AIRB 204CEN (10/87)

THANK YOU FOR SHIPPING WITH AIRBORNE EXPRESS.

PLEASE RETAIN THIS PORTION OF THE INVOICE FOR YOUR RECORDS.

JAN 22 1991

PUBLIC NOTICE
UNITED STATES OF AMERICA
FEDERAL ENERGY
REGULATORY COMMISSION
Notice of Application
Filed with the Commission
(July 20, 1988)

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.: 10468-000 c. Date filed: September 4, 1987 d. Applicant: Marsh Valley Hydroelectric Company, an Idaho Corporation e. Name of Project: Marsh Valley f. Location: On the Portneuf River in Bannock County, Idaho near the town of McCammon, T9S., R.37E., Section 20, Boise Meridian g. Filed Pursuant to: Federal Power Act 16 U.S.C. Sections 791 (a) - 825(r) h. Applicant Contact: Ted S. Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522-8069, Randall C. Budge, Attorney at Law, Center Plaza, Corner First & Center, Pocatello, ID 83204 i. FERC Contact: Ms. Deborah Frazier-Stutely j. Comment Date: August 31, 1988 k. Competing Application: Project No. 10242-000. Date Filed: January 12, 1987 l. Description of Project: The proposed run-of-river project would consist of: (1) an existing 10-foot-high diversion dam at elevation 4,921 feet, diverting water from the Portneuf River into; (2) the existing 11,670-foot-long Portneuf-Marsh Valley Irrigation Canal; (3) a 7-foot-high concrete diversion structure located on the existing Portneuf-Marsh Valley Canal at elevation 4,911 feet; (4) an intake structure; (5) a 500-foot-long, 60 or 72-inch-diameter penstock; (6) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW operating under an average head of 96 feet; (7) a 50-foot-long tailrace discharging into the Portneuf River; (8) a 0.5-mile-long, 12.4-kV transmission line, tying into an existing Utah Power and Light Company's line; and (9) appurtenant facilities. m. Purpose of Project: Project power will be sold to Utah Power & Light Company n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1. A3. Development Application - Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for a 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, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must 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. section 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,' 'RECOMMENDATIONS FOR TERMS AND CONDITIONS,' 'NOTICE OF INTENT TO FILE COMPETING APPLICATION,' 'COMPETING APPLICATIONS,' 'PROTEST' or 'MOTION TO INTERVENE,' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application. D1. Agency Comments - Agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state of which the project is located, affected Indian tribes, and states are requested to provide coments and recommendations for terms and conditions pursuant to the Federal Power Act (Act), as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission, along with the recommendations, to comply with the requirement in Section 313 (b) of the Federal Power Act, 16 U.S.C. 8251(b), that the Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, the Commission will presume that the agency has none. One copy of an agency's response must also be sent to the applicant's representatives.

/S/Lois D. Cashell
Acting Secretary
August 1, 1988
No. 34

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JAN 22 1993

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

WEST ONE BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
MICHAEL D. CRAPO
JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
G. LANCE NALDER
J. MICHAEL WHEILER
MARIE T. FEELEY
ROBERT M. FOLLETT

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

R. VERN KIDWELL, OF COUNSEL

August 18, 1989

RECEIVED
AUG 21 1989
Department of Water Resources

Idaho Department of
Water Resources
ATTENTION: Gary Spackman, Manager
Water Rights Permit
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720

RE: Application for Permits Nos. 29-7578 and 29-7772

Dear Gary:

We are in receipt of the copy of the letter dated August 10, 1989 in the above entitled matter sent to you by Randall C. Budge. On behalf of Marsh Valley Development Company which is vitally interested in the outcome of this matter, we wish to join in Mr. Budge's request that the Petition for Rehearing be immediately denied. To our knowledge, there is no new or additional evidence not already presented by the petitioners for intervention and it appears to us that the Petition for Rehearing has no purpose other than further delay. Since the petitioner has adequate appeal rights, we believe that the Petition for Rehearing ought to be immediately denied so that if an appeal is necessary, it can be prosecuted with dispatch. Thank you for your kind attention to this matter.

Yours very truly,

Kent W. Foster

#6066.00/srr

cc: Mr. Ted Sorenson
Randall C. Budge

JAN 22 1993

SORENSON ENGINEERING
CONSULTING ENGINEER
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069
FAX 208-522-8223

RECEIVED
NOV 30 1989
Department of Water Resources

November 27, 1989

Gary Spackman
Manager
Water Rights Permit Section
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

RE: MARSH VALLEY HYDROELECTRIC APPLICATION FOR PERMITS #29-7578 AND #29-7772

Dear Mr. Spackman:

Pursuant to your order issued on October 18, 1989, comments were to be received by November 18, 1989. As no comments have been received, I see no reason why the water rights cannot be issued. The delay in the issuance of the water right is now adversely affecting the project.

Your prompt attention to this matter is sincerely appreciated.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:mbk

RECEIVED
JAN 22 1993

LETTER RE: APPROVAL OF APPLICATIONS

RECEIVED
JAN 31 1990
Department of Water Resources

BEFORE THE

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-7578 and 29-7772 IN THE NAME OF MARSH VALLEY HYDRO ELECTRIC COMPANY	PETITION FOR ISSUANCE OF LICENSE

COMES NOW Marsh Valley Hydro Electric Company by and through counsel of record, Donald L. Harris, and moves the court that licenses be issued for Permits No. 29-7578 and 29-7772. This motion is made for the reason that the Federal Energy Regulatory Commission has issued a License No. 10468-000 for the construction of a hydroelectric project on the Portneuf River. A copy of that license is appended hereto.

DATED this 30th day of January, 1990.

Donald L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO

JAN 2 2 1993

P-10468-000

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission

(July 20, 1988)

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

RECEIVED
AUG -1 1988
Department of Water Resources

a. Type of Application: Major License

b. Project No.: 10468-000

c. Date filed: September 4, 1987

JAN 2

d. Applicant: Marsh Valley Hydroelectric Company, an Idaho Corporation

e. Name of Project: Marsh Valley

f. Location: On the Portneuf River in Bannock County, Idaho near the town of McCammon.
T.9S., R.37E., Section 20, Boise Meridan

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§791 (a) - 825(r)

h. Applicant Contact:

Ted S. Sorenson, P.E.
550 Linden Drive
Idaho Falls, ID
83401
(208) 522-8069

Randall C. Budge
Attorney at Law
Center Plaza
Corner First & Center
Pocatello, ID
83204

i. FERC Contact: Ms. Deborah Frazier-Stutely

j. Comment Date: AUG 31 1988

k. Competing Application: Project No. 10242-000
Date Filed: January 12, 1987

l. Description of Project: The proposed run-of-river project would consist of: (1) an existing 10-foot-high diversion dam at elevation 4,921 feet, diverting water from the Portneuf River into; (2) the existing 11,670-foot-long Portneuf-Marsh Valley Irrigation Canal; (3) a 7-foot-high concrete diversion structure located on the existing Portneuf-Marsh Valley Canal at elevation 4,911 feet; (4) an intake structure; (5) a 500-foot-long, 60 or 72-inch-diameter penstock; (6) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW operating under an average head of 96 feet; (7) a 50-foot-long tailrace discharging into the Portneuf River; (8) a 0.5-mile-long, 12.4-kV transmission line, tying into an existing Utah Power and Light Company's line; and (9) appurtenant facilities.

m. Purpose of Project: Project power will be sold to Utah Power & Light Company

n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

29-7578 APP
29-7772 APP

P-10242-000

Legal RJR
Sportsmen 6.5
Sterling

JAN 23 1987

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission
(March 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: Preliminary Permit

b. Project No: 10242-000

c. Date Filed: January 12, 1987

d. Applicant: Marsh Valley Hydroelectric Company

e. Name of Project: Marsh Valley Diversion

f. Location: On Portneuf River in Bannock County, Idaho near the town of Lava Hot Springs, T.9S., R.37E., sec 21 and sec. 22, W 1/2

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § 791(a)-825(r)

h. Contact Person: Mr. Jordan Walker, or Mr. Mike Graham, P.O. Box N. Manti. Utah 84642 (801) 835-0202

i. Comment Date: MAY 5 1987

j. Description of Project: The proposed project would consist of: (1) the existing 21-foot-high Portneuf-Marsh Valley Canal dam at elevation 4,908 feet; (2) the existing 10-foot-wide, 5-foot-deep Portneuf-Marsh Valley canal to be gated; (3) a 60-inch-diameter, 500-foot-long buried penstock; (4) a powerhouse containing two generating units with a total installed capacity of 1,000 kW, producing approximately 4,000,000 kWh of energy annually; and (5) an existing 3,000-foot-long, 2.5-kV Utah Power and Light Company's transmission line. No access road will be needed to conduct the studies. The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $5,000.

The proposed project would be located on lands owned by the Marsh Valley Irrigation District and private parties.

k. Purpose of Project: Project power would be sold to Utah Power and Light Company

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

29-1578
29-1772

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Department of Water Resources

JAN 22 1993

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Marsh Valley Hydroelectric Company — Project No. 10468-000
Idaho

ORDER ISSUING LICENSE
(Major Project)

(Issued December 1, 1989)

Marsh Valley Hydroelectric Company filed a license application under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Marsh Valley Project, located on the Portneuf River, in Bannock County, Idaho. The project would affect the interests of interstate commerce. To an existing dam and canal, the applicant would add a new diversion structure on the canal, a penstock, and a powerhouse containing a single generating unit with a rated capacity of 1,700 kilowatts (kW).

Notice of the application has been published. The Idaho Department of Fish and Game filed a motion to intervene, raising concerns about adverse impacts to riparian and wildlife habitat. We (the staff) discuss these concerns in the attached environmental assessment (EA). No protests were filed and no agency objected to issuance of this license. The comments filed by interested agencies have been fully considered in determining whether to issue this license.

Comprehensive Development

Section 4(e) of the Act states that in deciding whether to issue a license, the Commission, in addition to considering the power and development purposes of the project, shall give equal consideration to the following: the purposes of energy conservation; the protection of, mitigation of, damage to, and enhancement of, fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. These purposes are considered in the comprehensive development section of the EA.

The proposed project would generate 7.6 gigawatthours of electrical energy per year. The project also provides for the long-term energy conservation and the displacement of fossil-fueled electric power plant generation for the betterment of air quality and the conservation of fossil fuels.

In the EA, we evaluate the effect of project construction and operation on the environmental resources of the project area

and discuss mitigative and enhancement measures that should be implemented. Mitigative measures recommended: run of river operation, erosion control measures, raptor protection, and visual quality protection. Enhancement recommended: a year-round minimum flow of 10 cfs in the bypass reach, where currently the river is dewatered for 4 to 5 months annually.

Section 10(a)(2) of the Act requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.

Under section 10(a)(2), federal and state agencies filed 24 comprehensive plans that address various resources in Idaho. Of these, we identified and reviewed seven plans relevant to this project.1/ No conflicts were found.

Based on our review of agency and public comments filed in this proceeding and on our independent analysis, the Marsh Valley Hydroelectric Project is best adapted to a comprehensive plan for the Portneuf River.

Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the Act requires the Commission to include license conditions, based on recommendations of federal and state fish and wildlife agencies, for the protection, mitigation, and enhancement of fish and wildlife. In the EA, we address the concerns of the fish and wildlife agencies raised during the public notice period and provide recommendations consistent with those of the agencies.

Summary of Findings

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

1/ Idaho state water plan, 1986, Idaho Water Resources Board; Idaho fisheries management plan, 1986, Idaho Department of Fish and Game; Idaho water quality standards and wastewater treatment requirements, 1985, Idaho Department of Health and Welfare; Idaho outdoor recreation plan, 1983, Idaho Department of Parks and Recreation; Columbia River Basin fish and wildlife program, 1986, Northwest Power Planning Council; Protected areas amendments and response to comments, 1988, Northwest Power Planning Council; Northwest conservation and electric power plan, 1986, Northwest Power Planning Council.

SORENSON ENGINEERING
CONSULTING ENGINEER
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069
FAX 208-522-8223

RECEIVED
NOV 30 1989
Department of Water Resources

November 27, 1989

Gary Spackman
Manager
Water Rights Permit Section
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

RE: MARSH VALLEY HYDROELECTRIC APPLICATION FOR PERMITS #29-7578 AND #29-7772

Dear Mr. Spackman:

Pursuant to your order issued on October 18, 1989, comments were to be received by November 18, 1989. As no comments have been received, I see no reason why the water rights cannot be issued. The delay in the issuance of the water right is now adversely affecting the project.

Your prompt attention to this matter is sincerely appreciated.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:mbk

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JAN 2 2 1993

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19-7699

Bert WR

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NOV 21 1989
Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Marsh Valley

Project No. 10468-000
Idaho

NOTICE OF AVAILABILITY OF ENVIRONMENTAL ASSESSMENT

(November 14, 1989)

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR, Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing reviewed the application for a minor license for the proposed Marsh Valley Hydroelectric Project, which would be located on the Portneuf River in Bannock County, near McCammon, Idaho, and prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff analyzed the potential environmental impacts of the proposed project and concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell
Secretary

PROPERTY OF
JAN 22 1993

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

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REGULATORY COMMISSION
FERC 351

P-10468 101465
STATE OF IDAHO DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE

BOISE, ID 83720

JAN 2 2 1993

October 18, 1989

<address>

Dear <sal>:

Enclosed is an Order Denying Petition for Rehearing and Amending Order Denying Petitions.

The enclosed order is a final order of the Director of the Department of Water Resources. If you wish to contest the order, you must appeal the decision to District Court of the state of Idaho within thirty (30) days of the date of service of this order.

Respectfully,

GARY SPACKMAN, Manager
Water Right Permit Section

GS:js

Enclosure

JAN 2 2 1993

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

March 16, 1989

Randy Budge
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83204-0391

Ken Arment
Attorney at Law
P.O. Box 1398
Boise, Idaho 83701-1398

RE: Applications for permit to appropriate water nos. 29-7578 and 29-7772 in the name of Marsh Valley Hydro Electric Company.

Gentlemen:

On August 31, 1988, Ken Arment filed a "Petition to Intervene; File Protest; Cancel Applications; and for Inquiry" with respect to the applications nos. 29-7578 and 29-7772 on behalf of the Lava Irrigation Company, Dempsey Irrigation Company, Topaz Irrigation Company, Fish Creek Irrigating Company, Jim Andrus, Ken Andrus and Max Hall.

The Department delayed action on the petition because of negotiations to resolve the dispute. To date, however, the matter has not been resolved.

This letter is notice that the Department will act on the petition if the dispute is not resolved by written agreement or written withdrawal of the petition by April 10, 1989.

Sincerely,

Gary Spackman

Gary Spackman, Manager
Water Right Permits Section

cc: Ted Sorenson
Kent Foster

MICROFILMED

JAN 2 2 1993

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-0391

TELEPHONE
AREA CODE 208
232-6101

TELEX
208-232-6109

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
BRENT O. ROCHE
PATTI POWELL**
CARY B. COLAIANNI
FRED J. LEWIS

*ALSO MEMBER ILLINOIS BAR
**ALSO MEMBER WASHINGTON BAR

March 7, 1989

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MAR 08 1989
Department of Water Resources

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

Re: Marsh Valley Hydro Electric Company: Application Numbers 29-7578 and 29-7772

Dear Gary:

In response to your February 24 inquiry, please be advised that on February 15, 1989, we forwarded to Ken Arment a proposed Stipulation to settle this matter which would included the withdrawal of their Motions to Intervene in both the IDWR and FERC cases. It is my understanding that Ken has sent the Stipulation to his clients for their review and approval.

We have just responded to some concerns raised by Ken but feel that they are minor and that we will have no difficulty in resolving them. I am following up with Ken and am hopeful that we can have the Stipulation finalized in a form acceptable to all parties for their signature in the near future.

Very truly yours,

RANDALL C. BUDGE

RCB:gr

cc: Ken Arment
Kent Foster

JAN 22 1993

R-DEPARTMENT MEMO — 1

FROM Sharla

DATE 2/27/89

TO File 29-7772

SUBJECT Misc. Correspondence

See file 29-7578 for additional correspondence which may have been submitted.

JAN 2 2 1993

SIGNATURE

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 24, 1989

Randy Budge, Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83204-0391

RE: Marsh Valley Hydroelectric Company: Application numbers 29-7578 and 29-7772

Dear Randy:

This letter is an inquiry about resolution of Ken Arment's motion to intervene. It was my understanding, after speaking to both of you in a telephonic conference call, that an agreement had been reached for settlement of the motion. I am awaiting some final response. Can you provide an update?

Sincerely,

Gary Spackman

Gary Spackman, Manager
Water Right Permits Section

cc: Ken Arment

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Marsh Valley Hydroelctric Company) Project No. 10468-000

NOTICE GRANTING LATE INTERVENTION
(January 19, 1989)

The Idaho Department of Fish and Game (IDFG) filed a late motion to intervene in the above-captioned proceeding.

IDFG has shown good cause to be permitted to intervene late and no opposition to its motion has been filed. See 18 C.F.R. § 385.214(d) (1987).

Accordingly, pursuant to Section 375.302(e) of the Commission's regulations, 18 C.F.R. § 375.302(e) (1987), IDFG is permitted to intervene in this proceeding, subject to the Commission's rules and regulations under the Federal Power Act, 16 U.S.C. § 791(a). Participation of this intervener shall be limited to matters set forth in its motion to intervene. The admission of the intervener shall not be construed as recognition by the Commission that the intervener might be aggrieved by an order entered in this proceeding.

Linwood A. Watson, Jr.
Acting Secretary

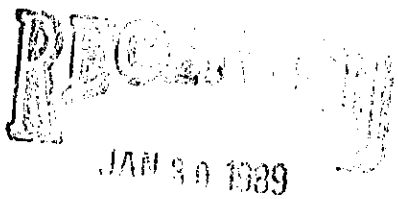
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JAN 30 1989
Department of Water Resources

DC-A-18

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WASHINGTON, D.C. 20426

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Department of Water Resources





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R. KEITH HIGGINSON DIRECTOR
DEPARTMENT OF WATER RESOURCES (ID)
STATEHOUSE

BOISE, ID 83720

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JAN 22 1993

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 30th day of January, 1990.

Document Served: PETITION FOR ISSUANCE OF LICENSE

Attorneys Served:

Kenneth Arment, Esq. (MAIL)
P.O. Box 1398
Boise, Idaho 83701-1398

Randall C. Budge, Esq. (MAIL)
P.O. Box 1391
Pocatello, Idaho 83204-1391

Ted Sorenson, P.E. (MAIL)
550 Linden Drive
Idaho Falls, Idaho 83401

Donald L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO

6149h/srr

JAN 22 1993

49 FERC ¶ 62,193

JAN 22 1993

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Marsh Valley Hydroelectric Company — Project No. 10468-000
Idaho

ORDER ISSUING LICENSE
(Major Project)

(Issued December 1, 1989)

Marsh Valley Hydroelectric Company filed a license application under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Marsh Valley Project, located on the Portneuf River, in Bannock County, Idaho. The project would affect the interests of interstate commerce. To an existing dam and canal, the applicant would add a new diversion structure on the canal, a penstock, and a powerhouse containing a single generating unit with a rated capacity of 1,700 kilowatts (kW).

Notice of the application has been published. The Idaho Department of Fish and Game filed a motion to intervene, raising concerns about adverse impacts to riparian and wildlife habitat. We (the staff) discuss these concerns in the attached environmental assessment (EA). No protests were filed and no agency objected to issuance of this license. The comments filed by interested agencies have been fully considered in determining whether to issue this license.

Comprehensive Development

Section 4(e) of the Act states that in deciding whether to issue a license, the Commission, in addition to considering the power and development purposes of the project, shall give equal consideration to the following: the purposes of energy conservation; the protection of, mitigation of, damage to, and enhancement of, fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. These purposes are considered in the comprehensive development section of the EA.

The proposed project would generate 7.6 gigawatthours of electrical energy per year. The project also provides for the long-term energy conservation and the displacement of fossil-fueled electric power plant generation for the betterment of air quality and the conservation of fossil fuels.

In the EA, we evaluate the effect of project construction and operation on the environmental resources of the project area

and discuss mitigative and enhancement measures that should be implemented. Mitigative measures recommended: run of river operation, erosion control measures, raptor protection, and visual quality protection. Enhancement recommended: a year-round minimum flow of 10 cfs in the bypass reach, where currently the river is dewatered for 4 to 5 months annually.

Section 10(a)(2) of the Act requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.

Under section 10(a)(2), federal and state agencies filed 24 comprehensive plans that address various resources in Idaho. Of these, we identified and reviewed seven plans relevant to this project.1/ No conflicts were found.

Based on our review of agency and public comments filed in this proceeding and on our independent analysis, the Marsh Valley Hydroelectric Project is best adapted to a comprehensive plan for the Portneuf River.

Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the Act requires the Commission to include license conditions, based on recommendations of federal and state fish and wildlife agencies, for the protection, mitigation, and enhancement of fish and wildlife. In the EA, we address the concerns of the fish and wildlife agencies raised during the public notice period and provide recommendations consistent with those of the agencies.

Summary of Findings

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

1/ Idaho state water plan, 1986, Idaho Water Resources Board; Idaho fisheries management plan, 1986, Idaho Department of Fish and Game; Idaho water quality standards and wastewater treatment requirements, 1985, Idaho Department of Health and Welfare; Idaho outdoor recreation plan, 1983, Idaho Department of Parks and Recreation; Columbia River Basin fish and wildlife program, 1986, Northwest Power Planning Council; Protected areas amendments and response to comments, 1988, Northwest Power Planning Council; Northwest conservation and electric power plan, 1986, Northwest Power Planning Council.

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. We analyzed related issues in the attached Safety and Design Assessment.

The Director of the 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 Marsh Valley Hydroelectric Company (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 Marsh Valley Project. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and 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. 10468-	Showing
1	6	Project Profile
2	7	Powerhouse Site Plan Project Boundaries
3	8	Project Location Map

(2) Project works consisting of: (a) a 10-foot-high diversion dam at elevation 4,921 feet, diverting water from the Portneuf River into; (2) the 11,670-foot-long Portneuf-Marsh Valley Irrigation Canal; (3) a 7-foot-high concrete diversion structure located on the Portneuf-Marsh Valley Canal at elevation 4,911 feet; (4) an intake structure; (5) a 500-foot-long, 60 or 72-inch-diameter penstock; (6) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kW operating under an average head of 96 feet; (7) a 50-foot-long tailrace discharging into the Portneuf River; (8) a 0.5-mile-long, 12.4-KV transmission line, tying into an existing Utah Power and Light Company's line northeast of the powerhouse; and (9) 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 S&DA.

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

(C) The exhibit G described above and those sections of exhibits A and F recommended for approval in the S&DA are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-11, (October 1975), entitled "Terms and Conditions of License for unconstructed major project affecting the interests of interstate or foreign commerce," except article 20 and the following additional articles.

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

> 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 2,270 horsepower.

Article 202. The licensee shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project that result from maintenance, operation, or alteration of the project works. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

Article 203. 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 on the net investment in the project shall be used for determining surplus earnings of the project for 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

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reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts, properly includable in the licensee's long-term debt, and proprietary capital accounts, as listed in the Commission's Uniform System of accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series), computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 301. The licensee shall begin construction of the project works within 2 years after the issuance date of the license and shall complete construction of the project within 4 years after the issuance date of the license.

Article 302. At least 60 days before starting construction, the licensee shall submit one copy to the Commission's Regional Director and two copies to the Director of the Division of Inspections and Dam Safety of the final contract drawings and specifications for pertinent features of the project, such as water-retention structures, all necessary transmission facilities, the powerhouse, and water conveyance structures. The Director of the Division of Inspections and Dam Safety may require changes in the plans and specifications to assure a safe and adequate project.

Article 303. Within 90 days after constructing the project, the licensee shall file for Commission approval revised exhibits A, F, and G to describe and show the project as built.

Article 401. The licensee, within 1 year after completion of project construction, shall revegetate all project related disturbed lands with plant species that visually blend with the

adjacent landscape and shall paint all exterior surfaces of the powerhouse dark earthtones.

Article 402. The licensee, after consultation with the Soil Conservation Service, the Idaho Department of Health and Welfare, the Idaho Department of Fish and Game, and the Bannock County Office of Planning and Development Services, and at least 90 days before starting any project related land-clearing, land-disturbing, or spoil-producing activities, shall file for Commission approval a plan to control erosion and prevent slope instability and to minimize the quantity of sediment resulting from project construction and operation.

The plan shall be based on actual-site geological, soil, and groundwater conditions and shall include: (a) a description of the actual-site conditions; (b) detailed descriptions, design drawings, and specific topographic locations of all control measures, and (c) documentation of agency consultation and agency comments. Road cuts and fills shall be minimized. This plan shall include provisions for cleaning of the sediment trap, proper disposal of the removed sediment, and method of cleaning of the sediment trap. For areas to be revegetated, the plan shall also identify species mix, seeding rate, mulch, and soil amendments.

The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. No project-related land-disturbing, land-clearing, or spoil-producing activities shall begin until the licensee is notified that the plan complies with the requirements of this article.

Article 403. The licensee, before starting any land-clearing, land-disturbing, or spoil-producing activities within the project boundaries, other than those specifically authorized in this license, shall consult with the Idaho State Historic Preservation Officer (SHPO), shall conduct a cultural resources survey of these areas, and shall file for Commission approval a resource management plan to avoid or mitigate impacts to any significant archeological or historic sites identified during the survey. The survey and plan shall be based on the recommendations of the SHPO and shall be conducted and prepared by a qualified cultural resources specialist.

If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all land-clearing and land-disturbing activities in the vicinity of the sites, and shall also consult with the SHPO, and shall file for Commission approval a cultural resources management plan to avoid or mitigate impacts to

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significant resources, prepared by a qualified cultural resources management specialist.

The survey and plan shall be documented in a report containing the following: (1) a description of each discovered site, indicating whether it is listed or eligible to be listed on the National Register of Historic Places; (2) a description of the potential effect on each discovered site; (3) proposed measures for avoiding or mitigating the effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for mitigating effects and conducting additional studies. The Commission may require changes to the plan or the report.

The licensee shall not begin land-clearing, land-disturbing, or spoil-producing activities, other than those specifically authorized in this license, or resume such activities in the vicinity of a site discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

Article 404. The licensee shall design all aerial project transmission lines in accordance with the guidelines in Suggested practices for raptor protection on power lines: the state of the art in 1981, Raptor Research Report No. 4, issued by the Raptor Research Foundation, Inc. Within 90 days after completing construction of the transmission line, the licensee shall file as-built drawings with the Commission.

Article 405. The licensee shall release from the Marsh Valley dam, on the Portneuf River, a continuous minimum flow of 10 cubic feet per second (cfs) or the inflow to the project, whichever is less, for the protection of fish and wildlife resources in the Portneuf River. This flow may be temporarily modified if required by operating emergencies beyond the control of the licensee and for short periods on mutual agreement among the licensee, the Idaho Department of Fish and Game, and the U.S. Fish and Wildlife Service.

Article 406. The licensee, after consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, and at least 90 days before starting any project related land-clearing, land-disturbing, or spoil-producing activities, shall file for Commission approval a plan to install, operate, and maintain a streamflow gage in the Portneuf River to monitor the minimum flow releases required in Article 405.

The plan shall include the location and design of the gage, a schedule for installation, the method of collecting flow data, and a provision for providing the data to the agencies. The licensee shall include comments from the consulted agencies on

the plan. The Commission reserves the right to require changes to the plan.

No project-related land-disturbing, land-clearing, or spoil-producing activities shall begin until the licensee is notified that the plan complies with the requirements of this article.

Article 407. The Commission, on its own motion or on the recommendation of federal or state fish and wildlife agencies or affected Indian Tribes, reserves the right to order changes in project structures and operations, to take into account to the fullest extent practicable, at each stage of the decision-making process, the Columbia River Basin Fish and Wildlife Program, developed and amended in accordance with the Pacific Northwest Electric Power Planning and Conservation Act.

Article 408. (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 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 also shall have continuing responsibility to supervise and control the use and occupancies for which it grants permission and to monitor the use of and to ensure compliance with the covenants of the instrument of conveyance for any interests that it conveys under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for the 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 noncomplying structures and facilities.

(b) The types of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are these: (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 the facility is intended to serve single-family 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

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occupancy of facilities for access to project lands or waters. The licensee also shall ensure to the satisfaction of the Commission's authorized representative that the use 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 do the following: (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, among other things, may establish a program for issuing permits for the specified types of use and occupancy of project lands and waters that 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 these purposes: (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) nonproject 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 1 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 that briefly describes 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 the following: (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 certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) nonproject overhead electric transmission lines requiring 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 that are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved exhibit R or an approved report on recreational resources of an exhibit E; and (7) other uses, if these conditions exist: (i) the amount of land conveyed for a particular use is 5 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 shall submit a letter to the Director, Office of Hydropower Licensing, stating the licensee's intent to convey the interest and briefly describing the type of interest and the 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 paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with appropriate federal and state fish and wildlife or recreational agencies and with 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 an approved report on recreational resources of an exhibit E or if the project does not have an approved exhibit R or an approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance shall include covenants running with the land adequate to ensure the following: (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 occur in a manner that protects the scenic, recreational, and environmental values of the project.

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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 shall be excluded from the project only on 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 the preservation of 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 are 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.

(G) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to the Commission filing. Proof of service on these entities must accompany the filing with the Commission.

(H) This order is issued under authority delegated to the Director and is final unless appealed 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.

Fred E. Springer
Director, Office of
Hydropower Licensing

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ENVIRONMENTAL ASSESSMENT
FOR HYDROPOWER LICENSE

Marsh Valley Hydroelectric Project

FERC Project No. 10468-000

Idaho

Federal Energy Regulatory Commission
Office of Hydropower Licensing
Division of Project Review
825 N. Capitol St., NE
Washington, DC 20426

November 6, 1989

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

Marsh Valley Hydroelectric Project

FERC Project No. 10468-000--Idaho

November 6, 1989

A. APPLICATION

1. Application Type: Major License

2. Date filed with the Commission: September 4, 1987

3. Applicant: Marsh Valley Hydroelectric Company

4. Water body: Portneuf River River basin: Snake River

5. Nearest City or town: McCammon (See figure 1.)

6. County: Bannock State: Idaho

B. PURPOSE AND NEED FOR ACTION

1. Purpose

The proposed project would provide an estimated average of 7.6 gigawatthours (GWh) of electrical energy per year. The applicant proposes to sell the project energy to Utah Power and Light Company.

2. Need for Power

The power from the project would be useful in meeting a small part of the need for power projected by the Northwest Power Planning Council for the northwest region. From the time the project goes into commercial operation, it would be available to displace fossil-fueled power generation in the Western System Coordinating Council (WSCC) region, thereby conserving nonrenewable fossil-fuels and reducing the emission of noxious byproducts caused by the combustion of fossil fuels.

C. PROPOSED PROJECT AND ALTERNATIVES

1. Description of the proposed action. (See figure 2.)

The proposed run-of-river project would consist of: (1) an existing 10-foot-high diversion dam at elevation 4,921 feet, that diverts water from the Portneuf River into the existing 11,670-foot-long Portneuf-Marsh Valley Irrigation Canal; (2) a 7-foot-high concrete diversion structure, located on the existing

Portneuf-Marsh Valley Canal at elevation 4,911 feet; (3) an intake structure; (4) a 500-foot-long, 60- to 72-inch-diameter penstock; (5) a powerhouse containing a single turbine-generator unit with a rated capacity of 1,700 kilowatts (kW), operating under an average head of 96 feet; (6) a 50-foot-long tailrace discharging into the Portneuf River; (7) a 0.5-mile-long, 12.4-kilovolt (kV) transmission line, tying into an existing Utah Power and Light Company line; and (8) support facilities.

2. Applicant's proposed mitigative measures

a. Construction

The applicant proposes: painting the powerhouse earthtone colors, designing a low-profile powerhouse, and burying the penstock. The applicant proposes to prevent erosion by avoiding excessive stripping of vegetation, replacing vegetation after completing construction, and minimizing the steepness of slopes.

b. Operation

The applicant proposes to maintain 10 cubic feet per second (cfs) in the bypassed reach to support the existing vegetation and fishery. To protect raptors from electrocution, the applicant proposes to raptor-proof the transmission line. The applicant would install an energy dissipator and sediment trap to minimize erosion and sedimentation during project operations.

3. Federal lands affected.

__X__ No. _____ Yes; _____ (agency); acreage=___;

4. Alternatives to the proposed project

a. __X__ No reasonable action alternatives have been found.
_____ Action alternartive:

b. Alternative of no action

No action, denial of a license, would preclude the applicant from constructing the proposed project. No action would involve no alterations to the existing environment and would preclude the applicant from producing electrical power at the site.

D. CONSULTATION AND COMPLIANCE

1. Fish and wildlife agency consultation (Fish & Wildlife Coordination Act).

a. U.S. Fish and Wildlife Service (FWS): __X__ Yes. ___No.
b. State(s): Idaho Department of Fish and Game (IDFG): __X__ Yes. ___No

c. National Marine Fisheries Service (NMFS): ___Yes. __X__No.

2. Section 7 consultation (Endangered Species Act).

a. Listed species: __X__None. ____Present:

b. Consultation: __X__ Not required.
____ Required; completed: __/__/____.

Remarks: The FWS says no federally listed or proposed threatened or endangered species occur in the area (letter from John P. Wolfin, Field Supervisor, U.S. Fish and Wildlife Service, Department of the Interior, Boise Field Office, Boise, Idaho, September 3, 1987).

3. Section 401 certification (Clean Water Act).

___ Not required.

__X__ Required; applicant requested certification on 05/12/87.

Status: __X__ Granted by the certifying agency on 09/03/87.

4. Cultural resource consultation (Historic Preservation Act).

a. State Historic Preservation Officer (SHPO): __X__ Yes. ___ No.
b. National Park Service (NPS): __X__ Yes. ___ No.
c. National Register status: __X__ None. ___ Eligible or listed.
d. Council: __X__ Not required. ___ Required.
e. Further consultation: __X__ Not required. ___ Required.

Remarks: The SHPO says that no archeological or historic sites would be impacted by construction or operation of the project (letter from Dr. Thomas Green, Deputy State Historic Preservation Officer, Idaho State Historical Society, Boise, Idaho, June 24, 1987).

5. Recreational consultation (Federal Power Act).

a. U.S. Owners: ___ Yes. __X__ No.
b. NPS: __X__ Yes ___ No.
c. State(s): __X__ Yes. ___ No.

6. Wild and scenic rivers (Wild and Scenic Rivers Act).

Status: __X__ None. ___ Listed. Determination completed: __/__/__.
Administering agency: _____

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7. Land and Water conservation Fund Lands and facilities (Land and Water Conservation Fund Act).

Status: _X_ None. ___ Designated.
___ Determination completed: __/__/__.

Administering agency: _____.

8. Pacific Northwest Power Planning and Conservation Act

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

The Program directs agencies to consult with federal and state fish and wildlife agencies, appropriate Indian Tribes, and the NPPC during the study, design, construction, and operation of any hydroelectric development in the basin. At the time the application was filed, the Commission's regulations required applicants to initiate prefiling consultation with the appropriate federal and state fish and wildlife agencies the Tribes, and provide these groups with post filing opportunities to review and to comment on the application. This consultation process has occurred.

The Program states that authorization for new hydroelectric projects should include conditions of development that would mitigate the impacts of the project on fish and wildlife resources. The relevant federal and state fish and wildlife agencies have reviewed and commented on the application. In addition, any license issued would provide for mitigative measures to protect fish and wildlife resources and therefore, is consistent with section 1103 of the Program. Further, a condition of any license issued would reserve to the Commission the authority to require future alterations in project structures and operation in order to take into account, to the fullest extent practicable, the applicable provisions of the Program.

E. COMMENTS

1. The following agencies and entities provided comments on the application or filed a motion to intervene in response to the public notice dated 07/20/88.

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Commenting agencies and other entities	Date of letter
Department of the Interior, U.S. Fish and Wildlife Service	10/07/88 and 11/07/88

Motions to intervene	Date of motion
Idaho Department of Fish and Game	09/20/88

2. _X_ The applicant responded to the comments by letters dated 12/08/88, 01/27/89, and 07/12/89.

___ The applicant did not respond to the comments or motion(s) to intervene.

F. AFFECTED ENVIRONMENT

1. General description of the locale.

a. Description of the Portneuf River Basin.

The drainage area is about 570 square miles and is at a mean altitude of 6,080 feet above mean sea level (msl). The project is located on the Portneuf-Marsh Valley (PMV) Canal at about elevation 4,900 feet msl.

The area of the project is rural, with no major population centers in the vicinity. Lands in the vicinity of the project are used mostly for livestock grazing and agriculture. The cropland in the area is used mainly to grow hay and grain.

The Portneuf River is narrow with hills on each side. The project would lie parallel to Union Pacific Railroad and U.S. Highway 30 rights-of-ways along the north and south banks, respectively.

The weather conditions in the area are variable. High temperatures reach 90 degrees Fahrenheit (°F) during the summer and low temperatures drop below zero °F during the winter. The annual precipitation is generally around 15 inches.

b. Existing licensed projects in the river basin, as of 10/31/89:

Project No.	Project name
7447	Portneuf River

c. Except for the subject application, there are no pending applications for license or exemption in the river basin, as of 10/31/89.

d. Cumulative impacts: We assessed the regional significance and geographic distribution of the resources within the river basin

and identified rainbow trout and brown trout as target species. The proposed run-of-river project would not add to the cumulative impact of previous water diversions on trout survival because of the project's limited scope, the limited presence of the trout, and the proposed and recommended mitigative and enhancement measures outlined in section G.

2. Descriptions of the resources in the project impact area (Source: Marsh Valley Hydroelectric Project, 1987, application, exhibit E, unless otherwise indicated).

a. Geology and soils: Bedrock in the project area includes both sedimentary and igneous rock, such as the fractured basalt bedrock underlying the existing canal. Most of the project area is within an alluvial deposit. The existing canal appears to be stable. Soils in the project range from very cobbly silt loam to silt loam in texture; these soils have a very high hazard of water erosion except on very level areas near the river.

b. Streamflow:

low flow: 143 cfs;	flow parameter:	mean monthly flow for October.
high flow: 342 cfs;	flow parameter:	mean monthly flow for May.
average annual flow:	196 cfs.	

Data for this project was derived from 64 years of USGS gaging records at gage no. 103073000 on the Portneuf River near Topaz, Idaho, about 1.5 miles upstream from project intake.

c. Water quality: The Idaho Department of Health and Welfare's water quality measurements of the Portneuf River, 30 miles downstream of the project, indicates that water quality is poor. The water quality of the river in the project area is suspected to be poor also because of the discharge of urban, municipal, and agricultural wastes upstream and downstream; in addition, during the irrigation season from June to October, the volume of water in the river is reduced, which contributes to water temperature increases.

d. Fisheries:

Anadromous:	X Absent.	___ Present.
Resident:	__ Absent.	X Present.

Some of the more important sport fish in the project area are brown trout, rainbow trout, Utah chub, bluehead sucker, and Utah sucker. Forage fish present include speckled dace, redside shiner, and mottled sculpin.

e. Vegetation:

Cover type	Dominant species
sagebrush grassland	sagebrush, cheatgrass, rabbitbrush, wheatgrass
riparian	cottonwood, willows, wild rose,

f. Wildlife: Typical inhabitants of the project area include beaver, muskrat, various ground squirrels, badger, skunk, and mule deer. Game birds such as mourning dove, quail, Hungarian partridge, and ring-necked pheasant are found in the vicinity. Waterfowl such as ducks and geese are commonly found in the project area. Raptors, such as red-tailed hawk, goshawk, Cooper's hawk, and golden eagle, and various songbirds commonly occur in the area.

g. Cultural:

X National Register (listed and eligible) properties have not been recorded.

h. Visual quality:

The landscape of the Portneuf Valley is typical of southeastern Idaho. The combination of an open, green and brown colored valley flanked by sagebrush and grass covered hills, the Portneuf River, and the bright blue sky produces a high quality visual scene. Highway 30, the irrigation canals, and to a lesser extent, the river itself, are linear features that blend with the relatively level lands of the valley bottoms.

i. Recreation: There is limited hunting and fishing near the project vicinity.

j. Land use: Livestock graze in the project vicinity. Land that would be used for the project is occupied by a privately owned irrigation canal.

G. ENVIRONMENTAL ISSUES AND PROPOSED RESOLUTIONS

There are five issues addressed below.

1. Visual Resources: The landscape is typical of southern Idaho, and has a high visual quality. The landscape components combine to form a relatively natural-appearing, uncluttered scene.

The applicant proposes burying the penstock, giving the powerhouse a low profile, painting it in earthtones, and replacing disturbed vegetation after construction. These

measures would greatly reduce adverse visual impacts and the licensee should implement them.

2. Erosion and Sedimentation: Land-clearing, land-disturbing, and spoil-producing activities would cause temporary, localized erosion and sedimentation. In addition, construction activities within the active stream could adversely affect fish by physical contact and bottom disturbance. Also riparian and upland vegetation could be disturbed during construction. The IDFG and the FWS express concern that construction activities associated with the proposed project may increase sedimentation of the Portneuf River below the project. The IDFG, the FWS, and the Bannock County Office of Planning and Development Services (County) want the applicant to prepare a detailed plan for the control of erosion and sedimentation and to revegetate all areas disturbed during project construction to reduce soil erosion into the drainage. The IDFG says vegetation removed should be replaced by similar plantings at a loss:replacement ratio of 1:1.5. The County also recommends that the road be constructed in such a way that cutting and filling is unnecessary or is kept to only that amount that is absolutely necessary. The IDFG states that an operation and maintenance plan for cleaning of the sediment trap (retention wall), located in the PMV canal upstream of the diversion, should be developed and implemented after project construction and should address the disposal of the removed sediment and the method of cleaning of the sediment trap.

The applicant proposes to avoid excessive removal of vegetation, to replace vegetation upon completion, and to minimize the steepness of slopes.

Most of the project features are already existing, so the construction area would be small and would be localized around the penstock, powerhouse, and tailrace, and associated access road. Construction would, however, take place in highly erodible soils.

We recommend the applicant prepare a detailed, site-specific plan to control erosion and sedimentation and to maintain slope stability, including measures to revegetate disturbed areas and to properly dispose of sediments to be removed during project operation. If the applicant does this, project impacts would be minor and short-term.

3. Archeological or historic sites discovered during construction or operation of the project, or that may be impacted from changes in the location of project facilities: The SHPO's comments on the proposed project are based on the premise that the project would be constructed as described in the application without significant changes.

Changes to the project, especially changes in the proposed location and design of a project, are occasionally found to be necessary after a license has been issued, and may require an applicant to amend a license. Under these circumstances, whether or not an application for amendment of license is required, the SHPO's comments would no longer reliably depict the cultural resources impacts that would result from developing the project.

Therefore, before beginning land-clearing or land-disturbing activities within the project boundaries, other than those specifically authorized in the license and previously commented on by the SHPO, the licensee should consult with the SHPO about the need to conduct a cultural resources survey and to implement avoidance or mitigative measures.

Also, land-clearing and or land-disturbing activities could adversely affect archeological and historic sites not identified in the vicinity of the proposed project.

Therefore, if the licensee encounters such sites during the development of project works or related facilities, the licensee should stop land-clearing and land-disturbing activities in the vicinity of the sites, should consult with the SHPO on the eligibility of the sites, and should carry out any necessary measures to avoid or to mitigate impacts to the sites.

Either before starting land-clearing or land-disturbing activities associated with any changes to the project, both proposed and necessitated, or before resuming land-clearing and land-disturbing activities in the vicinity of any previously undiscovered sites, the licensee should file with the Commission a plan and a schedule for conducting the appropriate studies, along with copies of the SHPO's written comments on the plans and the schedule.

The licensee should not start or resume land-clearing or land-disturbing activities, other than those specifically authorized in this license and commented on by the SHPO, or resume such activities in the vicinity of an archeological or historic site discovered during construction, until informed by the Commission that the requirements discussed above have been fulfilled.

4. Raptor protection: The proposed 0.5-mile-long overhead transmission line would be an electrocution hazard to raptors if the spacing between conductors is not sufficient. The IDFG and the FWS recommend that the applicant design and construct the project transmission line according to the Raptor Research Foundation, Inc.'s guidelines (Raptor Research Foundation, Inc., 1981). The applicant agrees to do so.

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Since raptors such as red-tailed hawk, goshawk, Cooper's hawk, and golden eagle commonly occur on the reach of the Portneuf River that includes the project area, the transmission line should be designed and constructed to protect golden eagles and other raptors from electrocution hazards. Therefore, the licensee should make the transmission line raptor-proof by designing the poles, crossarms, and conductor placements to ensure a separation of 60 inches between energized hardware, as recommended by the Raptor Research Foundation, Inc. (1981).

5. Minimum flows for the benefit of aquatic resources: Presently, all river water is diverted into the PMV canal during the irrigation season (approximately June to October). Consequently, for 4 to 5 months annually, the Portneuf River is dewatered for about 3.5 miles downstream of the diversion, until tributary and spring flows enter the river about 3,500 feet downstream of the proposed powerhouse location. Fish survive in the 3.5-mile-long reach of Portneuf River because of the presence of numerous deep pools, which remain watered and that provide a refuge during the low or no-flow periods. As a result of the applicant's proposed minimum flow release (discussed below), flows in the 3.5-mile-long reach would be increased during the irrigation season.

During the non-irrigation season (approximately October to June), the project would divert approximately 250 cfs from the Portneuf River at the existing Marsh Valley Diversion and would return that flow through the powerhouse to the river at a point about 15,000 feet downstream of the diversion. Flows in the 15,000-foot-long bypass section would be reduced during the non-irrigation period.

The applicant proposes to maintain a minimum flow of 10 cfs in the bypass reach year-round to perpetuate and to enhance aquatic resources, including the riparian vegetation and trout fishery. Although IDFG and FWS have not provided specific minimum flow recommendations, the agencies agree that providing flows of 10 cfs during the irrigation season, when several miles of the Portneuf River are dewatered, would be an improvement over the existing no-flow condition. The IDFG says the proposed 10-cfs minimum flow would have beneficial impacts several miles downstream and would guarantee aquatic production year-round.

Maintaining 10-cfs minimum flow year-round would ensure that the pools and about 80 to 85 percent of the habitat for adult rainbow and brown trout would be present year-round in the bypass reach (Chapman Consultants, 1989). Without the proposed project, no minimum flow would occur and only about 30 to 35 percent of the habitat would be present for adult rainbow and brown trout. The proposed 10-cfs minimum flow would provide minor enhancement to the aquatic resources over the existing conditions in the proposed bypass reach of the Portneuf River and the licensee

should release it. To ensure the 10-cfs minimum flow is maintained, the licensee should install a streamflow gage just below the PMV canal diversion in the river.

E. ENVIRONMENTAL IMPACTS

1. Assessment of impacts expected from the applicant's proposed project (P), with the applicant's proposed mitigation and any conditions set by a federal land management agency; the proposed project with any additional mitigation recommended by the staff (Ps); and any action alternative considered (A). Assessment symbols indicate the following impact levels:

O = None; 1 = Minor; 2 = Moderate; 3 = Major;
A = Adverse; B = Beneficial; L = Long-term; S = Short-term.

Resource	Impact P	Impact Ps	Impact A	Resource	Impact P	Impact Ps	Impact A
a. Geology-Soils	1AS			f. Wildlife	1AS		
b. Streamflow	1BL			g. Cultural:			
c. Water quality:				Archeological	0		
Temperature	0			Historical	0		
Dissolved oxygen	0			h. Visual quality	1AL		
Turbidity and sedimentation	1AS			i. Recreation	1AS		
d. Fisheries:				j. Land use	0		
Anadromous	0			k. Socioeconomics	0		
Resident	1BL						
e. Vegetation	1AS						

Remarks:

a. Construction activities would cause localized erosion, sedimentation, dust, and minor, temporary increases in turbidity in the Portneuf River.

b. Maintenance of a minimum flow of 10 cfs throughout the year in the bypass reach of the Portneuf River would ensure that the bypass reach is not dewatered at any time.

c. Short-term increases in turbidity would occur during project construction.

d. Eliminating the dewatering that now exists in the bypass and ensuring a 10-cfs minimum flow would enhance the fish habitat.

e. Approximately 0.8 acres of sagebrush grassland would be removed or damaged during construction. The appplicant proposes to reseed disturbed areas to accelerate the rate of revegetation.

f. Local wildlife populations would be disturbed by increased noise and human activity.

i. During construction, public access would be denied to a small segment of the Portneuf River.

2. Impacts of the no-action alternative.

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

3. Recommended alternative (including proposed, required, and recommended mitigative measures):

X Proposed project. ___ Action alternative. ___ No action.

4. Reason(s) for selecting the preferred alternative.

The proposed project would generate electrical energy from a renewable resource without significantly affecting the existing environmental conditions in the project area.

I. UNAVOIDABLE ADVERSE IMPACTS OF THE RECOMMENDED ALTERNATIVE

Minor, temporary localized erosion and sedimentation and increases in turbidity would be unavoidable during project construction. Wildlife would experience a minor, short-term impact as a result of human disturbances during the construction period and minimal loss of habitat. Approximately 0.8 acres of sagebrush would be removed or damaged; these areas would be reseeded to accelerate the rate of revegetation. During the construction period, public access to the Portneuf River in the project vicinity would be denied; this would have a minor, short-term, adverse impact on recreationists.

J. COMPREHENSIVE DEVELOPMENT

Section 4(e) of the Federal Power Act (Act) states that in deciding whether to issue a license, the Commission, in addition to considering the power and development purposes of the project,

shall give equal consideration to the purposes of energy conservation, the protection, mitigation of, damage to, and enhancement of, fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

In section 10(a), the Act further states that the project adopted shall be such that in the judgement of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, utilization, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation flood control, water supply, and recreational and other purposes discussed in section 4(e).

As we said, the proposed project would generate 7.6 GWh of electrical energy per year. The project also would provide for displacement of fossil-fueled electric power plant generation, improved air quality, and conservation of fossil-fuels.

This environmental assessment evaluates the effect of project construction and operation on the resources of the project area and discusses mitigative and enchancement measures that should be implemented. The mitigative measures we recommend are implementing an erosion control plan, visual resource protection, protecting raptors from transmission lines, and keeping minimum flows in the bypass to protect resident fish.

Based on our review under sections 4(e) and 10(a), we conclude that the proposed project, with proposed and recommended mitigative and enhancement measures, would be best adapted to a comprehensive plan for developing the Portneuf River.

K. CONCLUSION

X **Finding of No Significant Impact.** Approval of the recommended alternative [H(3)] would not constitute a major federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement (EIS) will not be prepared.

__ **Intent to Prepare an EIS.** Approval of the recommended alternative [H(3)] would constitute a major federal action significantly affecting the quality of the human environment; therefore, an EIS will be prepared.

JAN 22 1993

L. LITERATURE CITED

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White Horse Associates. 1988. Botanical resources--Marsh Valley Hydroelectric Facility, Bannock County, Idaho. February 1988.

M. LIST OF PREPARERS

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Kathleen Sherman	Soil Conservationist
James R. Kirby, Jr.	Environmental Protection Specialist
Thomas C. Camp, Jr.	Landcape Architect
John Mitchell	Writer-Editor

Figure 1. Location of the proposed Marsh Valley Hydroelectric Project, FERC No. 10468, (Source: Federal Energy Regulatory Commission, 1981)

Figure 2. Major features of the proposed Marsh Valley Hydroelectric Project, FERC No. 10468, Idaho (Source: White Horse Associates, 1988, as modified by staff).

SEP 2 1993

SAFETY AND DESIGN ASSESSMENT
MARSH VALLEY HYDROELECTRIC PROJECT
FERC NO. 10468-000 - IDAHO

Dam Safety

The proposed run-of-river hydroelectric project would use a new 7-foot-high concrete diversion structure and intake facilities on the existing Portneuf-Marsh Valley Canal, in Bannock County, Idaho. An existing 10-foot-high earthen diversion structure on the Portneuf River diverts irrigation flows into the Portneuf-Marsh Valley Canal.

The new diversion structure would impound about 0.4 acre-feet of water. The failure of the project's structures would not endanger downstream life or property. The project structures would be safe if constructed in accordance with sound engineering practice.

Consideration of Council's Power Plan

We reviewed the Northwest Power Planning Council's Northwest Conservation and Electric Power Plan to determine if the project is consistent.

The Council's Plan envisions meeting the growing regional energy requirements in the most economical manner with environmentally acceptable resources. The plan considers any environmentally acceptable resource that is less expensive than coal-fueled steam electric generation as an acceptable resource for development before the development of coal-fueled power plants (the Council's planned marginal resource).

We developed life-cycle costs of energy from the Council's planned generic coal plant, assumed to be needed in the year 2002 under the Council's medium-high load growth assumption, for determining if proposed hydroelectric projects are, in the long term, consistent with the Council's plan, as required by section 10 (a)(2) of the Act.

Since we find that the life-cycle levelized cost of the proposed project is less, as of its projected on-line date, than the levelized life-cycle cost of the least cost or marginal long-term alternative, included in the plan, the proposed project, as proposed, is consistent with the Council's Power Plan, and is economically feasible within the long-term objectives of the plan.

Water Resource Planning

The project's Francis turbine-generator unit would have an installed capacity of 1.7 megawatts and a hydraulic capacity of 250 cubic feet per second (cfs) at a gross head of 101 feet. The project would be operated as a run-of-river facility, using water

diverted from the Portneuf River. Based on the Geological Survey's flow records, recorded from 1919 to 1983 at gauge number 103073000 on the Portneuf river near Topaz, Idaho, the average annual stream flow for the Portneuf River is about 196 cfs. The applicant agrees to a year-round minimum flow of 10 cfs. Based on the available flows for power generation, the project's hydraulic capacity would be exceeded about 18 percent of the time; because of irrigation and minimum flows requirements, the project would be shut down during the summer months (the irrigation season).

The applicant estimates that the project would have an average annual generation of about 7.6 gigawatthours. We find this estimate reasonable. The project's size is adequate, under the available flows and head, to develop the hydropower potential of the site.

Section 10(a)(2) of the Act requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.

Under section 10(a)(2), federal and state agencies filed 24 comprehensive plans that address various resources in Idaho. Of these, we identified and reviewed one plan relevant to this project.1/ We found no conflicts.

Our review of agency and public comments shows the project does not conflict with any existing or planned water resource development in the basin. No comments or recommendations were made about flood control, water supply, or irrigation requirements for the Portneuf River.

Our Upper Snake River Basin Planning Status Report and our Hydropower Resources Assessment Report show that the project would not affect any proposed or constructed project on the Portneuf River and would not conflict with any pending application for exemption, license, or preliminary permit.

In summary, our analysis shows that the Marsh Valley Hydroelectric Project would adequately develop the hydroelectric potential of the site and would not conflict with any existing or planned water resource development in the basin.

1/ Idaho State Water Plan, 1986, Idaho Water Resources Board.

Primary Transmission Facilities

The license for the proposed Marsh Valley Hydro Project should include the following: 2.4-kV generator leads; a 2.4/12.5-kV, 2.0-MVA transformer; a 0.5-mile-long, 12.5-kV transmission line; and appurtenant facilities.

Economic Evaluation

A proposed project is economically beneficial so long as its projected levelized cost is less than the long-term, levelized cost of alternative energy to any utility in the region that can be served by the project.

Based on current economic conditions, we estimate the levelized power value in the region to be 76.2 mills per kilowatthour (kWh). We base our estimate on the generic coal-fueled steam-electric plant, forecasted by the Northwest Power Planning Council in its proposed resource portfolio to come on-line about the year 2002. We assume the cost of money at 11 percent and that the project would be operational in October 1992. The project's levelized cost of energy thus would be about 54 mills/kWh, and the project would be economically beneficial with a levelized net annual benefit of 22.2 mills/kWh.

The power purchase agreement between the applicant and Utah Power and Light company expired on November 20, 1988. Because of the economic benefits of the project, however, the project would be potentially financially feasible with a discounted cash flow rate of return of 15.8 percent.

Exhibits

The following parts of revised exhibit A and the following revised exhibit F drawings conform to the Commission's rules and regulations and are approved and made a part of the license.

Exhibit A: Section 1(i), 1(ii), 1(iii), and 1(vi).

Exhibit	FERC No.10468-	Showing
F-1	1	Intake Structure
F-2	2	Powerhouse Plan
F-3	3	Powerhouse Elevation
F-5	5	Diversion Bypass Structures

Preparers: Mohamad Fayyad, Civil Engineer
Roland George, Electrical Engineer

RECEIVED
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Form L-11
(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING THE INTERESTS OF INTERSTATE OR FOREIGN COMMERCE

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

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

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

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to

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

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Energy Regulatory 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 features 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 state 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 locations 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.

JAN 22 1993

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 relasionship 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 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 statues and regulations.

Article 21. 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 22. 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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November 17, 1989

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Department of Water Resources

Idaho Department of Water
Resources
Statehouse Mail
Boise, ID 83720

Re: Lava Irrigation Co. v. Marsh Valley Hydro Electric Co., et al.
Application Nos. 29-7575 and 29-7772

Ladies and Gentlemen:

Please file the enclosed **INFORMATION SUBMITTED PURSUANT TO ORDER OF THE IDAHO DEPARTMENT OF WATER RESOURCES** in the above matter.

Thank you.

Very truly yours,

BRADY, SAETRUM & LERMA,
CHARTERED

Kenneth R. Arment

KRA:vrd

Enclosure

cc/enc Randall C. Budge
Kent W. Foster

29-7578
29-7772

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Marsh Valley Hydroelectric Company Project No. 10242-000

ORDER DISMISSING PRELIMINARY PERMIT APPLICATION WITHOUT PREJUDICE

(Issued February 16, 1989)

On January 12, 1987, Marsh Valley Hydroelectric Company filed a hydropower preliminary permit application to study the feasibility of developing Project No. 10242-000. A competing development application No. 10468 was subsequently filed and accepted.

The Commission's policy is to dismiss without prejudice permit applications that compete with accepted development proposals (applications for license or exemption) when they fail to substantiate the technical, environmental, and economic aspects of the proposed project. See Dennis V. McGrew, 32 FERC ¶ 61,229 (Aug. 15, 1985). This policy is based on the necessary prerequisite to a comparative analysis of competing applications.

Here, the preliminary permit applicant has failed to substantiate its proposal. Accordingly, the application for proposed Project No. 10242-000 will be dismissed. If the competing development application is subsequently dismissed or denied, the permit application will be reinstated automatically, with its original filing date intact, and the permit applicant will be notified.

If a development application is granted. the preliminary permit applicant will be served a copy of the approved order. The dismissal of the permit application will be with prejudice from the date of that order, and any appeal must be filed within 30 days from the date of that order.

DC-A-5

The Director orders:

The permit application submitted January 12, 1987, by Marsh Hydroelectric Company for proposed Project No.10242-000 is dismissed without prejudice.

Dean L. Shumway
Director, Division of Project Review

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Department of Water Resources

Diana
What is the difference between these two? Please find out.

Gary

#10242 was a preliminary permit application.
#10463 was a license application submitted subsequent to #10242 by a different party.

Since #10242 was still an application and no permit had yet been issued when #10463 was submitted as a competing application, FERC reviewed both applications and favored #10463. FERC will almost always favor a license application over a preliminary permit application if the two are competing.

I don't know if the Marsh Valley Hydroelectric Company on #10242 is the same as on #10463, but my guess would be that most of the same parties are involved since some of the project works are existing.

KKK

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NOS. 29-7578 AND 29-7772 IN THE NAME OF MARSH VALLEY HYDRO ELECTRIC COMPANY	) ORDER DENYING PETITION FOR ISSUANCE OF LICENSE (PERMIT) AND ORDER DENYING MOTION FOR SANCTIONS

On January 31, 1990, the Department of Water Resources received a petition for issuance of license for water right filings nos. 29-7578 and 29-7772 from Donald L. Harris, on behalf of Marsh Valley Hydro Electric Company. A review of files nos. 29-7578 and 29-7772 shows that the filings are actually applications, not permits, and the petition from Mr. Harris will be considered a petition for issuance of permits, rather than issuance of a license since a permit must be approved, and a project developed prior to the issuance of a water right license. The basis for Mr. Harris' motion was that a FERC license had been issued for the project.

Kenneth R. Arment, attorney for petitioners for intervention, objected to the petition for issuance of a permit and moved for sanctions against Ted Sorenson and his attorneys and agents because of alleged ex parte communication with the Department without notice to his clients.

The initial petition for intervention was filed with the Department of Water Resources by Mr. Arment on behalf of a number of Portneuf River water users. The original petition was denied, and Mr. Arment is now appealing the decision of the Department to

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the District Court (Ada County Case No. 93069). The Department assumes that, if intervention is granted, Mr. Arment desires to present testimony about why the Department should not issue a permit to the applicant. If the Department were to issue a permit at this time, the purpose of Mr. Arment's motion to intervene, and the now pending appeal, would be frustrated. The Department of Water Resources will not issue permits for applications nos. 29-7578 and 22-7772 until the pending appeal is resolved.

The Department files contain letters from both Ted Sorenson and Kent W. Foster, encouraging the Department to issue permits for applications nos. 29-7578 and 29-7772. The Department assumes that the allegations of ex parte communication contained in Mr. Arment's motion for sanctions refer to these pieces of correspondence.

When the Department receives documentation pertaining to a contested matter, it generally assumes that copies have been served upon the other parties. This is particularly true where counsel has been retained for both sides. The Department should not be required to determine whether other parties have been served. The Department should also not be required to provide carbon copies to the parties. All of the parties must serve copies of correspondence upon the other parties.

The communication with the Department did not rise to the level of an action deserving of sanctions, however. The Department did not act on the correspondence that was sent, and only when an official petition was received by the Department did it consider the issues. According to the mailing certificate, the petition for

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issuance of a permit was served upon Mr. Arment.

Finally, there have been some questions raised regarding the the attorneys who are representing various parties.

The records of the Department show that Randall Budge, attorney at law, is representing Marsh Valley Hydro Electric Company. If Mr. Harris is now representing Marsh Valley Hydro Electric Company, a substitution of counsel would be appropriate. The Department, as well as Mr. Arment, should know who is representing the respective interests in this matter, and with whom they should communicate.

ORDER

IT IS HEREBY ORDERED that the Petition for Issuance of License (Permit) is DENIED.

IT IS FURTHER ORDERED that the petition for sanctions against Ted Sorenson and his agents or representatives is DENIED.

IT IS FURTHER ORDERED that pending resolution of judicial review of the denied petition for intervention and any documents filed with the Department by Marsh Valley Hydro Electric Company, Ted Sorenson, and attorneys representing these interests, and also by Kenneth Arment, attorney at law, must by served upon the other parties.

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IT IS FURTHER ORDERED that Mr. Harris must identify his present relationship with Marsh Valley Hydro Electric Company, or with other interested parties.

Dated this 14TH day of March, 1990.

R. KEITH HIGGINSON
Director

CERTIFICATE OF MAILING

I hereby certify that on this 16th day of March, 1990, I mailed a true and correct copy of the Order Denying Applicant's Petition for Issuance of License (Permit) and Order Denying Perspective Intervenors Motion for Sanctions, postage prepaid, to the following individuals:

Kenneth Arment
Brady, Saetrum & Lerma
First Interstate Center
877 West Main St., Suite 800
P.O. Box 1398
Boise, ID 83701-1398

Donald Harris
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

Randall C. Budge
Racine, Olson, Nye, Cooper & Budge
P.O. Box 1391
Pocatello, ID 83204-1391

Ted Sorenson
550 Linden Dr.
Idaho Falls, ID 83401

JENNIFER SEIFERT
Clerical Assistant

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JAN 22 1993

BEFORE THE

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-7578 AND 29-7772 IN THE NAME OF MARSH VALLEY HYDRO ELECTRIC COMPANY	ORDER DENYING PETITION FOR REHEARING AND AMENDING ORDER DENYING PETITIONS

A petition for leave to intervene, file protest, cancel applications and for inquiry (petition to intervene) was filed by Lava Irrigation District and other petitioners in September, 1988. The Department of Water Resources (Department) issued an Order Denying Petitions on July 11, 1989.

The petitioners filed a petition for rehearing on July 31, 1989. The first portion of this order, in narrative form, addresses the issues raised in the petition for rehearing. The issues raised by the petition for rehearing will be addressed in substantially the same order they were framed by the petitioners. The second portion of this order, labeled as findings of fact and conclusions of law, addresses issues raised by the petition to intervene.

Ex Parte Communications

Petitioners assert that the Department did not receive a letter from Ted Sorenson until after they had filed their petitions and that the communication, without notification to the petitioners, was an ex parte communication.

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Finding of fact No. 8 should be corrected to reflect that Ted Sorenson sent a letter tot he Department which was dated August 31, 1988. The Department did not receive the letter until September 7, 1988, seven days after the filing of the petition to intervene.

The acceptance of the letter by the Department was not an ex parte communication as contemplated by Idaho Code § 67-5213. The Department did not act on the information contained therein. The petitioners have not shown that the letter, by residing in the files of the Department, was prejudicial to resolution of their petition to intervene. Nor have they shown how the facts contained in the letter itself were used by the department to determine any issue raised in the petition to intervene.

Correspondence between Applicant and Department

Petitioners argue that the Department failed to recognize Department consideration of other correspondence requiring submittal of information from the applicant.

Finding of fact No. 7 contained a brief statement regarding repeated correspondence between the applicant and the Department. The petitioners have specifically identified some of the correspondence. A review of the correspondence reveals that some of the responses from the applicant were timely and some were not timely. The Department's return inquiries were also not always prompt. The delays and tardiness are not cause for cancellation at this juncture.

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Rule 4,1,4. and Rule 4,5,1. Time Requirements

Rule 4,1,4. of the Water Appropriation Rules and Regulations does not require that a request for delay of commencement or processing be filed if a delay in commencement of processing occurs. It is a mechanism whereby the applicant can obtain a period of inaction by the Department. It also does not establish expiration periods after which an application will automatically lapse, be voided, or be cancelled. The applications will not be cancelled for the expiration of a period of inaction, regardless of whether the applicant requested or did not request a delay.

Rule 4,5,1. states that failure to submit information within thirty (30) days is "cause" for the director to void an application or advance priority. The rule does not mandate the remedy, and is a discretionary tool exercised when the director determines that he must force compliance.

Improper Notice

Petitioners argue that the notice of the applications to appropriate water were inadequate because the applicant knew of the interest of the petitioners, and also because the second application, when published, did not refer to the first application.

Idaho Code § 42-203A states that publication is the method for notifying potential interested parties of a water right application. The Department is not required to publish in its notice that a filing will be used in connection with other filings.

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Real Party in Interest

The petitioners assert that Ted Sorenson, d/b/a Marsh Valley Development Company is the real party in interest and should be required to participate as the principal party.

The applicant has not totally divested itself of its interest in the project. The applicant should be entitled to hire consultants and obtain financing. The fact that the consultant may provide the financing does not necessarily divest the applicant of its interest. The Department should not require Ted Sorenson to be substituted as the real party in interest.

Ultra Vires Act

The petitioners assert that the Department should not have refused to consider an allegation of ultra vires acts by the applicants.

The conclusions and order will be amended to allow the submittal of information regarding any matter which may raise a question about any of the five criteria contained in Idaho Code § 42-203A. The applicants may also submit information that rebuts allegations by the petitioners. If this information includes an allegation of ultra vires acts, and it relates to one of the criteria, the Department will accept the information.

Correction of Names and Water Right Number

The petitioners argue that the directive to non parties to correct deficiencies in the filing was an error by the Department.

The language in the order directing McCammon Ditch Company and Marsh Valley Hydro Electric Company to correct errors in

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names and water right numbers should have been permissive rather than mandatory. The mandatory language will be changed to permissive language.

Failure by Applicants to Contest Petitions and Motion to Strike

The petitioners imply that failure by the applicants to contest its petitions should result in a default and granting of their petitions. They also argue that a letter to the Department from Randy Budge, dated August 10, 1989, should be stricken, to the extent it is deemed an answer to the petition for rehearing, because it was untimely filed.

This is not a default proceeding, and the Department must determine whether the petitions should be granted or denied. The letter from Randy Budge is a response to the first order of the Department, and does not address the issues raised in the petition for rehearing, but merely asks for a determination.

The petition for "rehearing" should be denied to the extent that it again requests intervenor status and a hearing. The findings of fact and conclusions of law are amended as follows:

FINDINGS OF FACT

1. McCammon Ditch Company filed application to appropriate water no. 29-7578 in 1981. Another application to appropriate water was filed in the name of Marsh Valley Hydro Electric Company in 1984, and was assigned water right no. 29-7772.

2. The applications were properly advertised as required by the Idaho Code. The name printed in the legal notice for application no. 29-7772 was Marsh Valley Hydro Electric Co.

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3. Application no. 29-7578 was not protested. Idaho Department of Fish and Game filed a protest against application no. 29-7772, but the protest was withdrawn on September 24, 1984.

4. The files of the Department contain an assignment purporting to assign permit no. 29-7585 from the McCammon Ditch Company to Marsh Valley Hydro Electric Company. McCammon Ditch Company has never owned permit no. 29-7585 and correspondence in Department files indicate that McCammon Ditch Company intended to assign permit no. 29-7578.

5. Department files contain an affidavit attesting to the authority of Marsh Valley Hydro Electric Co. to do business in the state of Idaho, signed by Lyndon Green, the president of Marsh Valley Hydro Electric Co.

6. The Water Appropriation Rules and Regulations were promulgated in October, 1986.

7. The Department and representatives of the applicant corresponded repeatedly about the progress of the proposal during 1986, 1987, and 1988.

8. On May 20, 1988, the Department requested that the applicant submit additional information as required by Rule 4,5. of the Water Appropriation Rules and Regulations. The letter requested a reply within sixty (60) days. The applicant responded to the Department's request for information on August 31, 1988. The letter was received by the Department on September 7, 1989.

9. On August 31, 1988, Lava Irrigation Company, Dempsey Irrigation Company, Fish Creek Irrigating Company, Jim Andrus,

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Ken Andrus and Max Hall (petitioners) petitioned the Director of the Department for leave to intervene, file protest, cancel applications, and for inquiry in the matter of applications for permit nos. 29-7578 and 29-7772.

CONCLUSIONS OF LAW

1. Rule 6,1. of the Practice and Procedure Rules and Regulations states that the Department may grant leave to intervene when "[p]ersons, other than the original parties to the proceeding, who are directly and substantially affected by the proceeding, shall secure an order from the Director . . . granting leave to intervene before being allowed to participate . . .."

2. Rule 6 contemplates that an intervention will not be granted unless a formal dispute resulting from the filing of a protest is filed, and a formal dispute is pending which may culminate in a hearing.

3. Unless notice of an application for permit is improperly advertised, readvertisement and making available another protest period is not appropriate.

4. Rule 4,5,1. of the Water Appropriation Rules and Regulations discusses the time frames within which an applicant must respond to a request for information.

> For unprotested applications and permits being reprocessed, the additional information required by Rule 4,5,3. shall be submitted within 30 days after the director notifies the applicant that the application or permit is being reviewed for decision. The director may extend the time within which to submit the information upon request by the applicant and upon a showing of good cause.
>
> Failure to submit the required information within the time period allowed will be cause for the director to void an application.

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5. The Department granted sixty days for submittal of the information. It was not received within sixty days.

6. Rule 4,5,1. does not mandate that an application be voided for tardy submittal. The rule creates "cause" for action that may be taken by the director at his discretion.

7. Prior to voiding an application, the applicant is entitled to notice of pending department action to void the application. The May 20, 1988, letter did not afford adequate notice of possible Department action.

8. Rule 4,1,4. of the Water Appropriation Rules and Regulations states that an "applicant may request in writing that commencement of processing . . . be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months."

9. Processing of applications nos. 29-7578 and 29-7772 had already begun prior to promulgation of the rules. Furthermore, the expiration of six months during processing does not result in an interruption of processing. Rule 4,1,4. creates a mechanism for requesting time for inaction; it is not a mandate that a filing be voided if action on the permit is not complete within the time frames set forth in the rule, and the applicant has not requested delay.

10. Permit No. 29-7578 has not been properly assigned to the Marsh Valley Hydro Electric Co.

11. Idaho Code § 42-206 through § 42-210 requires Department approval of assignments of hydropower permits. Failure to properly identify a water right is not grounds to void an

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application or permit, particularly where the Department acknowledged and recognized the assignment.

12. In this case, it appears that Marsh Valley Hydro Electric Co. substantially complied with the requirements for assigning a hydropower filing. Correction of the name and the number listed on the assignment will resolve the inconsistencies in file 29-7578. Correction of the name on application no. 29-7772 will resolve the inconsistencies in file no. 29-7772.

13. When an application to appropriate water is filed with the Department, the Department is required to consider criteria set forth in Idaho Code, § 42-203A. These criteria must be considered regardless of whether an application is protested, and regardless of whether there is an ongoing protest proceeding.

14. In evaluating the criteria, the Department must gather and consider evidence relative to the criteria.

15. Any person substantially affected by a filing may submit information about the filing to the Department of Water Resources, even after the protest period has expired. The Department will forward the information submitted to the applicant, and inform the applicant that it will consider the information and determine whether the application should be rejected or approved.

16. The petitioners may present facts that relate to the criteria of Idaho Code § 42-203A.

ORDER

IT IS HEREBY ORDERED as follows:

JAN 22 1993

1. The petitions for leave to intervene, file protest, and cancel applications are DENIED.

2. The petition to strike, petition for rehearing, and motion for attorneys fees is DENIED.

3. The petition for hearing and investigation regarding water distribution on the Portneuf River contained in the petition for rehearing need not be resolved as part of the consideration of application nos. 29-7578 and 29-7772. The petition will be taken under advisement.

4. The portion of the petition which asks for inquiry, to the extent that it seeks the opportunity to submit facts that would assist the Department in reaching a decision regarding the applications is GRANTED.

5. The petitioners may submit facts related to any of the five criteria of Idaho Code § 42-203A. The petitioners must submit the information to the Department of Water Resources within thirty (30) days of the date of service of this order.

6. Any information submitted by the petitioners or the applicant to the Department must also be served upon the other interested entities through their attorneys. An additional period of thirty (30) days shall also be granted from the date of service to rebut any evidence submitted.

7. McCammon Ditch Company may correct the assignment contained in file no. 29-7578 by refiling an amended assignment naming the proper assignee and listing the proper water right number.

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8. Marsh Valley Hydro Electric Co. may correct the spelling of the name listed on application no. 29-7772 by submitting a written request for correction to the Department.

Dated this 17th day of October, 1989.

R. KEITH HIGGINSON
Director

JAN 22 1993

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of October, 1989, a true and correct copy of the Order Denying Petition for Rehearing and Amending Order Denying Petition, was mailed, postage prepaid, to the following individuals:

Ken Arment, Attorney at Law
P.O. Box 1398
Boise, ID 83701-1398

Randy Budge, Attorney at Law
P.O. Box 1391
Pocatello, ID 83204-1391

Kent Foster
Holden, Kidwell, Hahn & Crapo
Idaho First National Bank Bldg.
P.O. Box 51030
Idaho Falls, ID 83405

Ted Sorenson, P.E.
550 Linden Dr.
Idaho Falls, ID 83401

Jennifer Seifert

JENNIFER SEIFERT
Clerical Assistant

JAN 22 1993

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-7578 AND 29-7772 IN THE NAME OF MARSH VALLEY HYDRO ELECTRIC CO.	ORDER DENYING PETITIONS

This matter having come before the Department of Water Resources (Department) as a result of the filing of a petition for leave to intervene, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. McCammon Ditch Company filed application to appropriate water no. 29-7578 in 1981. Another application to appropriate water was filed in the name of Marsh Valley Hydro Electric Company in 1984, and was assigned water right no. 29-7772.

2. The applications were properly advertised as required by the Idaho Code. The name printed in the legal notice for application no. 29-7772 was Marsh Valley Hydro Electric Co.

3. Application no. 29-7578 was not protested. Idaho Department of Fish and Game filed a protest against application no. 29-7772, but the protest was withdrawn on September 24, 1984.

4. The files of the Department contain an assignment purporting to assign permit no. 29-7585 from the McCammon Ditch

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Company to Marsh Valley Hydro Electric Company. McCammon Ditch Company has never owned permit no. 29-7585 and correspondence in Department files indicate that McCammon Ditch Company intended to assign permit no. 29-7578.

5. Department files contain an affidavit attesting to the authority of Marsh Valley Hydro Electric Co. to do business in the state of Idaho, signed by Lyndon Green, the president of Marsh Valley Hydro Electric Co.

6. The Water Appropriation Rules and Regulations were promulgated in October, 1986.

7. The Department and representatives of the applicant corresponded repeatedly about the progress of the proposal during 1986, 1987, and 1988.

8. On May 20, 1988, the Department requested that the applicant submit additional information as required by Rule 4,5. of the Water Appropriation Rules and Regulations. The letter requested a reply within sixty (60) days. The applicant responded to the Department's request for information on August 31, 1988.

9. On August 31, 1988, Lava Irrigation Company, Dempsey Irrigation Company, Fish Creek Irrigating Company, Jim Andrus, Ken Andrus and Max Hall (petitioners) petitioned the Director of the Department for leave to intervene, file protest, cancel applications, and for inquiry in the matter of applications for permit nos. 29-7578 and 29-7772.

CONCLUSIONS OF LAW

1. Rule 6,1. of the Practice and Procedure Rules and

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Regulations states that the Department may grant leave to intervene when "[p]ersons, other than the original parties to the proceeding, who are directly and substantially affected by the proceeding, shall secure an order from the Director. . . granting leave to intervene before being allowed to participate. . .."

2. Rule 6 contemplates that an intervention will not be granted unless a formal dispute resulting from the filing of a protest is pending, and which may culminate in a hearing.

3. Unless notice of an application for permit is improperly advertised, readvertisement and making available another protest period is not appropriate.

4. Rule 4,5,1. of the Water Appropriation Rules and Regulations discusses the time frames within which an applicant must respond to a request for information.

> For unprotested applications and permits being reprocessed, the additional information required by Rule 4,5,3. shall be submitted within 30 days after the director notifies the applicant that the application or permit is being reviewed for decision. The director may extend the time within which to submit the information upon request by the applicant and upon a showing of good cause.
>
> Failure to submit the required information within the time period allowed will be cause for the director to void an application.

5. The Department granted sixty days for submittal of the information. It was not received within sixty days.

6. Rule 4,5,1. does not mandate that an application be voided for tardy submittal. The rule creates "cause" for action that may be taken by the director at his discretion.

7. Prior to voiding an application, the applicant is

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entitled to notice of pending department action to void the application. The May 20, 1988 letter did not afford adequate notice of possible Department action.

8. Rule 4,1,4. of the Water Appropriation Rules and Regulations states that an "applicant may request in writing that commencement of processing . . . be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months."

9. Processing of applications nos. 29-7578 and 29-7772 had already begun prior to promulgation of the rules. Furthermore, the expiration of six months during processing does not result in an interruption of processing. Rule 4,1,4. creates a mechanism for requesting time for inaction; it is not a mandate that a filing be voided if action on the permit is not complete within the time frames set forth in the rule.

10. Permit No. 29-7578 has not been properly assigned to the Marsh Valley Hydro Electric Co.

11. Idaho Code § 42-206 through § 42-210 requires Department approval of assignments of hydropower permits. Failure to properly identify a water right is not grounds to void an application or permit, particularly where the Department acknowledged and recognized the assignment.

12. In this case, it appears that Marsh Valley Hydro Electric Co. substantially complied with the requirements for assigning a hydropower filing, presumably application no. 29-7578. Submittal of an amended assignment correcting the name and the number listed on the assignment will resolve the

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inconsistencies in file 29-7578. Correction of the name on application no. 29-7772 will resolve the inconsistencies in file no. 29-7772.

13. When an application to appropriate water is filed with the Department, the Department is required to consider criteria set forth in Idaho Code, § 42-203A. These criteria must be considered regardless of whether an application is protested, and regardless of whether there is an ongoing protest proceeding.

14. In evaluating the criteria, the Department must gather and consider evidence relative to the criteria.

15. Any person substantially affected by a filing may submit information about the filing to the Department of Water Resources, even after the protest period has expired. The Department will forward the information submitted to the applicant, and inform the applicant that it will consider the information and determine whether the application should be rejected or approved.

16. An allegation of ultra vires activities by corporate entities is not a matter that the Department is authorized to resolve.

ORDER

IT IS HEREBY ORDERED as follows:

1. The petition, to the extent that it requests leave to intervene, file protest, and cancel applications is DENIED.

2. The portion of the petition which asks for inquiry, to the extent that it seeks the opportunity to submit facts that would assist the Department in reaching a decision regarding the

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applications is GRANTED.

3. Any technical data that would establish or discount injury to the petitioners must be submitted to the Department of Water Resources within thirty (30) days of the date of service of this order.

4. Any information submitted by the petitioners or the applicant to the Department must also be served upon the other interested entities through their attorneys. An additional period of fifteen (15) days shall also be granted from the date of service to rebut any evidence submitted.

5. McCammon Ditch Company shall correct the assignment contained in file no. 29-7578 by refiling an amended assignment naming the proper assignee and listing the proper water right number.

7. Marsh Valley Hydro Electric Co. shall correct the spelling of the name listed on application no. 29-7772 by submitting a written request for correction to the Department.

Dated this 11TH day of July, 1989.

R. KEITH HIGGINSON
Director

APPROVED
JAN 22 1993

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of July, 1989, a true and correct copy of the Order Denying Petitions, was mailed to the following individuals, postage prepaid:

Ken Arment, Attorney at Law
P.O. Box 1398
Boise, ID 83701-1398

Randy Budge, Attorney at Law
P.O. Box 1391
Pocatello, ID 83204-1391

Kent Foster
Holden, Kidwell, Hahn & Crapo
Idaho First National Bank Bldg.
P.O. Box 51030
Idaho Falls, ID 83405

Ted Sorenson, P.E.
550 Linden Dr.
Idaho Falls, ID 83401

Jennifer Seifert

JENNIFER SEIFERT, Clerical Assistant

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Form 202
3/78

Ident. No. 29-7772

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

1. Name of applicant Marsh Valley Hydro Electric Company Phone (208) 245-3494

   Post office address c/o Lyndon Green, President, McCammon, Idaho 83250

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

3. Location of point of diversion is SE ¼ of NW ¼ of Section 22 Township 9 S

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

   NONE. Existing rock filled wooden crib diversion structure will be used

4. Water will be used for the following purposes:

   Amount 75 cfs (cfs ~~or acre-feet per annum~~) for hydropower purposes from Jan. 1 to Dec. 31 (both dates inclusive)

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

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

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

5. Total quantity to be appropriated:

   a. 75 cfs cubic feet per second and/or b. ---- acre-feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. Water diverted from Portneuf River by existing rock filled wooden crib into existing irrigation canal. Diverted from canal in NW¼ NW¼, Section 21, T. 9 S., R. 37 E.B.M., by concrete box into penstocks connected to hydro electric plant located adjacent to Portneuf River.

   b. Height of storage dam N/A feet, active reservoir capacity N/A acre-feet; total reservoir capacity N/A acre-feet, materials used in storage dam: _____

   Period of year when water will be diverted to storage NONE. run of (Month/Day) to the river (Month/Day) inclusive.

   c. Proposed well diameter is N/A inches; proposed depth of well is N/A feet.

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

8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: NW ¼ of NW ¼ of Section 21 Township 9 S.

      Range 37 E.B.M.

      (2) Amount of power to be generated: 600 horsepower under 88 feet of head.

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

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

      (5) If water is to be used for other purposes describe: water to be diverted from Portneuf River conveyed through existing canal to new spliter box, diverted through Penstock and hydro generating plant, and returned to river. Total distance of conveyance thru canal 1/2 mile.

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

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

Total number of acres to be irrigated _____

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

N/A

9. a. Who owns the property at the point of diversion McCammon Ditch Company

b. Who owns the land to be irrigated or place of use Roger S. Johnson

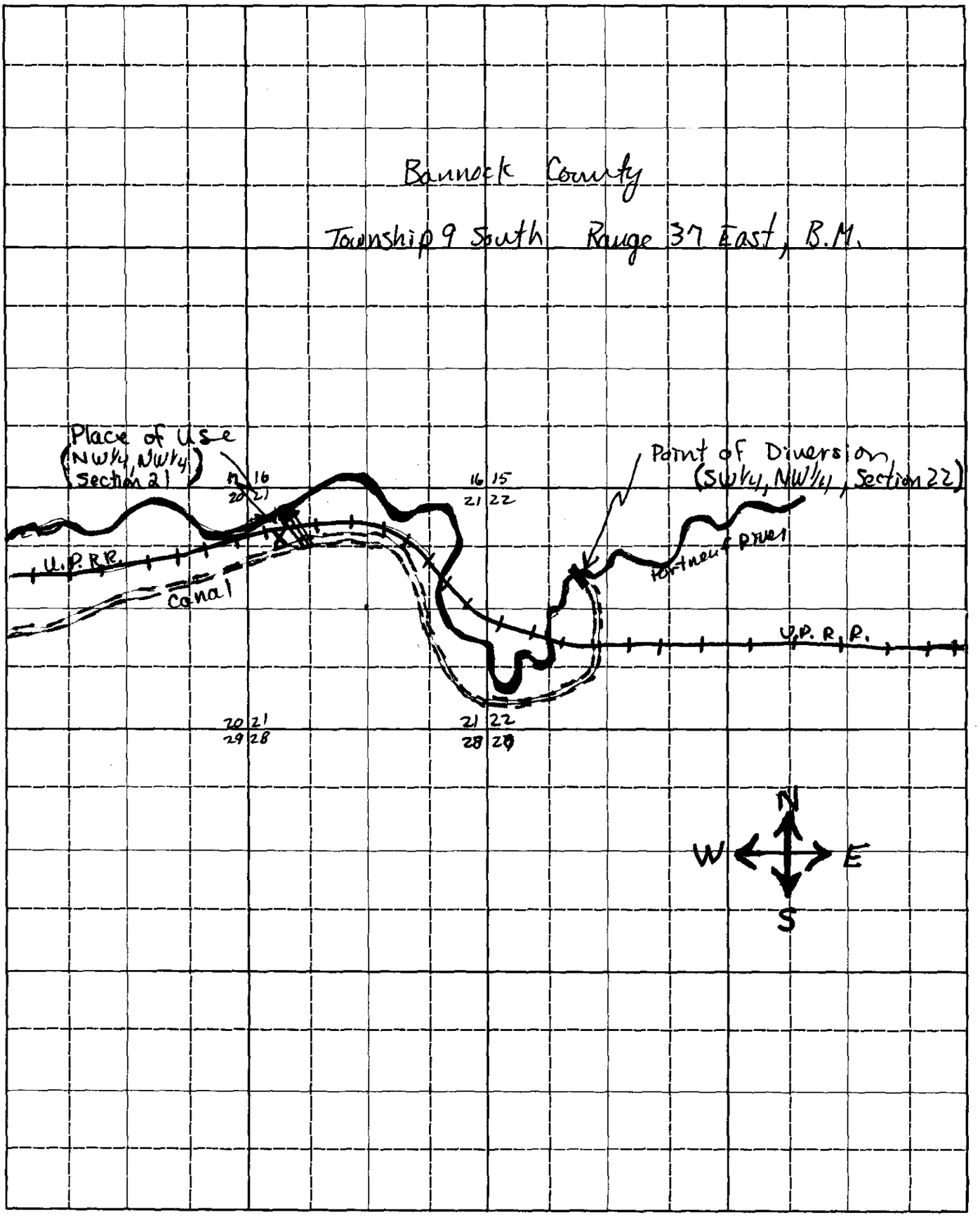
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Applicant has an Option to Purchase a plant site and adjacent easement with land owner Roger S. Johnson which was entered into on October 3, 1983, and recorded as Bannock County #718016. This Option will be exercised within approximately 90 days following which the land used will be owned by Applicant.

10. Remarks

This Applications supplements Permit #29-7585 (78) previously obtained to appropriate 175 cfs to provide for a total of 250 cfs.

JAN 22 1993

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



Scale: 2 inches equal 1 mile.

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

RECEIVED
JAN 22 1993

Lyndon Green, President
(Applicant)

Attest: Harold C Raymond, Secretary

Received by CW Date 6-05-84 Time 1:05

Preliminary check by DJR. Fee $ 975.00

Receipted by CT Date 6-6-84 #33567

Publication prepared by CJ Date 6-6-84

Published in Idaho State Journal

Publication dates 6-14 6-21-84

Publication approved CJ Date 6-26-84

Protests filed by: ~~F & G~~ WITHDRAWN

Copies of protests forwarded by CW

Hearing held by _____ Date _____

Recommended for approval denial by _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____ , and said application is hereby _____ .

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____ , 19 ____ .

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

   d. Other:

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JAN 2 2 1993

Form 205/206
7/81

Ident. No._____

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

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

1. Individual Applicant or Individual Members of a Partnership:

I,_____ 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, Lyndon Green of McCammon,
(name) (city)

County of Bannock, State of Idaho, being duly sworn, depose and say: That I am the designated registered agent of the MARSH VALLEY HYDRO ELECTRIC CO.: 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 McCammon, Idaho, wherein are kept the corporate records required
(city)

by Section 30-1-52, Idaho Code: and that MARSH VALLEY HYDRO ELECTRIC CO.
(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.

Lyndon Green Jrs.
Applicant

State of Idaho)
County of BANNOCK) ss.

On this 10th day of AUGUST, 19 84, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Russell C. Bridge
Notary Public residing at
Pocatello, Idaho

seal

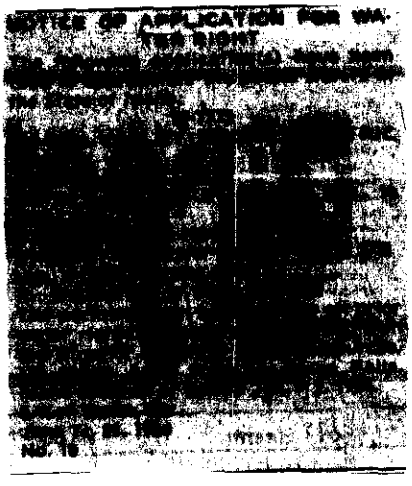
My commission expires:
10/15/84

JAN 22 1993

PROOF OF PUBLICATION

RECEIVED
JUN 26 1984
Department of Water Resources
Eastern District Office

STATE OF IDAHO
County of Bannock } ss.



Sandra K Herald

being first duly sworn on oath deposes and says: That she was at all times herein mentioned a citizen of the United States of America, more than 21 years of age, and the Principal Clerk of THE IDAHO STATE JOURNAL, a daily newspaper, printed and published at Pocatello, Bannock County, Idaho, and having a general circulation therein.

That the document or notice, a true copy of which is attached, was published in the said IDAHO STATE JOURNAL, on the following dates, to-wit:

June 14, 1984	, 19
June 21, 1984	, 19
, 19	, 19
, 19	, 19
, 19	, 19

That said paper has been continuously and uninterruptedly published in said County for a period of seventy-eight weeks prior to the publication of said notice or advertisement and is a newspaper within the meaning of the laws of Idaho.

Sandra K Herald

Subscribed and sworn to before me this 25th day of June, 19 84

Notary Public, State of Idaho
Residence: Pocatello, Idaho

RECORDED

JAN 22 1993

PROOF OF PUBLICATION

RECEIVED
JUN 26 1984
Department of Water Resources
Eastern District Office

STATE OF IDAHO
County of Bannock } ss.

Sandra K Herald

being first duly sworn on oath deposes and says: That she was at all times herein mentioned a citizen of the United States of America, more than 21 years of age, and the Principal Clerk of THE IDAHO STATE JOURNAL, a daily newspaper, printed and published at Pocatello, Bannock County, Idaho, and having a general circulation therein.

That the document or notice, a true copy of which is attached, was published in the said IDAHO STATE JOURNAL, on the following dates, to-wit:

June 14, 1984, 19
June 21, 1984, 19
, 19, 19
, 19, 19
, 19, 19

That said paper has been continuously and uninterruptedly published in said County for a period of seventy-eight weeks prior to the publication of said notice or advertisement and is a newspaper within the meaning of the laws of Idaho.

Sandra K Herald

Subscribed and sworn to before me this 25th day of June, 1984

Notary Public, State of Idaho
Residence: Pocatello, Idaho

NOTICE OF APPLICATION FOR WATER RIGHT

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

29-7772
MARSH VALLEY HYDRO ELECTRIC CO.
MCCAMMON, ID 83250
Source: PORTNEUF RIVER trib. to SNAKE RIVER
Date Filed: 06-05-1984
Diversion Pt: SENW Sec 22 T 09S R 37E
Use: POWER (75.00 CFS)
In: NWNW Sec 21 T 09S R 37E
The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before JULY 2, 1984.
S/Ken Dunn, Dir.
June 14, 21, 1984
No. 18

See File
#2 for
later-in-time
correspondence.
Kay
9-4-90

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

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

May 20, 1988

Ted S. Sorenson, P.E.
550 Linden Drive
Idaho Falls, ID 83401

Re: Permits to Appropriate Water Nos. 29-7578 and 29-7772

Dear Mr. Sorenson:

Following our telephone conversation in which you requested processing of the applications to appropriate water Nos. 29-7578 and 29-7772, I have reviewed the files. This letter is a request for additional information which we must receive prior to approval. Please respond to the following:

1. Our records are unclear as to whether the option to purchase land with Roger S. & Kaye R. Johnson has been exercised.

2. The FERC report states that water will not be available for hydropower generation during the peak irrigation months. The application to appropriate water seeks a water right to divert water year around. Please justify why the period of use should not be shortened.

3. Will losses occur in the delivery system which will injure other water right holders?

4. State the total annual volume of water anticipated to be diverted during a peak and average year.

5. Our files lack a current certified statement of financial commitment. Correspondence from BayBank of Boston only states that BayBank "would readily consider a request for the financing of the site." Either a statement of commitment from BayBank of Boston, or a short statement of worth from Bonneville Pacific must be submitted.

6. Explain design construction and operation techniques to minimize the effects of a shutdown on the canal system and on uses of water both from the canal and also downstream from the hydropower plant.

7. Explain what engineering design features are planned to prevent water hammer or negative pressure in the penstock. IDWR will require the project design and construction to be certified

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by a licensed Idaho engineer to insure the adequacy and safety of the construction.

8. You have previously explained that the present ditch diversions for the McCammon Ditch Company and the Portneuf-Marsh Valley Irrigation Company will not be changed. Please explain the design of the diversion that is proposed. Please also submit a copy of the latest plans. Our latest copy is contained in the FERC application file, and depicts the McCammon Ditch Company diversion combined with the Portneuf-Marsh Valley diversion.

9. In relationship to paragraph 8, the two permits list different tracts as the respective points of diversion. Please reconcile the discrepancy.

10. Provide a copy of the portion of the power sales contract which details the term of years of the contract.

11. Explain how the diversion bypass will work mechanically.

Please submit the above requested information within sixty (60) days of the date of this letter.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Allocation Section

GS:jf

CC: Randy Budge
Eastern

JAN 2 2 1993

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-0391

TELEPHONE
AREA CODE 208
232-6101

TELEX
208-232-6109

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*

JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
CARY B. COLAIANNI
DAVID E. RAYBORN

*ALSO MEMBER ILLINOIS BAR

March 25, 1988

RECEIVED
MAR 28 1988
Department of Water Resources

Gary Spackman
Supervisor, Water Allocations Sections
Idaho Department of Water Resources
State House
Boise, Idaho 83720

Re: Applications for Permit No. 29-7772 and 29-7578

Dear Gary:

We represent Marsh Valley Hydro Electric Company with respect to the captioned applications and the development of their co-generation project on their canal system adjacent to the Portneuf River east of McCammon, Idaho. Ernest Carlsen, Water Rights Supervisor for the Eastern Division indicated that future correspondence pertaining to this matter should be directed to you.

I am enclosing a copy of the signed development contract entered into on February 23, 1988 between our client, Marsh Valley Hydroelectric Company and the developer, Marsh Valley Development, Inc. The principle owner, engineering and developer for the developing corporation is Ted Sorenson of Sorenson Engineering, 550 Linden Drive, Idaho Falls, Idaho 83401.

It is my understanding that Ted Sorenson has in the recent past been in communication with Norm Young of your department with regard to this matter and has provided him with a copy of the FERC application for minor license filed in September, 1987 together with other information as has been requested including information concerning the financing, engineering and design of the project.

I am also enclosing a copy of the February 19, 1988 letter from Bay Bank of Boston which has made a committment to finance the construction of the project. The developer plans on commencing construction as soon as FERC has issued the license which is expected within the next several weeks. Certain supplemental information required by FERC has recently been submitted by Sorenson Engineering via letter dated March 8, 1988, a copy of which is also enclosed.

JAN 22

Based upon the foregoing, it is our understanding that you now have all information necessary and we know of no reason why the permit should not be issued. Accordingly, we would respectfully request that the Department act upon the pending applications and issue the permits without further delay.

The urgency in issuing the permits is two-fold. First, final approval of the FERC license may be prejudiced absent an approved application and permit; and second, we are advised that Senate Bill No. 1504 has passed the Idaho State Senate and, if it becomes law, might impede issuance of the permits at a later date.

If you have any questions or if anything further is needed to expedite this matter, please contact Ted Sorenson or me.

Very truly yours,

RANDALL C. BUDGE

RCB:gr

Enclosure

cc: Ted Sorenson
Ernest Carlsen
Keith Bennett
Lyndon Greene

JAN 22 1993

BayBank Boston, N.A.
175 Federal Stree
Boston, MA 021
(617) 482-1040

RECEIVED
MAR 28 1988

Jacques P. Fiechter
Senior Vice President

cc: Randy Budge

BayBank Department of Water Resources
Boston

February 19, 1988

FEB 23 19

Portnuef Marsh Valley Canal Company
c/o Sorenson Engineering
550 Linden Drive
Idaho Falls, Idaho 83401

Dear Sirs:

I am pleased to provide this letter at Ted Sorenson's request. BayBank Boston is one of the most active hydro financing banks in the country. We are now, or have been, involved in the financing of 38 small scale hydro projects, including (in Idaho) Smith Creek in Porthill, Jim Ford in Weippe, Dry Creek and Bell Mountain near Howe, and Birch Creek near the Idaho National Engineering Laboratory. The last project, owned and operated by Ted Sorenson, came on line late in 1986. We began working with Ted on that project in July of 1984!

Ted has mentioned that you are concerned over the fear of delays due to deficiencies in the license applications. Ted also mentioned that there had been a mis-start with another group in the earlier history of the project. Let me assure you of two things. First, there are fewer and fewer quick hydro developments these days. Most projects we see for financing are the result of at least two years of work before a spade of soil is turned. In California and Washington that time frame can be easily four years. Second, we have confidence in Ted Sorenson's professional and financial integrity. He has dealt with this bank in a fashion which has earned our trust and respect. We would not lend if it were otherwise.

Based on Ted's description of the Marsh Valley Project, this bank would readily consider a request for the financing of the site. Though the site is smaller than we are typically looking for, our existing relationship with Ted would enable us to rationalize getting involved.

I wish you luck and good speed with your project and would be pleased to be of further assistance if I can.

Sincerely yours,

JPF:lmh

Enclosure

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JAN 22 1993

ORENSON ENGINEERING
CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

MAR 22 1988

March 8, 1988

RECEIVED
MAR 28 1988
Department of Water Resources

Lois D. Cashell
Acting Secretary
Federal Energy Regulatory Commission
825 N. Capital, N.E.
Room 3110
Washington, D.C. 20426

SUBJECT: MARSH VALLEY HYDROELECTRIC COMPANY,
AN IDAHO CORPORATION, PROJECT FERC #10468

Dear Ms. Cashell,

This letter is written pursuant to Mr. Edward A. Abrams' letter of December 18, 1987. This letter contains responses to deficiencies as contained in Schedule A and responses to the additional information requested in Schedule B.

Deficiencies Schedule A

Item #1. (a) The following entities will have proprietary rights necessary to construct, operate or maintain the project:

(1) McCammon Ditch Company
c/o Mr. Lyndon Green, President
1791 East South
McCammon, ID 83250
(208) 254-3494

(2) Portneuf-Marsh Valley Canal Company
c/o Mr. Keith Bennett
Downey, ID 83234
(208) 897-5791

Please note that the above canal companies are the owners of the Marsh Valley Hydroelectric Company, an Idaho corporation.

The project will cross Union Pacific Railroad property and an easement has been granted for same.

Item #1. (b) No town of greater than 5,000 people is within 15 miles of the project. The project is located within Portneuf River Water District #29. The contact is Mr. Thomas Bloxham, Water Master, Route 1, Downey, Idaho 83234. The project is located within Bannock County, Bannock County Courthouse, P. O. Box 4777, Pocatello, Idaho 83205.

Item #2. Failure to document service of application to agencies consulted.

JAN 22 1993

On September 3, 1987 a copy of the application for licenses was sent to each agency listed on the certification of Mailing (attached as last page of the application) along with the cover letter to Mr. Kenneth F. Plumb of FERC. A copy of the cover letter and certificate of mailing is attached. In order to insure compliance a new cover letter transmitting the original application and this response is attached.

Item #3. (a) The comprehensive state and regional water resource development plan in the area is governed by the Idaho Department of Water Resource Board which has published the Idaho State Water Plan dated December 12, 1986.

Item #3. (b) Explain how and why the project would or would not comply with the relevant comprehensive state and regional water resource plan. Attached is a letter of consultation from the Idaho State Department of Water Resources and a response letter dated March 8, 1988 from the Idaho Department of Water Resources.

"The Idaho Department of Water Resources is charged with the responsibility for planning for the optimum development of the water resources of the state through policies and water allocations which reflect the public interest." The Idaho Department of Water Resources accomplishes this through issuance of a water right permit.

The state water right filings have been made and approved pending issuance of the FERC license and therefore complies with the State Water Plan. Specific requirements that have been met are:

1. The project does not reduce the quantity of water to other existing water rights as the project is a non-consumptive use.

2. Have a sufficient water supply. The project does have a sufficient water supply as evidenced by USGS gauging station at Topaz.

3. Is pursued in good faith as has been evidenced by securing the power sales agreement and retention of an engineer to prepare the Federal Energy Regulatory Commission License.

4. Have sufficient financial backing. The project has sufficient financial backing as a function of the power sales agreement which has been executed.

5. Not conflict with the local public interest. This project does not conflict with the local public interest as evidenced by publication of the notice of appropriation of water in the local newspaper and receiving no protests.

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In addition, the Marsh Valley Hydroelectric Project would utilize the features of the Marsh Valley Canal Company which is an owner of the project. According to state law, any use of existing water feature must have permission from the owner. The applicant complies with same.

Item #3. (c) The project would comply with the state water plan.

Item #4. (a) Attached is a Project Location Map showing the location of all project facilities and their location in the relation to the stream where the water body on which the project is located and to the nearest town or any permanent monuments or objects.

Item #4. (b) The Project Location Map, Hydraulic Profile, and Exhibit G-2 show clearly existing and proposed project facilities. Please note that Exhibit G-2 is revised to show specifically the project boundaries.

Item #5. The length of the existing feeder ditch is 11,670 feet. The length of the proposed penstock is 500 feet.

Item #6. Refer to the attached Project Location Map. The project would utilize the existing canal intake for the Portneuf-Marsh Valley Canal to divert water from the Portneuf River and would construct a new proposed diversion and intake structure approximately 11,670 feet downstream in the Portneuf-Marsh Valley Canal.

Schedule B Additional Information

Item #1. Environmental impacts on vegetation and wildlife resources. Attached is a mini-study on the vegetative resources. Also attached is a letter of consultation and a letter of review from the Idaho Department of Fish & Game with respect to wildlife and vegetative resources. With respect to the wildlife resources, we will adhere to the Department of Fish & Game's letter of March 11, 1988 which refers to the Idaho Department of Fish & Game's letter of March 11, 1983. We will adhere to these guidelines. With respect to the vegetative resources, we will adhere to the report prepared by Whitehorse Associates of Smithfield, Utah. A copy is attached. This report and plan of action is approved by the Idaho Department of Fish & Game. Idaho Department of Fish & Game and the U. S. Fish & Wildlife Service are requesting no further studies, and we hereby petition FERC for the same.

Item #2 through #8. Please note that under the current situation with respect to the irrigation companies, the bypassed reach of the Portneuf River may be totally dewatered for a period

JAN 2 2 1993

of four to five months each year during the irrigation season. However, the bypass over the years has been maintained at between 3 to 10 cfs. As a function of Dr. Jack Griffith's study, a copy of which is included in the application as appendix E-3a, the Idaho Department of Fish & Game and with the concurrence of the U. S. Fish & Wildlife Service have concluded that if the canal companies, whom are the owners of Marsh Valley Hydroelectric, are willing to enter an agreement to maintain a 10 cfs bypass flow, not only during the irrigation season, but throughout the year, that no significant impact would be realized. On the other hand, without this agreement for the minimum bypass flow for a period of four to five months each year the irrigation companies would have the legal right to totally dewater the Portneuf River. Recognizing this situation, the Idaho Department of Fish & Game has felt that the 10 cfs would actually improve the situation over what could occur without an agreement for a minimum bypass flow. It should be noted that during the irrigation season the hydroelectric plant would not run. It would be shut down. Therefore, the Idaho Department of Fish & Game has concluded that a year-round bypass flow of 10 cfs would be in the best interest of the environment. This is consistent with recent consultation and correspondence, the letters of which are attached. Therefore, we respectfully petition the commission to waive any further studies as U. S. Fish & Wildlife Service and Idaho Department of Fish & Game do not feel that they are justified. It is their opinion that the trade-off with respect to minimum bypass flow during the irrigation season more than offsets any potential impacts of diversion during the non-irrigation season. Your concurrence in this matter is sincerely appreciated.

Item #8. The Utah Power & Light transmission line to which the project would connect is McCammon circuit #11.

Item #10. Pursuant to Section 10-I of the Federal Power Act, we do not wish to waive Sections 14 and 15. Accordingly, a revised map showing the project boundary is shown as Exhibit G-2.

We trust this information provides sufficient basis for acceptance of the application and will allow you to issue the license in the near future. Please feel free to call me if any questions arise.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:ll

Enclosures

JAN 2 2 1993

MARSH VALLEY HYDROELECTRIC PROJECT

AGREEMENT FOR ASSIGNMENT OF ASSETS AND PAYMENT OF ROYALTIES

THIS AGREEMENT, is made and entered into on this 23rd day of February, 1988, by and between the Marsh Valley Hydroelectric Company, a corporation duly incorporated and conducting business under the laws of the State of Idaho, for itself and its successors and assigns, (hereinafter referred to as "Assignor"), and Marsh Valley Development, Inc., a corporation incorporated and conducting business under the laws of the State of Idaho, for itself and its successors and assigns, (hereinafter referred to as "Assignee".)

I. DEFINITIONS

As used in this Agreement, the following terms and phrases shall have the following meanings (the singular or plural number, shall each be deemed to include the other, unless the context so indicates or requires):

1.1 Application for FERC License: The Application for FERC License for a Minor Water Power Project filed by Sorenson Engineering on Assignor's behalf on September 5, 1987.

1.2 Appurtenant Rights: For the project, any and all permits, licenses, rights or governmental approvals which are necessary or reasonably related to the efficient development, construction and operation of the facility and the transmission of electricity therefrom. Appurtenant Rights also includes for the project all technical data, reports, and studies concerning the project and includes a Power Sales Agreement, the Proprietary

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Information, and any and all other licenses, exemptions, permits, or similar governmental or regulatory approvals as are necessary or reasonably related to the development, construction and operation of such facility and the transmission of electricity therefrom. Without limiting the generality of the foregoing, the term Appurtenant Rights shall include for the project as follows:

a. A Power Purchase Agreement with Utah Power & Light Company executed on November 21, 1986, which Agreement was approved by the Idaho Public Utilities Commission pursuant to Order #20979 dated January 7, 1987.

b. Permit No. 29-7772 for 175 c.f.s. and No. 29-7772 for 75 c.f.s. with the Idaho Department of Water Resources for water rights in connection with the development of the project.

c. Application for FERC License.

1.3 FERC: Federal Energy Regulatory Commission.

1.4 Facility: The hydroelectric power generating facility proposed under the Application for FERC License including, a powerhouse, all water conduits, all dams and appurtenant works and structures (including navigation structures if any) which are a part of said unit, and all storage, diverting, or forbay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part hereof, and all water rights, rights-of-ways, ditches, dams,

JAN 22 1993

reservoirs, lands, or interest in lands, the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.

1.5 Proprietary Information: Any and all professional work product, including but not limited to engineering work, technical data, hydrology studies and reports, and any and all other information relating to the Project, and the Assignor's canal system (as the same may relate to the Project), and the development, construction, use and operation of the Facility in which Assignor has any right or interest.

1.6 Power Sales Agreement: For the project, an Agreement for the sale of all power generated by the Facility entered into with Utah Power & Light Company on November 21, 1986, which Agreement was approved by the Idaho Public Utilities Commission pursuant to Order #20979 dated January 7, 1987, and any succeeding Agreement for the sale of power generated by the Facility to any public or private utility.

1.7 Project: The complete unit of development, improvement, construction, and operation of the Facility.

1.8 Gross Receipts: The revenue received by Assignee under the Power Sales Agreement from the sale of electricity generated by the Facility less charges by the entity purchasing the power in connection with the acceptance of the power such as Kvar charges, incurred cost charges, and other similar charges.

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JAN 22 1993

1.9 Project Real Properties: That real estate underlying and surrounding the Facility, located in the Northeast Quarter of the Northeast Quarter, Section 20, Township 9 South, Range 37 East Boise Meridian, approximately 3 miles east of McCammon, Bannock County, Idaho, Portneuf-Marsh Valley Canal more particularly described in Exhibits A and B attached hereto together with all easements, rights-of-way, and other interests in real property which are necessary or reasonably convenient for the development, construction and operation of the Facility, including without limitation:

a. nonexclusive rights of ingress and egress to the various sites of the Facility for persons, vehicles, and equipment relating to development, construction and operation of the Facility from suitable public roads;

b. nonexclusive easements for any and all pipes, penstocks, powerhouses, powerlines, and any and all structures supporting the same as are necessary or appropriate for the development, construction and operation of the Facility as anticipated by the Application for FERC License and for the transmission of electricity therefrom; and

c. any and all rights-of-way as are necessary or reasonably related to development, construction and operation of the Facility and the transmission of electricity therefrom (which may be nonexclusive so long as such use is within the permitted use of such rights-of-way).

JAN 22 1993

II. TRANSFER OF REAL ESTATE

2.1 Deed of Real Estate: Assignor shall transfer to Assignee the property described on the attached Exhibit A by good and sufficient warranty deed, clear of all liens and encumbrances except those listed on the attached Exhibit A at a designated time for closing after the License requested in the Application for FERC License and Assigned has secured a commitment for financing is issued.

2.2 Easement: Assignor agrees to execute an easement in the form of Exhibit B to Assignee as soon as reasonably practicable at a designated time for closing after the issuance of the FERC License requested in the Application for FERC License and Assigned has secured a commitment for financing.

III. ASSIGNMENT OF ASSETS

3.1 Assets Assigned: Assignor shall transfer to Assignee, free and clear of all liens, encumbrances and claims whatsoever, all of Assignor's right, title and interest in the Appurtenant Rights for the Project whether now owned or hereafter acquired. Such transfer shall also occur at a designated time for closing after issuance of the FERC License requested in the Application for FERC License and a commitment for financing has been obtained.

3.2 Assignment Documents: Assignor shall deliver to Assignee upon issuance of the FERC License requested in the Application for FERC License executed documents assigning,

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JAN 22 1993

granting, conveying and transferring, as the case may be, for the Project each of the following:

(a) the FERC License for the Project,

(b) any Proprietary Information which Assignor has,

(c) the Power Purchase Agreement,

(d) all other Appurtenant Rights.

(e) all of such documents shall be in form and content reasonably satisfactory to Assignee and its counsel and, where applicable, in form and content satisfactory to the relevant agency, commission, or other relevant issuing authority or to the lending institution providing funds for the development or operation of the Project.

3.3 Assistance in Obtaining Appurtenant Rights: The parties hereto recognize that all the Appurtenant Rights necessary for the development of the Project have not yet been obtained at the present time. Assignor will use reasonable assistance where necessary to help Assignee obtain all the Appurtenant Rights which Assignee has not been able to assign to Assignor at the present time necessary for completion of the Project. Assignor will also provide reasonable assistance to Assignee in obtaining zoning approval and a building permit for the Project.

IV. RETRANSFER IN THE EVENT OF FAILURE TO CONSTRUCT OR ABANDONMENT

The parties hereto recognize that FERC requires that the substantial construction of the project begin within two years

JAN 2 2 1993

after issuance of the FERC License. In the event:

a. Assignee fails to begin substantial construction on the project within two years after the date of issuance of the FERC License; or

b. Assignee fails to complete construction within two years from the date construction commences; or

c. the FERC License is revoked; or

d. Assignee abandons the project or facility;

Such event shall be considered a default under this Article IV and Assignor shall be entitled to give Assignee written notice specifying the default and demanding a cure. In the event Assignee has not cured the specified default within 60 days of notice from the Assignor, Assignee shall be required to deed, convey and transfer back to Assignor the Facility, the Appurtenant rights and all other related assets conveyed by Assignor to Assignee pursuant to Articles II and III above. Assignor shall be entitled to retain the $7,000.00 paid by Assignee described in Section 5.1 below in such event as well as to bring action for collection of any other unpaid amounts due pursuant to Section 5.2 below.

V. PAYMENT AND ROYALTIES

5.1. Initial Payment: Assignee has paid to Assignor the sum of $7,000.00 Dollars receipt of which is hereby acknowledged. *

5.2 Yearly Operation and Maintenance and Royalty Fees: In addition to the initial payment described in 5.1. above, Assignee

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* Upon execution of this contract Assignee agrees to pay Assignor its out-of-pocket costs expended to date towards the development of the project to a maximum of $50,000.

shall pay Assignor upon receipt from the power purchaser for its operation and maintenance services provided in accordance with Article VI below (which is anticipated by the parties to be on a monthly basis) and for the assignments and assistance provided by it in the development of the Project and described in Sections II and III above as follows:

Year of Project Operation	Percentage of Project Gross Receipts
1 - 10	6% of power generated Sept. 16 - April 14 and, 10% for power generated April 15 - September 15,
~~11 - 13~~	~~7%~~
~~14 - 15~~	~~8%~~
16 - 23	~~16%~~ 6% - Sept. 16 - April 14 +
24	17% 16% - April 15 - Sept. 15
25	18%
26	19%
27 and thereafter	20%

However, after the first full year of operation the annual Royalty fee payment to Assignor shall not be less than $5,000.00.

Any payment not made within 30 days after its due date shall be considered in default and shall bear interest at the highest legal rate.

For purposes of this Agreement each year shall be calculated on a calendar year basis regardless of when the operation of plant commences. For example, if operation of the plant commences in March of 1988, then year one shall begin in

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JAN 22 1993

March of 1988 and shall end on December 31, 1988. Year two shall begin January 1, 1989, and shall end December 31, 1989, and so on.

VI. CONSTRUCTION AND OPERATION OF THE FACILITY

6.1 Construction of the Facility: Assignee shall construct the Project Facility together with roadways, powerlines, diversion structures, gates and other Facilities, alterations and improvements as may be necessary at its own cost and expense and shall be responsible to obtain any financing necessary to complete the Project.* Assignor shall provide reasonable assistance and cooperation with Assignee if necessary and appropriate to assist Assignee in obtaining financing from a reputable lending institution as long as such cooperation and assistance does not involve an undue amount of time on the part of Assignor or in any way make Assignor liable to the lending institution for the financing.

6.2 Operation and Maintenance: Once the Project is on line and delivering electric power to the power company pursuant to the Power Purchase Agreement, the Assignor shall assume the financial and administrative responsibility for the physical operation and routine preventative operating maintenance of the Facility, as outlined in the Operation and Maintenance Manual which shall be prepared by Assignee and which contents will be agreeable to Assignor and Assignee. Assignee shall deliver to

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* Assignee will use its best efforts to rebuild and enlarge the Portrout-Marsh Valley Canal from the point of diversion to the plant, to the extent physically and economically feasible, to maximize its ability to carry McCammen Ditch water.

Assignor specifications and a complete set of accurate as-built design drawings within 30 days of the completion of the Project.

Assignee shall pay and be responsible for all maintenance, repair, and improvement work not considered as routine preventative operating maintenance as indicated in the Operation and Maintenance Manual and any other cost not stated in the Manual or in this Agreement to be the responsibility of Assignor.

The clearing of the trash rack (including removal of ice) on the inlet structures to the canal and to the penstock shall be part of routine preventative maintenance, which shall be the responsibility of Assignor as part of the routine maintenance.

Assignee represents that the operation of the plant will be automated to the extent practicable and will not require full-time operation and maintenance. It is further agreed that the Assignor's obligation shall not exceed an average of 40 man hours per month during each year. Any time incurred beyond 480 man hours per year shall be reimbursed by Assignee upon presentation of proper documentation, said payment to be at the prevailing wage rate in the local area.

All maintenance and repair costs relating to the canal from the point of diversion at the Portneuf River to Assignee's Power Plant site and all related diversion structures shall be paid 75% by Assignee and 25% by the Portneuf-Marsh Valley Canal Company, Ltd., and the McCammon Ditch Company.

JAN 2 2 1993

-In agreeing to share the expenses of maintaining the canal Assignee is relying on Assignor's representation that the expense of maintaining the canal has historically not normally been more than $500.00 per year and that the canal is currently in good repair and no major expenses are expected to be needed in the near future. During the first twelve months of operation, Assignee shall pay for the entire cost of any major or unusual repairs or maintenance made necessary by reason of the Project.

In the event that Assignor shall fail to provide the appropriate operation and maintenance required under this Agreement, Assignee shall be entitled to provide such operation and maintenance and shall deduct the cost of same from the payments to be made Assignor pursuant to Article V above.

6.3 Control: Assignee shall have the right and authority to make all decisions concerning the operation of the Facility and the sale of electrical energy generated by the Facility including but not limited to the right to temporarily discontinue the operation of the Facility at any time or from time to time subject only to the Assignor's reasonable requirements in operating its canal system for irrigation purposes. Assignee shall periodically consult with the Assignor concerning Assignor's use of the canal for irrigation purposes.

6.4 Irrigation Rights: It is understood and agreed that McCammon Ditch Company and Portneuf-Marsh Valley Canal Company, Ltd. own certain priority decree irrigation water rights together with diversion structures and canals utilized during the normal

JUN 22 1993

irrigation season from April 15th through September 15th of each year.

It is understood and agreed that all water rights for power generation are subordinate and secondary to the irrigation rights of McCammon Ditch Company and Portneuf-Marsh Valley Canal Company, Ltd., which rights shall not be impaired. Assignor, McCammon Ditch Company and Portneuf-Marsh Valley Canal Company, Ltd., shall use their best efforts to minimize any waste of irrigation water (and shall not sell, transfer or lease any water outside of their existing irrigation systems either during normal irrigation season or at any other time if such sale, transfer or lease would decrease the water flow to the Facility) and maximize water available for power generation during normal irrigation season. During the remainder of the year, McCammon Ditch Company and Portneuf-Marsh Valley Canal Company, Ltd. will use their best efforts to see that the entire water flow is diverted to the Facility.

Nothing herein shall be construed as a dedication or guarantee by Assignor, McCammon Ditch Company or Portneuf-Marsh Valley Canal Company, Ltd. of the supply or availability of water to Assignee. Assignee expressly waives all claims to water supply by Assignor, McCammon Ditch Company and Portneuf-Marsh Valley Canal Company, Ltd. other than the contractual rights provided herein.

6.5 Insurance: During construction, Assignee shall maintain in full force and effect appropriate builders, "all

risks" coverage for the project for physical loss and damage.

At all times during the term of the agreement, Assignee agrees to carry and maintain in full force and affect at it's sole expense, general liability insurance in an amount not less than $1,000,000.00 combined single limit or equivalent for bodily injury, personal injury and property damage.

Before construction is started, Assignee shall furnish Assignor with certificates of insurance. Assignee shall furnish Assignor with copies of the insurance policies as soon as the same are received from the insurance companies. Said policies shall provide that the insurers waive subrogation rights against Assignor, McCammon Ditch Company and Portneuf-Marsh Valley Canal Company, Ltd.

VII. REPRESENTATIONS, COVENANTS AND WARRANTIES OF ASSIGNOR

Assignor hereby represents and warrants to Assignee each of the following and covenants with Assignee as follows:

7.1 Existence: Assignor is a corporation duly organized, validly existing and in good standing under the laws of the State of Idaho.

7.2 Authority: Assignor has all requisite power and authority to own its properties, to carry on its business as is now being conducted and to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement, the assignments, easements and the warranty deeds

by Assignor and the consummation of the transactions contemplated thereby have been duly authorized.

7.3 Enforceable: This Agreement constitutes the valid and binding obligation of the Assignor and is enforceable against Assignor in accordance with its terms.

7.4 Obligations: Without limiting any of the provisions of this Agreement, the Assignor by this Agreement shall and does hereby assume the following obligations:

a. with the assistance of Assignee to secure the FERC License requested in the Application for FERC License and assign the same to Assignee;

b. to secure all necessary water rights for the Project and assign the same to Assignee;

c. to assign the Power Purchase Agreement to Assignee;

d. assist Assignee in securing approval for the Project from the appropriate building and zoning authorities;

e. to execute and deliver the deeds, easements and assignments described in Articles II and III above at the designated time and place for closing after the FERC License has been obtained and Assignee has obtained a commitment for financing;

f. to obtain and transfer to Assignee, fee title to the Power Plant Site and a valid access easement and penstock easement as contemplated in the Application for FERC License free and clear of any liens and encumbrances;

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g. to assign its rights in that Agreement executed by Union Pacific Railroad Company as "Licensor" and Marsh Valley Hydroelectric Company as "Licensee" on February 22, 1984, to Assignee;

h. to assist Assignee in securing and assign to Assignee, the appropriate Water Quality Certifications and any of the necessary environmental approvals required for the Project by the State of Idaho and the United States Federal Government;

i. to perform all acts otherwise required by this Agreement.

7.5 Conflicts: The execution and delivery of this Agreement, and deeds, easements, and assignments contemplated by this Agreement by Assignor and the performance of Assignor's obligations hereunder are not in violation of or breach of and do not conflict with or constitute a default under any of the terms or provisions of Assignor's Articles of Incorporation, By-laws, or any contract or agreement, written or oral, to which Assignor is a party or by which Assignor or any of Assignor's assets or properties are bound and will not be an event which after notice or lapse of time or both will result in any such violation, breach, conflict or default or under any law, judgement, decree, order, rule or regulation of any governmental authority or court whether federal, state, or local at law or in equity and applicable to Assignor or to any of Assignor's property or assets and will not result in any creation or imposition of any lien, possibility of lien, encumbrance, equity or restriction in favor

of any third party upon any of the Appurtenant Rights (collectively the "Assets").

7.6 Solvent: At the date of this Agreement, Assignor is and will continue to be solvent.

7.7 Title: Assignor has or will obtain in a timely manner good and marketable title to the Assets free and clear of any and all liens, charges, encumbrances, or claims. Upon assignment by Assignor to Assignee of the Assets, Assignee will acquire good and marketable title in the Assets free and clear of any and all liens, charges, encumbrances or claims and Assignor shall indemnify and hold Assignee harmless from all costs, expenses, and judgments, (including attorneys' fees) arising out of the foregoing.

7.8 Sufficient Rights: The Assets to be transferred and assigned to Assignor will constitute all the rights to the property real or personal, tangible or intangible, and all governmental approvals whether local, State, or Federal necessary or reasonably related to the development and construction of the Project and the operation of the Facility. No such right or approval is held under any lease, mortgage, security agreement, conditional sales contract or other title retention agreement or is other than the sole possession and under the sole control of Assignor.

7.9 Litigation: There is no litigation, suit, proceeding, action, claim or investigation, at law or in equity, pending or threatened against or affecting Assignor and involving the

JAN 2 2 1993

Project or Assets before any court, agency or authority, and there are no facts known to Assignor that may result in such litigation, suit, proceeding, claim or investigation. Assignor is not subject to nor in default with respect to any notice, order, writ, injunction or decree of any court agency or authority.

7.10 Compliance with Law: The development, construction and operation of the Facility as contemplated by the Application for FERC License shall be in compliance with all the laws, ordinances, regulations, decrees and orders, including zoning ordinances, applicable to the Facility and now in effect.

7.11 Cooperation: Assignor will cooperate in all respects, for no additional compensation, in good faith and within the law with Assignee's efforts to develop, construct, and operate the Facility and to do at the request and expense of the Assignor whatever is reasonably necessary to carry out the intent of this Agreement.

7.12 Water Rights: Assignor holds free and clear of any and all liens and encumbrances certain existing water rights under Idaho law subject to the timely application of the same to beneficial use in generating power, and will cause the same to be assigned in an approved transaction to Assignee as soon as reasonably possible after the FERC License is issued. Assignor further represents that it holds valid irrigation rights downstream for the water to be used in the Project and that it shall not abandon, sell, lease, transfer, assign, convey, or

JAN 22 1993

alter the point of diversion or place any of its downstream consumption rights in a manner which could adversely affect Assignee's rights to use the water for power unless previously consented to in writing by Assignee.

7.13 Exhibits: Any underlying documents incorporated in the Exhibits referred to in this Agreement are true and correct copies, and there are no amendments or modifications thereto.

7.14 Brokers: Assignor has not engaged in any broker, finder, or agent, with respect to any transaction contemplated by this Agreement and shall indemnify and hold Assignee harmless against all claims, and expenses arising out of the same.

7.15 Information: None of the representations made by Assignor or Assignor's directors, officers, or shareholders to Assignee concerning the Project whether furnished prior to, at, or subsequent to the date hereof does or will to best of Assignor's knowledge contain any untrue statement of a material fact and does or will omit to state any material fact necessary to make any such statement, in light of the circumstances under which such statement is made, misleading.

7.16 Survival: The agreements, covenants, conditions, representations and warranties contained in this Agreement or in any instruments, certificates, opinions or other writings required by this Agreement shall survive this Agreement and the delivery of the consideration.

7.17 Financing: Assignee may pledge or grant security interests to third parties in the Appurtenant Rights to finance or in connection with the financing of the Facility.

VIII. WARRANTIES AND OBLIGATIONS OF ASSIGNEE

Assignee hereby represents and warrants to Assignor each of the following and agrees with Assignor as follows:

8.1 Best Efforts: Assignee will make every reasonable and timely effort to develop the Facility. Assignee understands that construction of the Facility must begin within two years after issuance of the FERC License and be completed within two years after construction commences.

8.2 Capability: Assignee will provide the experience, skill and technical capability reasonably and commercially sufficient to undertake the development of the Project and in the construction and operation of the Facility.

8.3 Existence: Assignee is a corporation in good standing under and pursuant to the laws of the state of Idaho and has full authority and capability of entering into this Agreement.

8.4 Obligations: By this Agreement, Assignee shall and does hereby assume the following obligations;

a. to provide capital for the development of the Project;

b. to undertake the construction of the Facility and all related and necessary improvements at its own cost and expense;

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c. to perform the technical studies necessary for completion of the Project not already completed;

d. to undertake all obligations and do all acts as required by this Agrement.

8.5 Brokers: Assignee shall be responsible for the payment of any fee of any broker, finder, or agent which it has engaged with respect to any transaction contemplated by this Agreement.

8.6 Indemnification: Assignee shall during the period of its ownership of the Facility indemnify and hold Assignor and McCammon Ditch Company and Portneuf-Marsh Valley Canal Company, Ltd. free and harmless from any and all claim or liability, including counsel fees and costs and expenses, for damages arising in or about the plant and appurtenant facilities and in any way in connection with the use or operation by Assignee, whether for injury to person or persons, or for damage to property or the death of any person or by the loss of any property, by whomsoever asserted. Provided however, in no event shall this Section 8.6 be construed to make Assignee liable for the fault or negligence of Assignor, McCammon Ditch Company or Portneuf-Marsh Valley Canal Company, Ltd.

IX. GENERAL

9.1 Authorization: Each individual executing this Agreement on behalf of a corporation represents or warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such corporation in accordance with the

JAN 22 199

duly adopted resolution of the Board of Directors of such corporation and this Agreement is binding upon such corporation in accordance with its terms. Within 30 days of execution of this Agreement such corporation shall deliver to the other party a certified copy of the resolution of the Board of Directors of such corporation authorizing or ratifying the execution of this Agreement.

9.2 Relationship of Parties: Only the relationship of purchaser and seller are intended by this Agreement. No joint venture, partnership, employment or agency relationship is intended or shall result from this Agreement. The parties hereto act for themselves alone and not for others in performing any acts called for under this Agreement.

9.3 Specific Performance: The parties hereby declare that it is impossible to measure in money the damages which will accrue to either Assignor or Assignee by reason of a failure to perform any of the obligations under this Agreement and that the remedy of Assignor for a breach of this Agreement is not adequate at law. Therefore either Assignor or Assignee may enforce the rights hereunder by injunction proceeding, proceeding for specific performance, or other equitable proceedings, and in the event of such actions or proceeding to enforce specific provisions hereof, any person against whom such action or proceeding is brought hereby waives the claim or defense that the

JUN 2 2 1993

party bringing the action has an adequate remedy at law, and such person shall not urge in any action or proceeding that such remedy at law exists.

9.4 Expense of Parties: Except as provided in this Agreement, each of the parties to this Agreement shall bear their own respective expenses incurred by or on behalf it in connection with the transactions contemplated by this Agreement.

9.5 Assignment: With the exception of financing for construction purposes, neither party may transfer or assign all or any part of its interest in this Agreement and/or the Project without the other party's written consent which consent shall not be unreasonably withheld. Any transferee, assignee, sublessee, or successor in interest specifically agrees to be bound by the provisions of this Agreement. Such transfer shall not operate to relieve the transferring party of its liability under this Agreement unless such release is specifically consented to in writing by the other party.

9.6 Right of First Refusal: In the event Assignee receives an offer from a third party for the purchase of all or any part of the Plant and Appurtenant Facilities, or Assignor receives an offer from a third party for purchase of its assets, before making such sale, the party receiving the offer (hereinafter referred to as the "Selling Party") must first notify the other party (hereinafter referred to as the "Optionee") of all terms of such offer. From the effective date of such notice, the Optionee shall have a right of first refusal and option to purchase the

same for a period of 60 days upon the same terms and conditions as the offer. In the event Optionee fails to exercise it's option within said 60 day period, the Optionee's option shall expire and Selling Party may sell the same to the third party upon such terms and conditions as were contained in the notice. This provision shall apply to a sale of assets to be effectuated by a transfer of stock in either party as well as a direct sale of assets.

9.7 Governing Law: This Agreement shall be governed by the laws of the State of Idaho.

9.8 Attorney Fees: In the event that either of the parties hereto shall institute any action or proceeding against the other party relating to this Agreement, the unsuccessful party in such action or proceeding shall reimburse the successful party for its disbursements incurred in connection therewith and for its reasonable Attorney fees.

9.9 Binding Effect: This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

9.10 Severability: If any provisions of this Agreement or its application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstance, other than those as to which it is determined invalid, illegal or

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unenforceable, shall not be affected, and each other provision of this Agreement shall be valid and legal and shall be enforced to the fullest extent permitted by law. It is the intention of the parties that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable there shall be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible and be valid, legal and enforceable.

9.11 Execution of Other Documents: Both parties agree to execute any other documents reasonably required to fully perform the intent of this Agreement. This obligation on the part of the Assignor to execute such other documents shall not include any documents whereby the Assignor assumes any liabilities, gives any warranties, makes any claims, or subjects itself to any risks not already agreed to or provided for in this Agreement.

9.12 Lenders' Liens and Bonds: Any lenders' liens shall be confined by Assignee and the lender to Assignee's interest in the Project and Facility only. The Assignor shall be named as co-beneficiary of any performance bonds required of the Assignee by lenders.

9.13 Waiver: The failure of either party at any time to seek redress for any violation of this Agreement or any applicable law or regulation or to insist upon the strict performance of any term or condition shall not prevent any subsequent act or omission of the same or similar nature which

would have originally constituted a breach or default of this Agreement from having all the force and effect of an original breach or default, and such subsequent act or omission may be proceeded against to the fullest extent approved by this Agreement. No provision of this Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by such party.

9.14 Captions: The captions of this Agreement are for convenience and reference only and shall in no way define, explain, modify, construe, limit, amplify or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

9.15 Further Instruments: Each of the parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under this Agreement and the complete satisfaction of the conditions of this Agreement. Upon the request of either party at any time the other party shall execute or re-execute and file any additional instruments and furnish any additional data as may be reasonably necessary or desirable to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

9.16 Survival: The covenants, representations and warranties herein contained shall survive the execution of the warranty deeds and easements hereof and shall extend for the term of this Agreement.

JAN 2 2 1993

9.17 Notice: All notices, demands, request, election, approvals, disapprovals, consents or other communications given under this Agreement shall be in writing and shall be given by personal delivery, mail or telegram. Notice by personal delivery shall be deemed effective upon the delivery of such notice to the party for whom it is intended at the address set forth below. Notice by mail shall be deemed effective four (4) business days after depositing such notice, first class, certified or registered mail, postage prepaid, properly stamped and sealed with the United States Postal Service, addressed as set forth below, regardless of whether or when the notice is actually received by the addressee. Notice by telegram shall be deemed effective upon the transmission of the telegram, telegraph charges prepaid, to the party for whom it is intended at the address set forth below, or at such other address as is later provided by either party to the other in writing:

Marsh Valley Development, Inc.
c/o Ted S. Sorenson
2988 Tipperary Lane
Idaho Falls, ID 83404

Marsh Valley Hydroelectric Company
c/o Randall C. Budge, Esq.
Racine, Olson, Nye, Cooper & Budge, Chartered
Center Plaza-Corner First & Center
P. O. Box 1391
Pocatello, ID 83204

JAN 2 2 1993

DATED: Feb. 23, 1988

MARSH VALLEY HYDROELECTRIC COMPANY

By Lyndon Green *

its: President

Attest: John Bowen Secretary

ASSIGNOR

MARSH VALLEY DEVELOPMENT, INC.

By Ted Sorensen

its: President

ASSIGNEE

* Signed subject to final approval of board as to the preventative maintenence requirements set forth in paragraph 6.2.

JAN 2 2 1993

CONSENT OF McCAMMON DITCH COMPANY AND

PORTNEUF-MARSH VALLEY CANAL COMPANY, LTD.

The undersigned, McCammon Ditch Company and Portneuf Marsh Valley Canal Company, Ltd., each a non-profit corporation duly organized and existing under the laws of the State of Idaho, for themselves, their successors and assigns, do hereby consent to that certain "Agreement for Assignment of Assets and Payment of Royalties" (hereinafter referred to as the "Agreement") entered into on Feb. 23, _____, 1988 between Marsh Valley Hydroelectric Company and Marsh Valley Development Company, Inc., a copy of which is attached hereto. This consent is given in consideration of certain improvements to be made by reason of the Project in the undersigned's canal and diversion structure and in consideration of the sharing of maintenance expense by Marsh Valley Development Company, Inc. as set forth in Section 6.1 and 6.2 of the Agreement. The undersigned specifically agrees to the provisions of Section 6.4 of the Agreement and such other portions of the Agreement that reasonably relate to the undersigned, such as provisions relating to assets to be transferred to the Assignee under the Agreement which may be in the name of or owned by the undersigned or provisions agreeing to assist and execute such other documents as may be necessary to effectuate the Agreement.

JAN 2 2 1993

DATED this 23 day of February, 1988.

Lyndon L Green
President
McCAMMON DITCH COMPANY

Attest:
Roberta Henderson
~~Secretary~~ Vice-President
McCAMMON DITCH COMPANY

Keith Bennett
President
PORTNEUF-MARSH VALLEY CANAL
COMPANY, LTD.

Attest:
John Bowen
Secretary
PORTNEUF-MARSH VALLEY CANAL
COMPANY, LTD.

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ORENSON ENGINEERING
CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

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MAR 2 8 1988
Department of Water Resources

FERC 10468

March 8, 1988

Mr. Thomas Green
State Historical Preservation Office
Idaho State Historical Society
210 Main Street
Boise, ID 83702

Mr. John Heimer
Idaho Department of Fish & Game
5205 South 5th Avenue
Pocatello, ID 83201

Mr. John Wolfin
U. S. Fish & Wildlife Service
4696 Overland Road
Boise, ID 83705

Idaho Department of Parks & Recreation
Statehouse
Boise, ID 83720

Mr. Keith Higginson
Director
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

SUBJECT: MARSH VALLEY HYDROELECTRIC COMPANY, AN IDAHO CORPORATION, FERC #10468

Gentlemen:

Attached is a copy of the application for license. This application was submitted to all parties on September 3, 1987 with the exception of the Idaho Department of Water Resources for which the application was submitted to them on January 25, 1988. In order to more fully comply with FERC requirements I am formally submitting to you another application with this cover letter together with a copy of the deficiency response to FERC dated March 8, 1988. In that I have already consulted with you, this is submitted to you for your information.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

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JAN 2 2 1993

TSS:mm

Enclosure

cc: Federal Energy Regulatory Commission

SORENSON ENGINEERING
CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

February 8, 1988

Mr. John Heimer
Idaho Department of Fish & Game
5205 South 5th Avenue
Pocatello, ID 83201

SUBJECT: MARSH VALLEY HYDROELECTRIC PROJECT #10468

Dear John,

Pursuant to our recent telephone conversation here is a letter from the Water Master of Portneuf River District #29 documenting that the water flow below the diversion has been consistently between 8 to 10 cfs. On behalf of the Marsh Valley Hydroelectric Company we hereby agree to a minimum bypass flow of 10 cfs.

In addition, we specifically request your recommendation that further fishery, vegetative, and wildlife studies not be required. Specifically we are asking you to recommend that the studies listed under Items 1 through 8 of Schedule B of FERC's letter of December 18, 1987 require no further study.

Your prompt attention in this matter is sincerely appreciated. Please note that the U. S. Fish & Wildlife has agreed to this course of action. Enclosed is a copy of their letter for your review.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:ll

Enclosure

cc: Mr. Keith Bennett
Mr. Randall C. Budge, Attorney at Law

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JAN 2 2 1993

January 22, 1988

Mr. Ted Sorenson
Sorenson Engineering
550 Linden Drive
Idaho Falls, ID 83401

Mr. Ted Sorenson:

In answer to your phone call about the flow of water in the river below the Portneuf-Marsh Valley diversion, and the McCammon Ditch. I have been with the company since 1944 as Water Master of the Companies and very closely in touch with the river. The last nine years I have served as Portneuf River Water Master of River District #29 for the Water Resource of Idaho. The water flow in the reach below the diversion has been consistently between 8 to 10 cfs since I began on the river in 1944. This includes 1977 and 1987 two of the poorest water seasons.

Sincerely,

Thomas Bloxham

Thomas Bloxham
Portneuf River Water Master
River District #29

JAN 2 2 1993

Region 5
5205 S. 5th Avenue
Pocatello, Idaho 83204
Telephone: (208) 232-4703

February 12, 1988

Mr. Ted Sorenson, P.E.
Project Engineer
Sorenson Engineering
550 Linden Drive
Idaho Falls, Idaho 83401

RE: FERC 10468, Marsh Valley Hydro Flows

Dear Mr. Sorenson:

In response to the question regarding minimum flows downstream from the above referenced project diversion we concur with the statement dated January 22, 1988 by Mr. Thomas Bloxham, Portneuf River Water Master for River District #29. Our recommendation for a minimum streamflow in this area is 10 cfs. Since you have agreed to this minimum flow in your letter dated February 8, 1988 we feel that the information developed on this matter is sufficient. Therefore we will not be recommending any additional studies.

Sincerely,

David Neider
Regional Supervisor

DN/ch

cc: Mr. Keith Bennett
Mr. Randall C. Budge
Fisheries Bureau

JAN 2 2 1993

EQUAL OPPORTUNITY EMPLOYER

CERTIFICATION OF DELIVERY

I hereby certify that I hand-delivered a copy of the Deficiencies letter dated December 18, 1987 to Mr. Roy Heberger of U. S. Fish & Wildlife Service at Mr. Hebergers Office in Boise. We discussed the content at length.

Ted S. Sorenson, P.E.
Project Engineer

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JAN 2 2 1993

United States Department of the Interior

FISH AND WILDLIFE SERVICE
BOISE FIELD OFFICE
4696 Overland Road, Room 576
Boise, Idaho 83705

February 4, 1988

Mr. Ted S. Sorenson, P.E.
Project Engineer
Sorenson Engineering
550 Linden Drive
Idaho Falls, Idaho 83401

Re: FERC 10468
Marsh Valley Hydro Flows

Dear Mr. Sorenson:

This follows your meeting of January 29, 1988 with Roy Heberger concerning the above referenced project which involves an existing diversion and canal. You indicated that a license application has been filed with the Federal Energy Regulatory Commission and that there is an apparent concern over project flows.

After coordinating with the Idaho Department of Fish and Game, you indicate that they have apparently approved a year-round instream flow of 8-10 cfs. This is to inform you that the Service will not be recommending further studies under the Federal Power Act for this project. We suggest that you continue to work with the Idaho Department of Fish and Game to resolve any areas of concern they may have.

Sincerely yours,

John P. Wolflin
Field Supervisor

cc: IDFG, Hdqtrs., Boise
IDFG, Region 5, Pocatello

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JRENSON ENGINEERING
CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

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Department of Water Resources

March 8, 1988

Lois D. Cashell
Acting Secretary
Federal Energy Regulatory Commission
825 N. Capital, N.E.
Room 3110
Washington, D.C. 20426

SUBJECT: MARSH VALLEY HYDROELECTRIC COMPANY,
AN IDAHO CORPORATION, PROJECT FERC #10468

Dear Ms. Cashell,

This letter is written pursuant to Mr. Edward A. Abrams' letter of December 18, 1987. This letter contains responses to deficiencies as contained in Schedule A and responses to the additional information requested in Schedule B.

Deficiencies Schedule A

Item #1. (a) The following entities will have proprietary rights necessary to construct, operate or maintain the project:

(1) McCammon Ditch Company
c/o Mr. Lyndon Green, President
1791 East South
McCammon, ID 83250
(208) 254-3494

(2) Portneuf-Marsh Valley Canal Company
c/o Mr. Keith Bennett
Downey, ID 83234
(208) 897-5791

Please note that the above canal companies are the owners of the Marsh Valley Hydroelectric Company, an Idaho corporation.

The project will cross Union Pacific Railroad property and an easement has been granted for same.

Item #1. (b) No town of greater than 5,000 people is within 15 miles of the project. The project is located within Portneuf River Water District #29. The contact is Mr. Thomas Bloxham, Water Master, Route 1, Downey, Idaho 83234. The project is located within Bannock County, Bannock County Courthouse, P. O. Box 4777, Pocatello, Idaho 83205.

Item #2. Failure to document service of application to agencies consulted.

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On September 3, 1987 a copy of the application for licenses was sent to each agency listed on the certification of Mailing (attached as last page of the application) along with the cover letter to Mr. Kenneth F. Plumb of FERC. A copy of the cover letter and certificate of mailing is attached. In order to insure compliance a new cover letter transmitting the original application and this response is attached.

Item #3. (a) The comprehensive state and regional water resource development plan in the area is governed by the Idaho Department of Water Resource Board which has published the Idaho State Water Plan dated December 12, 1986.

Item #3. (b) Explain how and why the project would or would not comply with the relevant comprehensive state and regional water resource plan. Attached is a letter of consultation from the Idaho State Department of Water Resources and a response letter dated March 8, 1988 from the Idaho Department of Water Resources.

"The Idaho Department of Water Resources is charged with the responsibility for planning for the optimum development of the water resources of the state through policies and water allocations which reflect the public interest." The Idaho Department of Water Resources accomplishes this through issuance of a water right permit.

The state water right filings have been made and approved pending issuance of the FERC license and therefore complies with the State Water Plan. Specific requirements that have been met are:

1. The project does not reduce the quantity of water to other existing water rights as the project is a non-consumptive use.

2. Have a sufficient water supply. The project does have a sufficient water supply as evidenced by USGS gauging station at Topaz.

3. Is pursued in good faith as has been evidenced by securing the power sales agreement and retention of an engineer to prepare the Federal Energy Regulatory Commission License.

4. Have sufficient financial backing. The project has sufficient financial backing as a function of the power sales agreement which has been executed.

5. Not conflict with the local public interest. This project does not conflict with the local public interest as evidenced by publication of the notice of appropriation of water in the local newspaper and receiving no protests.

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In addition, the Marsh Valley Hydroelectric Project would utilize the features of the Marsh Valley Canal Company which is an owner of the project. According to state law, any use of existing water feature must have permission from the owner. The applicant complies with same.

Item #3. (c) The project would comply with the state water plan.

Item #4. (a) Attached is a Project Location Map showing the location of all project facilities and their location in the relation to the stream where the water body on which the project is located and to the nearest town or any permanent monuments or objects.

Item #4. (b) The Project Location Map, Hydraulic Profile, and Exhibit G-2 show clearly existing and proposed project facilities. Please note that Exhibit G-2 is revised to show specifically the project boundaries.

Item #5. The length of the existing feeder ditch is 11,670 feet. The length of the proposed penstock is 500 feet.

Item #6. Refer to the attached Project Location Map. The project would utilize the existing canal intake for the Portneuf-Marsh Valley Canal to divert water from the Portneuf River and would construct a new proposed diversion and intake structure approximately 11,670 feet downstream in the Portneuf-Marsh Valley Canal.

Schedule B Additional Information

Item #1. Environmental impacts on vegetation and wildlife resources. Attached is a mini-study on the vegetative resources. Also attached is a letter of consultation and a letter of review from the Idaho Department of Fish & Game with respect to wildlife and vegetative resources. With respect to the wildlife resources, we will adhere to the Department of Fish & Game's letter of March 11, 1988 which refers to the Idaho Department of Fish & Game's letter of March 11, 1983. We will adhere to these guidelines. With respect to the vegetative resources, we will adhere to the report prepared by Whitehorse Associates of Smithfield, Utah. A copy is attached. This report and plan of action is approved by the Idaho Department of Fish & Game. Idaho Department of Fish & Game and the U. S. Fish & Wildlife Service are requesting no further studies, and we hereby petition FERC for the same.

Item #2 through #8. Please note that under the current situation with respect to the irrigation companies, the bypassed reach of the Portneuf River may be totally dewatered for a period

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of four to five months each year during the irrigation season. However, the bypass over the years has been maintained at between 8 to 10 cfs. As a function of Dr. Jack Griffith's study, a copy of which is included in the application as appendix E-3a, the Idaho Department of Fish & Game and with the concurrence of the U. S. Fish & Wildlife Service have concluded that if the canal companies, whom are the owners of Marsh Valley Hydroelectric, are willing to enter an agreement to maintain a 10 cfs bypass flow, not only during the irrigation season, but throughout the year, that no significant impact would be realized. On the other hand, without this agreement for the minimum bypass flow for a period of four to five months each year the irrigation companies would have the legal right to totally dewater the Portneuf River. Recognizing this situation, the Idaho Department of Fish & Game has felt that the 10 cfs would actually improve the situation over what could occur without an agreement for a minimum bypass flow. It should be noted that during the irrigation season the hydroelectric plant would not run. It would be shut down. Therefore, the Idaho Department of Fish & Game has concluded that a year-round bypass flow of 10 cfs would be in the best interest of the environment. This is consistent with recent consultation and correspondence, the letters of which are attached. Therefore, we respectfully petition the commission to waive any further studies as U. S. Fish & Wildlife Service and Idaho Department of Fish & Game do not feel that they are justified. It is their opinion that the trade-off with respect to minimum bypass flow during the irrigation season more than offsets any potential impacts of diversion during the non-irrigation season. Your concurrence in this matter is sincerely appreciated.

Item #8. The Utah Power & Light transmission line to which the project would connect is McCammon circuit #11.

Item #10. Pursuant to Section 10-I of the Federal Power Act, we do not wish to waive Sections 14 and 15. Accordingly, a revised map showing the project boundary is shown as Exhibit G-2.

We trust this information provides sufficient basis for acceptance of the application and will allow you to issue the license in the near future. Please feel free to call me if any questions arise.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:ll

Enclosures

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CERTIFICATE OF MAILING

I hereby certify I mailed a true and correct copy of the foregoing by passing same in the United States Mail postage prepaid addressed to the following with a copy of the final application to:

Mr. Thomas Green
State Historical Preservation Office
Idaho State Historical Society
210 Main Street
Boise, ID 83702

Mr. John Heimer
Idaho Department of Fish & Game
5205 South 5th Avenue
Pocatello, ID 83201

Mr. John Wolfin
U. S. Fish & Wildlife Service
4696 Overland Road
Boise, ID 83705

Idaho Department of Parks & Recreation
Statehouse
Boise, ID 83720

Mr. Keith Higginson
Director
Idaho Department of Water Resources
Statehouse Mail
Bosie, ID 83720

Ted S. Sorenson, P.E.
Project Engineer

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Region 5
5205 S. 5th Avenue
Pocatello, Idaho 83204
Telephone: (208) 232-4703

March 11, 1988

Ted S. Sorensor., P.E.
Project Engineer
550 Linden Drive
Idaho Falls, Idaho 83401

RE: Marsh Valley Hydro Elective Company FERC #10468

Dear Mr. Sorenson,

We have reviewed the mini-study for the above referenced project. The study accurately describes vegetative communities at the site and the reclamation program for project disturbed areas appears adequate.

Schedule B, item 1 also requires you to define and quantify the project impacts on wildlife. We do not find this information contained.

Department correspondence dated March 11, 1983 on this project carries recommendation for minimum flow, buried transmission lines and other recommendations.

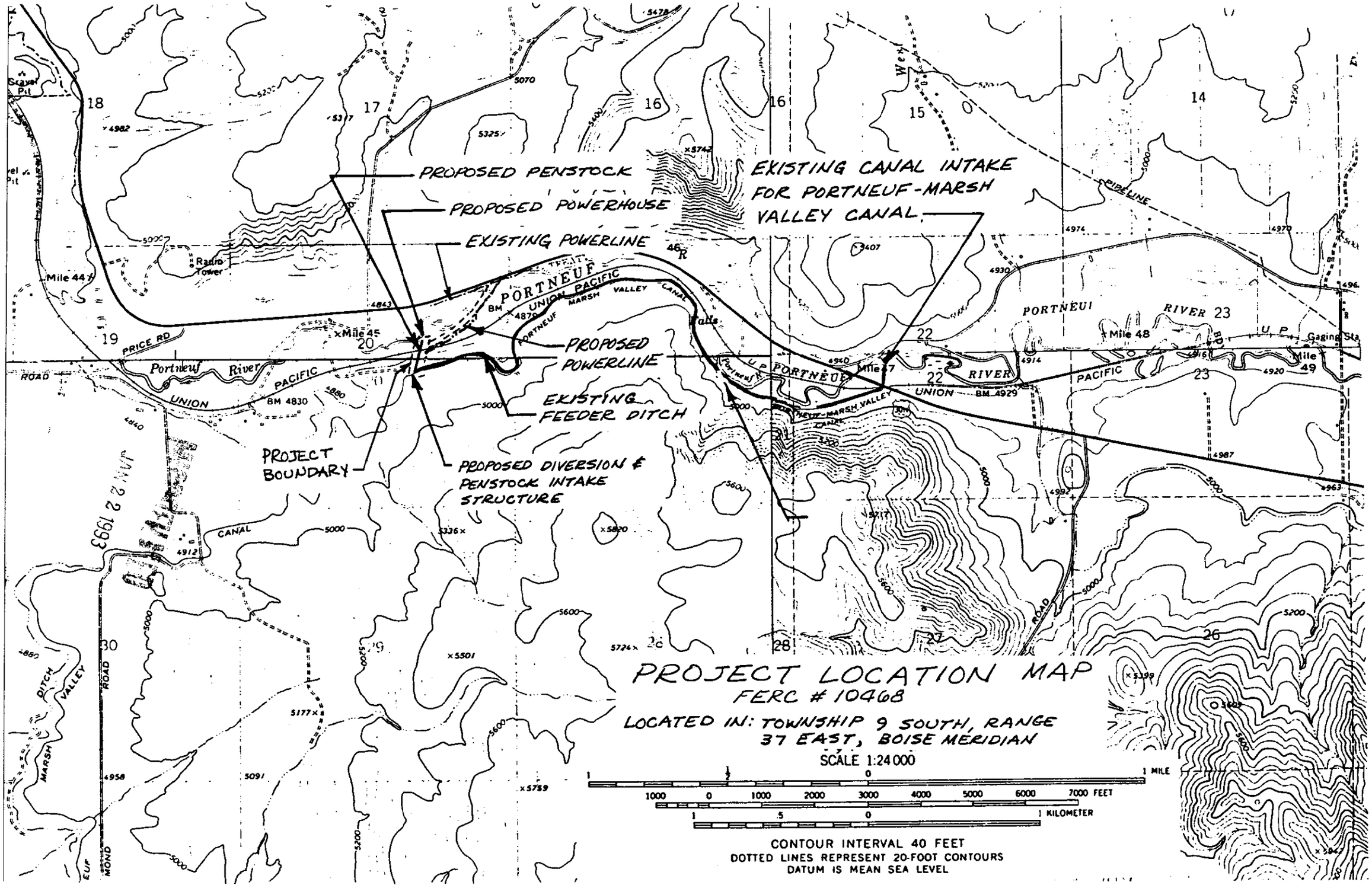
If these recommendations are followed we do not believe this project will seriously impact wildlife resources in the area.

Sincerely,

for Bill Davidson
David Neider
Regional Supervisor

DN/ch

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PROPOSED PENSTOCK
PROPOSED POWERHOUSE
EXISTING POWERLINE
EXISTING CANAL INTAKE FOR PORTNEUF-MARSH VALLEY CANAL
PROPOSED POWERLINE
EXISTING FEEDER DITCH
PROJECT BOUNDARY
PROPOSED DIVERSION & PENSTOCK INTAKE STRUCTURE
PROJECT LOCATION MAP
FERC # 10468
LOCATED IN: TOWNSHIP 9 SOUTH, RANGE 37 EAST, BOISE MERIDIAN
SCALE 1:24000
1 MILE
1000 0 1000 2000 3000 4000 5000 6000 7000 FEET
1 KILOMETER
CONTOUR INTERVAL 40 FEET
DOTTED LINES REPRESENT 20-FOOT CONTOURS
DATUM IS MEAN SEA LEVEL
PORTNEUF MARSH VALLEY CANAL
UNION PACIFIC
PORTNEUF RIVER
PRICE RD
Mile 44
Mile 45
Mile 47
Mile 48
Mile 49
Radio Tower
Gaging Sta
PIPE LINE
Portneuf River
BM 4830
BM 4875
BM 4929
JAN 22 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 1301 North Orchard Street Boise, Idaho 83706-2237 • (208) 334-4440

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

March 8, 1988

Ted S. Sorenson
Sorenson Engineering
550 Linden Drive
Idaho Falls, ID 83401

RE: Proposed Marsh Valley Hydroelectric Project

Dear Ted:

Your letter of January 25, 1988, requests information on comprehensive water resource development plans or programs relevant to the above referenced project. The Department of Water Resources considers the adopted State Water Plan to be a "comprehensive water plan" which among other essential features and considerations is intended to provide a guide for the amount and general location of development. A copy of the plan is attached for your use in responding to the FERC deficiency request.

Applications for permit 29-7578 and 29-7772 have been filed with this department to appropriate water for the hydropower project. These are the only filings seeking to appropriate water for a hydropower project at this site, and there are no pending protests against approval of the applications. Compliance with the State Water Plan will be assured as the applications are processed. Approval of the permits will require that the project comply with the criteria specified in Section 42-203A, Idaho Code. The criteria require that the project:

1. Not reduce the quantity of water to other existing water rights,
2. Have a sufficient water supply,
3. Be pursued in good faith,
4. Have sufficient financial backing, and
5. Not conflict with the local public interest.

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Enclosed is a copy of the adopted rules which further define these requirements. If necessary, a permit may be issued with conditions to insure that the above requirements are met. Two conditions required by state law for hydropower permits (Section 42-203B, Idaho Code) are subordination to future upstream state authorized uses and re-evaluation after a specific term (usually coordinated to match the term of the FERC license). Section 42-205(3), Idaho Code, gives preference to the owner of existing water diversion and use facilities to develop hydropower on the facilities.

If I can provide more information, please feel free to contact me.

Sincerely,

NORMAN C. YOUNG
Administrator
Resource Administration Division

NCY:alw
Attachment
cc: Keith Bennett, Portneuf Marsh Valley Canal
Eastern Region, IDWR

JAN 2 2 1993

SORENSON ENGINEERING
CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

March 4, 1988

Mr. John Heimer
Idaho Department of Fish & Game
5205 South 5th Avenue
Pocatello, ID 83201

SUBJECT: MARSH VALLEY HYDROELECTRIC COMPANY FERC #10468

Dear John,

Here is a copy of the recent deficiencies letter received on this project. Under Schedule B item 1 we are required to quantify and mitigate for vegetative impacts of the construction of the project. Attached is a study which was recently completed by Mr. Sherm Jensen. I would appreciate it if you would review this mini-study and indicate your concurrence or recommendations for modifications if any for this study. In general the construction impact will be minimal due to the small area involved. Your input with respect to this is sincerely appreciated. In that I must file a response to the deficiencies by March 11, 1988, I would appreciate receiving your response as soon as possible. I will be telephoning you to discuss the matter. Thanking you in advance.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:ll

Enclosures

cc: Mr. Randall C. Budge, Esq.
Mr. Keith Bennett
Mr. Lyndon Green

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File

February 22, 1988

Ted S. Sorenson
Sorenson Engineering
550 Linden Drive
Idaho Falls, ID 83401

RE: PROPOSED MARSH VALLEY HYDROELECTRIC PROJECT - 29-7578 and 29-7772

Dear Mr. Sorenson:

Our Eastern Regional office in Idaho Falls has forwarded the copy of the Application for License to the Federal Energy Regulatory Commission (FERC application) in connection with the above referenced project. You have essentially asked that the department provide comment relative to the interrelationship of the proposed hydro project to existing water programs in the Portneuf River area.

Use of water in connection with the proposed hydropower facility has the potential for substantial conflict with the historical use of water from the Portneuf River and to further complicate the water distribution function of existing Water District No. 29, the Portneuf River and tributaries.

The hydropower use would be subject to the control of the watermaster of Water District No. 29 from April 15 to September 15 of each year during which time the water available for the new use may be less than the report indicates. The hydrologic information shown in the FERC application does not seem to recognize irrigation diversions which occur outside these dates, uses from the river below the PMV diversion or in the PMV canal above the proposed hydroplant.

The FERC application appears to indicate the project plans to use the McCammon Ditch Company (McCammon) water as well as the Portneuf Irrigation and Portneuf-Marsh Valley Canal Co. (PMV) water. McCammon ditch now diverts downstream from the PMV in a gaining reach of the river. Moving the diversion upstream to the PMV heading has the potential to injure other existing water rights and will require a change application.

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The 10 cfs minimum flow cannot be made available under the pending hydropwer applications during the irrigation season, since the Portneuf River is nearly dried up at the McCammon ditch heading. PMV may have to file a change in nature of use of some of its stored water in order to satisfy the minimum flow requirement. A change in nature of use can only be approved if it is in the public interest, does not expand the use of the right or injure other rights.

Existing regulation of diversions from the Portneuf River is difficult at best, partly due to the location of the PMV measuring device. Any canal losses that occur above the measuring device presently are not charged to PMV. This has been at least partially offset by returns to the river upstream of the existing McCammon diversion. Under the hydropower proposal, losses would need to be charged, since increased flow rates and higher heads may add to the loss which would no longer be captured by the McCammon diversion.

During a shutdown of the power plant, it appears the bypass structure will cause uneven flows in the canal, since the head in the canal will have to increase until enough water goes over the bypass and on down the canal.

Due to the location of the proposed project, it appears prudent to consider any claims of the Shoshone-Bannock Indian tribes in the evaluation of the project. You should contact the tribal business council for input to your FERC license application.

Specific comments on the application include the following:

a) Unnumbered page 2, item 6(ii)A - The Idaho Department of Water Resources (IDWR) has not approved a water right in connection with the proposed project. Two (2) applications for permit, however, identified in IDWR records as 29-7578 and 29-7772 have been submitted to IDWR in connection with the project.

b) Unnumbered page 4, item 7 (ii) - The project likely will use the existing diversion structure.

c) Unnumbered page 8 - The diversions between the gage and the PMV headgate do not appear to be accounted for.

IDWR appreciates the opportunity to provide comment relative to the proposed project.

Sincerely,

NORMAN C. YOUNG,
Administrator

c: Eastern Region
Shoshone-Bannock Business Council

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Project No. 10468-0
Schedule A

DEFICIENCIES

(1) Under the requirements in 18 CFR at 4.32(a), you must provide the following:

(a) identify every person, citizen, association of citizens, domestic corporation, municipality, or state that has or intends to obtain and will maintain any proprietary right necessary to construct, operate, or maintain the project;

(b) identify by names and mailing addresses every city, town or similar subdivisions (5,000 or more people) within 15 miles of project dam; irrigation districts, drainage districts or similar political subdivisions; every other political subdivision in project area applicant believes may be interested in, or affected by, the application.

(2) Your application does not conform to the requirements in 18 CFR at 4.38(c). Specifically, you have failed to document in Exhibit E of the application that you have served a copy of the application filed with the Commission on each agencies consulted. Provide documentation that all agencies consulted under section 4.38 received a copy of the application.

(3) Under the requirements in 18 CFR at 4.38(f), you must provide the following:

(a) identify any comprehensive state and regional water resource development plans and programs in the area where the project is to be constructed (contact state resource or other appropriate agencies);

(b) explain how and why the project would, or would not, comply with the relevant comprehensive state and regional water resource development plans and programs;

(c) if the project would not comply, explain why the project should be allowed to not comply, with these plans and programs.

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Schedule A
Project No. 10468-000

(4) Under the requirements in 18 CFR at 4.61(f), you must provide the following:

(a) A map showing the location of all project facilities and their location in relation to the stream or other water body on which the project is located and to the nearest town or any permanent monuments or objects;

(b) a project map clearly identifying the proposed and existing project facilities.

(5) On page 1 of the Exhibit A it is stated that the length of the feeder ditch is 12,170 feet long and the penstock would be 500 feet long, but on page 2 of the Exhibit A the feeder ditch length is given as 34,900 feet and the penstock length is 600 feet. Provide the correct dimensions of the existing feeder ditch and proposed penstock to clarify the discrepancies in the application.

(6) The applicant states the project would utilize an existing diversion structure, but also states the project would utilize an unconstructed dam. Please provide staff with clarification on these conflicting statements.

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BOTANICAL RESOURCES
MARSH VALLEY HYDROELECTRIC FACILITY
BANNOCK COUNTY, IDAHO

CONDUCTED FOR:

SORENSON ENGINEERING, INC.
IDAHO FALLS, IDAHO

CONDUCTED BY:

SHERMAN JENSEN (SOIL SCIENTIST/PHYSICAL ECOLOGIST)
&
FRANK SMITH (BOTANIST)

WHITE HORSE ASSOCIATES
P.O. BOX 123
SMITHFIELD, UTAH 84335

FEBRUARY 1988

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1.0 INTRODUCTION

Botanical resources were inventoried along a segment of the Portneuf River where construction of a hydroelectric generating facility has been proposed. The survey area included about 12,000 feet of the valley-bottom. The survey area includes parts of sections 20 and 21, Township 9 south, Range 37 east, as illustrated in Figure 1-1. The survey area is located in the Snake River Plain Section of the Columbia Plateau Physiographic Province (Fenneman 1931). This segment of the Portneuf River flows in a V-shaped canyon incised in basalt. A floodplain ranging from 20 to 250 feet wide occurs along low gradient segments of the Portneuf River. Along steep gradient segments where the stream is incising, the channel is confined by steep alluvial/colluvial slopes and floodplains are absent or of minor extent.

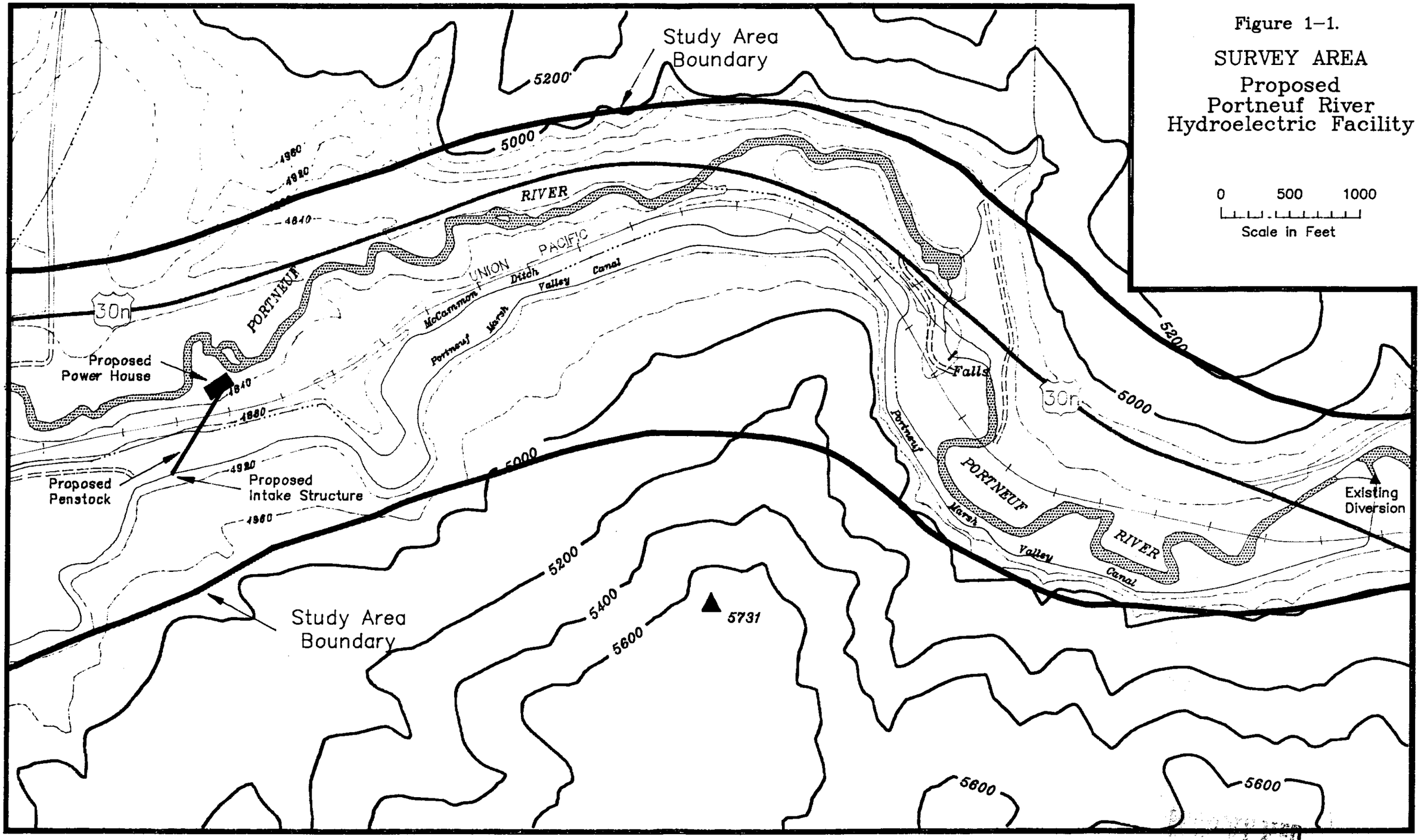
Currently streamflow is controled by diversion structures located near the upstream end of the survey area. During the irrigation season, streamflow is diverted to the Portneuf-Marsh Valley canal. During winter, streamflow is allowed to flow along its normal course. The proposed hydroelectric development will divert flow to the Portneuf-Marsh Valley canal year-round, allowing about 10 cfs to flow down the Portneuf River channel. Effluent from the power generating station will be discharged back to the Portneuf River near the downstream end of the survey area.

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Figure 1–1.

SURVEY AREA
Proposed
Portneuf River
Hydroelectric Facility



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The proposed facility will utilize existing structures for diversion of streamflow to the existing Portneuf-Marsh Valley canal. The proposed facility will require construction of a diversion and intake structure, about 500 feet of penstock, and a powerhouse.

2.0 OBJECTIVES

The purpose of the survey was to identify botanical resources in the area where construction of a hydroelectric facility is proposed. Information is to be used to identify potential impacts resulting from the proposed development. Specific objectives were:

1. To inventory vegetation types occurring in the study area.
2. To identify vegetation types that may be impacted by the proposed development.

3.0 METHODS

A field investigation was conducted on February 20, 1988. Sherman Jensen (Soil Scientist/Physical Ecologist) was responsible for preliminary identification of vegetation types, mapping of vegetation types, geomorphic descriptions and soil characterizations. Frank Smith (Botanist) was responsible for species identifications and floristic descriptions.

Vegetation types are areas of distinctive vegetation that recur on positions with similar slope, aspect and substrate. Dominant plant species were identified for each vegetation type. Mapping was conducted on a 1:8,000 scale base-map prepared from 7.5 minute USGS topographic maps.

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About a foot of snow covered the survey area at the time of the field investigation. Given this constraint, plants that were decumbant and/or of low stature were probably missed. Many plants were identifiable only to genus.

4.0 RESULTS

Vegetation types identified in the survey area are identified in Table 4-1.

Table 4-1. Vegetation types.

PHYSIOGNOMY Vegetation Type (SYMBOL)
SHRUB
Riparian Shrub (RS)
Big Sagebrush (ARTR)
HERBACEOUS
Hay Meadow (HAY)
Disturbed (existing)
Agricultural land (AG)

Plant species identified for each vegetation type and common names for species are listed in APPENDIX A. Descriptions of each vegetation type follow. Vegetation types are delineated in Figure 4-1. The projected area to be disturbed by construction activities is also illustrated.

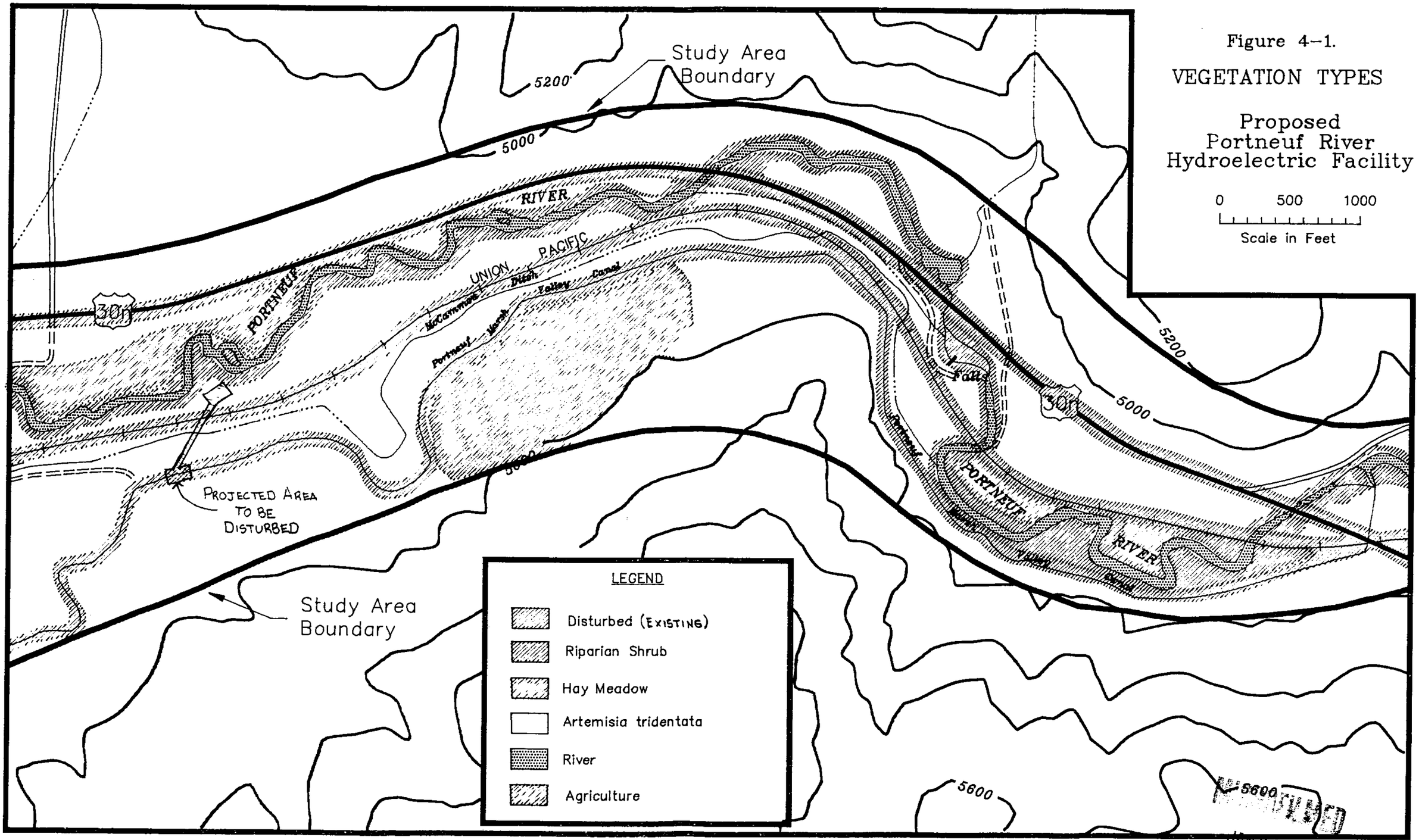
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Figure 4–1.

VEGETATION TYPES

Proposed
Portneuf River
Hydroelectric Facility

0 500 1000
Scale in Feet



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4.1 Riparian Shrub (RS) Vegetation Type

This vegetation type occurs on the floodplain of the Portneuf River. Surfaces are less than 5 feet above the level of normal streamflow and are seasonally flooded.

The vegetation is a dense thicket of shrubs dominated by redosier dogwood (Cornus sericea), willows (Salix spp.) and woods rose (Rosa woodsii). Other shrubs included black birch (Betula occidentalis), alder (Alnus sp.) and sandbar willow (Salix exigua). Reed canarygrass (Phalaris arundinacea), bluegrass (Poa spp.), common yarrow (Achillea millefolium), thistle (Cirsium spp.), western virginsbower (Clematis ligusticifolia), curlycup gumweed (Grindelia squarrosa), and stinging nettle (Urtica dioica) were identified in the herbaceous stratum. Minor areas dominated by common cattail (Typha latifolia) and common reed (Phragmites communis) were also included.

4.2 Big Sagebrush (ARTR) Vegetation Type

This vegetation type occurs on alluvial positions and on floodplains where the stream channel is incised 5 to 10 feet. These communities are not influenced by flooding of the Portneuf River.

The dominant vegetation is big sagebrush (Artemisia tridentata). Other shrub species included rubber rabbitbrush (Chrysothamnus nauseosus), broom snakeweed (Gutierrezia sarothrae) and antelope bitterbrush (Purshia tridentata), and widely scattered Utah juniper (Juniperus osteosperma). The herbaceous stratum includes cheatgrass (Bromus tectorum), Indian ricegrass (Oryzopsis hymenoides), common yarrow (Achillea

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millefolium), aster (Aster spp.), curlycup gumweed (Grindelia squarrosa), prickly lettuce (Lactuca serriola) and yellow salsify (Tragopogan dubius).

4.3. Hay Meadow (HAY) Vegetation Type

This vegetation type occurred on floodplains and on the toes of alluvial fans adjacent to the Portneuf River. These communities are seasonally flooded. They are used for pasture and are sometimes cut for hay.

These herbaceous communities are dominated by orchardgrass (Dactylis glomeratus), smooth brome (Bromus inermis), and bluegrass (Poa spp.). Basin wildrye (Elymus cinereus), common yarrow (Achillea millefolium), aster (Aster spp.), thistle (Cirsium spp.), and prickly lettuce (Lactuca serriola) were also noted.

4.4. Disturbed (DISTURBED) Vegetation Type

Areas contiguous to Highway 30, the railroad, and irrigation canals were identified as disturbed vegetation type. These areas were cut and filled by construction.

Disturbed areas are dominated by weedy herbaceous species. Species from adjacent vegetation types tend to colonize in these areas.

4.5 Agricultural Lands (AG)

Agricultural lands were identified on the southern flank of the survey area.

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5.0 PROJECTED IMPACTS

Construction activities are expected to directly impact minor areas of DISTURBED and ARTR vegetation types. A total of about 0.8 acres will be disturbed by construction: about 0.1 acres for the diversion and intake structure; about 0.5 acres for the penstock; and about 0.2 acres for the powerhouse and outfall canal.

Areas disturbed by construction activities will be contoured and replanted with native and introduced grasses. A mixture of smooth brome, basin wildrye, Indian ricegrass, and orchardgrass will be broadcast at a rate of 10 to 12 pounds per acre and raked in.

6.0 LITERATURE CITED

Fenneman, N.M. 1931. Physiography of Western United States. Mcgraw-Hill Book Co., Inc. New York and London. 534 pp.

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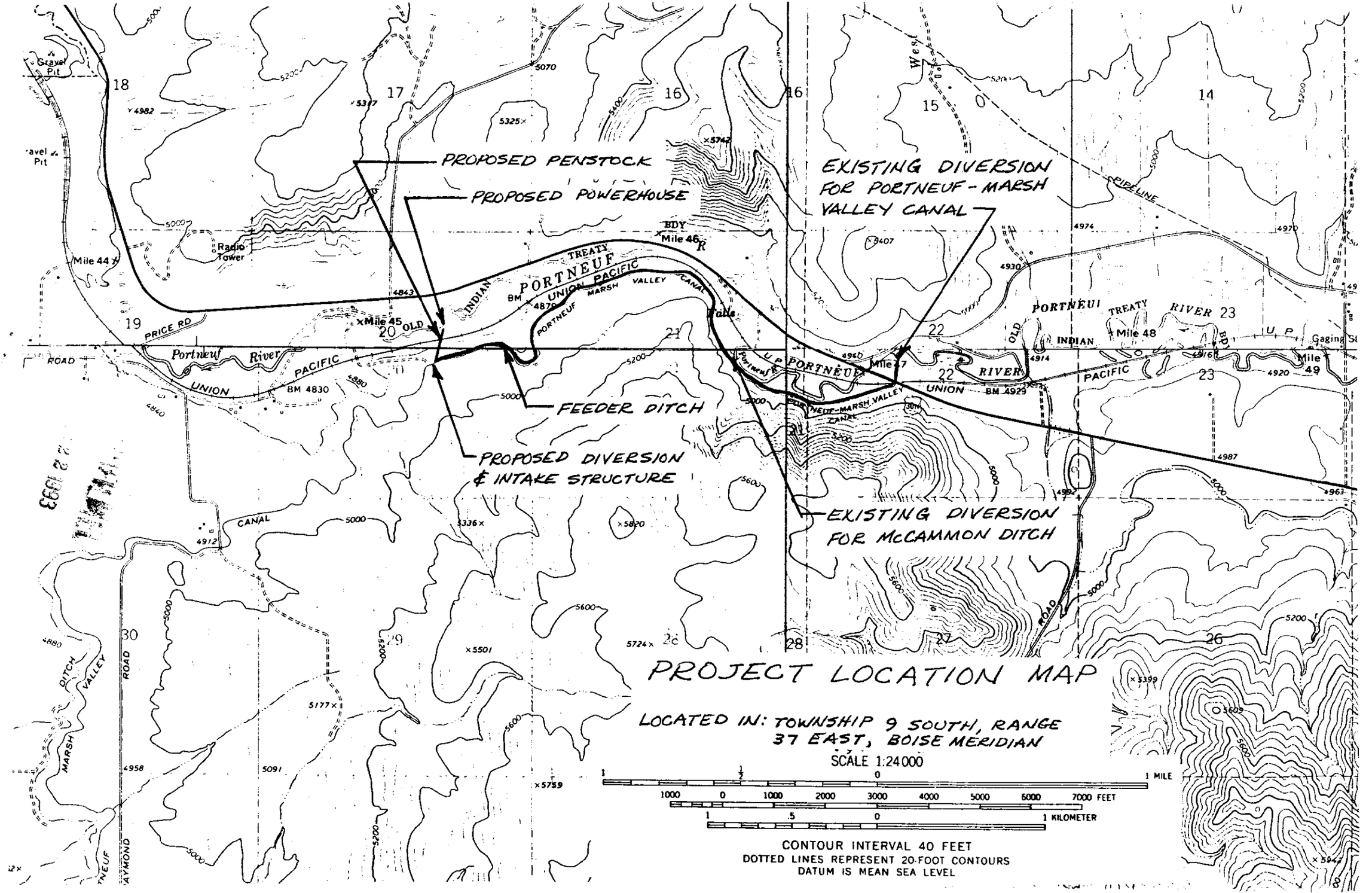
APPENDIX A

ASSOCIATION TABLES

JAN 2 2 1993

PHYSIOGNOMIC CLASS Plant species	VEGETATION TYPE SHRUB RIPARIAN	 ARTR	 HAY	HERBACEOUS DISTURBED	COMMON NAME
TREES					
Acer negundo	X	X	X	X	boxelder
Juniperus osteosperma		X			Utah juniper
SHRUBS					
Alnus sp.	X				alder
Amelanchier sp.					serviceberry
Artemisia tridentata		X			Big sagebrush
Betula occidentalis	X				Water birch
Chrysothamnus nauseosus		X		X	Rubber rabbitbrush
Cornus sericea	X				Redosier dogwood
Elaeagnus angustifolia	X	X			Russian olive
Gutierrezia sarothrae		X			Broom snakeweed
Purshia tridentata		X			Antelope bitterbrush
Rosa woodsii	X			X	Woods rose
Salix exigua	X				Sandbar willow
Salix spp.	X				willow
GRASSES					
Agropyron cristatum				X	Crested wheatgrass
Agropyron repens				X	Quackgrass
Bromus inermis			X	X	Smooth brome
Bromus tectorum		X	X	X	Cheatgrass
Dactylis glomerata			X		Orchardgrass
Elymus cinereus		X	X		Basin wildrye
Oryzopsis hymenoides		X		X	Indian ricegrass
Phalaris arundinacea	X		X		Reed canarygrass
Poa spp.	X		X	X	bluegrass
Phragmites communis	X				Common reed
FORBS					
Achillea millefolium	X	X	X	X	Common yarrow
Aster spp.	X	X	X		aster
Cirsium spp.	X		X	X	thistle
Clematis ligusticifolia	X				Western virginsbower
Cynoglossum officinale				X	Houndstongue
Glycyrrhiza lepidota	X			X	American licorice
Grindelia squarrosa		X		X	Curlycup gumweed
Helianthus annuus				X	Common sunflower
Lacutuca serriola		X	X	X	Prickly lettuce
Sisymbrium altissimum				X	Tumblemustard
Marrubium vulgare				X	Horehound
Penstemon spp.		X			penstemon
Rumex crispus				X	Curly cock
Typha latifolia	X				Common cattail
Tragopogon dubius		X		X	Yellow salsify
Urtica dioica	X		X	X	Stinging nettle
Verbascum thapsus	X			X	Flannel mullein
Xanthium strumarium				X	Smooth cocklebur

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PROPOSED PENSTOCK
PROPOSED POWERHOUSE
EXISTING DIVERSION FOR PORTNEUF-MARSH VALLEY CANAL
FEEDER DITCH
PROPOSED DIVERSION & INTAKE STRUCTURE
EXISTING DIVERSION FOR McCAMMON DITCH
PROJECT LOCATION MAP
LOCATED IN: TOWNSHIP 9 SOUTH, RANGE 37 EAST, BOISE MERIDIAN
SCALE 1:24000
1 MILE
7000 FEET
1 KILOMETER
CONTOUR INTERVAL 40 FEET
DOTTED LINES REPRESENT 20-FOOT CONTOURS
DATUM IS MEAN SEA LEVEL
Gravel Pit
Radio Tower
Mile 44
Mile 45
Mile 46
Mile 47
Mile 48
Mile 49
PRICE RD
ROAD
Portneuf River
UNION PACIFIC
BM 4830
BM 4870
BM 4929
INDIAN TREATY
OLD PORTNEUF
PORTNEUF MARSH VALLEY CANAL
PIPELINE
CANAL
DITCH
MARSH VALLEY ROAD
Falls
BDY
Gaging St

INTER-DEPARTMENT MEMO — 1

FROM CHERYL

DATE 2-29-8

TO FILE 29-7772

SUBJECT

PLEASE SEE FILE 29-7578 FOR COPY OF PROPOSED MARSH VALLEY HYDROELECTRIC PROJECT.

MICROFILMED

JAN 2 2 1993

SIGNATURE

)RENSON ENGINEERING
CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

January 25, 1988

Mr. Ernie Carlson
Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, ID 83402

SUBJECT: MARSH VALLEY HYDROELECTRIC PROJECT

Dear Mr. Carlson,

Attached is a copy of the Application for License to the Federal Energy Regulatory Commission FERC #9367-000. Specifically, I am being required by FERC to identify any comprehensive State and Regional Water Resource development plans or programs in the area where the project is to be constructed. I am to explain why the project would or would not comply with the relevant comprehensive State and Regional Water Resource development plans and programs. Also I am to identify if the project would or would not comply and if the project would not give explanation why the project should be allowed not to comply. I believe that the Portneuf River is included in the State water plan, but I do not believe that it is in any way in noncompliance with the plan. I would appreciate your review and concurrence as to the State water plan and to the compliance or noncompliance with same. This statement from you is being required by the Federal Energy Regulatory Commission. Your prompt review and response is sincerely appreciated. Please call to discuss this matter.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:ll

Enclosure

cc: Mr. Keith Bennett
Mr. Randall C. Budge, Esq.

JAN 2 2 1993

December 2, 1987

Michael J. Graham
Energy National Corporation
P.O. Box 1929
Lake Havasu City, Arizona 86403

RE: APPLICATION FOR PERMIT NOS. 29-7578 AND 29-7772

Dear Mr. Graham:

In response to your letter dated November 20, 1987, written on behalf of Marsh Valley Hydroelectric Company, a Utah partnership, I have reviewed the above referenced water right applications which are in the name of Marsh Valley Hydro Electric Co., an Idaho corporation.

Water right application 29-7578 filed with the department on February 2, 1981 proposes the diversion of 175 cubic feet per second of water from the Portneuf River for hydropower generation purposes. Water right application 29-7772 was filed on June 5, 1984 and proposes the diversion of 75 cubic feet per second of water from the Portneuf River for hydropower generation purposes. Both applications have been advertised and the time period in which to file a protest has passed.

Department action on the applications will be based on applicable provisions of the Idaho Code and the Water Appropriation Rules and Regulations of the department.

As you probably know, in Idaho, the general rule with respect to water rights is "first in time is first in right". An application in itself does not, however, represent a water right but is the document by which a water right and a priority can be established.

Please feel free to contact this office if you have additional questions.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

c: Randall C. Budge

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JAN 22 1993

N. 777 NR1

ENERGY NATIONAL CORPORATION

P.O. Box 1929
1930 Mesquite Avenue, Suite 12
Lake Havasu City, Arizona 86403
Telephone (602) 855-1615

RECEIVED
NOV 24 1987
Department of Water Resources

November 20, 1987

Mr. Keith Higginson, Director
Idaho State Department of Water Resources
Water Rights Division
Statehouse Mail
Boise, Idaho 83720

Dear Mr. Higginson:

Marsh Valley Hydroelectric Company, a Utah partnership, is presently the "first in time" applicant for a Federal Energy Regulatory Commission Hydropower License for it's Marsh Valley Diversion Hydroelectric Project, (No. 10242-000) on the Portneuf-Marsh Valley Canal, Portneuf River, Idaho.

Michael J. Graham of Energy National Corporation is the authorized agent of Marsh Valley Hydroelectric Company.

It has come to our attention that a competing applicant, "Marsh Valley Hydro Electric Company", of McCammon, Idaho, has filed an application for water rights (Nos. 29-7578, 29-7772) with your office. This competing application is for the water rights to the river on the same diversion and canal as our project.

We have requested the proper water right application forms from your office, and would appreciate the opportunity to participate in any hearings or procedures to protest the water right application filed by Marsh Valley H.C. of McCammon. It is our intent to file an application with your office for a water right for our Marsh Valley Diversion project No. 10242-000.

While our company is currently a Utah partnership, we are in the process of forming an Idaho Corporation.

As the first-in-time FERC applicant, we would respectfully request that no water right be issued at this time for these waters at this location, until the FERC license has been issued on this project. This would allow the FERC procedures to be completed, and still be in conformance with State of Idaho requirements.

Thank you for your consideration in this matter.

Sincerely,

M. Graham

Michael J. Graham
President and Agent

MICROFILMED
JAN 22 1993

Our Ref: 10242-WR.001

SORENSON ENGINEERING
CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

September 3, 1987

Mr. Kenneth F. Plumb
Federal Energy Regulatory Commission
825 N. Capital, N.E.
Washington, D.C. 20426

SUBJECT: MARSH VALLEY HYDROELECTRIC PROJECT FILED BY MARSH VALLEY HYDROELECTRIC AN IDAHO CORPORATION

Dear Mr. Plumb,

Here is an original and 14 copies of this application. Please note that this application is filed as a competing minor license application to Preliminary Premit #P-10242. For your use and to avoid confusion a copy of the notice of intent to file competing license application is enclosed. Please note that Mr. Jordon Walker and Mike Graham, dba/Marsh Valley Hydroelectric, were using an assumed name which is lawfully registered to McCammon Ditch Company and Portuef-Marsh Valley Canal Company, Ltd. Your understanding in this matter is sincerely appreciated.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:ll

Enclosure

cc: Randy Budge
Keith Bennett
Lyndon Green

MICROFILMED
JAN 2 2 1993

CERTIFICATE OF MAILING

I hereby certify I mailed a true and correct copy of the foregoing by passing same in the United States Mail postage prepaid addressed to the following with a copy of the final application to:

Mr. Jordan Walker and Mr. Mike Graham
P. O. Box N
Manti, Utah

Mr. Merle Green
State Historical Preservation Office
Idaho State Historical Society
610 N. Julia Drive
Boise, ID 83702

Mr. John Heimer
Idaho Department of Fish & Game
5205 South 5th Street
Pocatello, ID 83201

Mr. Ron Wolfin
U. S. Fish & Wildlife Service
4696 Overland Road
Boise, ID 83705

Idaho Department of Parks & Recreation
Statehouse
Boise, ID 83702

Ted S. Sorenson, P.E.

JAN 22 1993

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

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SEP 2 1987
Department of Water Resources

29-7578
29-7772V

REPLY TO ATTN OF: WD-136

JUL 28 1987

RECEIVED
JUL 31 1987
Department of Water Resources
Western Regional Office

Mr. Jordon Walker
P.O. Box N
Manti, Utah 84642

RE: Marsh Valley Diversion
FERC No. 10242

Dear Mr. Walker:

The Environmental Protection Agency (EPA) has received the Notice of Preliminary Permit Application filed with the Federal Energy Regulatory Commission (FERC) for the referenced project.

The information about the proposed project and its environs is not sufficient for us to offer substantive comments on its environmental aspects at this time. We normally recommend special environmental mitigation stipulations on licenses for hydroelectric projects based on our review of the sponsor's Environmental Report (Exhibit E of the license/exemption application) and any Environmental Impact Statement (EIS) which FERC may prepare on the pending application.

EPA recommends that your project be designed to avoid significant environmental impacts to the maximum extent practicable. When impacts are unavoidable, they can often be reduced with design modifications and alternative construction techniques. EPA and other resource agencies may be able to offer suggestions on appropriate mitigation measures. Circulation of the preliminary draft environmental report and relevant correspondence to state and federal natural resource agencies and EPA for review is one good way to disseminate such information and facilitate these mitigation suggestions.

The contents of Exhibit E of the Application for License under Section 4.41 of the FERC book of application procedures are detailed and discussed on page 39 of the "blue book." We suggest you contact us again upon completion of the preliminary draft of Exhibit E, so that we can advise you regarding whether the draft report provides enough information to support our review. We have enclosed a list of general concerns of EPA regarding small hydroelectric projects to be used as a guide for more specific content of the Environmental Report.

RETURNED
JAN 22 1993

We would appreciate being kept informed of the status of your project and any significant problems which may arise. If you wish to discuss any environmental concerns related to your project, you may contact Steve Bubnick of our Environmental Review Section at (206) 442-8512 or Michelle Stevens of our Idaho Operations Office at (208) 334-9488.

Sincerely,

for Gerald Opatz, Chief
Environmental Review Section

Enclosure

cc: FERC (Plumb)
NMFS
USFWS
IDHW
IDFG
IDWR
COE
IOO
Columbia River Fish
Commission

JAN 22 1993

SORENSON ENGINEERING
CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

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APR 27 1987
Department of Water Resources

April 16, 1987

Earnest Carlson
Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, ID 83401

SUBJECT: MARSH VALLEY HYDROELECTRIC COMPANY'S APPLICATION FOR WATER RIGHT FOR HYDROPOWER PURPOSES ON THE MCCAMMON AND PORTNEUF-MARSH VALLEY CANAL SYSTEM
APPLICATION #29-7772

Dear Mr. Carlson,

I have been retained to file the FERC Application for this project. We were under the understanding that we could file an exemption. However, it appears that we must file a minor license. I have attached a rough draft copy of this minor license for your review. Further revisions will be made to this over the next month prior to the final filing. I trust this will be sufficient information to you to hold the water right open.

Trusting this to be of value.

Very truly yours,

Ted S. Sorenson, P.E.
Project Engineer

TSS:ll

Enclosure

cc: Mr. Randy Budge w/encl.
Mr. Keith Bennett w/encl.

RECEIVED
APR 23 1987
Department of Water Resources
Eastern District Office

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JAN 22 1993

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

APPLICATION FOR LICENSE FOR A MINOR WATER POWER PROJECT

5 MEGAWATTS OR LESS

1. MCCAMMON DITCH COMPANY AND PORTNEUF-MARCH VALLEY CANAL COMPANY, LTD., applies to the Federal Energy Regulatory Commission for a minor license for a water power project as described hereinafter.

2. Location of the facility is:

State or Territory: State of Idaho

County: Bannock

Township or nearby Town: McCammon

Stream or body of water: Portneuf River

3. The exact name and business address of the applicant :

McCammon Ditch Company
c/o Mr. Lyndon Green, President
McCammon, Idaho 83250

Portneuf-Marsh Valley Canal Co. Ltd.
c/o Mr. Keith Bennett, President
Downey, Idaho 83234

4. The exact name and business address of each person authorized to act as agent for the applicant in this application are:

5. The MCCAMMON DITCH COMPANY AND PORTNEUF MARCH VALLEY CANAL CO. LTD., are corporations under the laws of the State of Idaho.

JAN 2 2 1993

6. (i) The statutory or regulatory requirements of the State of Idaho that affect the project as proposed with respect to bed and banks and the appropriation, diversion and use of water for power purposes, with respect to the right to engage in the business of developing, transmitting and distributing power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act are:

A. Article XV of the Idaho Constitution, in chapter 1 and 2, Title 42, Idaho Code, addresses the appropriation of water for beneficial use with the State of Idaho. The right to use such water is gained by application for permit and license to the Idaho Department of Water Resources. An application for hydro power development has been filed and memorandum of decision rendered. A final permit will be granted, contingent upon issuance of license, that is herein applied for from the Federal Energy Regulatory Commission. A copy of the finding is attached following this section.

B. Chapter 38, Title 42, Idaho Code, the Stream Channel Protection Act, was an act to regulate the alteration of the beds and banks of Idaho Streams. This act is also administered by the Idaho Department of Water Resources. A separate application for a Stream Channel Alteration Permit is necessary, however, when the alteration is intended to divert appropriated waters from a stream, an application to appropriate water is sufficient and a separate application for a Stream Channel Alteration Permit is not necessary. A permit to appropriate water from the stream carries with it the right to alter the stream bed and bank to accomplish the diversion.

C. Chapter 9, Title 36, Idaho Code, deals with the protection of fish in Idaho Waters. Section 36-906 requires suitable fish screening devices and fish ways to be constructed at all power sites to the specifications of the Idaho Department of Fish and Game.

D. Chapter 11, Title 50, Idaho Code, grants to Idaho Counties, the right to establish planning and zoning commissions and grants regulatory authority to the counties to govern building standards and local use classification. A zoning concurrence must be obtained from Bannock County before this hydro project can be constructed.

(ii) The steps which the applicant has taken or plans to take to comply with the statutory or regulatory requirements cited above are:

A. Regarding appropriation for water benefits for use with the State of Idaho, the applicant has made a water right filing (#29-7578) for the purpose of

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JAN 22 1993

hydro power development. The Idaho Department of Water Resources has issued the water right. A copy is attached as _____.

B. Regarding the Stream Channel Protection Act, no separate action by the applicant is required. The diversion is existing and the tailrace will require minor disturbance to the banks.

C. Regarding the protection of fish in Idaho Waters, the requirements of the Idaho Department of Fish & Game will be concurred with.

D. Regarding planning and zoning commission regulatory authority; when FERC license is in hand, the applicant will submit the documents and final design of this project to the Bannock County Planning and Zoning Commission. This is the final prerequisite before any construction can take place.

No more specific approvals or actions are required apart from licensing of the project by the Federal Energy Regulatory Commission. Advisory copies of the Power Sales Contract and Interconnection Contract with applicable public utilities will be filed with the Idaho Public Utilities Commission.

7. The project proposes to develop the hydroelectric potential of Portneuf-Marsh Valley Canal Co. Ltd., via diversion of water utilizing existing structures to the existing canal for a distance of 12,710 feet. The water would be routed to a penstock 500 feet to the powerhouse and thence returned to the Portneuf River.

(i) Proposed installed generating capacity is 3 megawatts.

(ii) The project would utilize an unconstructed dam.

8. Lands of the United States affected are shown in Exhibit __. Lands are surveyed lands. Public lands of the United States affected are:

(i)	National Forest	None
(ii)	Indian Reservation	None
(iii)	Public Lands under the jurisdiction of the Bureau of Land Management	acres
(iv)	Other: U.S. Department of Energy	acres
(v)	Total U.S. Lands	acres

9. Construction of the project is planned to start within 12 months and is planned to be completed within 36 months from the date of issuance of the license.

JAN 2 2 1993

VERIFICATION

State of Idaho)
)ss
Bonneville County)

Ted S. Sorenson, being first duly sworn, deposes and says that: He is the President of both MCCAMMON DITCH COMPANY AND PORTNEUF-MARSH VALLEY CANAL CO. LTD., the applicant, that he has read the foregoing application and knows the contents thereof: and that the same are true to the best of his knowledge and belief.

_____
President
BIRCH POWER COMPANY, INC.

Subscribed and sworn to before me, a Notary Public of the State of Idaho this _____day of _____, 1987.

_____
Notary Public

(seal)

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EXHIBIT A

The APPLICANT proposes to divert water from the Portnuef River through an existing diversion structure to 12,170 L.F. of existing earthen feeder ditch and 500 L.F. of 60" or 72" diameter steel penstock to a power plant. Approximately 0.5 miles of new three phase electrical transmission line will be required.

The water would then be returned to the Portneuf River through approximately a 50 foot tailrace.

All of the proceeding would be existing except the penstock, powerhouse and tailrace. The mode of operation would be run of the river.

1.	(i)	Existing and future generating Units	None
		Proposed Generating Unit	One
		Proposed Generating Output Capacity	1,500 KW
	(ii)	Type of Hydraulic Turbine	Reaction Type (Frances)
	(iii)	Power Plant Operation	Manual Start, Auto-Shutdown, Run of the River
	(iv)	Average Annual Generation	7.6 x 10 KW-HRS
	(v)	Power Plant Design Head	101 feet
		Power Plant Average Head	96 feet
	(vi)	Area of Pipeline Intake Forebay at Canal	1,200 feet
		Surface Elevation	4,910 feet
		Net Storage	0.2 Acre-Ft.
		Gross Storage	0.4 Acre-Ft.
	(vii)	Plant Hydraulic Capacity	220 cfs

The hydrology for this project was derived from U.S.G.S. gaging records for gage number 13073000, for the Portneuf River at Topaz, Idaho. This gage is located approximately 1.5 miles upstream of the PMV Canal inlet and was therefore considered as representative of the flows available to the canal for generation. The drainage area at the gaging station is 570 square miles and is at a mean altitude of 6,080 feet (datum of gage is 4,918 feet). The period of record is January, 1913 to September, 1915, and July, 1919 to current year. Because of missing or extra data, only the 64-year period of October, 1919 through September, 1983 was utilized for generation studies.

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Average discharge for the period of record is 141,900 acre-feet a year or a mean annual flow of 196 cfs. Normal monthly means, in cfs, are provided below:

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
143	154	154	153	170	204	268	342	266	206	178	151

The hydrologic records including flow duration without irrigational withdrawal is attached.

Irrigation demands were derived from the Idaho Water User Daily Record Books for Water District 29. These logs are maintained by the ditch tender and provided to the State as a log of the diverted flows down the Portneuf River. Average monthly diversions were derived from these records to indicate those quantities of water that would not be available for generation. The following flows, in cfs, are current average diversions for irrigation by the canal companies and would continue down the canal to respective canal users:

JUNE	JULY	AUGUST	SEPTEMBER 1-15
230	230	230	220

The net water available for power generation is the total flow less cfs more flow less the irrigation withdrawal as follows:

	OCT	NOV	DEC	JAN	FEB	MAR
Total Flow	143	154	154	153	170	204
Minimum Flow	10	10	10	10	10	10
Irrigation	0	0	0	0	0	0
Power Flow	133	144	144	143	160	194

	APR	MAY	JUNE	JULY	AUG	SEPT
Total Flow	268	342	266	206	178	151
Minimum Flow	10	10	10	10	10	10
Irrigation	0	0	230	230	230	110
Power Flow	258	332	26	0	0	31

(viii) Existing Diversion — 10' high compacted native soils

Feeder Ditch — 34,900 L.F. open channel trapezoidal earthen - 85 cfs capacity

Pipeline Intake Facility — concrete w/steel bar screen

Penstock — 600 L.F. 60" and/or 72" diameter steel pipe

Powerhouse — concrete base, prefabricated steel building

JAN 2 2 1993

Transmission Line	0.5 miles new 3 phase, 12.4 KVA to existing Utah Power & Light Transmission Line.
Generator Voltage	2,400 Volt
Transformer	One (1) 2,000 KVA, 7,200/12470Y 2,400 volt, pad mounted transformer

(ix) Estimated Project Capital Cost $1,500,000

2. The purpose of the project is to produce a clean, renewable resource as electrical power (which will reduce the dependency on foreign imports of oil) for sale to Utah Power & Light Company.

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JAN 2 2 1993

29-7578 APP
29-7772 APP

Legal RJZ KRA
Spackman G.S.
Sterling

P-10242-000

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission
(March 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: Preliminary Permit

b. Project No: 10242-000

c. Date Filed: January 12, 1987

d. Applicant: Marsh Valley Hydroelectric Company

e. Name of Project: Marsh Valley Diversion

f. Location: On Portneuf River in Bannock County, Idaho near the town of Lava Hot Springs, T.9S., R.37E., sec 21 and sec. 22, W 1/2

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § 791(a)-825(r)

h. Contact Person: Mr. Jordan Walker, or Mr. Mike Graham, P.O. Box N, Manti, Utah 84642 (801) 835-0202

i. Comment Date: MAY 8 1987

j. Description of Project: The proposed project would consist of: (1) the existing 21-foot-high Portneuf-Marsh Valley Canal dam at elevation 4,908 feet; (2) the existing 10-foot-wide, 5-foot-deep Portneuf-Marsh Valley canal to be gated; (3) a 60-inch-diameter, 500-foot-long buried penstock; (4) a powerhouse containing two generating units with a total installed capacity of 1,000 kW, producing approximately 4,000,000 kWh of energy annually; and (5) an existing 3,000-foot-long, 2.5-kV Utah Power and Light Company's transmission line. No access road will be needed to conduct the studies. The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $5,000.

The proposed project would be located on lands owned by the Marsh Valley Irrigation District and private parties.

k. Purpose of Project: Project power would be sold to Utah Power and Light Company

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

DC-A-1

JAN 22 1993

A5. Preliminary Permit -- Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit -- Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

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MAR 23 1987
Department of Water Resources

A10. Proposed Scope of Studies Under Permit -- A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

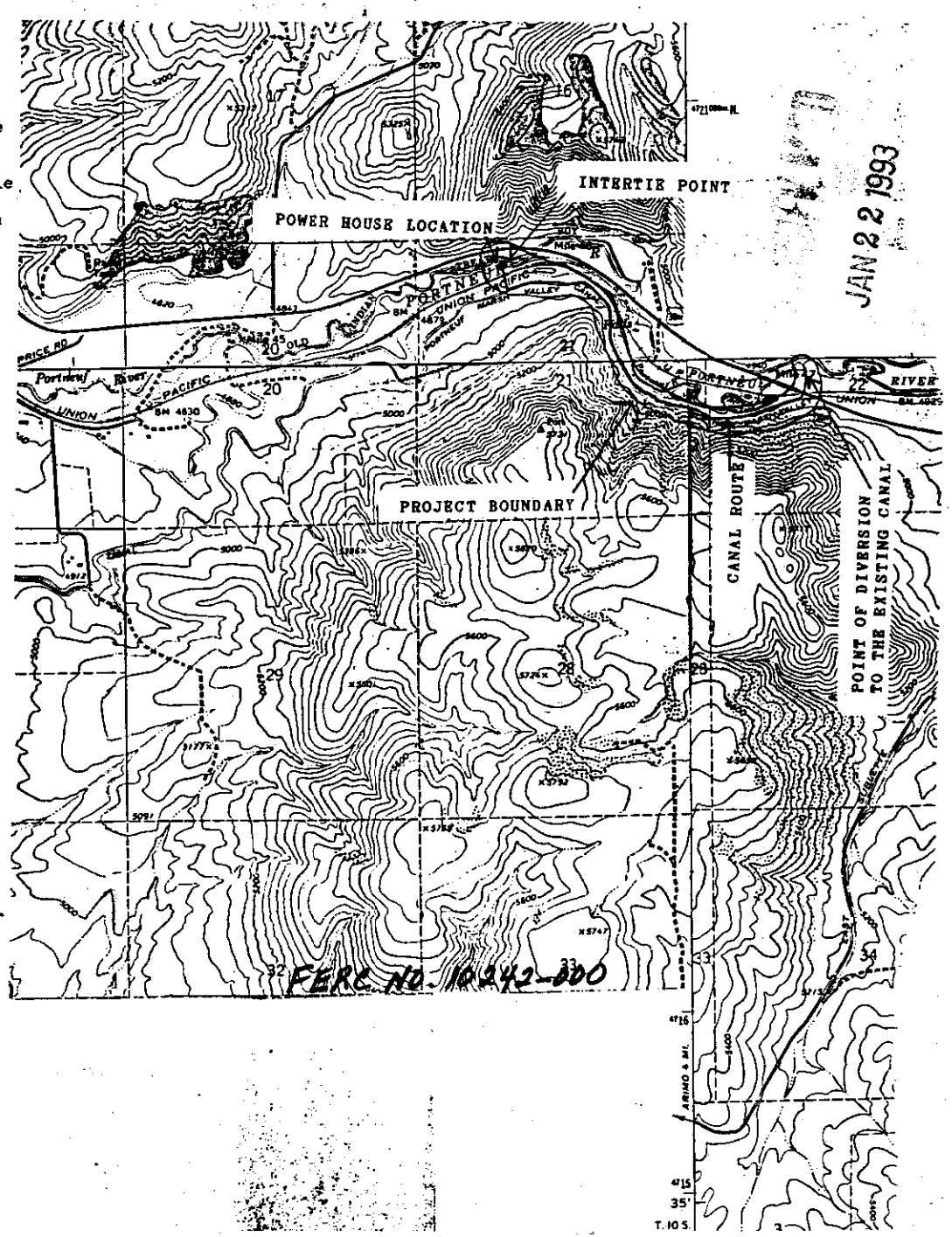
FILED
JAN 22 1993

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

D2. Agency Comments - Federal, State, and local agencies are invited to file 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 specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb
Secretary



JAN 22 1993

April 3, 1987

Randall C. Budge
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83204

Ted S. Sorenson, P.E.
Sorenson Engineering
550 Linden Drive
Idaho Falls, Idaho 83401

RE: Application for Permit 29-7772

Gentlemen:

Based on information furnished in response to the letter from this office dated March 12, 1987, I am forwarding the above captioned application to our state office. Future correspondence pertaining to the development contract, verification of financing and FERC rulings concerning this project and permit applications 29-7578 and 29-7772 should be addressed to:

Gary Spackman
Supervisor, Water Allocations Sections
Idaho Department of Water Resources
State House
Boise, Idaho 83720

Respectfully submitted,

Ernest Carlsen
Water Rights Supervisor

EC/md

RECEIVED
JAN 22 1993

INTER-DEPARTMENT MEMO –

FROM E. Carlson.

DATE 31 March 83

TO File

SUBJECT These documents were submitted in conjunction with the initial application to F.E.R.C. That application was denied & Hydro Electric Constructors is no longer involved. Therefore, I suspect these documents are invalid.

RECEIVED
JAN 2 2 1993

SIGN

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-0391

TELEPHONE
AREA CODE 208
232-6101

TELEX
208-232-6109

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*

JOHN B. INGELSTROM
DANIEL C. GREEN
BART D. BROWNING
REED W. LARSEN
CARY COLAIANNI

*ALSO MEMBER ILLINOIS BAR

March 26, 1987

Mr. Ernest Carlsen
Water Rights Supervisor
Idaho Department of Water Resources
Eastern Region
150 Shoup
Idaho Falls, Idaho 83401

RECEIVED
MAR 27 1987
Department of Water Resources
Eastern District Office

Mr. Gary Spackman
Supervisor, Water Allocation Section
Idaho Department of Water Resources
State Office
450 West State Street
Boise, Idaho 83720

Re: Application for Permit No. 29-7772
Marsh Valley Hydro Electric Company

Gentlemen:

I am writing as counsel for Marsh Valley Hydro Electric Company with regard to the captioned permit and to respond to Ernest Carlsen's letter dated March 12, 1987 entitled, "Notice of Pending Action to Reject Application". Mr. Carlsen's letter requested that Marsh Valley either withdraw their application or explain why the department should not reject it. Please be advised that Marsh Valley does not desire to withdraw its application as they are now moving forward with the development of the project, as discussed below, and hereby request that the application be retained and an extension of time be granted to permit the development to be completed.

As set forth in my September 3, 1986 letter to Water Rights Supervisor, Jim Johnson, a copy of which is enclosed, the original developer, Hydro Electric Constructors of Orange, California, encountered financial and other difficulties and did not perform its obligations under the contract to develop the project, by reason of which the contract was terminated. Consequently it became necessary for Marsh Valley to seek another developer to pursue a FERC exemption and/or license, as well as development of the project.

JAN 22 1993

Subsequently in my October 2, 1986 phone conversation with Gary Spackman, I advised that Marsh Valley was in the process of negotiations and reached a tentative agreement with Ted S. Sorenson and David Snedigar of New Energy, Inc. to pursue FERC approval and development of the project (see Mr. Spackman's 10/3/86 letter).

On September 30, 1986 Marsh Valley exercised its option to purchase a plant site and related easements pursuant to an "Option to Purchase Real Estate and Easements" Agreement entered into on 10/3/86 with Mr. and Mrs. Roger S. Johnson. The closing has been delayed due to minor difficulties the Johnsons have encountered in securing a partial release from one of their lien holders, First Bank and Trust, primarily because the bank failed and has been taken over by the FDIC. However, it is expected that this acquisition will close within the next few weeks.

A Power Purchase Agreement was entered into between Marsh Valley and Utah Power & Light Company on November 21, 1986 which was subsequently approved by the Idaho Public Utilities Commission in Case No. U-1009-172, Order No. 20979. A copy of the IPUC Order is enclosed, together with a copy of the Power Purchase Contract excepting only the appendixes which are too voluminous and not enclosed.

One of the developers, Ted S. Sorenson, P.E. - L.S. of Sorenson Engineering P.A., 550 Linden Drive, Idaho Falls, Idaho 83401, phone 522-8069, is acting as the Project Engineer, has completed preliminary engineering designs, and a new application to the FERC for a conduit exemption. From our discussions with Mr. Sorenson it is our understanding that the application is ready to file and is only awaiting an amendment of previous easements obtained from the Union Pacific Railroad which became necessary due to changes in the project design. I have requested that Mr. Sorenson send you a copy of the new FERC application which should be received shortly.

It is our understanding that the developers have received a commitment from Bay Bank of Boston for the financing of the project. Please feel free to contact Mr. Sorenson if you have any further questions concerning this financing. Drafts ofthe development contract between Marsh Valley and Sorenson - Snedigar are being circulated between counsel for final revisions and are expected to be signed by the parties in the near future.

JAN 2 2 1993

I trust the foregoing sufficiently responds to your inquiry, documents the fact that Marsh Valley is vigorously pursuing the development of the project, and permits an extension of time on the captioned permit. Please advise if you have any questions or desire further information.

~~Very~~ truly yours,

RANDALL C. BUDGE

RCB/dhn

Enclosures

cc: Ted Sorenson
Dave Snedigar
Lyndon Green
Keith Bennett

RECEIVED
JAN 22 1993

September 3, 1986

Jim Johnson
Water Rights Supervisor
Department of Water Resources
State Office
450 W. State Street
Boise, Idaho 83720

Re: Application for Permit No. 29-7578
Marsh Valley Hydro-Electric Co.

Dear Mr. Johnson:

This will respond to your August 12th leter regarding the captioned matter requesting an update.

The owner, Marsh Valley Hydro-Electric Co., originally contracted with Hydro-Electric Constructors, Inc. of Orange, California to develop a project including the processing of the FERC exemption and/or license. The developer was unsuccessful in obtaining a FERC exemption and due to financial and other difficulties did not perform its obligations under the contract and develop the project. Accordingly Marsh Valley has terminated the contract with HEC and is seeking another developer to pursue a FERC exemption and/or license as well as development of the project.

At this point information regarding the technical information pertaining to the project has been sent to three different developers. Thus far one of the developers has responded expressing interest and more information. At this point Marsh Valley's efforts are focusing upon securing another developer.

Very truly yours,

RANDALL C. BUDGE

RCB/dds

cc: Lyndon Green
Keith Bennett

RECEIVED
JAN 22 1993

Office of the Secretary
Service Date
JAN 7 - 1987

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF UTAH POWER & LIGHT COMPANY FOR AN ORDER APPROVING A FIRM ENERGY SALES AGREEMENT.

JAN - 8 1987

CASE NO. U-1009-172

ORDER NO. 20979

On December 8, 1986, Utah Power & Light Company (UP&L) submitted an Application to the Idaho Public Utilities Commission (Commission) for an Order approving a Firm Energy Sales Agreement between UP&L and Marsh Valley Hydro Electric Company.

Marsh Valley Hydro Electric Company is the owner of a proposed 1.7 megawatt hydroelectric project to be located in the Northeast quarter of the Northeast quarter of Section 20, Township 9 South, Range 37 East, Boise Meridian, approximately 3 miles East of McCammon, Bannock County, Idaho on the Portneuf-Marsh Valley Canal. The project is a qualified small power production facility under the applicable provisions of the Public Utilities Regulatory Policies Act. The scheduled operation date of the facility is March 1988.

The Commission finds that the parties reach agreement as to all material contract terms on or about May 7, 1985. The Agreement as signed and submitted by the parties contains avoided cost rates in conformity with applicable Commission Orders. The terms of the contract are reasonable and we approve them. We also approve payments made under this Agreement as prudently incurred expenses for ratemaking purposes.

CONCLUSIONS OF LAW

I

The Idaho Public Utilities Commission has jurisdiction over Utah Power & Light Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code.

JAN 2 2 1993

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 22 day of January, 1987.

PRESIDENT

COMMISSIONER

COMMISSIONER

ATTEST:

SECRETARY

SW:vs/305L

RECEIVED
JAN 22 1993

Per Commission Order
No. 20979.

Myrna J. Walters
Commission Secretary

POWER PURCHASE AGREEMENT

BETWEEN

JAN - 8 1987

MARSH VALLEY HYDRO ELECTRIC COMPANY

AND

UTAH POWER & LIGHT COMPANY

THIS AGREEMENT is entered into this 21st day of November, 1986, by and between MARSH VALLEY HYDRO ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Idaho, and owners of a qualifying facility as defined in 18 CFR §292.101(b)(1) with the appropriate representation for qualification as specified in Appendix K, hereinafter referred to as "Seller," and UTAH POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Utah, hereinafter referred to as "Buyer." Seller and Buyer are sometimes referred to collectively as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, Seller intends to construct, own, operate and maintain a hydroelectric generating facility consisting of three (3) synchronous generators, each with a Name Plate Rating of six-hundred (600) kilowatts, for a total generating capacity of one-thousand, seven-hundred (1,700) kilowatts, hereinafter referred to as Facility*; and

* Initial capitalization of words and phrases other than proper names indicates that these terms are defined in Appendix A hereof.

JAN 22 1993

WHEREAS, Seller wishes to sell to Buyer and Buyer agrees to purchase all electric energy generated for sale by such Facility, but only in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

1. TERM OF AGREEMENT AND TERMINATION

1.1 Subject to the terms and conditions hereof, this Agreement shall become effective upon execution by the Parties and shall remain in full force and effect for a term of thirty-five (35) years from the Operation Date. It is anticipated that testing of the Facility pursuant to Appendix E and in-service generation will commence in March 1988.

1.2 This Agreement cannot be terminated by Seller except by subsequent mutual agreement of the Parties in writing or by abandonment of the Facility and payment by Seller to Buyer of the sums required by Appendix C.

1.3 This Agreement cannot be terminated by Buyer except by subsequent mutual agreement of the Parties in writing or in accordance with Appendix C. Also, in the event that Buyer's system which provides electrical service to Seller is acquired by another entity, to the extent that Seller's electrical service is to be supplied by said entity, this Agreement shall be deemed to be terminated by Buyer upon the date of acquisition. All future

MICROFILMED
JAN 22 1993

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the first date hereinabove set forth.

SELLER:

MARSH VALLEY HYDRO ELECTRIC COMPANY

By Lyndon Green

Title PRESIDENT

BUYER:

UTAH POWER & LIGHT COMPANY

By _____

VERL R. TOPHAM
Senior Vice President

JAN 22 1993

C9:024

payment obligations of Buyer to Seller pursuant to this Agreement shall end upon the date of acquisition and the payment by Seller to Buyer of the sums required by Appendix C shall be due.

2. SALE OF POWER

2.1 Seller agrees to sell and deliver and Buyer agrees to purchase and accept all energy generated from the subject Facility in accordance with the terms and conditions of this Agreement.

2.2 Seller's proposed Facility is located in the Northeast 1/4 of the Northeast 1/4 of Section 20, Township 9 South, Range 37 East, Boise Meridian, approximately three miles east of McCammon, Bannock County, Idaho on the Portneuf-Marsh Valley Canal and shall provide energy as set forth herein.

2.3 If Seller intends to increase the generating capability of the generators beyond the stated Name Plate Rating, Seller shall notify Buyer. The Parties will enter into a mutually acceptable agreement to purchase any additional energy provided from such increase in accordance with the terms and at the rates then required by the appropriate regulatory authority. Such agreement will not become effective until it has been approved by the Idaho Public Utilities Commission. Seller shall be responsible for the costs that may be incurred by Buyer to accept the additional energy provided from such increase.

JAN 22 1993

3. PURCHASE PRICE AND METHOD OF PAYMENT

3.1 Buyer shall pay Seller, for the energy delivered to the Point of Delivery. The payment shall be the sum of the following:

(a) A fixed energy rate of 40.49 mills per kilowatt-hour for the energy delivered to the Point of Delivery. This portion of the payment will only be paid for the energy that is delivered after the Operation Date, but in no case will this portion of the payment be paid until after the Scheduled Operation Date. This rate reflects a 1988 scheduled in-service date and a thirty-five (35) year term as shown in Appendix B. This rate shall not change due to a delay in completion of construction nor shall it be subject to escalation or change except as stated in Appendix C, Section D.

(b) A variable energy rate of 14.00 mills per kilowatt-hour for all energy delivered to the Point of Delivery before and after the Operation Date. This rate will be updated annually by the Idaho Public Utilities Commission and applied to this Agreement as specified in Appendix B.

3.2 The kilowatt-hours for which Buyer shall be obligated to purchase shall be the kilowatt-hours measured on Buyer's metering equipment located at the Point of Delivery. Payment shall be based on total generation from the Facility less Station Use. In the event that during a month Station Use exceeds gross generation, then Seller

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JUN 22 1993

shall pay Buyer for the excess energy at the then-current applicable rate(s).

3.3 Buyer's obligation to pay Seller the fixed energy rate for energy furnished to Buyer shall commence on the Operation Date of the Facility. Buyer shall pay Seller the variable energy rate for energy furnished to Buyer during the test period prior to the Operation Date and after the Operation Date for energy furnished to Buyer.

4. ENTIRE AGREEMENT

4.1 This Agreement shall supersede all prior contracts, proposals, representations, negotiations, discussions or letters between the Parties.

4.2 This Agreement cannot be amended by either Party except by subsequent mutual agreement of the Parties in writing.

4.3 This Agreement may be unilaterally terminated by Buyer twelve (12) months after the Scheduled Operation Date if Seller's Facility has not commenced delivery of energy pursuant to this Agreement, unless Seller can show just cause why the Facility is not complete and that it will be operational within a reasonable period of time.

4.4 This Agreement may be unilaterally terminated by Buyer twelve (12) months after the execution date, above, if Seller has failed to

APPROVED
JAN 22 1993

obtain all necessary licenses and permits, including qualifying facility representation, needed to construct and operate the Facility throughout the term of this Agreement.

4.5 This Agreement includes the following Appendices, all of which are attached hereto and incorporated herein by reference:

Appendix A:	Power Purchase General Terms and Conditions
Appendix B:	Schedules of Capacity and Energy Rates
Appendix C:	Adjustment of Payments
Appendix D:	Parallel Generation Interconnection Requirements
Appendix E:	Performance Test Criteria for Seller's Interconnection Facilities
Appendix F:	Metering Equipment, Communication Equipment and Communication Channels
Appendix G:	Seller's Interconnection Facilities
Appendix H:	Buyer's Interconnection Facilities
Appendix I:	Point of Delivery
Appendix J:	Description of Facility
Appendix K:	Qualifying Facility Representation

5. NOTICES

5.1 All written notices given pursuant to this Agreement shall be addressed as follows:

(a) To Buyer:

Corporate Secretary
UTAH POWER & LIGHT COMPANY
1407 West North Temple Street, Room 326
P.O. Box 899
Salt Lake City, UT 84110

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JAN 22 1993

With a copy to: Manager, Resource Contracts
UTAH POWER & LIGHT COMPANY
1407 West North Temple Street, Room 3312
P.O. Box 899
Salt Lake City, UT 84110

(b) To Seller: MARSH VALLEY HYDRO ELECTRIC COMPANY
McCammon, ID 83250

With a copy to: McCammon Ditch Company
McCammon, ID 83250

And: Portneuf-Marsh Valley Canal Co., Ltd.
Downey, ID 83234

5.2 Inquiries concerning meter readings, billings, etc., should be addressed to:

(a) To Buyer: Customer Service Manager
UTAH POWER & LIGHT COMPANY
145 West Main Street
P.O. Box 130
Rexburg, ID 83440

RECEIVED
JAN 22 1993

March 12, 1987

RE: Application for Permit No. 29-7772
Hydropower on the Portneuf River

Marsh Valley Hydro Electric Company
c/o Lyndon Green, President
McCammon, ID 83250

Dear Mr. Green:

NOTICE OF PENDING ACTION TO REJECT APPLICATION

In a Department letter dated 4 February 1986, Gary Spackman advised Randall C. Budge of the necessity for furnishing information regarding the financial ability of Marsh Valley Hydro Electric Company to finance the construction of the proposed project under the above captioned application. Mr. Spackman also expressed the Department's position that it was the company's responsibility to diligently pursue approval of the project by the Federal Energy Regulatory Commission (FERC) and to provide information documenting the company's efforts.

In response to Mr. Budge's reply, Mr. Spackman agreed to defer departmental action on the application until October of 1986, at which time the above items were to be furnished for consideration by the Department. Documentation in our file reveals none of the information has been submitted.

Idaho Code, Section 42-203A states an application may be rejected and issuance of a permit refused if it appears to the satisfaction of the Department that such application is not made in good faith, is made for delay or speculative purposes, or the applicant has not sufficient financial resources with which to complete the work involved. The purpose of this letter is to request you either withdraw your application or explain why the Department should not reject it. Enclosed is a withdrawal form

JAN 2 2 1993

that authorizes voiding the application from the Department's records when returned bearing the signature of an officer in the company.

Failure to furnish the information previously requested or respond by showing cause that your application is not speculative and financing is available will cause the Department to proceed with rejecting your application. This action will be initiated thirty (30) days from the date of this letter.

Respectfully submitted,

ERNEST CARLSEN
Water Rights Supervisor

EC:cw

Enclosure

cc: Randall C. Budge, Attorney at Law

1993

March 11, 1986

Randall C. Budge
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83204

Re: Application for Permit No. 29-7772, Marsh Valley Hydro Electric Company

Dear Randy:

Thank you for your prompt response to my inquiry regarding progress being made on the hydro-electric project which has been proposed by your clients.

Based on the representations which you have made to me, the Department will defer any action on the application for an additional six (6) months. If you could keep the us periodically advised as to the status of the FERC approval process, it would prevent continuing inquiry by the Department.

Again, I thank you for your response and look forward to your continuing association.

Sincerely,

Gary Spackman
Sr. Resource Agent

Gs/md

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204

TELEPHONE
AREA CODE 208
232-6101

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.

JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
BART D. BROWNING
KIM CLAUSSEN**
ERICH N. STORM
REED W. LARSEN

* ALSO MEMBER ILLINOIS BAR
** ALSO MEMBER UTAH BAR

RECEIVED
FEB 24 1986
Department of Water Resources
Eastern District Office

February 21, 1986

Gary Sprackman
Sr. Resource Agent
Department of Water Resources
Eastern Region
150 Shoup - Suite 15
Idaho Falls, Idaho 83402

Re: Application for Permit No. 29-7772
Marsh Valley Hydro Electric Company

Dear Gary:

I am writing in response to your February 4, 1986 inquiry concerning the captioned application.

On October 26, 1984 the applicant entered into a Ground Lease and Agreement with Hydro Electric Constructors Inc. and International Energy Resources Inc., a California corporation, to completely construct and develop the proposed project. Among other things, the agreement required that the developer submit and obtain, at it's expense, all necessary permits and licenses required to construct and operate the plant in compliance with applicable Federal, State and local laws within six (6) months of the signing of the agreement.

Despite an extension of time and two submissions, the developer has been unsuccessful in securing an exemption from the licensing requirements of the Federal Energy Regulatory Commission (FERC). The initial application for a small conduit exemption from licensing submitted on January 9, 1985 was rejected by FERC on June 5, 1985 due to a failure to conform with relevant requirements of the Commisions regulations. A revised application for a case specific exemption submitted July 30, 1985 was rejected by FERC on September 24, 1985 on the basis it did not fit the criteria for exemption.

Because the developer, HEC, was unable to timely obtain a FERC exemption, Marsh Valley has given a formal Notice of Default and is in the process of terminating all contractual obligations with HEC.

RECEIVED
JAN 2 2 1993

Marsh Valley does intend to develop the project and is actively soliciting a new developer to pursue FERC approval and construction of the project. Accordingly, Marsh Valley requests that the present application and priority date be permitted to remain in good standing. If further information is required to this end or if you have any other questions, please feel free to contact me.

Very truly yours,

Randall C. Budge

RANDALL C. BUDGE

RCB/dds

cc: Keith Bennett
Lyndon Green

JAN 2 2 1993

February 4, 1986

RE: Application for Permit No. 29-7772
Marsh Valley Hydro Electric Company

Mr. Randall C. Budge
Attorney at Law
P.O. Box 1391
Pocatello, ID 83201

Dear Randy:

In reviewing the file of application No. 29-7772, it appears that the only protestant to the application, the Idaho Department of Fish and Game, withdrew their protest based on an agreement to maintain a minimum flow of ten (10) cubic feet per second in the Portneuf River below the point of diversion. Since there are no other protestants to the application, it appears that the only reasons for non-issuance of a permit are: (1) By letter dated August 27, 1984, the Department requested a statement of financial ability of the developers of the project and whether the agreement between the applicant and the developer had been executed, and (2) it is the policy of the Department of Water Resources to postpone issuance of a permit until issuance of a license by the Federal Energy Regulatory Commission.

The Department has not received any information regarding the financial ability of the developers to finance the proposed construction, or whether the developers and the applicant even executed the draft agreement which was presented, nor has there been any information submitted within the last year and one-half showing that the applicant has been diligently pursuing approval of the project by the Federal Energy Regulatory Commission. It is necessary that the above information be provided to the Department.

JAN 2 2 1993

In order to give you adequate opportunity to compile the information which I have requested from you, no administrative action on the application will be taken for the next sixty (60) days. Failure to submit the information within this time period, however, could jeopardize the standing of the application with the Department and the priority date of the application.

Sincerely,

GARY SPACKMAN
Sr. Resource Agent

GS:cw

JAN 2 2 1993

INTER-DEPARTMENT MEMO — 1

FROM Ernest

DATE 10-18-84

TO: File

SUBJECT Prior to forwarding application we need proof of financibility & verification of FERC ruling. Correspondence dated 8-84 indicates FERC application is being prepared. Documentation concerning ~~financial~~ dedicated financing was requested on 8-7-84.

JAN 2 2 1993

File should be held until 12-3-84, before sending enquiry in progress.

SIGNATURE

October 18, 1984

RE: Application for Permit No. 29-7772 MARSH VALLEY HYDRO

Mr. David Neider, Supervisor
Idaho Fish & Game Department
5205 S. 5th Avenue
Pocatello, ID 83201

Dea Mr. Neider:

This is to acknowledge receipt of your withdrawal of protest against approval of the above referenced application. The Department will take no further action in setting a hearing in this matter.

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

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enc: Copy of Agreement

JAN 2 2 1993

October 18, 1984

RE: Application for Permit No. 29-7772

Marsh Valley Hydro Electric Company
c/o Lyndon Green, President
McCammon, ID 83250

Dear Mr. Green:

This is to advise you that David Neider, Idaho Fish and Game, has withdrawn their protest against approval of the above referenced application. The Department will take no further action in setting a hearing in this matter and has resumed the processing of your application.

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

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enc: Copy of Agreement

MICROFILMED
JAN 2 2 1993

MARSH VALLEY HYDRO ELECTRIC CO.

Lyndon Green	**John Bowen**	**Keith Bennett**
President	**Secretary**	**Vice President**
McCammon, ID 83250	**Downey, ID 83234**	**Downey, ID 83234**

October 12, 1984

RECEIVED
OCT 16 1984
Department of Water Resources
Eastern District Office

Mr. Earnest Carlsen
Assistant Regional Director
DEPARTMENT OF WATER RESOURCES
150 Shoup, Suite 15
Idaho Falls, Idaho 83401

Re: Application for Permit No. 29-7772
Marsh Valley Hydro Electric Co.

Dear Mr. Carlsen:

In response to your letter of September 28, 1984, regarding the captioned matter, please be advised that Marsh Valley Hydro Electric Co. is willing to comply with the 10 c.f.s. minimum instream flow as required by the Idaho Department of Fish and Game to permit withdrawal of their protest to our pending application.

Very truly yours,

MARSH VALLEY HYDRO ELECTRIC CO.

By: Lyndon Green
Lyndon Green, President

By: Keith Bennett
Keith Bennett, Vice President

JAN 2 2 1993

PROTESTANTS AND REPRESENTATIVES

Idaho Fish & Game -

APPLICATION NO. 29-7772

FERC NO. _____

REPRESENTATIVES FOR APPLICANT

Marsh Valley Hydro Electric Co.
c/o Lyndon Green
Randy Budge - Attorney

DATE	FILE HISTORY	ACTION PENDING & CALL UP
June 5, 1984	Application filed with Dept of Water Resources	
July 11, 1984	Letter requested preliminary engineering design, estimate of construction costs, & demonstration of financial ability	
August 7, 84	Letter to Randy Budge again requesting info previously asked for on July 11, 1984	
Aug. 17 84	Info received from Randy Budge	
Aug 27, 84	Letter to Randy Budge requesting financial ability of developer and whether agreement signed	
Aug 31, 84	Response by Randy Budge stating information still not available.	
Sept. 28, 84	Letter to Randy Budge asking position of applicant on minimum ... s streamflow.	

JAN 2 ...

September 28, 1984

Randall C.Budge, Esq.
P.O. Box 1391
Pocatello, ID 83204

RE: Application for Permit No 29-7772, Marsh Valley Hydro-Electric Company

Dear Mr. Budge:

The Department recently received a letter from David Neider, Supervisor of Idaho Fish and Game in Pocatello withdrawing his department's protest of the above captioned application. The withdrawal includes a provision for a 10. cfs minimum in-stream flow below the proposed point of diversion.

To recognize this withdrawal the department must be certain that your client is willing to comply with this provision. Therefore, further administrative action will be delayed until we receive written notice of your client's position regarding the minimum flow provision.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

FMC/cz

JAN 2 2 1985

Region 5
5205 S. 5th Avenue
Pocatello, Idaho 83201
Telephone: (208) 232-4703

September 20, 1984

RECEIVED
SEP 24 1984
Department of Water Resources
Eastern District Office

Mr. Ronald D. Carlson
Eastern Regional Supervisor
Idaho Department of Water Resources
150 Shoup
Idaho Falls, Idaho 83401

Dear Mr. Carlson:

Re: Application for water rights, #29-7578 and #29-7772,
Portneuf River hydroelectric projects

We would like to withdraw our protests against the above referenced applications as we have now been furnished with information regarding them as requested. We understand that a minimum of 10 cfs is to be left in the stream and all other conditions requested by the Department agreed to.

Sincerely,

David Neider

David Neider
Supervisor, Region 5

DN:JTH:sc

cc: Randall C. Budge

JAN 2 2 1993

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204

TELEPHONE
AREA CODE 208
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LOUIS F. RACINE, JR.
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RANDALL C. BUDGE

JOHN A. BAILEY
WILLIAM F. BACON
JOHN R. GOODELL*
JOHN B. INGELSTROM

* ALSO MEMBER ILLINOIS BAR

RECEIVED
SEP 4 1984
Department of Water Resources
Eastern District Office

August 31, 1984

Mr. Ernest Carlsen
Assistant Regional Supervisor
State of Idaho
Department of Water Resources
150 Shoup - Suite 15
Idaho Falls, Idaho 83402

Re: Application for Hydro Power
#29-7772

Dear Ernest:

In response to your letter of August 27, Marsh Valley Hydro Electric Company expects to sign the contract and related documents with the developer, Hydro Electric Constructors, Inc., within the next 30 days.

I am requesting a financial statement and other documents to verify that they have resources to finance the project and will provide you with the same when received.

An application has been prepared and is expected to be submitted within the next few weeks to the Federal Energy Regulatory Commission requesting an exemption from their licensing requirements.

I am in contact with John Hymer, acting regional director for the Idaho Department of Fish and Game, and I am optimistic that their concerns can be satisfied.

JAN 22 1993

Very truly yours,

Randall Budge

RANDALL C. BUDGE

RCB:mdb

(P.S. — Hymer now satisfied & will mail your letter withdrawing protest of F+G.)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

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

August 27, 1984

Randall C. Budge, Esq.
P.O. Box 1391
Pocatello, ID 83204

Re: Application for Hydro Power #29-7772

Dear Randy,

Thank you for promptly submitting the documents and information we requested concerning the hydro electric project by Marsh Valley Hydro Electric Co. As indicated in your cover letter the agreement is still pending between Marsh Valley Hydro Electric Company and Hydro Electric Constructors, Inc. because this agreement specifies that the financial burden for constructing the project will be the responsibility of Hydro Electric Constructors, Inc. we would like to know when you expect the agreement to be signed and what information you have verifying they have sufficient resources to finance the project.

It is Department policy to postpone conducting administrative hearings on hydro power applications until we receive verification of a ruling on the project by the Federal Energy Regulatory Commission. Realizing this could take several months there should be sufficent opportunity for you to try and resolve the protest with the Department of Fish and Game.

Please feel free to contact me if you have any questions concerning the foregoing.

Respectfully Submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EMC/cz

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LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204

TELEPHONE
AREA CODE 208
232-6101

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE

JOHN A. BAILEY
WILLIAM F. BACON
JOHN R. GOODELL*
JOHN B. INGELSTROM

* ALSO MEMBER ILLINOIS BAR

August 16, 1984

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AUG 17 1984
Department of Water Resources
Eastern District Office

Mr. Ernest Carlsen
Assistant Regional Supervisor
State of Idaho
Department of Water Resources
150 Shoup
Idaho Falls, Idaho 83401

Re: Application for Permit #29-7772
Marsh Valley Hydro Electric Co.

Dear Ernest:

Enclosed please find the original AFFIDAVIT FOR WATER RIGHTS TO BE USED FOR POWER PURPOSES, which has been signed and notarized.

In response to your letter of July 11, 1984, to Lyndon Green, requesting that information be submitted in accordance with Idaho Code, §42-22, I am enclosing the following:

1. Photocopies of the project loan map (Exhibit B-1) and the principal project features (Exhibit B-2) prepared by Hydro Electric Constructors, Inc., which identify the approximate location and layout of the diversion structures, penstocks and generating facility.

2. Photocopies of drawing No. MVP1 and 2 reflecting preliminary engineering design of the turbines, generators, controls and switch gear within the plant.

3. Itemized construction cost estimates obtained from feasibility study prepared by J-U-B Engeineers, Inc.

4. Copy of agreement to be entered into between applicant and Hydro Electric Constructors, Inc., providing for the development of the project at no cost to the applicant, who will receive a percentage of gross power production from the developer, Hydro Electric Constructors, Inc.

With regard to the protests filed by the Idaho Department of Fish and Game, please be advised that we are contacting the acting regional supervisor, Chris Chappin, in an attempt to resolve this matter directly with them. Accord-

JAN 22 1993

ingly, you need not set the protest for hearing at this time. The Idaho Department of Fish and Game also protested, our initial Application for Permit No. 29-7585 for 175 cfs and the Fish and Game Department also protested. This protest was resolved as a result of a fish population study prepared by J.S. Griffith on behalf of the applicant, a copy of which is also enclosed. This study previously satisfied the concerns of the Department of Fish and Game and we feel it remains valid for purposes of the present application and will satisfy concerns they have raised.

If you have any questions concerning the foregoing, please call me.

Very truly,

RANDALL C. BUDGE

RCB:cwn Encs.

cc: Lyndon Green
Keith Bennett

JAN 2 2 1993

TABLE 3

MARSH VALLEY HYDROELECTRIC PROJECT
CONSTRUCTION COST ESTIMATE

ITEM	UNIT	QUANTITY	UNIT PRICE	AMOUNT
LAND AQUISITION AND RIGHTS-OF-WAY	Acre	9	$ 3,000	$ 27,000
MOBILIZATION & DEMOBILIZATION	L.S.	1	5,000	5,000
CANAL IMPROVEMENTS & STRUCTURES:				
Overflow Structure	L.S.	1	18,500	18,500
Radial Gates & Structure (Inlet)	L.S.	1	49,600	49,600
Road Improvements	L.S.	1	5,000	5,000
Canal Improvements	L.S.	1	108,100	108,100
TOTAL CANAL IMPROVEMENTS & STRUCTURES				$ 213,200
POWERHOUSE & FOREBAY				
Excavation (Rock) Powerhouse	C.Y.	150	55	8,250
Excavation (Common) Powerhouse	C.Y.	2,500	4	10,000
Foundation Preparation - Powerhouse	L.S.	1	6,000	6,000
Concrete (Forebay)	C.Y.	48	350	16,800
Concrete (Powerhouse)	C.Y.	340	350	119,000
Trash Rack, Rake & Walkway	L.S.	1	16,000	16,000
Concrete (Discharge Bay)	C.Y.	20	350	7,000
Radial Gate (Forebay)	L.S.	1	22,500	22,500
Turbine/Generators/Gear Boxes	L.S.	1	390,000	390,000
Installation of Turbine/Generators	L.S.	1	20,000	20,000
Penstock	L.F.	460	175	80,500
Valves and Manifold	L.S.	1	38,500	38,500
Pipe (McCammon Ditch Co.)	L.F.	210	145	30,450
UPRR Undercrossing	L.S.	1	35,000	35,000
Gate (Sluice)	L.S.	1	16,000	16,000
Programmable Control Hardware	L.S.	1	25,000	25,000
Programmable Control Software	L.S.	1	15,000	15,000
Remote Computer System	L.S.	1	6,000	6,000
Transformer	L.S.	1	20,000	20,000
Switchgear	L.S.	1	29,000	29,000
Utility Relay & Metering	L.S.	1	5,000	5,000
Transmission Line	Mile	3	36,666	110,000
Riprap (Tailrace)	C.Y.	600	25	15,000
Powerhouse Building Electrical	L.S.	1	36,000	36,000
Powerhouse HVAC	L.S.	1	15,000	15,000
TOTAL POWERHOUSE AND FOREBAY				$1,103,000
ESTIMATED TOTAL CONSTRUCTION COST				$1,316,200
Contingencies (10% Equipment 20% Engineering)				165,530
		SUBTOTAL		$1,481,730



JAN 2 2 1993

TABLE 3 (con't.)

ITEM	UNIT	QUANTITY	UNIT PRICE	AMOUNT
ENGINEERING				
Design			103,750	
Construction Inspection			74,090	
Construction Management			59,280	
Project Administration & Misc. Permits			13,800	
TOTAL ENGINEERING AND ADMINISTRATION			250,920	250,920
ADMINISTRATIVE COSTS				
Interest During Construction			74,040	
Legal Services			7,410	
Administration			12,340	
Sales Taxes - 3%			41,460	
Feasibility Study			12,000	
FERC License Exemption			3,500	
TOTAL ADMINISTRATIVE CODTS AND TAXES			150,750	150,750
TOTAL ESTIMATED PROJECT COST				$1,883,400

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JAN 22 1993

MARSH VALLEY HYDROELECTRIC PROJECT

AGREEMENT

McCammon Ditch Company, and Portneuf-Marsh Valley Canal Co., Ltd, being political subdivisions of the State of Idaho, and Marsh Valley Hydro Electric Company for themselves, their successors and assigns, hereafter collectively referred to as "District" and Marsh Valley Hydro Development Company, (a joint venture composed of HYDRO ELECTRIC CONSTRUCTORS, INC., a California corporation, and Arizona Micro-utilities, Inc. an Arizona Corporation) for themselves, their successors, sublessees and assigns, hereafter collectively referred to as "Hydro", agree to enter and do enter into an AGREEMENT.

1. The name of the project shall be MARSH VALLEY HYDROELECTRIC PROJECT.

2. The subject of this AGREEMENT shall be a power generating plant, hereinafter referred to as the "plant" or "power plant".

JAN 22 1993

The power plant will consist of penstocks, pipelines, turbines and generators and related equipment, structures, facilities, including power lines and poles, access roads, and easements, improvements to existing canals, and improvements to existing intake and diversion structures by District. with a combined capacity of approximately 1700 KW together with necessary equipment, structures and transmission equipment, all as more specifically detailed in Exhibit A, which is attached hereto and incorporated herein.

3. The terms of this AGREEMENT shall become effective as they apply to the plant on the date the plant has been accepted by the District for operation and maintenance in conformance with Section 5 below. Acceptance by the District shall not take place until it is determined that all components of the power plant are installed, complete and in good working order and all necessary contracts and approvals have been received by Hydro.

4. Hydro shall be solely responsible for the erection and construction of the power plant and the District shall not be responsible for nor shall it contribute any monies, labor, material or services whatsoever for the erection and construction of the said power plant nor for any other purposes except as outlined in Section 5 below.

5. When the conditions in Section 3 shall have been met, and the plant is on line and delivering electric power to the power purchaser, then the physical operation of the plant shall be

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JAN 22 1993

turned over to the District and the District shall assume financial and administrative responsibility for the physical operations and routine preventative operating maintenance, as outlined in the operating and maintenance manual which contents will be agreeable to the District. Hydro shall deliver to the District specifications and a complete set of accurate as-built design drawings within 30 days of completion of the plant.

Hydro shall pay and be responsible for all maintenance, repair, and improvement work not considered as routine preventative operating maintenance as indicated in the operation and maintenance manual and any other cost, not stated in the manual to be a District responsibility, including payment of any taxes, fees, charges or expenses or expenses of regulatory agency requirements related to the power plant in any way.

The clearing of the trash rack (including removal of ice) on the inlet structures to the canals and to the penstocks shall be a part of routine preventative maintenance which shall be the responsibility of and paid for by the District. Hydro represents that the operation of plant will be automated and will not require full-time, operation & maintenance. It is futher agreed that District's obligation will not exceed 40 man hours per month. Any expense incured beyond 40 man hours per month shall be reimbursed by Hydro upon presentation of proper documentation, said payment to be at the prevailing wage rate on the local area.

6. Hydro will carry, at its sole cost, the insurance

JAN 2 2 1993

policies required in the ground lease agreement.

7. It is further understood and agreed that this AGREEMENT does not now create and shall never be held to create any liability or general obligation upon the District, an no general or special taxes, assessments, or charges shall ever be paid by the District in connection with the facilities or the revenue derived therefrom, but will remain the sole responsibility of Hydro.

District and Hydro intend that the relationship between them shall be solely that of lessor and lessee. Nothing contained in this AGREEMENT or in any other document or instrument made in connection with the power plant shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the District and Hydro.

8. All gross proceeds of the sale of electricity shall be deposited directly by the purchasing utility company in a special account maintained by Downey State Bank, In Kom, Idaho, as Trustee or such other bank chosen by the District and Hydro. After acceptance of the power plant by District and in consideration for Hydro's leasehold interest and the rights and privileges granted by District to District property, water, and facilities, the District will be paid as a fee for services rendered hereunder the proportion of the gross proceeds set forth below, with the remainder to be forwarded to Hydro or its

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JAN 2 2 1993

assignee within 15 working days, after the receipt of the gross proceeds from the purchasing utility company.

For purpose of determining district compensation, the first operating year for each plant will start on the effective date of this AGREEMENT as defined in Section 3.

PERCENT OF GROSS PROCEEDS TO BE PAID

TO DISTRICT

OPERATING YEAR	
1	6%
2	6%
3	6%
4	6%
5	6%
6	6%
7	6%
8	6%
9	6%
10	6%
11	7%
12	7%

JAN 22 1993

13	7%
14	8%
15	8%
16	16%
17	16%
18	16%
19	16%
20	16%
21	16%
22	16%
23	16%
24	17%
25	18%
26	19%
27	20%
28	20%

District and trustee bank account books relating to the proceeds of the sale of electricity will be open to inspection at all times during regular business hours.

9. It is understood and agreed that this AGREEMENT shall never create any general obligation of the District or encumber general funds or general revenues of the District. The District's financial obligations under this AGREEMENT, and its responsibility to Hydro, shall be limited to the amounts and obligations set out in this AGREEMENT, and Hydro hereby waives

JAN 2 2 1993

any recourse to any other source of District revenues or funds to insure performance of District's rights, obligations and liabilities which may arise under this AGREEMENT or the enforcement thereof.

The District makes no assurances or guarantees as to the financial feasibility of the power plant, and Hydro assumes all financial risks of the power plant including, but not limited to, loss of or inadequate water supply, financial detriment imposed under provisions of the Power Purchase Agreement, default of the Power Purchaser, defective materials and workmanship, and failure or defects in upstream impoundment or water transmission facilities.

All assignees and sublessees of this AGREEMENT and/or the GROUND LEASE will be subject and subordinate to each and every term of this AGREEMENT.

10. The District will notify Hydro of the need for any repairs required to be made by Hydro pursuant to Section 5 hereof, and Hydro will make such repairs as soon as possible. At least once a year, Hydro and the district will conduct a joint inspection of the power plant to better determine future power plant needs. It is understood that appropriate State and Federal agencies may wish to inspect said facilities, and Hydro and District shall jointly accompany said inspections.

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JAN 22 1993

11. The ground lease and the operation under this AGREEMENT shall not be deemed a sale to, or a joint venture or partnership with, Hydro, and Hydro shall be entitled to all depreciation and investment tax credits available (whether for purposes of Federal or State Income Tax purposes) on account of its construction and installation of the facility. Hydro shall not be called upon for any further or additional capital contributions for the operation, except to fulfill such financial obligations as may arise pursuant to this AGREEMENT.

12. With regard to the tax benefits which Hydro may gain from the power plant, Hydro assumes the sole risk of any changes or interpretations of Federal or State law which might affect the taxable status or financial feasibility of this power plant. Change in said law, affecting the status of the power plant for tax purposes shall not be considered grounds for termination of this AGREEMENT by Hydro.

13. All notices shall be in writing and shall be sufficient if sent by registered or certified mail to the last known address of the other party to whom such notice is to be given. The addressee of the parties are set forth below the signature lines. In addition, copies of all notices from Hydro to District shall be sent to: Randy Budge, attorney, Pocatelle, Idaho.

JAN 2 2 1993

14. The parties hereto agree that they will execute any further instruments, and that they will perform any acts, any further instruments, and that they perform any acts, not otherwise inconsistent with purposes of this AGREEMENT or the obligations of the parties hereunder, which are or may become necessary to effectuate and to carry out the purposes of this AGREEMENT. However, in no event will District be required to execute any instrument, or to perform any act, or continue this AGREEMENT if such action imposes any financial or administrative burden on District not specifically assumed herein or which in any manner requires District to alter its facilities or the operations of its system or to amend, modify, or relinguish any of its existing rights.

15. So long as each of the parties shall be in compliance with its respective obligations under and pursuant to the terms and conditions of this AGREEMENT, then each party does waive and release and agree to hold the other party harmless from any and all claims for loss of income from power sales whether negligently or due to interruption, however caused, of the generation of electrical power at the power plant which is the subject of this AGREEMENT. In the event any suit is brought by either party against the other to enforce term or condition of this AGREEMENT, the prevailing party shall be entitled to reasonable attorney's fees and costs, including the costs of any consultants retained for purposes of said litigation.

16. Subject to all applicable regulatory authority, both

parties will utilize their best efforts to continue operations of the hydroelectric facilities during any dispute or following any mechanical malfunction of the facilities. Accordingly, in the event of such dispute or failure or malfunction of the power plant, District and Hydro will utilize their best effort to continue operations, and neither party will engage in any act which prevents operation, repair or restart of the power plant.

17. It is agreed that any disputes arising out of this AGREEMENT or any other written agreement of the parties made in connection with this AGREEMENT, shall, if not resolved within 30 days of notice thereof, be submitted to arbitration. Withing 30 days of a request for arbitration, the parties shall agree upon an arbitrator for said dispute. If the parties are unable to agree on a single arbitrator, then each party shall, within 15 days, select and arbitrator and the arbitrators so chosen shall, within 10 days, select a third arbitrator. The arbitration shall be held within 60 days of the completion of said panel and a decision shall be rendered within 60 days after submittal of the matter for decision. Discovery shall be permitted as in civil actions pursuant to the provisions of the Code of Civil Procedure of Idaho.

18. This AGREEMENT shall bind and benefit the successors, sublessees and permitted assigns of each of the parties.

19. This AGREEMENT shall be interpreted and enforced

JAN 2 2 1993

according to the laws of Idaho.

20. District has been induced to enter this AGREEMENT by the established expertise of Hydro as represented to the District. However, it is contemplated by all parties that Hydro may sell the plant to an investment group, or enter into financing agreements with other parties, which sale or agreements may require the assignment of Hydro's interest hereunder. Said assignment shall require the written consent of the District, which shall not be unreasonably withheld.

21. Hydro shall be solely responsible for the financing of the power plant. As a condition subsequent to this AGREEMENT, Hydro shall present to District, for District's review, the detailed financing proposal for the power plant, including all agreements related to said financing.

Review of said financing by District is for the sole purpose of informing the District of the contents of said financing, and said review by District, shall not, in any way, be deemed to constitute an approval of any of the terms or conditions thereof, nor otherwise be construed to make district a party to any such financial agreements.

22. If any governmental agency exercising jurisdiction, or any court or legislative body should determine that this AGREEMENT is illegal or outside the jurisdiction of District or that the District's interest in the power plant or the revenues

JAN 2 2 1993

therefrom subjects the District to taxation and this determination subjects the District, in its opinion, to notcompensational harm or penalty or affects the operations of the District, then this AGREEMENT may be terminaed by either party without further obligation or responsibility of either party hereto. Termination may occur immediately after a final nonappealable judgement or ruling occurs or after any final judgement if neither party hereto elects to appeal the decision. Terminantion pursuant to this section shall not be considered a default by either party.

23. Should Hydro be in default on any provision of this AGREEMENT, or should Hydro voluntarily or involuntarily avail itself of the protection afforded by the Bankruptcy Laws of the United States, or should Hydro be placed in receivership, or make a general assignment for the benefit of creditors, or commit a similar act of insolvency, then Hydro shall be deemed to be in default of its obligations under this AGREEMENT and this AGREEMENT shall be immediately terminated unless the District has consented to the assumption of Hydro's rights and obligations by a third party.

Dated this _____ day of _____,

1984.

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JAN 22 1993

FISH POPULATIONS IN THE VICINITY OF

THE

PROPOSED MARSH VALLEY HYDRO PROJECT

Report To:

J-U-B Engineers, Inc.
and
The Marsh Valley Hydro Electric Company

22 February 1983

By:

J. S. Griffith, Ph.D.
2055 Kenneth Place
Pocatello, ID 83201

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JAN 2 2 1993

Introduction

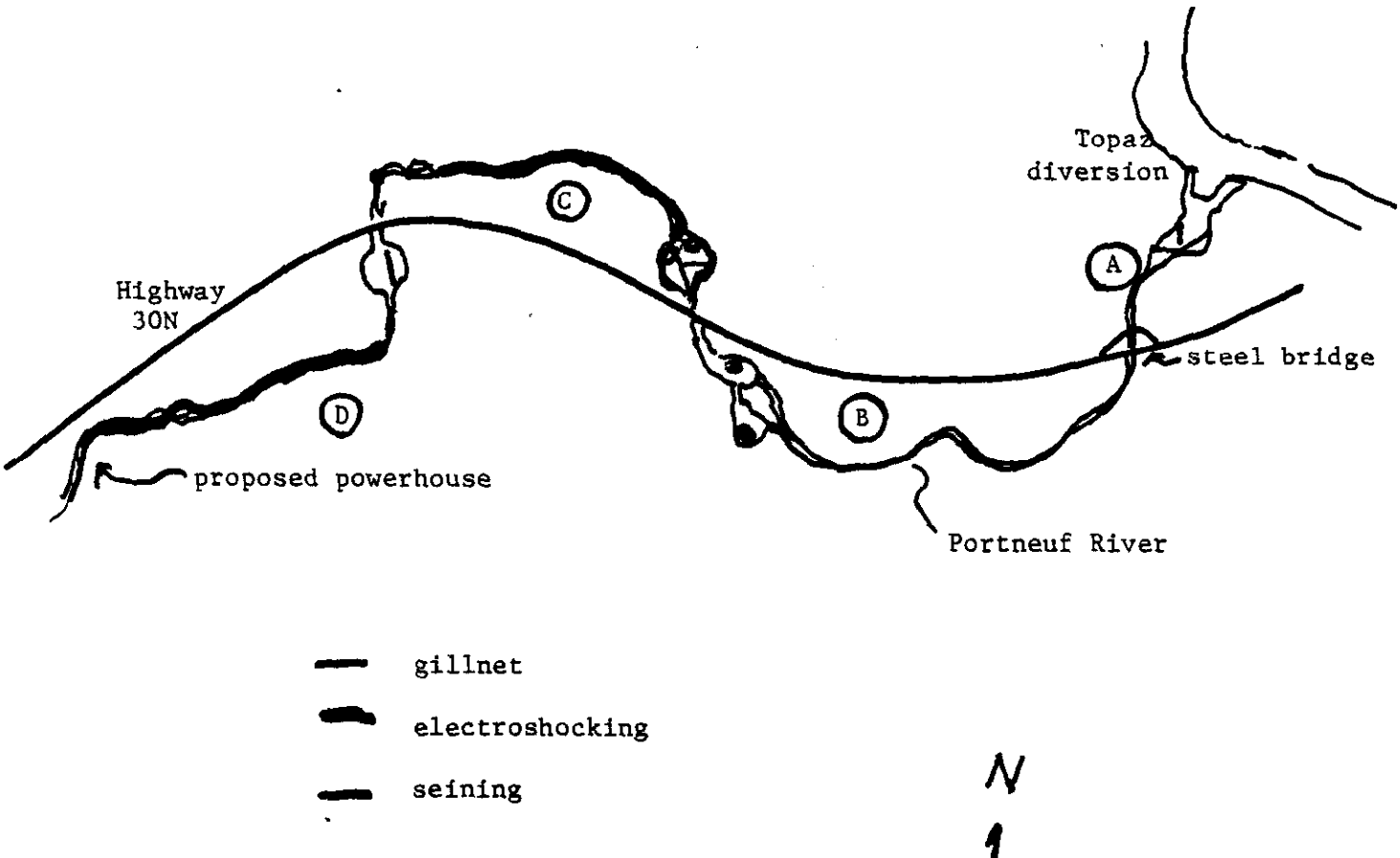
Field data were gathered in January and February 1983 to characterize fish populations in a portion of the Portneuf River between McCammon and Lava Hot Springs (Bannock County, Idaho) that would be impacted by the proposed hydro project. The project would divert approximately 250 cfs at the existing Topaz Diversion during the non-irrigation season and return that flow through a powerhouse to the river at a point adjacent to Highway 30N approximately 1.3 road miles west of the highway bridge at Topaz (Figure 1). Flows in approximately 15,000 feet of the river would thus be substantially reduced, in a manner similar to that in which it (and a longer reach downriver) is presently dewatered during the irrigation season. During peak runoff (typically at 500 - 700 cfs in April), flow would resume in the natural channel.

Site Description

From the Topaz Diversion to the site of the proposed powerhouse, the river is dissected into four segments as it is passed in culverts under Highway 30N (Figure 1). It is impossible to drift a boat equipped with sampling gear from one segment to the next. River segment A, at the head of the section studied, extends approximately 500 feet and is characterized by a steep cascade over a lava sill, a deep plunge pool, and a short run. Segment B, approximately 8,700 feet long, is low-velocity water (possibly channelized along the Union Pacific rail line) followed by two waterfalls and plunge pools. Segment C, approximately 3,500 feet in length, consists of a large pool (the largest in the area studied)

JAN 22 1993

Figure 1. Sampling locations and gear types used to sample fish populations in the Portneuf River below Topaz Diversion.



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and a low-velocity run, with the lower quarter being a series of short drops over lava sills, and small pools. Segment D is 2,300 feet in length, with a pool at its head and then a series of drops (some to 3 feet) and pools. In all, there were five major pools in the 15,000-foot section, all deeper than 10 feet.

During our sampling in January an February of 1983, flows were estimated at approximately 150 cfs. Water levels, as shown on a gage near the powerhouse site, were 1 foot, 1 inch on 29 January and 1 foot, 2 inches on 20 February. Water clarity was about 12-16 inches at the end of January and improved to approximately twice that by mid-February. Water temperature was 39°F on 29 January and 45°F on 20 February.

Sampling Methods

The area was difficult to sample because of physical conditions (depth, velocity, turbidity) and lack of boat access. A combination of electroshocking and gillnetting was utilized and a few seine hauls were made.

A portion of each of the four river segments was sampled. An effort was made to concentrate on the areas of habitat that appeared most likely to hold game fish. Nearly all of Segments C and D were sampled. About half of Segment A was sampled, and Segment B received the least effort.

Electroshocking was done from a 16-foot aluminum drift boat with a 2,500-watt generator producing 300 volts D.C. and using the boat hull as the negative electrode. Two sizes of bottom-set gillnets were used. One was 1½ inch square mesh X 4-feet high X 60 -feet long, and the other was graded in mesh size from 3/4 inch to 1-3/4in five increments, 4-feet

JAN 2 2 1993

high and 125-feet long. Nets were set for 1-2 hours during the day, or, in one case, overnight. The seine utilized was a 50-foot bag seine.

The only pool that would be sampled by electroshocking was that in Segment C. The rest of that segment was also electroshocked to the beginning of the lava falls at the downstream end. The pool in Segment D was inaccessible to the electroshocking boat, but the portion of the segment beginning approximately 250 feet below the tail of the pool was shocked. The pools in Segments A and B were inaccessible to the shocker.

Gillnetting was feasible only in the pools and was used in Segments A, C and D. The pools in Segment B were too small and water was too swiftly-flowing to enable the nets to be effectively used. The bag seine could only be used where water was shallow and free of submerged obstructions.

Fish Populations

Eight species of fish were collected, probably all of those that are present in the section of river. They were:

brown trout ... Salmo trutta
rainbow trout...Salmo gairdneri
Utah sucker ... Catostomus ardens
bluehead sucker... Catostomus discobolus
Utah chub.....Gila atraria
speckled dace...Rhinichthys osculus
redside shiner..Richardsonius balteatus
mottled sculpin.Cottus bairdi

All are common in southeast Idaho with the exception of the bluehead sucker, which is relatively uncommon but is not considered to be a species of special concern at this time.

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A total of 139 fish were collected (Table 1), excluding mottled sculpin which were abundant in some areas of rocky substrate but were not collected. The bulk of the fish collected, both by weight and by numbers, were suckers. Most suckers were 10-14 inches in length, with none smaller than 8 inches taken.

Minnows (shiners, dace and chub) were relatively uncommon. Therefore the forage base of small fish available as food for predatory brown trout was very limited.

Only seven trout (5% of all fish collected) were captured. Brown trout were more numerous than rainbow trout. Sizes of the trout were:

	total length, cm	weight, grams
Browns:	48.3	822
	38.7	482
	29.9	229
	33.1	325
	29.5	226
Rainbows:	25.8	255
	19.8	162

All were wild trout. Scales were analyzed, and the oldest rainbow was in its third year of life. The two largest browns, both captured in the pool in Segment D, were both aged seven years. The smaller browns were ages 4 and 5. All browns were in noticeably poor condition (see photos), probably due to a lack of forage fish.

Due to the small sample size, it was not possible to obtain a quantative estimate of trout abundance. Trout are certainly not abundant in the area examined, and I would estimate the total population to be

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less than 200 trout, mostly inhabiting the pools.

No anglers were observed in the area examined on any of the occasions we sampled. One local resident reported taking a few trout from the pool in Segment C over the last few years.

Physically, the section of river appears to provide fair habitat for trout. There is good water depth and bank cover. The substrate was very heavily sedimanted. No spring areas nor areas offering spawning habitat for trout were observed.



Brown trout 48.3cm
Segment D below Topaz
Portneuf R. 21 Feb 1983

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POOL C 19 Jan. 1983
Utah Suckers in gill net



POOL C 19 Jan. 1983 Brown trout

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Table 1. Numbers of fish collected in the vicinity of the proposed Marsh Valley Hydro Project on the Portneuf River below the Topaz Diversion, 1983.

Stream segment	Date	Gear	Effort, hours	trout		suckers		Utah chub	speckled dace	redside shiner	mottled sculp
				brown	rainbow	Utah	bluehead				
A - pool	19 Feb	1½" gillnet	2.0	no fish collected							
		graded "	2.0	no fish collected							
B - pool	19 Feb	bag seine	0.5							26	
C - pool	29 Jan	shocker	0.7	2	2	3	0	0	4	4	2
"	" "	1½ gillnet	1.0	0	0	15	0	1	0	0	0
"	" "	graded "	1.0	0	0	18	1	0	0	0	0
"	" "	bag seine	1.0	no fish collected							
C - middle	29 Jan	shocker	0.6	no fish collected							
"	" "	1½ gillnet	1.0	no fish collected							
D - all except pool	29 Jan	shocker	1.2	1	0	23	4	0	0	0	commor
D - pool	20-21 Feb	graded gill.	16.0	2	0	28	5	0	0	0	0
TOTAL				5	2	87	10	1	4	30	

JAN 2 2 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup
Idaho Falls, Idaho 83401
(208) 525-7161

August 7, 1984

RE: Application for Permit #29-7772, MARSH VALLEY HYDRO-ELECTRIC CO.

Randal C. Budge
P.O. Box 1391
Pocatello, ID 83204

Dear Mr. Budge:

A review of the file for the above captioned application reveals that we have never received verification that Marsh Valley Hydro-Electric Co. is a corporation qualified to do business in the State of Idaho. To satisfy the requirement, please provide the information requested under items A2 and B of the enclosed residency affidavit form. When these items have been completed, sign the form in the presence of a notary and return it to this office. Since this information is required under Section 42-206 of the Idaho Code failure to submit this form by August 27, 1984 could jeapordize the priority of Marsh Valley Hydro-Electric Company's application.

Enclosed you will also find a copy of the departments letter sent to Mr. Lyndon Green on July 11, 1984. This letter requests some specific information that is needed to supplement the hydro-power application. The letter further advises the applicant has 90 days to provide this information.

If you have any questions concerning the residency affidavit or the information requested in the letter of July 11, 1984, please feel free to call or contact me.

Respectfully submitted,

Ernest Carlsen.

ERNEST CARLSEN
Assistant Regional Supervisor

EC:jk

Enclosures

MICROFILMED
JAN 22 1993

July 17, 1984

RE: Application for Permit No. 29-7772

Lyndon Green, President
Marsh Valley Hydro Electric Company
McCammon, ID 83250

Dear Mr. Green:

In addition to the information requested in the Department's letter of July 11, 1984, Section 42-206 of the Idaho Code also requires that the applicant be qualified to do business in Idaho. To satisfy this requirement, simply provide the information requested in items 2a and b of the enclosed form, sign it in the presence of a notary, and return the form to this office.

Your cooperation and prompt action in returning the residency affidavit will be appreciated.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enc: Aff/Res.

JAN 2 2 1993

July 11, 1984

RE: Application for Permit No. 29-7772

Marsh Valley Hydro Electric Company
c/o Lyndon Green, President
McCammon, Idaho 83250

Dear Mr. Green:

Though the initial processing of the above captioned application for permit is finished, state law requires certain information be furnished to supplement the filing.

Since the application seeks to establish a water right for power generating purposes, and it appears a commercially marketable amount of power may be produced, the following information must be submitted in accordance with Section 42-202 of the Idaho Code.

1. Preliminary engineering design of the facility identifying approximate locations, dimensions, and elevations of diversion structure, penstock, and generating facility. This should include a scale drawing showing the proposed layout of these structures so the impact to the stream can be determined.

2. An itemized estimate of the construction costs.

3. Demonstration of financial ability to build the project by furnishing either a financial statement showing that the applicant has the necessary financial resources or a letter of commitment to finance the project from an institution with sufficient resources.

RECEIVED

JAN 2 2 1993

To insure there is adequate opportunity for furnishing the above information, all administrative action on your application will be suspended for the next 90 days. Failure to submit the information within this time period could jeopardize the standing of the application with the Department.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

JAN 2 2 1993

July 5, 1984

Marsh Valley Hydro Electric Company
c/o Lyndon Green, President
McCammon, ID 83250

Dear Mr. Green;

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to your Application No. 29-7772. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

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

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

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

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

Enclosure

cc: IDWR - State Office

July 5, 1984

RE: Application for Permit No. 29-7772 MARSH VALLEY HYDRO ELECTRIC CO.

Chris Chaffin
Acting Supervisor, Reg. 5
Idaho Fish & Game
P.O. Box 4229
Pocatello, ID 83201

Dear Mr. Chaffin:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

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

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

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

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

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

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

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

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

JAN 2 2 1993

RDC:cw

cc: IDWR - State Office

IDAHO DEPARTMENT OF FISH AND GAME
REGION 5 Phone 232-4703
South Fifth Avenue • P.O. Box 4229
Pocatello, Idaho 83201

RECEIVED
JUN 18 1984
Department of Water Resources
Eastern District Office

June 14, 1984

Mr. Ernest Carlsen
Assistant Regional Supervisor
Department of Water Resources
Eastern Region
150 Shoup, Suite 15
Idaho Falls, Idaho 83402

Dear Mr. Carlsen:

SUBJECT: Application for Permit No. 29-7772 by Marsh Valley Hydro

As is customary with all water right applications involving hydro-electric projects we object to this permit until we receive further project details.

Sincerely,

Chris Chaffin
Acting Supervisor, Region 5

JAN 2 2 1993

June 11, 1984

RE: Application for Permit No. 29-7772 MARSH VALLEY HYDRO

Department of Fish & Game
Region 5
P.O. Box 4299
Pocatello, Idaho 83201

Gentlemen:

We are enclosing a copy of an application that may be of interest to your agency. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is July 2, 1984, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enclosure

JAN 2 2 1993

June 11, 1984

RE: Application for Permit No. 29-7772 MARSH VALLEY HYDRO

Mr. Thomas Bloxham, Watermaster
Water District No. 29
Downey, ID 83234

Dear Mr. Bloxham:

We are enclosing a copy of an application that may be of interest to your water district. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is July 2, 1984, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enclosure

JAN 2 2 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

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

June 7, 1984

Randal C. Budge
P.O. Box 1391
Pocatello, ID 83204

Dear Mr. Budge,

Idaho Department of Water Resources has received an application for permit from Marsh Valley Hydro Electric Company. Prior to processing the application several additional items must be submitted and several questions answered.

Any power application which will generate 500 HP or greater must be accompanied with a financial statement indicating that the company has dedicated resources to complete the proposed project and a copy of the engineering plans which will be used for construction of the project.

The application states the water will supplement Permit application 29-7585 (I believe this should be 29-7578). Since McCammon Ditch Company is the applicant of 29-7578 what arrangement has been made with the ditch company which will allow this to be supplemental water? Is this 75.0 cfs. part of any existing right owned by this company? What is the capacity of the canal indicated on the application? Will the canal require enlarging?

Please provide the financial statement, plans and answers to the questions as soon as they are available.

If you have any questions call 525-7161 or come into the Idaho Falls office.

Sincerely,

Gerald F. Ramsey
Radiologic Specialist

GFR/cz

Enc.

JAN 2 2 1993

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

---

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

JUNE 6, 1984

Idaho State Journal
P. O. Box 431
Pocatello, Idaho 83201

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 JULY 2, 1984.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

JAN 22

NOTICE OF APPLICATION FOR WATER RIGHT

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

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before JULY 2, 1984.

KEN DUNN, Dir.

Published 6/14 & 6/21/84.

RECEIVED

JAN 22 1993

29=ZZZZ

MARSH VALLEY HYDRO ELECTRIC CO.

MC CAMMON, ID 83250

Source: PORTNEUF RIVER trib. to SNAKE RIVER

Date Filed: 06/05/1984

Diversion Pt: SENW Sec 22 T 09S R 37E

(75.00 CFS)

Use: POWER

In: NWNW Sec 21 T 09S R 37E

29-7772
MARSH VALLEY HYDRO ELECTRIC
CO.
MCCAMMON, ID 83250
Source: PORTNEUF RIVER trib. to
SNAKE RIVER
Date Filed: 06-05-1984
Diversion Pt: SENW Sec 22 T 09S R 37E
Use: POWER (75.00 CFS)
In: NWNW Sec 21 T 09S R 37E
The permit(s) will be subject to all prior
water rights. Protests must be filed with
the Director, Dept. of Water Resources,
150 Shoup Ave., Suite 15, Idaho Falls,
Idaho 83402 on or before JULY 2, 1984.
S/Ken Dunn, Dir.
June 14, 21, 1984
No. 18
<i<i<i<i

JAN 2 2 1993

STAFF SHEET FOR POWER GENERATION

INITIAL REVIEW BY _____ APPLICATION NO. 29-7.72

DATE REQUESTED	IN FILE	
_____	_____	Form 205/206
_____	_____	Financial statement if operating capacity is more than 500 HP 0.37 MW 373 KW
_____	_____	Statement declaring what the applicant proposes to do with the generated power. (NOT MANDATORY)
_____	79%	Efficiency is between 85% and 60%

P = kilowatts .74 x hp

Q = c.f.s.

H = feet

e = efficiency

$$e = \frac{P\ (11.8)}{QH} = \frac{.74(600)\ (11.8)}{(88)\ (75)} = 79\% = \_\_\_\_$$

SECRETARY OF STATE VERIFICATION
FOR CORPORATION (334-2300) yes 6/6/84

JAN 22 1983

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204

TELEPHONE
AREA CODE 208
232-6101

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE

JOHN A. BAILEY
WILLIAM F. BACON
JOHN R. GOODELL*
JOHN B. INGELSTROM
PATRICK J. OSHIE **

* ALSO MEMBER ILLINOIS BAR
**ALSO MEMBER UTAH BAR

31 May 1984

RECEIVED
JUN 5 1984
Department of Water Resources
Eastern District Office

IDAHO DEPARTMENT OF
WATER RESOURCES
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Marsh Valley Hydro Electric Company

Gentlemen:

Enclosed please find APPLICATION FOR PERMIT submitted on behalf of Marsh Valley Hydro Electric Company, together with their check for filing fees in the amount of $575.00. Please file and begin processing the same.

Please contact me if you have any questions. Also notify me of any protests received and provide us a copy of the approved application.

Thank you for your assistance in this matter.

Very truly yours,

RANDALL C. BUDGE

RCB:kmh
Encs.

JUN 22 1984