Form 202
3/78

Ident. No. 13-7416

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPROVED

AMENDED

APPLICATION FOR PERMIT AMENDED

To appropriate the public waters of the State of Idaho

1. Name of applicant Robert N. Fackrell Phone 208-852-1522

   Post office address P.O. Box 1, Preston, ID 83263

2. Source of water supply Mink Creek which is a tributary of Bear River

3. Location of point of diversion is SW ¼ of NE ¼ of Section 23 Township 13S

   Range 41E B.M. Franklin County, additional points of diversion if any: ____

   (unsurveyed)

4. Water will be used for the following purposes:

   Amount 100.0 cfs (cfs ~~or acre-feet per annum~~) for Power purposes from 1/1 to 12/31 (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. 100.0 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. concrete and steel diversion structure with a 60" diameter bypass and 48" diameter penstock

   b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

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

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

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

8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: NE ¼ of SE ¼ of Section 28 Township 13S

      Range 41E B.M.

      (2) Amount of power to be generated: 3.1 mw. ~~horsepower~~ under 467 feet of head.

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

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

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

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. None

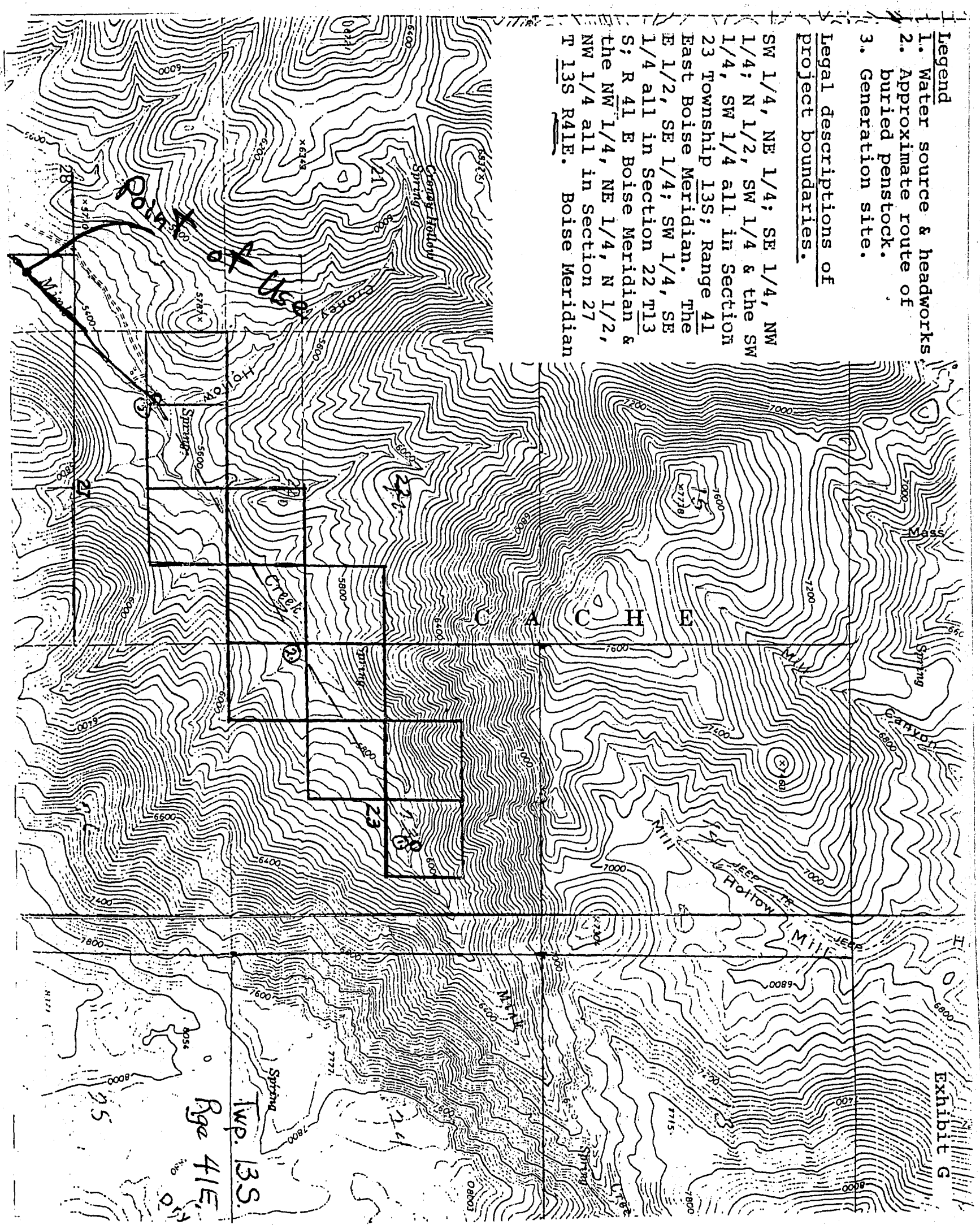
9. a. Who owns the property at the point of diversion U.S. Forest Service

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

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 secured agreement with Valdo Benson for construction of project on Mr. Benson's property. A special use permit is being obtained from USFS.

10. Remarks The application is being amended in order to accurately describe the hydro-electric project as presented in the application for license before the Federal Energy Regulatory Commission.

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



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.

(Applicant)

Proposed Priority 5/18/84

Received by DW Date 5-15-86 Time 1:30p

Preliminary check by KCW Fee $ 20.00

Receipted by MD Date 5/20/86 # 39639

Publication prepared by MD Date 5/21/86

Published in Preston Citizen Lewiston Trib Times News Idaho Statesman

NOC LEWISTON TRIB + REG. AD IN PRESTON CITIZEN 7-3 + 7-10-86

Publication dates 5/29 + 6/5/86

Publication approved DW Date 8-01-86

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by KW

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 13-7416, and said application is hereby APPROVED.

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 1991.

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

   d. Other: SEE ATTACHED SHEET FOR CONDITIONS d thru

Witness my hand this 20th day of August, 1986.

L. Glen Saxton

Chief, Operations Bureau

#875 JUN 25 1984

№ 2117

AFFIDAVIT OF PUBLICATION

RECEIVED
JUL 5 1984
Department of Water Resources
Eastern District Office

STATE OF IDAHO, }
County of Franklin } ss.

J. Walter Ross
being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

May 31, 1984, and ending

with the issue of June 7, 1984.

J. Walter Ross

Fee $ 14.38

Subscribed and sworn to before me this 30th day

of June, 1984.

Kevin Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986

NOTICE OF APPLICATION FOR WATER RIGHT

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

13-7416

FACKRELL, ROBERT N.
P.O. BOX 1, PRESTON, ID 83263
Source: MINK CREEK trib. to BEAR RIVER
Date Filed: 05/18/1984
Diversion Pt: SWSE Sec 13 T 13S R 41E
Use: POWER (125.00 CFS)
In: SESE Sec 22 T 13S R 41E

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 JUNE 18, 1984.

KEN DUNN, Dir.

Published 5/31 & 6/7/84
Legal No. 2117 —23L— Published May 31, June 7, 1984

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due
31.04

Account Name	Account Number
ID. Department of Water Resources - Eastern Reg.	#100564

Address	City/State	Zip
150 Shoup Ave., Suite 15	Idaho Falls, ID	83402

Ordered By	P.O. Number	Rate	Run Dates
Ronald D. Carlson		nt	1986 May 29, June 5

Identification	Legal Number
Amended Application for Water Right - Fackrell	#2264

[1] Number of Affidavits Requested

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that the Application for Permit No. 13-7416 in the name of ROBERT N. FACKRELL, Preston, Idaho, was filed for the diversion of 125.0 cfs of water from Mink Creek tributary to Bear River, with point of diversion within the SW¼SE¼, Sec. 13T.13S., R.41E., B.M., Franklin County, the water to be used for power generation purposes from Jan. 1 to Dec. 31, within the SE¼SE¼, Sec. 22, T.13S., R.41E., B.M.

The applicant now proposes to amend Application No. 13-7416, requesting 100.0 cfs of water and amending the point of diversion to within the SW¼NE¼, Sec. 23, T.13S., R.41E., for use within the NE¼SE¼, Sec. 28, T.13S., R.41E., B.M., Franklin County.

Any protest to the proposed amending of the application must be filed with the Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83401, on or before June 16, 1986.

A. KENNETH DUNN
Director

Pub. May 29, June 5, 1986 2264

RECEIVED
JUN 6 1986
Department of Water Resources
Eastern District Office

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Laura Gay Barnes, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for Two (2) ☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip insertion(s) beginning with the issue of May 29, 1986, and ending with the issue of June 5, 1986.

Laura Gay Barnes

Subscribed and sworn to before me this 5th day of June, 1986.

Jeanne M Hawk

Notary Public for Idaho, Residing at Boise, Idaho.

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

Date 060584 INVOICE No. L00077544

Account No. 44660

Description 77544NOTIC

Times 2 Lines 32

Tab Lines

$ 28.00

LEGAL ADVERTISING
INVOICE

SOLD TO:
STATE OF IDAHO
DEPT OF WATER RESOURCES
150 SHOUP AVE, SUITE 15
IDAHO FALLS
ID83402

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

77544

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that Application for Permit No. 13-7416 in the name of Robert N. Fackrell, Preston, Idaho, was filed for the diversion of 125.0 cfs of water from Mink Creek tributary to Bear River, with point of diversion within the SW¼SE¼, Sec. 13 T. 13S, R. 41E, B.M., Franklin County, the water to be used for Power generation purposes from Jan. 1 to Dec. 31, within the SE¼SE¼, Sec. 22, T. 13S, R.41E, B.M.

The applicant now proposes to amend Application No. 13-7416, requesting 100.0 cfs of water and amending the point of diversion to within the SE¼NE¼, Sec. 23 T. 13S, R. 41E, for use within the NE¼SE¼, Sec. 28, T. 13S, R. 41E, B.M. Franklin County.

Any protest to the proposed amending of the application must be filed with the Department of Water Resources 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83401, on or before June 16, 1986.

A. Kenneth Dunn
Director

RECEIVED
JUN 9 1986
Department of Water Resources
Eastern District Office

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

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

NOTICE OF AMENDED APPLICAT

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 052986, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 052986, and the last publication thereof being on the 060586, and said NOTICE OF AMENDED APPLICAT was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Rena R. Thomason

SUBSCRIBED AND SWORN BEFORE ME THIS THE 5 day of June 1986

Sherel McLaury

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

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that Application for Permit No. 13-7416 in the name of Robert N. Fackrell, Preston, Idaho was filed for the diversion of 125.0 cfs of water from Mink Creek tributary to Bear River, with point of diversion within the SW¼SE¼, Sec. 13 T. 13S, R 41E, B.M., Franklin County, the water to be used for Power generation purposes from Jan 1 to Dec. 31, within the SE¼SE¼, Sec. 22, T 13S, R.41E, B.M.

The applicant now proposes to amend Application No. 13-7416, requesting 100.0 cfs of water and amending the point of diversion to within the SW¼NE¼, Sec. 23, T. 13S, R. 41E, for use within the NE¼SE¼, Sec. 28, T. 13S, R. 41E, B.M. Franklin County.

Any protest to the proposed amending of the application must be filed with the Department of Water Resources 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83401, on or before June 23, 1986.

A. Kenneth Dunn
Director

PUBLISH: Thursdays, May 29, and June 5 & 12, 1986.

Affidavit of Publication

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

No 16326

I, Belinda J Capps, being first duly sworn upon oath, depose and say that I am Publication Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for three consecutive weeks, commencing with the issue dated May 29, 1986, and ending with the issue dated June 12, 1986.

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

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

Belinda J Capps

Subscribed and sworn to before me on this 12th day of June, 1986.

Deanna Kruse

Notary Public in and for the County of Twin Falls, State of Idaho, residing at Twin Falls, Idaho

RECEIVED JUN 1986 Department of Water Resources Eastern Division Office

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

Date 071086 INVOICE No. L00080946

Account No. 44660

Description 80946NOTIC

Times 2 Lines 22

Tab Lines

$ 19.25

LEGAL ADVERTISING
INVOICE

SOLD TO:

DEPT OF WATER RESOURCES
150 SHOUP AVE, SUITE 15
IDAHO FALLS
ID83402

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

80946

NOTICE OF CORRECTION

Notice is hereby given that Application No. 13-7416 in the name of Robert N. Fackrell, Preston, Idaho, was incorrectly advertised on May 29 and June 5, 1986. The Amended Point of Diversion was advertised as being within the SE¼NE¼, Sec. 23, T. 13S, R. 41E.

Whereas, the actual amended point of diversion is within the SW¼NE¼, Sec. 23, T. 13S, R. 41E, B.M.

Any protests against the granting of this permit as a result of thiscorrection must be filed with the Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402, on or before July 21, 1986.

A. Kenneth Dunn
Director

81906

RECEIVED
JUL 17 1986
Department of Water Resources
Eastern District Office

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

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

NOTICE OF CORRECTION IS

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 070386, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 070386, and the last publication thereof being on the 071086, and said NOTICE OF CORRECTION IS

was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Rena K. Thomason

SUBSCRIBED AND SWORN BEFORE ME THIS THE 14 day of July 1986

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

#875

JUL 31 1986

№ 2510

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }
County of Franklin } ss.

J. Walter Ross
being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

July 10, 1986, and ending

with the issue of July 17, 1986

J. Walter Ross

Fee $ 28.00

Subscribed and sworn to before me this 31st day

of July, 1986.

Kim D. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1992

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that Application for Permit No. 13-7416 in the name of Robert N. Fackrell, Preston, Idaho was filed for the diversion of 125.0 cfs of water from Mink Creek tributary to Bear River, with point of diversion within the SW¼ SE¼, Section 13T, 13S, R. 41E., B.M., Franklin County, the water to be used for power generation purposes from Jan. 1 to Dec. 31, with the SE¼ SE¼, Sec. 22, T. 13S, R. 41E, B.M.

The applicant now proposes to amend Application No. 13-7416 requesting 100.0 cfs of water, and amending the point of diversion to within the SW¼ NE¼, Sec. 23, T. 13S, R. 41E, for use within the NE¼ SE¼, Sec. 28, T. 13S, R. 41E, B.M. Franklin County.

Any protest to the proposed amending of the application must be filed with the Department of Water Resources 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83401, on or before July 28, 1986.

A. Kenneth Dunn
Director

Legal No. 2510—32L—Publish July 10, 17, 1986.

RECEIVED
AUG 1 1986
Department of Water Resources
Eastern District Office

Void - see amended application.

Form 202
3/78

Ident. No. 13-7416

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Robert N. Fackrell Phone 208-852-1522

Post office address P.O. Box 1, Preston, ID 83263

2. Source of water supply Mink Creek which is a tributary of Bear River

3. Location of point of diversion is SW ¼ of SE ¼ of Section 13 Township 13S

Range 41E B.M. Franklin County, additional points of diversion if any: ____

(unsurveyed)

4. Water will be used for the following purposes:

Amount 125.0cfs (cfs or acre-feet per annum) for Power Generation purposes from 1/1 to 12/31 (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. 125.0 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. concrete diversion into 42" penstock

b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

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

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

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

8. Description of proposed uses:

a. If water is **not** for irrigation:

(1) Give the place of use of water: SE ¼ of SE ¼ of Section 22 Township 13S

Range 41E B.M.

(2) Amount of power to be generated: 9900kw ~~horsepower~~ under 1200 feet of head.

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

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

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

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. None

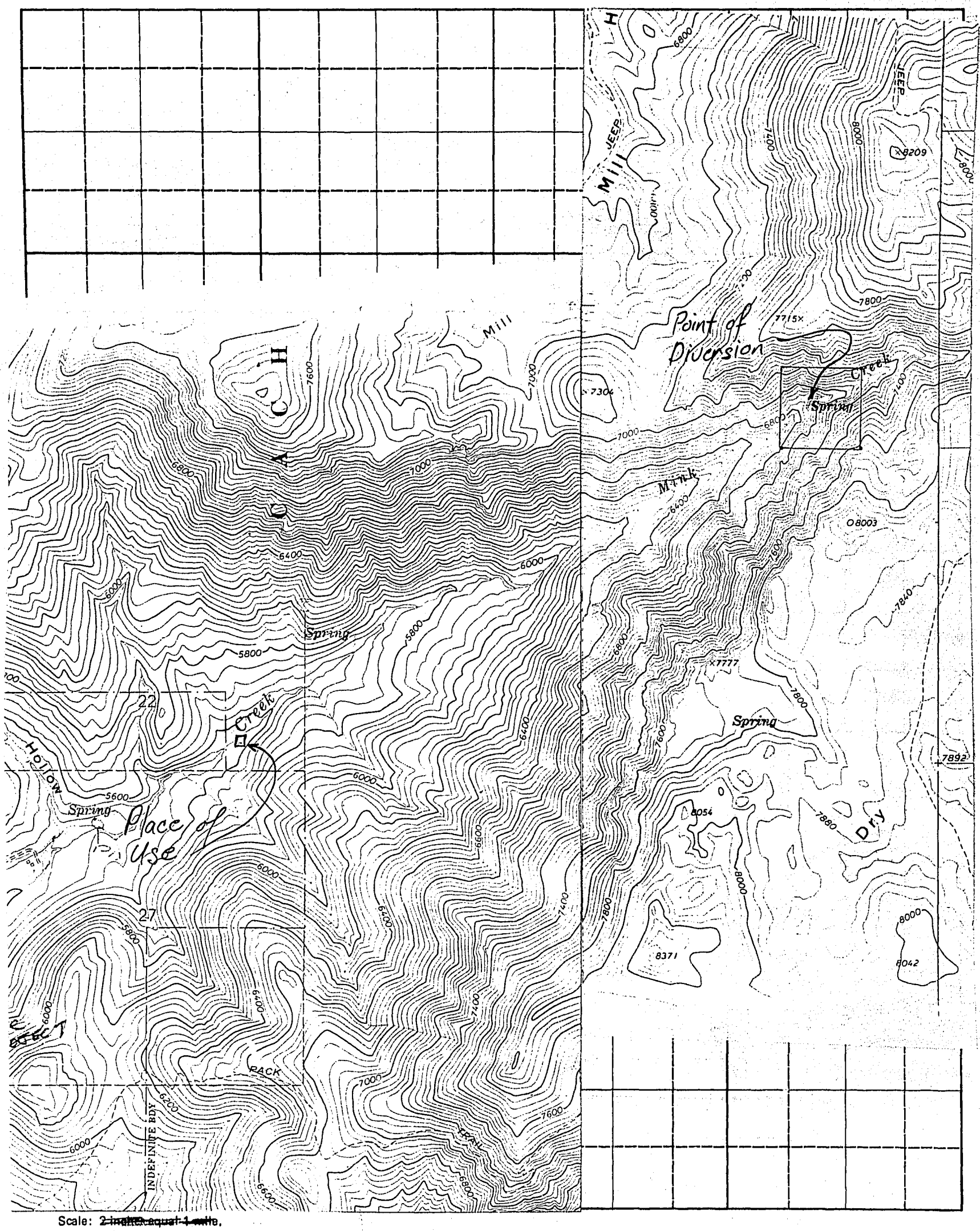
9. a. Who owns the property at the point of diversion US Forest Service (Cache National Forest)

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

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Applicant will have to acquire a special use permit from the Forest Service.

10. Remarks

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~~.
1:24,000

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.

John M. Faribull
(Applicant)

Received by EMC Date 5/18/84 Time 1:45 p.m.

Preliminary check by GFR Fee $ 1350.00

Receipted by CW Date 5-18-84 #33548

Publication prepared by CW Date 5-23-84

Published in Preston Citizen

Publication dates 5/31 & 6/07/84

Publication approved CW Date 7-5-84

Protests filed by: ~~Forest Service~~ W/Th Drawn, F & G

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:

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, Robert N. Fackrell (name) of Preston (city),

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

2. Corporation:

I,_____ (name) of_____ (city),

County of_____, State of Idaho, being duly sworn, depose and say: That I am the designated registered agent of the_____

_____ (name of corporation): that as such I am in charge of the registered office of the said corporation as required by Section 30-1-12, Idaho Code, at

_____ (city) Idaho, wherein are kept the corporate records required by Section 30-1-52, Idaho Code: and that_____ (name of corporation)

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

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)

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

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

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

Robert N. Fackrell
Applicant

State of Idaho)
County of Bonneville) ss.

On this 18th day of May, 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.

Colleen Wray
Notary Public residing at
Idaho Falls, ID

seal

My commission expires:

6-15-85

ATTACHMENT TO CONDITIONS OF APPROVAL

For Permit No. 13-7416

d. Water used under this permit if discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.

e. 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.

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

g. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.

h. The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director on the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

i. 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.

j. This permit is subject to the agreement dated 1/13/1986 between permit holder and protestant(s) to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources.

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

l. Use of water under this permit shall be non-consumptive.

m. A separate stream alteration permit from the IDWR is required for any activity in the stream channel other than construction and/or maintenance of the diversion structure. If your proposed construction or operation involves construction of an outfall or any other work in the stream channel other than a water diversion, you must contact the Department and obtain a Stream Channel Alteration permit prior to the start of construction.

n. Use of water under this permit is subject to control by the watermaster of State Water District No. 13N, Mink Creek.

Witness my hand this 20th day of August, 1986.

L. Glen Saxton

Chief, Operations Bureau

STAFF SHEET FOR POWER GENERATION

INITIAL REVIEW BY G. F. RAMSEY
MAY 21 1984

APPLICATION NO. 13 7416

DATE REQUESTED	IN FILE	
_____	YES	Form 205/206 ~~NOT NEEDED~~
_____	_____	Financial statement if NEEDED operating capacity is more than 500 HP, 0.37 MW, 373 KW
_____	NO	Statement declaring what the applicant proposes to do with the generated power. (NOT MANDATORY)
_____	78 %	Efficiency is between 85% and 60%

P = kilowatts .74 x hp
Q = c.f.s.
H = feet
e = efficiency

$$e = \frac{P\ (11.8)}{QH} = \frac{(9900)\ (11.8)}{(125)\ (1200)} = 78\ \% = \_\_\_\_$$

$\frac{P}{.74} = .74 \times hp$

May 22, 1984

Robert Fackrell
P.O. Box #1
Preston, ID 83263

Dear Mr. Fackrell:

Prior to processing your application for 125 cfs from Mink Creek Water for power generation, it is necessary to have on file with the Department a copy of the plans for your project and a financial statement which indicates that you have sufficient resources to complete such a project.

The plans should be engineering drawings and plans of both the point of diversion and place of use including the generation facilities. The financial statement may be in any form or format which will show that sufficient resources are available and are committed to this project. Financial information will be treated as confidential information.

If you have any questions please call (525-7161) or come to the Idaho Falls office.

Sincerely,

GERALD F. RAMSEY
Radiologic Specialist

GFR:jk

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

MAY 23, 1984

The Preston Citizen
P. O. Box 472
Preston, Idaho 83263

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 JUNE 18, 1984.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

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 JUNE 18, 1984.

KEN DUNN, Dir.

Published 5/31 & 6/7/84.

13-2416

FACKRELL, ROBERT N.

P.O. BOX 1, PRESTON, ID 83263

Source: MINK CREEK trib. to BEAR RIVER

Date Filed: 05/18/1984

Diversion Pt: SWSE Sec 13 T 13S R 41E

Use: POWER (125.00 CFS)

In: SESE Sec 22 T 13S R 41E

Proofed by phone
5-29-84
JR

May 24, 1984

RE: Application for Permit No. 13-7416 FACKRELL

U.S. Forest Service
324 25th Street
Ogden, Utah 84401

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 June 18, 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

May 24, 1984

RE: Application for Permit No. 13-7416 FACKRELL

Idaho Department of Fish & Game
P.O. Box 4299
Pocatello, ID 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 June 18, 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

May 24, 1984

RE: Application for Permit No. 13-7416 FACKRELL

Dean C. Smith, Watermaseer
Water District No. 13-N
Rt. #2, Box 433
Preston, ID 83263

Dear Mr. Smith:

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 June 18, 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

ROBERT N. FACKRELL
GENERAL CONTRACTOR

P.O. BOX 1 • PRESTON, IDAHO 83263
(208) 852-1522

RECEIVED
MAY 29 1984
Department of Water Resources
Eastern District Office

May 24, 1984

Mr. Ron Carlsen
State of Idaho
Department of Water Resources
Eastern district Office
150 Shoup - Suite 15
Idaho falls, Idaho 83402

Dear Ron,

As per our telephone conversation of this afternoon, I am writing this letter in responce to a letter that I received from Gerald Ramsey dated May 22, 1984. Mr. Ramsey advised me that I neede to submit to your office a financial statement on myself as well as a set of drawings outlining the proposed Mink Creek project referenced in his letter.

In responce to his first request, I have enclosed a copy of the financial statement that was submitted to the State of Idaho Public Works Contractors Licensing Board. By way of comment concerning the resourses that I have available for, or committed to this project, I have discussed funding of this project with four individuals who are at the very least able to fund a project of this size and have received positive responces from all of them. In addition, I have discussed this project with a commercial lender who has as well expressed interest in considering it. Until more information is available from the feasability study presently underway, I am not in a position to committ any lender to a project such as this.

With reference to the second request of Mr. Ramsey, I have retained Mr. Ted Sorenson of Idaho Falls as a consulting engineer to assemble the pertinant data for F.E.R.C. as well as the money sources mentioned above. As soon as we receive the "Hydrological Curve" information from your department, we will be well underway on assembling the engineering drawings requested. As soon as thes drawings are complete, I will supply you with as many sets as you require.

In closing, I do appreciate the time that you extended to me on the telephone and I hope to be able to comply with any and all requirements that you may have.

Sincerely,

Robert N. Fackrell

APPLICANT'S CURRENT FINANCIAL STATEMENT

as of 01/84
Date

Name Robert N. Fackrell
Principal Banker First Security Bank - Preston, Idaho 83263
Surety Fred A. Moreton & Co. - Kent Bills, Agent

ASSETS

Current Assets:		
Cash	$263,000.00	
Accounts Receivable from Completed Contracts	3,500.00	
Sums Earned on Incomplete Contracts	36,758.00	
" Amounts due from Officers, Stockholders, Affiliated Companies & Employees		
Notes Receivable		
Other Accounts Receivable		
Materials in Stock not Included Above	24,000.00	
Negotiable Securities		
Other Current Assets		
Total Current Assets		$327,258.00
Fixed and Other Assets:		
Real Estate:		
Used for Business Purposes	25,000.00	
Not Used for Business	295,600.00	
Construction Plant and Equipment (Net book value from Item 9, Page 5)	99,000.00	
Furniture & Fixtures	12,000.00	
Other Non-Current Assets		
Total Fixed & Other Assets		$431,600.00
TOTAL ASSETS		$758,858.00

LIABILITIES AND CAPITAL

	Due Within Year	Due After One Year	Total
Liabilities:			
Accounts Payable	$196,000.00	0	$196,000.00
Other Current Liabilities	0	0	0
Notes Payable Exclusive of Equipment & Real Estate	0	0	0
Real Estate Encumbrances	0	0	0
Equipment Obligations Secured by Equipment	0	0	0
Other Non-Current Liabilities and Reserves	0	0	0
Total Liabilities	$196,000.00	0	$196,000.00

Capital and Surplus:		
Capital Stock Paid Up		
Net Worth or Surplus		
Earned	$562,858.00	
Unearned		
Total Capital & Surplus		
TOTAL LIABILITIES AND CAPITAL		

CONTINGENT LIABILITIES

Liability as Bondsman	0
Liability as Guarantor on Contracts or Accounts of Others	0
Other Contingent Liabilities	0

IDAHO DEPARTMENT OF FISH AND GAME
REGION 5 Phone 232-4703
South Fifth Avenue • P.O. Box 4229
Pocatello, Idaho 83201

RECEIVED
JUN 5 1984
Department of Water Resources
Eastern District Office

June 4, 1984

Mr. Ernest Carlson
Assistant Regional Supervisor
Idaho Department of Water Resources
150 Shoup, Suite 16
Idaho Falls, Idaho 83402

Dear Mr. Carlson:

SUBJECT: Application for Permit No. 13-7416
by Robert N. Fackrell for Mink Creek

As is customary with water right applications involving hydropower projects, we protest this application until we are furnished project details by the applicant.

Sincerely,

Chris Chaffin
Acting Supervisor, Region 5

ROBERT N. FACKRELL
GENERAL CONTRACTOR

P.O. BOX 1 • PRESTON, IDAHO 83263
(208) 852-1522

RECEIVED
JUN 8 1984
Department of Water Resources
Eastern District Office

June 7, 1984

Mr. Ron Carlsen
State of Idaho
Department of Water Resources
Eastern District Office
150 Shoup - Suite 15
Idaho Falls, Idaho 83402

Dear Ron,

Just a note for the purpose of confirming our telephone conversation of today. I called to see that you had in fact received my letter of May 24, 1984, and you indicated that you had received it and had forwarded it to Mr. Gerald Ramsey for processing. I also asked that you have your secretary send me a copy of my May 18, 1984 filing on 125 CFS of Mink Creek water and you indicated that you would do that.

Your help is sincerely appreciated, and if there is any additional information needed by your department, please do not hesitate to advise me and I will promptly respond to your request.

Sincerely,

Robert N. Fackrell

United States Department of Agriculture
Forest Service
Intermountain Region
324 25th Street
Ogden, UT 84401

Reply to: 2540

Date: JUN 13 1984

RECEIVED
JUN 14 1984
Department of Water Resources
Eastern District Office

Mr. Ronald D. Carlson
Eastern Region Supervisor
Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, ID 83401

Dear Mr. Carlson:

This is to protest Application for Permit No. 13-7416, submitted by Mr. Robert N. Fackrell of Preston, Idaho. The application proposes to divert 125 cfs from Mink Creek for power generation purposes from January 1 to December 31 annually. The proposed concrete diversion structure, 2-mile, 42-inch penstock, power generation facility, and associated roads and power lines are all located on National Forest System lands within the Wasatch National Forest near Preston.

Examination of the streamflow records for USGS Station No. 10087500, located on Mink Creek approximately 5 miles below the proposed point of diversion, indicates that the 125 second-feet of water applied for would completely dewater the stream at least 85 percent of the time. Our protest is based on four factors:

1. The United States has Federal reserved rights to a minimum instream flow necessary to secure favorable conditions of water flow as mandated by the Organic Administration Act of 1897. Permitting this diversion would interfere with that right. The reserved right has not yet been quantified.

2. The Forest Service has been given the responsibility of managing National Forest System lands for timber, watershed, range, recreation, and wildlife and fish through the Multiple-Use Sustained-Yield Act of 1960. If this application is granted, the Forest Service will be unable to redeem its responsibilities under Federal law.

3. It is believed that the stream is a source of recharge for Mink Creek spring which supplies municipal water to downstream residents.

4. The entire project is within the Mink Creek Roadless Area and at the present time, no occupancy is permitted.

Based on the above, we respectfully request the application be denied.

Sincerely,

TED V RISKEW
for J. S. TIXIER
Regional Forester

FS-6200-11b (7/81)

June 19, 1984

RE: Application for Permit No. 13-7416 FACKRELL

Preston Citizen
P.O. Box 472
Preston, ID 83263

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on May 31 and June 7, 1984.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

June 19, 1984

RE: Application for Permit No. 13-7416 FACKRELL

Chris Chaffin
Acting Supervisor, Region 5
Idaho Fish & Game Department
B.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

RDC:cw

cc: IDWR - State Office

June 19, 1984

RE: Application for Permit No. 13-7416 FACKRELL

J. S. Tixier
Regional Rorester
U.S. Forest Service
324 25th Street
Ogden, UT 84401

Dear Mr. Tixier:

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

RDC:cw

cc: IDWR - State Office

June 19, 1984

Robert N. Fackrell
P.O. Box 1
Preston, ID 83263

Dear Mr. Faccrell:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to your Application No. 13-7416. 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

STATE OF IDAHO

DEPARTMENT OF HEALTH AND WELFARE

DIVISION OF ENVIRONMENT
150 North 3rd Avenue
Pocatello, Idaho
83201

RECEIVED
JUL 5 1984
Department of Water Resources
Eastern District Office

July 2, 1984

Mr. Vernon F. Ravenscroft
Consulting Associates, Inc.
P.O. Box 893
Boise, Idaho 83701

RE: Competing Application for
FERC Project 7957-000
Mink Creek Hydroelectric Project

Dear Mr. Ravenscroft:

We will comment on this project when we receive a copy of EXHIBIT "E".

The following should be addressed during and after construction:

1. Turbidity and siltation associated with the headworks.

2. Turbidity and siltation associated with the relief valve.

3. Turbidity, siltation and dissolved oxygen associated with the tailrace.

We notice discrepancies between EXHIBIT "A" and the Department of Water Resources Application:

A. Exhibit "A" turbine capacity is 60 cfs with no plans for expansion, but water right application is for 125 cfs.

B. Exhibit "A" describes a 26 inch penstock, but water right application describes a 42 inch penstock.

If you have any questions, or if we can be of help, please call 236-6160.

Sincerely,

Elmer W. Smith

Elmer W. "Bill" Smith, P.E.
Environmental Engineer

ES/nn
cc: Gerald Ramsey, Dept. of Water Resources
Robert Fackrell, Rt. 1, Preston
Jerry Yoder, IDHW-DOE, Boise
Gordon Hopson, IDHW-DOE, Pocatello
John Southerland, S.E. District Health, Pocatello

EQUAL OPPORTUNITY EMPLOYER

13-7416 app

RECEIVED
SEP 23 1985
Department of Water Resources

P-8646-001

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission

(September 18, 1985)

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 (5MW or Less)

b. Project No: 8646-001

c. Date Filed: April 29, 1985

d. Applicant: Robert Fackrell

e. Name of Project: Mink Creek

f. Location: On Mink Creek in Franklin County, Idaho near the town of Preston, within the Caribou National Forest

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

h. Contact Person: Mr. Vernon Ravenscroft
Ms. Helen Chenoweth
Consulting Associates, Inc.
P.O. Box 893
Boise, ID 83701

i. Comment Date: NOV 22 1985

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 280-foot-long rock rubble core diversion dam at elevation 5,830 feet consisting of; (2) a 40-foot-wide reinforced concrete spillway; (3) a 14-foot-high, 30-foot-long reinforced intake structure having a steel trashrack and two 6-foot by 6-foot roller gates to control the flow; (4) a 60-inch-diameter steel bypass pipe located adjacent to the penstock, to convey excess water back into the stream; (5) a 4-foot-diameter, 8,500-foot-long buried steel penstock bifurcating into a 24-inch-diameter and a 40-inch-diameter penstock terminating at two Francis turbines: (6) a 24-foot-wide, 30-foot-long metal powerhouse at elevation 5,443 feet containing one 2.75 MW generating unit with a total average annual energy output of 9,378,300 KWh, operating under a head of 365 feet; (7) a 500-foot-long earthen tailrace, (8) a six-mile long, 14-kV transmission line tying into an existing Utah Power & Light Company line. The estimated cost of the project is $2,400,000 in 1984 dollars.

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

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

A3. Development Application -- Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A9. Notice of intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

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

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

D1. Agency Comments - Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

Lois D. Cashell
Acting Secretary

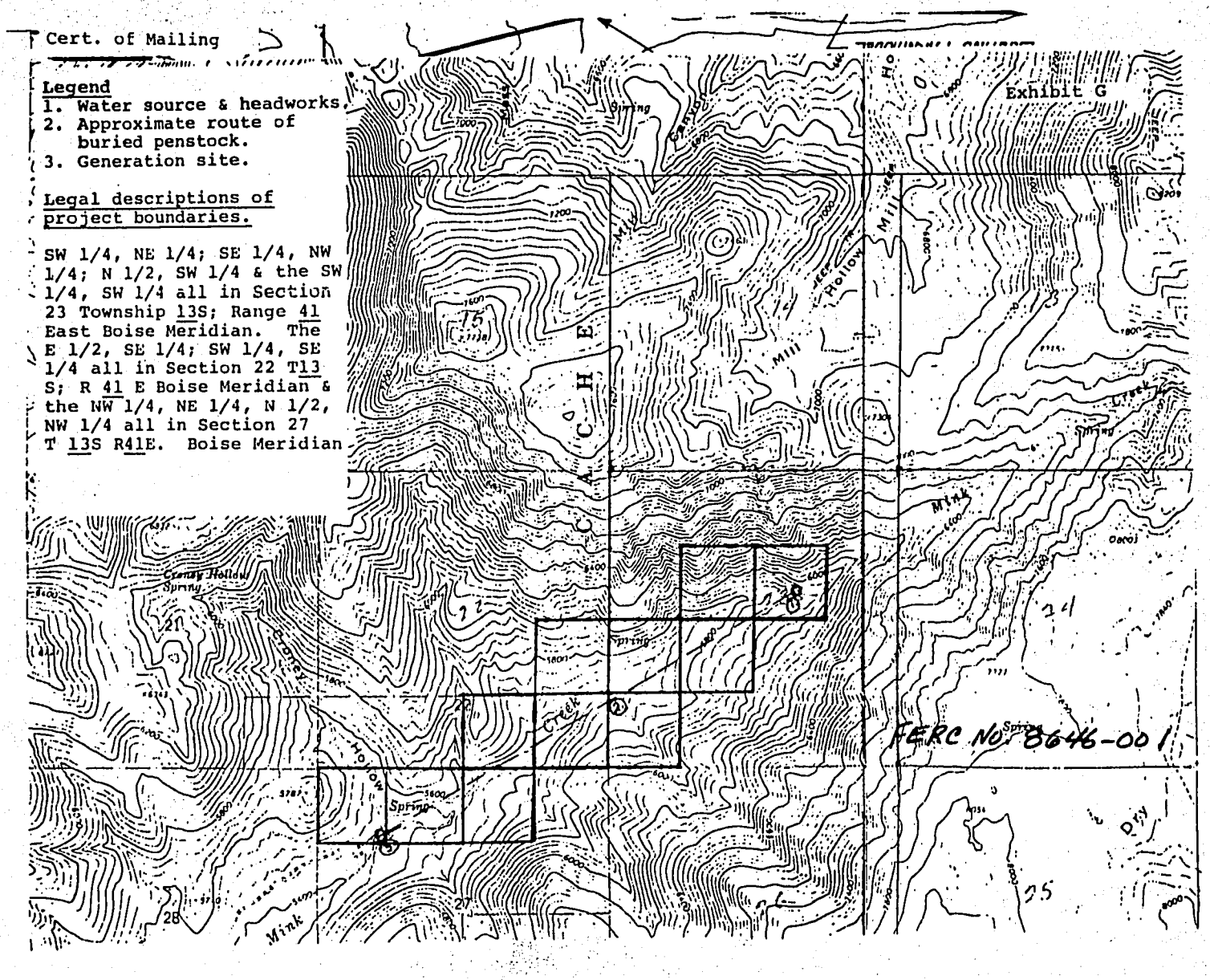
Cert. of Mailing

Legend

1. Water source & headworks.
2. Approximate route of buried penstock.
3. Generation site.

Legal descriptions of project boundaries.

SW 1/4, NE 1/4; SE 1/4, NW 1/4; N 1/2, SW 1/4 & the SW 1/4, SW 1/4 all in Section 23 Township 13S; Range 41 East Boise Meridian. The E 1/2, SE 1/4; SW 1/4, SE 1/4 all in Section 22 T13 S; R 41 E Boise Meridian & the NW 1/4, NE 1/4, N 1/2, NW 1/4 all in Section 27 T 13S R41E. Boise Meridian



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

October 1, 1985

Mr. Vernon Ravenscroft
Consulting Associates, Inc.
P.O. Box 893
Boise, ID 83701

Re: Application for Permit No. 13-7416 (Robert N. Fackrell)

Dear Mr. Ravenscroft:

The Department has recently received notice that an Application for Major License has been submitted to the Federal Energy Regulatory Commission (FERC) in connection with the above-referenced water right project.

A review of Department files shows that the application for permit has been protested. An administrative hearing before the Department may be required before the Department can act on the application.

Any permit issued by the Department will be conditioned with subordination and term language.

Sincerely,

A. KENNETH DUNN
Director

ls

cc: Eastern Region

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCROFT
HELEN CHENOWETH

PHONE (208) 345-2670
P O BOX 893
BOISE, IDAHO 83701

GLN
ALS

October 4, 1985

RECEIVED
OCT 7 1985
Department of Water Resources

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

Re: Application for permit #13-7416 Robert Fackrell

Dear Ken,

Please be advised that we do not at this time represent Mr. Fackrell. We have forwarded your letter of October 1, 1985 to him. Please take our name off of the mailing list for application 13-7416.

Sincerely,

Vernon Ravenscroft

VFR:mf

cc: Rob Fackrell

United States Department of Agriculture | Forest Service | Intermountain Region | 324 25th Street Ogden, UT 84401

Reply to: 2540

Date: JAN 24 1986

RECEIVED
JAN 27 1986
Department of Water Resources

Mr. Glen Saxton
Idaho Department of Water Resources
Towers Building, 3rd Floor
450 West State Street
Boise, ID 83720

Dear Mr. Saxton:

Enclosed is the Water Right Resolution effected between Robert N. Fackrell and the Forest Service which resolves our protest of Application for Permit No. 13-7416. Please append this to Mr. Fackrell's application. In conformity with item 2 of the Resolution, we respectfully withdraw our protest of Application for Permit No. 13-7416.

Thank you for your cooperation.

Sincerely,

for J. S. TIXIER
Regional Forester

Enclosure

RECEIVED
FEB 5 1986
Department of Water Resources
Eastern District Office

FS-6200-28(7-82)

WATER RIGHT RESOLUTION
between
Robert N. Fackrell
and
United States of America - USDA Forest Service

In resolution of the USDA-Forest Service protest of Application for Permit No. 13-7416, as submitted by Robert N. Fackrell, the two parties have come to the following agreement:

1. The applicant agrees to maintain in the bypassed stream reach a continuous minimum flow as defined by the attached Table 1, and as measured immediately downstream from the point of diversion on Mink Creek, for maintaining "favorable conditions of water flows" and for the protection of fish and wildlife resources. **The instream hydrograph shown in Table 1 may be proportionately adjusted to reflect the natural streamflow hydrograph at the diversion point after additional streamflow measurements have better defined the natural hydrograph, and upon mutual agreement betwen the applicant and the USDA-Forest Service.**

2. The USDA-Forest Service agrees to withdraw its protest of Application for Permit No. 13-7416.

3. Both parties agree to submit this Water Right Resolution to the State of Idaho, Department of Water Resources and to inform the State that both parties have come to agreement.

4. Both parties agree to recommend to the State of Idaho, Department of Water Resources that this Water Right Resolution be attached to the subject Application for Permit.

P Nordwall 1/13/86
PAUL R. NORDWALL Date
Forest Supervisor
USDA - Forest Service
Caribou National Forest
250 South Fourth Avenue
Pocatello, Idaho 83201

R N Fackrell 12/23/85
ROBERT N. FACKRELL Date
P.O. Box 1,
Preston, Idaho 83263

TABLE 1

United States of America - Forest Service
324 25th Street
Ogden, Utah 84401
(801) 625-5360

1. National Forest: Caribou National Forest

2. Stream: Mink Creek (tributary to Bear River)

3. Authority: Organic Administration Act of 1897 and the Multiple-Use Sustained-Yield Act of 1960

4. Reservation Date: 3-03-1891

5. Purpose: Secure favorable conditions of water flow and accomplish other multiple-use objectives of the National Forest.

6. Location of Quantification Point:

a. General: On Mink Creek at the diversion point located several hundred feet below the Upper Springs, Franklin County, Idaho.

b. Legal: SE 1/4, NE 1/4, Section 23, Township 13 South, Range 41 East, Boise Meridian.

7. Instream Flow Claim: a continuous instream flow equivalent to an average of 17,000 acre-feet per year (39.1% of historic flow) defined and distributed as follows:

a. Minimum flow rates: the amount of water to be released to Mink Creek for Day 1 and for each and every succeeding day or period throughout the entire year as follows:

Duration	Streamflow (cfs)
Day 1 thru 4	60.0
Day 5 thru 11	75.0
Day 12 thru 18	90.0
Day 19 thru 25	105.0
Day 26 thru 32	120.0
Day 33 thru 39	150.0
Day 40	130.0
Day 41	110.0
Day 42	90.0
Day 43	70.0
Day 44	50.0
Day 45	30.0
Day 46 thru Dec. 31	10.0
Jan 1 thru day 1	10.0

b. Day 1: the day that flow from the spring attains a rate of 90.0 cfs and equals or exceeds that rate for 24 hours, but in no event earlier than April 1.

8. In the event that natural flows do not attain the rates decreed above, the United States shall be entitled to the natural flows actually occurring during the time periods described above.

The undersigned, being duly sworn, deposes and says that he is the agent of the United States of America, that he makes this certification on behalf of the United States of America, that he has read the foregoing statement of claim and knows the contents thereof, and that he has signed on behalf of the United States of America said statement, that the answers set forth therein are true to his best knowledge and belief.

Landace K. Hall
(for) J. S. TIXIER
Regional Forester

Subscribed and sworn to before me this 24th day of January 1986.

Sandra S Carlson
Notary Public

February 18, 1986

RE: Application for Permit No. 13-7416 ROBERT N. FACKRELL

Mr. J.S. Tixier
U.S. Forest Service
324 25th Street
Ogden, UT 84401

Dear Mr. Tixier:

This is to acknowledge receipt of your withdrawal of protest against approval of the above referenced 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

February 18, 1986

RE: Application for Permit No. 13-7416

Mr. Robert N. Fackrell
P.O. Box 1
Preston, ID 83263

Dear Mr. Fackrell:

This is to advise you that the U.S. Forest Service has withdrawn their protest against approval of the above referenced 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

February 17, 1986

RE: Amendment of Application No. 13-7416

Mr. Robert N. Fackrell
P.O. Box 1
Preston, ID 83263

Dear Mr. Fackrell:

A comparison of your license application submitted to the Federal Energy Regulatory Commission and the application for permit No. 13-7416 filed with the Department of Water Resources revealed some inconsistency between the two applications. In order to rectify this matter we have prepared the enclosed amended application for permit which reflects the hydro-electric project as proposed in your FERC application.

You should carefully review the amended application to insure that it accurately describes the project. Provided there are no forseeable changes in the location of the facility or the diversion capacity, sign the amended application and return it to this office accompanied by a check for $20.00 as payment of the statutory amendment fee.

Amendment of the application will be necessary before it can be forwarded to our State Office for final administrative action. It will also be necessary for notice of the amended application to be published for two consecutive weeks on a statewide basis. Publication of the amended application will be initiated following its return to this office.

Recently we received the withdrawal of protest agreement between yourself and the U.S. Forest Service outlining the minimum flows that are to bypass your diversion structure and remain in the Mink Creek channel. The agreement has been placed with the application as part of the Department's records. The enactment of this agreement leaves the Idaho Department of Fish & Game the only remaining protestant.

If you have any questions concerning the amended application, feel free to contact me.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enclosure

RECEIVED

CONVERSATION MEMORANDUM

DATE February 21, 1986

FILE 13-7416

NAME OF PARTY Bob Fackrell

EMPLOYEE Ernest Carlsen EMC

RE: Application 13-7416

Bob Fackrell called with a question about amending the above application so it would be consistant with his application for license filed with FERC. He indicated the location of the power house maybe changed to a point further down stream in a different ¼¼. Selection of the powerhouse site will probably not be firmed up until July, 86. He has already talked with FERC and found out their review of the new site can take place without major changes in his licensing application.

It was my recommendation that he keep the amended application until the power house site has been selected. Then return the amended application making sure the locations for the point of diversion and place of use are correctly identified.

Pull file in Aug. 86.

RECEIVED
MAY 15 1986
Department of Water Resources
Eastern District Office

May 13, 1986

Mr. Ernest Carlsen
Assistant Regional Supervisor
State of Idaho Department of Water Resources
150 Shoup - Suite 15
Idaho Falls, Idaho 83402

Dear Mr. Carlsen,

Please find enclosed the corrected amended application for permit on the Mink Creek Hydro Electric project. Also enclosed is the twenty dollar fee for this amendment. Should there be any additional information needed, please advise me.

Sincerely,

Robert N. Fackrell

RNF/sk
Enclosure

FACKRELL CONSTRUCTION CO., INC.

P. O. Box #1 • Preston, Idaho 83263 • (208) 852-1320
P. O. Box 345 • Richmond, Utah 84333 • (801) 723-2177

STAFF SHEET FOR POWER GENERATION

I Initial Review By: KEITH C. WILSON 19 MAY 1986 Application No. 13-7416 AMENDED

Date Requested	In File	
A. _____	✓	Form 205/206.
B. _____	✓	Efficiency is between 85% and 60%.

$E = \frac{P\ (11.8)}{QH} = \frac{(3100)(11.8)}{(100)(467)} =$ 0.783 x 100 = 78 %

II Post Publication Review By: _____

A. Not Protested

1. 0 to 373 kw (500 Hp)

Date Requested	Date Received	(one or more)
_____	_____	Engineering feasibility report.
	_____	Preliminary design report.
	_____	Contracts to construct project.
	_____	Contracts to purchase power.
	_____	Verification that an application has been submitted to F.E.R.C.
	_____	Other: _____

2. 373 kw (500 Hp) and higher

Date Requested	Date Received	(all three are required)
_____	_____	Preliminary Engineering Report.
_____	_____	Itemized cost estimate.
_____	_____	Verification of financial ability.

B. Protested

1. 0 to 111 kw (150 Hp)

_____ Supplement information has been submitted.

_____ Hearing should be scheduled.

2. 111 kw (150 Hp) and higher

_____ Supplemental information has been submitted.

_____ Received verification of a F.E.R.C. ruling.

_____ Hearing should be scheduled.

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that Application for Permit No. 13-7416 in the name of Robert N. Fackrell, Preston, Idaho was filed for the diversion of 125.0 cfs of water from Mink Creek tributary to Bear River, with point of diversion within the SW1/4SE1/4, Sec. 13 T. 13S, R. 41E., B.M., Franklin County, the water to be used for Power generation purposes from Jan. 1 to Dec. 31, within the SE1/4SE1/4, Sec. 22, T. 13S, R.41E, B.M.

The applicant now proposes to amend Application No. 13-7416, requesting 100.0 cfs of water and amending the point of diversion to within the SW1/4NE1/4, Sec. 23, T. 13S, R. 41E, for use within the NE1/4SE1/4, Sec. 28, T. 13S, R. 41E, B.M. Franklin County.

Any protest to the proposed amending of the application must be filed with the Department of Water Resources 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83401, on or before June ~~16~~ 23, 1986.

A. Kenneth Dunn

Director

Published ~~5/29/86~~ 6-5-86 & ~~6/5/86~~ 6-12-86

Times News- PD - date = 6/23/86 recd
Lewiston Trib - PD - date =

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

MAY 21, 1986

The Idaho Statesman
Box 40
Boise, Idaho 83707

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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 JUNE 16, 1986.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

MAY 21, 1986

Lewiston Morning Tribune
505 C Street
Lewiston, Idaho 83501

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 JUNE 16, 1986.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

Aff Rec'd
6-09-86

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

MAY 21, 1986

Times News
P.O. Box 548
Twin Falls, Idaho 83301

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before JUNE 16, 1986.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

aff. rec'd
6-19-86

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

MAY 21, 1986

The Preston Citizen
P. O. Box 472
Preston, Idaho 83263

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 JUNE 16, 1986.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

May 30, 1986

Robert Fackrell
P.O. Box 1
Preston, Idaho 83263

Re: Application for permit No. 13-7416

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right application for permit. The application has been assigned identification no. 13-7416. Please refer to this number in all further correspondence.

This office is currently in the process of advertising the application in the Preston Citizen, Idaho Statesman, Lewsiton Tribune and Times News. The advertisement will be published for two weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protests must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When the permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Enclosed please find your receipt no. 39639 for the amount of $20.00.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Ernest Carlsen
Assistant Regional Supervisor

EC/md

June 3, 1986

Dean Smith, Watermaster
Rt. 2, Box 433
Preston, Idaho 83263

RE: Application for Permit No. 13-7416, Robert N. Fackrell

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 June 23, 1986, 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:md

Enclosure

June 3, 1986

U.S. Forest Service
324 25th Street
Ogden, Utah 84401

RE: Application for Permit No. 13-7416, Robert N. Fackrell

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 June 23, 1986, 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:md

Enclosure

June 3, 1986

Department of Fish & Game
5205 So. 5th Ave.
Pocatello, Idaho 83205

RE: Application for Permit No. 13-7416, Robert N. Fackrell

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 June 23, 1986, 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:md

Enclosure

United States Department of Agriculture
Forest Service
Intermountain Region
324 25th Street
Ogden, UT 84401

Reply to: 2540

Date: JUN 16 1986

Mr. Ronald D. Carlson
Idaho Department of Water Resources
150 Shoup Avenue
Idaho Falls, ID 83401

Dear Mr. Carlson:

We are writing regarding amended Application for Permit No. 13-7416 filed by Robert N. Fackrell to appropriate 100 cfs from Mink Creek for power production purposes. We protested Mr. Fackrell's original application in June 1984 and subsequently withdrew the protest when a Water Right Resolution was concluded between Mr. Fackrell and the Forest Service. The purpose of this letter is to remind you that the Water Right Resolution remains in effect and to request you amend it to the application as part of the permanent record.

Thank you for your cooperation.

Sincerely,

for Kendall L. Wall

J. S. TIXIER
Regional Forester

RECEIVED
JUN 18 1986
Department of Water Resources
Eastern District Office

Region 5
5205 S. 5th Avenue
Pocatello, Idaho 83204-4229
Telephone: (208) 232-4703

June 18, 1986

RECEIVED
JUN 2[illegible] 1986
Department of Water Resources
Eastern District Office

Ernest Carlson
Assistant Regional Supervisor
Department of Water Resources
150 Shoup
Idaho Falls, ID 83402

Dear Ernest:

RE: Amended Permit 13-7416 Robert N. Fackrell, Mink Creek

We have reviewed the above referenced application and as customary, with water right applications involving hydro-power generation, object to it until we are furnished specific project details by the applicant. We assume the minimum flow and habitat improvement agreements reached in regard to the original application will still apply to this amended application. However, we would request that the applicant clarify the need for the amendment process and whether he intends to adhere to our prior project stipulations.

Sincerely,

David Neider
Regional Supervisor

DN:DS:lad

EQUAL OPPORTUNITY EMPLOYER

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that Application for Permit No. 13-7416 in the name of Robert N. Fackrell, Preston, Idaho was filed for the diversion of 125.0 cfs of water from Mink Creek tributary to Bear River, with point of diversion within the SW1/4SE1/4, Sec. 13 T. 13S, R. 41E., B.M., Franklin County, the water to be used for Power generation purposes from Jan. 1 to Dec. 31, within the SE1/4SE1/4, Sec. 22, T. 13S, R.41E, B.M.

The applicant now proposes to amend Application No. 13-7416, requesting 100.0 cfs of water and amending the point of diversion to within the SW1/4NE1/4, Sec. 23, T. 13S, R. 41E, for use within the NE1/4SE1/4, Sec. 28, T. 13S, R. 41E, B.M. Franklin County.

Any protest to the proposed amending of the application must be filed with the Department of Water Resources 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83401, on or before July 21, 1986.

July 28
Preston Citizen

A. Kenneth Dunn
Director

Published 7/3/86 & 7/10/86

Recd'd in Preston citizen. They last rec'd.

Copied by phone to Preston citizen 7-7-86 mm

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

JUNE 25, 1986

The Preston Citizen
P. O. Box 472
Preston, Idaho 83263

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 21, 1986.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

NOTICE OF CORRECTION

Notice is hereby given that Application No. 13-7416 in the name of Robert N. Fackrell, Preston, Idaho was incorrectly advertised on May 29 and June 5, 1986. The Amended Point of Diversion was advertised as being within the SE1/4NE1/4, Sec. 23, T. 13S, R. 41E.

Whereas, the actual amended point of diversion is within the SW1/4NE1/4 Sec 23, T. 13S R. 41E, B.M.

Any protests against the granting of this permit as a result of this correction must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402, on or before July 21, 1986.

A. Kenneth Dunn

Director

Published July 3 and July 10, 1986

LEGLPRUG-0627

80946

NOTICE OF CORRECTION

Notice is hereby given that Application No. 13-7416 in the name of Robert N. Fackrell, Preston, Idaho, was incorrectly advertised on May 29 and June 5, 1986. The Amended Point of Diversion was advertised as being within the SE¼NE¼, Sec. 23, T. 13S, R. 41E.

Whereas, the actual amended point of diversion is within the SW¼NE¼, Sec. 23, T. 13S, R. 41E, B.M.

Any protests against the granting of this permit as a result of thiscorrection must be filed with the Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402, on or before July 21, 1986.

A. Kenneth Dunn
Director

June 25, 1986

The Lewiston Tribune
505 C Street
Lewiston, Idaho 83501

Gentlemen:

We are resubmitting a legal notice to be published on July 3, and July 10, 1986. This notice was originally published in your paper on May 29, and June 5, 1986. Unfortunately, it was advertised incorrectly. The amended point of diversion should have been printed as SW1/4NE1/4, Sec. 23, T. 13S, R. 41E, B.M. We therefore, request these be readvertised at your expense.

To prevent future problems in this matter, please submit a galley proof before the first date of publication. If we have any corrections, we will notify you: otherwise, assume the notice is correct. If the administrative procedures of your paper will not allow time for making corrections by submitting a galley proof, we will be glad to review the notice with you by telephone prior to publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to this office by July 21, 1986. Your cooperation in this matter is greatly appreciated.

Very truly yours,

Michele Davis
Secretary

Enclosure

July 9, 1986

RE: Amended Application for Permit No. 13-7416
ROBERT FACKRELL

Mr. J. S. Tixier
Regional Forester
U.S. Forest Service
324 25th Street
Ogden, Utah 84401

Dear Mr. Tixier:

This letter is to acknowledge your protest against approval of the above proposed amended application, a copy of which has been sent to the applicant. Your protest will be placed in the file for consideration at a water right conference and/or hearing.

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:CW

July 9, 1986

RE: Amended Application for Permit No. 13-7416
ROBERT FACKRELL

Mr. David Neider
Regional Supervisor
Department of Fish & Game
5205 South 5th Avenue
Pocatello, ID 83204-4229

Dear Mr. Neider:

This letter is to acknowledge your protest against approval of the above proposed amended application, a copy of which has been sent to the applicant. Your protest will be placed in the file for consideration at a water right conference and/or hearing.

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:CW

July 9, 1986

RE: Amended Application No. 13-7416

Mr. Robert N. Fackrell
P.O. Box 1
Preston, ID 83263

Dear Mr. Fackrell:

Please find enclosed protests submitted against approval of your amended application.

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

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:CW

Enclosures

EIVED
JULY 16 1986
of Water Resources
n District Office

July 11, 1986

Mr. David Neider
Idaho Fish and Game
Regional Supervisor
5205 South 5th Avenue
Pocatello, Idaho 83204-4229

RE: Mink Creek Hydro-electric project.

Dear Mr. Neider,

With regard to your letter to the Department of Water Resources dated June 18, 1986, I offer the following:

> The assumption stated in your letter that "the minimum flow and habitat improvement agreements reached in regard to the origional application will still apply to this amended application" is a correct assumption.
>
> In order to clarify the need for the amendment process, may I explain that in the origional application for the water right I was not certain as to the exact location of the point of diversion or the point of use. After the past few years of study and planning I have been able to determine the exact locations of both of these items, as well as the quantity of water needed. Thus, at the request of the Department of Water Resources I filed the amendment to the origional application.

Hoping the above will answer any questions that you had, I respectfully request that you withdraw your objection to Amended Permit 13-7416. Your promp action on this matter would be sincerely appreciated.

Thank you,

Robert N. Fackrell

RNF/sk

FACKRELL CONSTRUCTION CO., INC.

P. O. Box #1 • Preston, Idaho 83263 • (208) 852-1320
P. O. Box 345 • Richmond, Utah 84333 • (801) 723-2177

July 17, 1986

RE: Amended Application for Permit No. 13-7416
ROBERT FACKRELL

Mr. J. S. Tixier
Regional Forester
U.S. Forest Service
324 25th Street
Ogden, Utah 84401

Dear Mr. Tixier:

On July 9, 1986, I sent you a letter indicating the Department acknowledged your protest, which we received on June 18, 1976, against the above captioned application. Upon closer review of your letter, I find that its purpose was to remind the Department that a water resolution previously agreed to between yourself and Mr. Fackrell would remain in effect and be a part of the permanent record.

The Department does have a copy of this water right resolution with the application that has been filed by Mr. Fackrell. I spoke with Mr. Fackrell briefly by telephone on July 10, 1986 and he agrees that the resolution does pertain to the amended application.

Acknowledging the water right resolution is in effect, your letter of June 18, 1986, will not be recognized as a protest against Mr. Fackrell's application. If you disagree with our new interpretation of the Forest Service's position regarding this application, written notice should be submitted to this office within ten (10) days of the date of this letter.
Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

July 21, 1986

The Preston Citizen
P.O. Box 472
Preston, Idaho 83263

RE: Application No. 13-7416: Robert N. Fackrell

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced applications. The legal notice was to have been published in your paper on July 3, and July 10, 1986.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

MICHELE DAVIS
Office Secretary

M E M O

TO: File

FROM: Ernest Carlsen

RE: Application for Permit No. 13-7416

DATE: August 4, 1986

On June 30, 1986, FERC issued a license for construction of the hydropower project associated with permit application No. 13-7416. Subsequent to that action Mr. Fackrell contacted John Heimer, from Region 5 of Idaho Fish & Game, and obtained a verbal commitment to withdraw their protest of the application.

To satisfy our requirement for demonstrating financial capability, Mr. Fackrell submitted a letter from Ronald Seewald, Vice President & Assistant Manager of First Security Bank in Boise. The letter, received on August 1, 1986, and marked "confidential", outlines the general terms and conditions of the loan agreement for financing construction of the project. The letter was dated May 16, 1986. At Mr. Fackrell's request, the letter was returned to him.

To further substantiate financial capability, I spoke with Dale Higer (344-8535) by telephone on August 1, 1986, and confirmed First Security's commitment to finance the project.

Mr. Fackrell has already amended application 13-7416 to reflect final design of the project. That action along with issuance of the FERC license, withdrawal of all protests, and demonstration of financial capability should be sufficient for the Department to proceed with processing of the application.

Region 5
5205 S. 5th Avenue
Pocatello, Idaho 83204-4229
Telephone: (208) 232-4703

August 11, 1986

RECEIVED
AUG 13 1986
Department of Water Resources
Eastern District Office

Mr. Ernie Carlson
Department of Water Resources
150 Shoupe Ave. Suite 15
Idaho Falls, ID 83401

RE: Permit #13-7416--Mink Creek, Robert Fackrell

Dear Ernie:

This is to inform you that we have been furnished the needed information on the above referenced permit and hereby withdraw our protest to it.

Sincerely,

David Neider U.T.

David Neider
Regional Supervisor

DN/vt

EQUAL OPPORTUNITY EMPLOYER

August 14, 1986

RE: Amended Application for Permit No. 13-7416

Mr. David Neider
Regional Supervisor
Department of Fish & Game
5205 South 5th Avenue
Pocatello, ID 83204

Dear Mr. Neider:

This letter is to acknowledge receipt of your withdrawal of protest against the above referenced application. The Department has now resumed processing of this application.

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

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:CW

August 14, 1986

RE: Amended Application for Permit No. 13-7416

Mr. Robert N. Fackrell
P.O. Box 1
Preston, ID 83263

Dear Mr. Fackrell:

This letter is to inform you that Idaho Fish and Game has withdrawn their protest against the above referenced application. The Department has now resumed the processing of this application.

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

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

FERC LICENSE #8646-001

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

35 FERC ¶62,580

Robert Fackrell
Cook Electric, Inc.

Project No. 8646-001
Project No. 7957-000

ORDER ISSUING LICENSE (5MW OR LESS) AND DISMISSING APPLICATION FOR PRELIMINARY PERMIT WITH PREJUDICE

(Issue June 30, 1986)

Robert Fackrell has filed a license application under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Mink Creek Project, located in Franklin County, Idaho, on Mink Creek, a tributary of the Bear River. The project would occupy lands of the United States within the Caribou National Forest.

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

Competing Preliminary Permit Application

The license application was filed in competition with a preliminary permit application filed by Cook Electric, Inc. for Project No. 7957. The permit applicant failed to substantiate the technical, environmental, economic, and other aspects of its proposal and was therefore dismissed without prejudice so that it could be automatically reinstated if the competing development application were subsequently denied. See Dennis v. McGrew, 32 FERC ¶61,229 (1985). The licensee has met the statutory and regulatory license requirements, including demonstrating its ability to carry out its plans. The preliminary permit application is therefore dismissed with prejudice.

Summary of Findings

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

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

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

The Director orders:

(A) The application for preliminary permit for Project No. 7957 filed by Cook Electric, Inc. is dismissed with prejudice.

(B) This license is issued to Robert Fackrell (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 Mink Creek Project. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provision of the Act.

(C) 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. 8646-	Showing
1	5	Facility Site Plan (revised 05/86)
2	6	Facility Site Plan (revised 05/86)

(2) Project works consisting of: (a) a 5-foot-high, 280-foot-long rock rubble core diversion dam at elevation 5,830 feet; (b) a 40-foot-wide reinforced concrete spillway; (c) a 14-foot-high, 30-foot-long reinforced concrete intake structure having a steel trashrack and two 6-foot by 6-foot gates to control flows; (d) a 60-inch-diameter steel bypass pipe located adjacent to the penstock, to convey excess water back into the stream; (e) a 4-foot-diameter, 11,300-foot-long buried steel penstock terminating at a Pelton turbine; (f) a 24-foot-wide, 30-foot-long metal powerhouse containing one 3.1-MW generating unit with an estimated average annual energy output of 11,094 MWh, operating under a head of 430 feet; (g) a 500-foot-long earthen tailrace; (h) 4.16-kV generator leads; (i) a 4.16/12.5-kV transformer; (j) a 6-mile-long, 12.5-kV

transmission line tying into an existing Utah Power and Light Company line; and (k) appurtenant facilities.

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

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

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

(E) This license is subject to the following articles submitted by the United States Department of Agriculture, Forest Service under section 4(e) of the Act:

Article 101. Within 6 months following the date of issuance of this license and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a special-use authorization approved and enforceable by the Forest Service.

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

Article 102. Each year, on or about the anniversary date of the license, the licensee shall consult with the Forest Service with regard to measures needed to ensure protection and development of the natural resource values of the project area. Within 2 months following said meeting, the licensee shall file a report with the Commission of any recommendations made by these agencies. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the project and its operation which may be necessary to accomplish natural resource protection and development.

Article 103. Licensee shall maintain in the bypassed stream reach a continuous minimum flow as shown on the quantification below, and as measured immediately downstream from the point of diversion on Mink Creek, for maintaining "favorable conditions for water flows" and for the protection of fish and wildlife resources. The licensee may temporarily modify minimum flows if required by emergencies beyond the control of the licensee. The licensee may also modify minimum flows for short periods upon mutual agreement between the licensee and the Forest Service.

Instream Flow Claim: a continuous instream flow equivalent to an average of 17,000 acre-feet per year (39.1% of historic flow) defined and distributed as follows:

a. Minimum flow rates: the rate for Day 1 and for each and every succeeding day or period throughout the entire year as follows:

DURATION	STREAMFLOW (CFS)
Day 01 thru 04	60.0
Day 05 thru 11	75.0
Day 12 thru 18	90.0
Day 19 thru 25	105.0
Day 26 thru 32	120.0
Day 33 thru 39	150.0
Day 40	130.0
Day 41	110.0
Day 42	90.0
Day 43	70.0
Day 44	50.0
Day 45	30.0
Day 46 thru Dec. 31	10.0
Jan. 1 thru day 1	10.0

b. Day 1: the day that flow attains a rate of 90.0 cfs and equals or exceeds that rate for 24 hours, but in no event earlier than April 1.

In the event that natural flows do not attain the rates decreed above, the United States shall be entitled to the natural flows actually occurring during the time periods described above.

Article 104. Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the licensee in consultation with the Forest Service, shall file a fish and wildlife habitat mitigation plan approved by the Forest Service with the Director, Office of Hydropower Licensing. This plan shall identify requirements for construction and mitigation measures to meet Forest Service fish and wildlife habitat objectives and standards. The plan also shall include a schedule for accomplishing these objectives and standards and shall identify any needs for additional studies.

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

Within 2 months following completion of the in-stream flow study, the licensee shall file the final mitigation plan incorporating any study recommendations approved by the Forest Service with the Director, Office of Hydropower Licensing.

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

Article 105. Within 1 year following the date of issuance of this license, and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for accommodation of project-induced recreation.

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

Article 106. Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature, the licensee shall, after consultation with the Forest Service, file with the Director, Office of Hydropower Licensing, a plan for the operation and maintenance of the reservoir approved by the Forest Service. The plan shall address at least the following: Water storage and releases, including storage limitations (if any), dates and/or criteria for filling and release; procedures for flood conditions; erosion prevention in the reservoir area and spillway channel; and trash and debris removal. The plan shall include an implementation schedule, maintenance program, and evidence of agency consultation.

Article 107. Within 1 year following the date of issuance of this license and prior to the engaging of any activities of a land-disturbing nature, the licensee, in consultation with the Forest Service, shall complete a water quality study to assess the impact of the project on the water quality of Croney Hollow Springs and file the study with the Director, Office of Hydropower Licensing, along with comments from the above agency. The Director may approve the study or require its modification. If the results of the approved study indicate that changes in project structures or operations are necessary to maintain water quality standards of the State of Idaho, licensee shall file with the Commission a

mitigation schedule approved by the Forest Service, for implementing the specific changes in project structures or operations. At the same time, the licensee shall send copies of the schedule to the agencies consulted.

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

Article 108. Within 1 year following the date of issuance of this license, and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for the control of erosion, stream sedimentation, dust, and soil mass movement.

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

Article 109. Within 1 year following the date of issuance of this license and at least 60 days before starting any activities of a land-disturbing nature, the licensee shall file a plan approved by the Forest Service with the Director, Office of Hydropower Licensing, for oil and hazardous substances storage and spill prevention and cleanup.

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

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

Article 110. Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature relative to the construction of the proposed project features or facilities, the licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for the design and construction of the project facilities in order to preserve or enhance its visual character. The plan

shall consider facility configurations and alignments, building materials, color, conservation of vegetation, landscaping, and screening. Project facilities include, among other things, the diversion structure, penstock, powerhouse, transmission lines and corridor, and all access roads.

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

Article 111. Licensee shall, prior to any changes in the location of any existing or proposed project features or facilities, or any changes in the proposed uses of project lands and waters, or divergence from any approved exhibits filed with the Commission, consult and cooperate with the Forest Service in regard to measures needed to ensure the protection and development of the natural resource values of the project area that could be affected by such changes or divergence. Within 60 days following any consultations and prior to any such changes or divergence, the licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest Service. This article does not relieve the licensee from the requirements of Article 3 of this license. In the event that Forest Service approval of the changes cannot be secured, the proposed changes or modifications shall be considered to be a substantial alteration and must be submitted to the Commission for approval in accordance with Article 2.

Article 112. Licensee shall not use pesticides or herbicides on National Forest System (NFS) lands for any purpose without the prior written approval of the Forest Service. Each year, on or about the anniversary date of the license, the licensee shall file a pesticide and herbicide use plan approved by the Forest Service with the Director, Office of Hydropower Licensing. Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the annual report was submitted. At that time the Forest Service may grant an emergency approval. The licensee shall, within 1 month, file a copy of this approval with the Director, Office of Hydropower Licensing. Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned will be considered for use on National Forest System lands. Label instructions will be strictly followed in the preparation and application of pesticides and disposal of excess materials and containers.

Article 113. Licensee shall construct the transmission line in such a manner so it will minimize the hazard to raptors and other birds. (Reference: "Suggested Practices for Raptor Protection on Powerlines." Edison Electric Institute 1981.")

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

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

a. For the purpose of reimbursing the United States for the cost of administration of Part I of the 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 4,130 horsepower.

b. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 12 acres of its lands, a reasonable annual charge as determined by the Commission in accordance with its regulations, in effect from time to time.

Article 202. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost

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

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

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

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

Article 303. The licensee shall within 90 days of completion of construction file, for approval by the Commission, revised Exhibits A, F, and G to describe and show the project as built.

Article 401. The licensee shall consult with the Idaho Department of Fish and Game, the U.S. Fish and Wildlife Service, the Soil Conservation Service, and the Forest Service before preparing the plan required by article 108, and shall include documentation of agency consultation when filing the plan with the Commission. The plan shall apply to project related activities on all project lands.

Article 402. The licensee shall construct and operate streamflow gages as required by standard license article 8 in the bypass reach, including side channels, of Mink Creek below the project dam in a manner to allow continuous monitoring of the Mink Creek Project minimum flows required by article 103. Further, the licensee shall annually make available to the U.S. Fish and Wildlife Service, Forest Service, the Idaho Department of Fish and Game, and Portland Office Regional Director, the record of minimum flows obtained from these gages.

Article 403. The licensee, after consultation with the Forest Service, the Idaho Department of Fish and Game, and the U.S. Fish and Wildlife Service, shall develop and shall implement a plan to construct fish habitat enhancement structures in the bypass reach of Mink Creek. The plan shall include, but shall not be limited to, the number and location of the structures and a description of procedures to be implemented in maintaining these structures. A copy of the plan, including documentation of agency consultation on the plan, shall be submitted to the Commission within 4 months from the date of issuance of the license. Unless the Director of the Office of Hydropower Licensing instructs otherwise, the licensee shall construct fish habitat enhancement structures in Mink Creek as specified by the plan 90 days after filing the plan. The Commission reserves the right to require modification to the plan.

Article 404. The licensee, after consultation with the Forest Service, the U.S. Fish and Wildlife Service, and the Idaho Department of Fish and Game, shall develop a plan to monitor changes in fish populations associated with operation of the Mink Creek Project. The plan shall include a schedule for filing the results of the fish population monitoring and a schedule for filing recommendations for modifying project structures or operation in the event that the results indicate that project operation has adversely affected the fish resources of Mink Creek despite the mitigation requirements of this license. The licensee, within 4 months from the date of issuance of the license, shall file the plan for Commission approval. Comments from the aforementioned agencies shall be included in the filing.

Article 405. The licensee, after consultation with the U.S. Fish and Wildlife Service, the Forest Service, and the Idaho Department of Fish and Game, shall file for Commission approval, within 4 months from the date of issuance of this license, a plan to mitigate in kind for the loss of riparian habitat from project construction and operation. The plan shall include but shall not be limited to: (a) identification of the type of habitat to be used for replacement; (b) a determination of the location and the number of acres of habitat to be used for replacement; (c) a discussion of the specific construction and maintenance techniques to be used for onsite mitigation; (d) a schedule of implementation;

and (e) a monitoring program to determine the effectiveness of mitigative measures. Documentation of agency consultation on the mitigative plan shall be included in the filing.

Article 406. The licensee, after consultation with the U.S. Fish and Wildlife Service, the Forest Service, and the Idaho Department of Fish and Game, and within 4 months from the date of issuance of this license, shall file a transmission line design plan, prepared in accordance with the guidelines set forth in the publication, Suggested Practices for Raptor Protection on Power Lines, Raptor Research Report no. 4, issued by the Raptor Research Foundation, Inc., in 1981. The plan shall include detailed design drawings of the transmission line, clearly showing phase spacing, configuration, and grounding practices, a construction schedule, and agency comments on the adequacy of the design plan. Unless the Director of the Office of Hydropower Licensing instructs otherwise, the licensee may commence transmission line construction 90 days after filing the plan.

Article 407. The licensee, prior to any construction other than that specifically authorized, shall consult with the Idaho State Historic Preservation Officer (SHPO) and the Forest Service (FS) Supervisor of the Caribou National Forest about the need for cultural resource survey and salvage work. The licensee shall file documentation of the nature and extent of consultation, including a cultural resources management plan and a schedule to conduct any necessary investigation with the Commission, together with copies of letters from the SHPO and FS accepting the plan, 6 months before undertaking any construction activity in the location of such investigations. The licensee shall make available funds in a reasonable amount for any required work. If the licensee discovers any previously unrecorded archeological or historical sites on National Forest System lands or on other project lands during the course of the construction or development of any project works or other facilities at the project, the licensee shall stop construction activity in the vicinity of such archeological or historic sites and shall consult with FS, the SHPO, and a qualified archeologist to determine the significance of the sites and to develop a mitigative plan for the protection of significant archeological or historic resources. Before starting to excavate or remove any archeological resource located on National Forest System lands, the licensee shall secure a permit from FS authorizing such excavation or removal. If the licensee, the SHPO, and FS cannot agree on the amount of money to be expended on archeological or historic work related to the project, the Commission reserves the right to require the licensee, at its own expense, to conduct any necessary work.

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 other types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

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

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

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

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

Richard T. Hunt

Richard T. Hunt
Director, Office of
Hydropower Licensing

APPENDIX A
SAFETY AND DESIGN ASSESSMENT
MINK CREEK PROJECT
FERC NO. 8646-001 IDAHO

DAM SAFETY

The Commission's Fort Worth Regional Director classified the proposed earth and rockfill Mink Creek dam as low hazard on November 8, 1984. The dam would impound approximately two acre-feet of water at elevation 5833.5 msl. The flood wave that would result from failure of the dam would be less than 3.0 feet high, thus posing no threat to downstream life or property. The dam would be located in a national forest, and there are no downstream structures within the inundation limits of the dambreak flow.

PROJECT DESIGN

Water would be diverted from Mink Creek into a concrete intake structure. Gates in the intake structure would regulate the flow into the 60-inch-diameter steel bypass conduit and the 48-inch-diameter buried penstock. The penstock would convey flow 11,300 feet to the generating unit located in a metal powerhouse. Flow from the turbine would then be discharged via a tailrace to Mink Creek. The proposed powerhouse, diversion structure, and penstock designs comply with acceptable engineering design criteria. The Commission's staff concluded that project construction can be completed within two years after commencement. Within 90 days of completion of construction the licensee shall file revised Exhibits A and F to show the project as-built.

EXHIBITS

The following portions of Exhibit A and the following Exhibit F drawings conform to the Commission's rules and regulations and should be included in the license.

Exhibit A. General Technical Information filed with the Commission April 29, 1985, page one.

Exhibit F Drawing	FERC No. 8646-	Description
F-1	1	Mink Creek Hydroelectric Facility Powerhouse Layout revised 4/25/85. (Cross section view)

Exhibit F Drawing	FERC No. 8645-	Description
F-2	2	Mink Creek Hydroelectric Facility Powerhouse Layout revised 4/25/85. (Plan view)
F-3	3	Plan View and Profile of the Proposed Penstock 0+00 to 51+20.
F-4	4	Plan View and Profile of the Proposed Penstock 51+20 to 84+90.

APPENDIX B [1]/
ENVIRONMENTAL ASSESSMENT
DIVISION OF ENVIRONMENTAL ANALYSIS, OFFICE OF HYDROPOWER LICENSING
FEDERAL ENERGY REGULATORY COMMISSION

Mink Creek Project
FERC No. 8646-001--Idaho
May 15, 1986

I. APPLICATION

Robert Fackrell (applicant) applied on September 18, 1985, for a major license, 5 megawatts (MW) or less, for the Mink Creek Hydroelectric Project. The application was supplemented on March 26, May 10, and December 3, 1985, and March 6 and May 9, 1986.

The Mink Creek Project would be located on Mink Creek in Franklin County, Idaho, approximately 13 miles northeast of Preston, Idaho (Figure 1). Mink Creek is a tributary of the Bear River within the Great Salt Lake Basin.

The project would utilize 12 acres of federal land within the Cache National Forest, administered by the Forest Service (FS), Montpelier Ranger District, of the Caribou National Forest.

II. RESOURCE DEVELOPMENT

A. Purpose

The proposed project would provide an estimated average of 11,094,000 kilowatthours (kWh) of electrical energy per year to Utah Power and Light Company, a local utility.

B. Need for Power

There is at this time available data to support an opinion that growth in the demand for electric power and energy (due to population growth, continuing demand for additional amenities, etc.) will continue. Given positive load growth and an existing resource base, a reliability need for additional resources can at any time be projected to exist at some time in the future for any power system. Additional resources would have to be obtained for any system at some point in time in order to meet projected additional load requirements with the same degree of reliability established by an existing criterion for the system. Timing of the need would vary in different systems dependent upon, among other things, the rates of load growth, the load characteristics, the available existing power resources and the reliability criteria established for each system.

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[1]/ Illustrations referenced in the text are omitted from this document due to reproduction requirements.

Installation of a power resource prior to the existence of a reliability need can be justified if early installation of the resource will over its operating life provide benefits relative to operation of the system with the most likely alternative resource installed to meet the reliability need when it occurs. The early installation of a hydroelectric resource and the use of hydroelectric energy to displace more expensive thermal energy generation coupled with the incremental deferral of a thermal capacity alternative can produce economic benefits. Fossil fuel conservation and reduced atmospheric impacts of fossil fuel combustion are additional benefits of hydroelectric displacement and deferral of the thermal generation.

The project is located in the Northwest Power Pool Area (NWPP) of the Western Systems Coordinating Council (WSCC) region. In the April 1985, Coordinated Bulk Power Supply Program, WSCC shows that the NWPP is projecting the addition of 3,214 MW of coal-fired and 1,650 MW of nuclear-powered steam generating capacity and 73 MW of cogeneration capacity to meet projected load growth over the next 10-year period. The project could provide a small portion of this resource requirement.

The staff's economic analyses show that benefits are possible through installation of the project and, therefore, show a need for the project. From the time the project goes on line until needed to serve load directly, it would be available to off-load existing fossil-fueled electric generating plants located in the NWPP and adjacent areas, and thereby, to conserve nonrenewable resources, and to reduce the emission of noxious by-products caused by the combustion of fossil fuels.

Additionally, the applicant has negotiated a contract to sell the project power and thereby has established a need for the project.

C. Economic Analysis

The applicant has received a bid price of $2,381,000 for construction of the project. Using this cost, an estimated annual generation of 11,094,000 kWh, and discounting techniques, the staff estimates the levelized cost of the project to be 33.1 mills/kWh or $367,000 annually. The staff concludes the project is economically feasible because the cost of energy from the project is projected to be less than the value of energy under the contract.

A signed agreement with Utah Power and Light Company for power sales was provided by the applicant and served as a value of power in assessing the feasibility of the project. The levelized power value amounts to 47.0 mills/kWh or about $521,000 per year.

D. Comprehensive Development

The project's 3,075-kilowatt (kW) unit would have a maximum hydraulic capacity of 100 cubic feet per second (cfs). The project would develop a gross head of 467 feet utilizing a 48-inch-diameter penstock, with head loss through the water passages resulting in an average net hydraulic head of about 430 feet. The flow in Mink Creek exceeds the hydraulic capacity of the unit about 15 percent of the time.

The applicant estimates that the project would generate about 11,094,000 kWh annually. The staff finds this estimate of annual generation reasonable. There is no stream gage located on Mink Creek, so the applicant used a synthetic streamflow simulation with streamflow data from a hydrologically similar gaged stream near Preston, Idaho. The gage is located approximately 5 miles from the project. Forty years of records from Geological Survey gage no. 10087500 were used in the simulation analysis because the long period of record best reflects anticipated streamflow in Mink Creek. The staff agrees with the applicant's methodology for the estimated streamflow in Mink Creek.

The Commission's Planning Status Report for the Great Basin discusses the existing water resource developments and reconnaissance level plans of possible future development within the basin. The project would not conflict with any existing or planned development or any pending applications for exemption, license, or preliminary permit.

In summary, the staff's analysis shows that the proposed project is properly designed to develop the hydropower potential of Mink Creek.

II. PROPOSED PROJECT AND ALTERNATIVES

A. Proposed Project

1. Project Description

The proposed project would consist of: (1) a 5-foot-high, 280-foot-long diversion dam at elevation 5,820 feet, with a 40-foot-wide, reinforced-concrete spillway and a 14-foot-high, 30-foot-long reinforced intake structure, having a steel trashrack and two 6-foot roller gates to control the flow; (2) a 60-inch-diameter steel bypass pipe located adjacent to the penstock, to convey excess water back into the creek; (3) a 4-foot-diameter, 11,300-foot-long, buried steel penstock, terminating at one Pelton turbine; (4) a powerhouse at elevation 5,360 feet, containing one 3.1-MW generating unit; (5) a 500-foot-long earthen tailrace returning flows to Mink Creek; and (6) a 6-mile-long, 12.5-kilovolt transmission line, interconnecting with an existing

Utah Power and Light Company transmission line. Principal project features are shown in figure 2. Because the pool formed by the diversion dam would have negligible storage capacity, the project would be operated in a run-of-river mode.

2. Proposed Mitigative Measures

The applicant proposes to revegetate areas disturbed during the burial of the pipeline as soon as possible after construction. The applicant would release a minimum flow of 10 cfs from the project diversion dam to protect the fishery resources of the bypass reach. To further enhance the fishery resources of Mink Creek, the applicant proposes to construct rock weirs within the creek channel to increase the amount of habitat available to adult trout. To mitigate any adverse impacts of project operation on the quality and quantity of the water supply of the unincorporated community of Mink Creek, the applicant proposes to supplement the water supply with water from the project. The applicant proposes to design the project transmission line structures to prevent the electrocution of raptors, and finish the powerhouse exterior in colors that would blend with the surrounding landscape.

B. Federal Land Management Conditions

Under the requirements of section 4(e) of the Federal Power Act, FS, by letters dated November 14, 1985, and April 9, 1986, (Attachments 1 and 2), has provided 13 conditions to be included in any license issued for the proposed project. Those conditions would require the applicant to consult with FS periodically, to maintain a continuous minimum flow downstream from the project diversion dam, to raptor-proof the project transmission line, and to prepare plans for the following:

(a) the assessment and mitigation of any adverse project impacts on water quality, fish, and wildlife;

(b) the accommodation of any increase in recreational use of the area induced by the project;

(c) the control of dust, soil erosion and mass movement, and stream sedimentation;

(d) the operation and maintenance of the pool formed by the diversion dam;

(e) pesticide and herbicide use;

(f) oil and hazardous substance storage, spill prevention, and cleanup; and

(g) the design and construction of project facilities to preserve the area's present visual character.

C. Alternatives to the Proposed Project

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

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

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

D. Alternative of No Action

No action would prohibit the applicant from constructing the proposed project. No action would mean no alteration of the existing environment and no use of the potential hydropower that could be derived from the project.

IV. CONSULTATION AND COMPLIANCE

A. Agency Consultation

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

After the Commission accepts the application, formal comments may be submitted by concerned entities during the public notice period. In addition, organizations and individuals may petition to intervene and become a party to any subsequent proceedings. The comments provided by concerned entities are made part of the record and are considered during the review of the proposed project. The following entities commented on the application subsequent to the public notice, which was issued on September 18, 1985.

Commenting entity	Date of letter
Forest Service	November 14, 1985, April 9, 1986, May 1, 1986
Department of the Interior	November 27, 1985
Department of the Army, Sacramento District Corps of Engineers	January 10, 1986
Idaho Department of Fish and Game	March 13, 1986, May 6, 1986

The applicant responded to the agency comments in a letter dated December 19, 1985.

Intervenor	Date of Petition
Idaho Department of Fish and Game	November 21, 1985

B. Water Quality Certification

On May 14, 1986, the Idaho Department of Health and Welfare issued a water quality certificate for the proposed project, as authorized in Section 401 of the Clean Water Act.

V. ENVIRONMENTAL ANALYSIS

A. Proposed Project

The staff's analysis shows that adverse effects of the proposed project on visual and socioeconomic resources would be insignificant.

1. General Description of the Locale

Elevations in the vicinity of the proposed project range from about 5,000 feet to nearly 8,000 feet. The proposed project would be located along the bottom of a steep-walled, V-shaped canyon, vegetated with a deciduous forest.

2. Geology and Soils

Affected Environment: Bedrock in the area includes limestone, siltstone, quartzite, and dolomite; rock outcrops are common. Project area soils are shallow to deep loamy-skeletal soils, with high to moderate erosion hazard and low stability hazard (Robert Fackrell, 1985).

Environmental Impacts and Recommendations: Burying the pipeline and construction of the diversion dam, intake structure, powerhouse, tailrace, and transmission line would require excavation and other ground-disturbing activities. Those activities would increase soil erosion, localized, unstable slope conditions, and stream sedimentation. The most extreme effects of sediment would occur during the construction of the rock and earthfill dam. Soil erosion and stream sedimentation would be the most severe if the project is constructed during the spring runoff period or during extremely wet weather in the fall.

The Department of the Interior (Interior) recommends that the applicant develop a plan to control soil erosion and contain sediment at the project construction sites. The FS requires the applicant, before construction, to file with the Commission a FS-approved plan to control soil erosion, dust, slope stability, and stream sedimentation.

The applicant has outlined a plan to control soil erosion, slope stability, and the introduction of sediment into Mink Creek. The plan includes regrading and reseeding disturbed areas, retaining sediment at construction sites, scheduling construction activities for periods of low streamflow or low precipitation, monitoring soil erosion and slope stability after construction, and conducting a maintenance program for project lands and facilities (Robert Fackrell, 1986).

Careful planning, timing, and implementation of a FS-approved control plan would minimize erosion, sedimentation, and slope stability problems at the project. The applicant should consult with FS, the Soil Conservation Service, the U.S. Fish and Wildlife Service (FWS), and the Idaho Department of Fish and Game (IDFG) before preparing the control plan.

Unavoidable Adverse Impacts: Some minor, localized, short-term soil erosion and stream sedimentation would be unavoidable, particularly during the construction of the diversion dam.

3. Water Resources

Affected Environment: The flow regime of Mink Creek is typical of the high-elevation watersheds of the Wasatch Mountain Range. The high-flow period extends from April through July; during this period, rapid melting of the snowpack produces peak monthly flows that exceed 200 cfs. In the late summer and the fall, the streamflow in the high-elevation watersheds is characteristically very low, although during this time, accretion flows from springs augment the flow of Mink Creek. This spring flow maintains the flow of Mink Creek from 25 to 30 cfs during the late summer and the fall (Robert Fackrell, 1984, application, exhibit E).

Mink Creek loses some flow through permeable reaches of the streambed below the proposed point of diversion, and is believed to discharge into the Croney Hollow Spring, located in a watershed immediately adjacent to the project watershed. In measurements taken in the area of the proposed intake on June 7, 1984, the loss was estimated to be approximately 10 percent of the flow of Mink Creek or 5.8 cfs. On the same date, the flow of Croney Hollow Spring was 10.9 cfs, which may indicate that the discharge from this watershed does not depend totally upon recharge from the portion of Mink Creek that the project would affect. The community of Mink Creek uses approximately 0.003 cfs of the flow of Croney Hollow Spring as a municipal water supply (Robert Fackrell, 1985).

The water quality of Mink Creek is suitable for the maintenance of a salmonid fishery. The high gradient of the creek and the lack of significant loading of organic wastes maintain the dissolved oxygen concentration of Mink Creek near saturation levels. Because the flow of the creek originates from snowmelt and from springs, the water temperature remains relatively low, with maximum temperatures of less than 15 degrees Centigrade (°C). The pH of the creek ranges from 7.4 to 8.6, reflecting the discharge of springs from the limestone aquifers of the Mink Creek watershed. Hardness values of the water in Mink Creek range from 6 to 72 milligrams per liter $CaCO_3$ (Robert Fackrell, 1985).

Environmental Impacts and Recommendations: Building the project would introduce sediment into the water column directly, by instream construction activities, and indirectly, by erosion from disturbed land surfaces. Because of the high gradient of Mink Creek, most of the fine sediment that enters the creek would be transported well downstream of the project area. The implementation of the erosion control program stipulated by FS in its 4(e) conditions would minimize the impacts of project construction on water quality.

Operating the project would reduce the flow in the approximately 12,000-foot-long bypass reach and would alter the thermal regime of Mink Creek. Project-induced flow reductions during summer low-flow periods would likely cause elevated water temperatures in this reach. Bovee (1982) states that water temperature is related to streamflow, and that flow reductions generally result in warmer water temperatures during the summer. The flow reduction would ultimately decrease the water depth, and during the winter, would increase the loss of heat from the streambed and decrease the water temperature (Hynes, 1972). The changes in the water temperature would be small, however, because vegetation growing along the creek would minimize solar heating of the creek during the summer and would moderate heat loss during the winter. In addition, since the temperature of the water discharged from groundwater systems is expected to equal the mean annual air temperature of the region (Freeze and Cherry, 1979), groundwater discharges would lower the temperature of Mink Creek in the summer and would raise the creek's temperature in the winter; these temperature changes would moderate any project-induced changes in the thermal regime of the creek.

Project flow diversions could reduce the recharge to groundwater systems that depend upon water losses through permeable parts of the streambed. Since these groundwater systems are believed to discharge to Croney Hollow Springs, a reduction in discharge to these systems could reduce discharge from the springs.

FS expresses concern that project operation might reduce the recharge to the Croney Hollow Spring, the source of water for the community of Mink Creek. In response to the applicant's proposal to use project water to supplement the water supply, FS states that the project waters could contain Giardia lamblia, a pathogenic protozoan, and that the applicant should ensure the potability of any project water used for the community water supply. In its section 4(e) conditions, FS would require the applicant to assess the project impacts to Croney Hollow Spring and to develop an appropriate mitigative plan to minimize adverse impacts to the springs. The applicant should follow the section 4(e) conditions stipulated by FS to minimize the effects of project operation on water quality.

Unavoidable Adverse Impacts: Project construction would cause short-term increases in the suspended sediment concentration of Mink Creek. Project operations would reduce the streamflow of the 12,000-foot-long bypass reach and would reduce the recharge to groundwater systems associated with the permeable portions of the streambed.

4. Fishery Resources

Affected Environment: The fishery of Mink Creek is comprised primarily of brook trout (Salvelinus fontinalis); however, cutthroat trout (Salmo clarki) also exist in the creek. Cutthroat trout spawning has been reported in side channels of the bypass reach (letter from Jerry Mallet, Acting Director, Idaho Department of Fish and Game, Boise, Idaho, May 6, 1986). Fish population studies conducted in October, 1984, for the bypass reach showed average adult densities of 0.06 fish per square meter and young-of-year trout densities of 0.02 fish per square meter. These densities are very low compared to salmonid densities for other streams in Caribou National Forest, which range from 0.07 to 3.10 fish per square meter (Consulting Associates, Inc., 1985a).

Mink Creek's low trout densities can be explained in part by the creek's characteristically low water temperature. According to Baldwin (1951), water temperatures from 11 to 16°C are optimum for adult brook trout; the temperature of Mink Creek is generally less than 10°C (Robert Fackrell, 1984, application, exhibit E; Consulting Associates, Inc., 1985a). The low trout densities can also be partially explained by the lack of suitable young-of-year and adult habitat. The high gradient of the project reach, the high spring flows that wash away organic debris, and the lack of boulders or rock outcroppings preclude the formation of the pool habitat favored by young-of-year and adult brook trout (Robert Fackrell, 1984, application, exhibit E). An analysis of the availability of adult brook trout habitat, conducted for the applicant in accordance with the FWS's Instream Flow Incremental Methodology, shows that suitable adult brook trout habitat increases as flow decreases from 200 cfs to 10 cfs. (Robert Fackrell, 1985).

Environmental Impacts and Recommendations: Project construction would result in an increased suspended sediment concentration in Mink Creek. Rochester et al. (1984) determined that an increase in suspended sediment could reduce the visibility and feeding of fish, disrupt spawning, and smother fish food organisms.

Operation of the project would divert up to 100 cfs from Mink Creek and would reduce flows in the 12,000-foot-long bypass reach to 10 cfs approximately 80 percent of the time. The flow reduction would increase the quantity of habitat suitable for adult brook trout, by decreasing the water velocity and creating the low-velocity pool habitat that adult brook trout favor.

FS 4(e) conditions require the applicant to release a minimum flow of 10 cfs to protect fish resources and to release additional flows over a 45-day period to preserve the integrity of the stream channel. IDFG concurs with this flow regime, and asks that the applicant install streamflow gages to verify that the stipulated minimum flows are being released from the project dam and to verify that the flows are distributed through the bypass reach side channels to protect the fish habitat those channels provide.

The applicant agrees to release the minimum flows from the project dam required by FS. Those minimum flow releases would adequately protect the aquatic resources of the bypass reach. The applicant should install streamflow gages in sufficient number to verify compliance with these minimum flow releases.

The installation of the proposed rock weirs would increase the amount of habitat available to adult trout. The weirs would be designed to create pools over 1.5 feet deep, with water velocities of less than 1 foot per second. The weirs would be installed in an approximately 1.8-mile-long reach of Mink Creek. In the one reach of Mink Creek where pool habitat occurs under existing conditions, the adult trout population density is 0.11 fish per square meter. Since the reach of Mink Creek that the project would affect has 0.06 adult trout per square meter under existing conditions, the proposed stream modifications should increase the standing crop of adult brook trout.

IDFG concurs with the applicant's proposal to install rock weirs in Mink Creek to improve trout habitat. IDFG recommends: that the applicant monitor fish population changes to determine if the weirs are effective; if trout populations do not increase as desired that the applicant install additional structures; and that the applicant maintain and repair the weirs in accordance with designs approved by IDFG.

Because trout habitat in the bypass reach of Mink Creek is limited under existing conditions, the installation of rock weirs to form pools would ultimately increase the standing crop of brook trout. The applicant should develop a habitat enhancement plan to identify the number and the location of the proposed structures and to maintain the structures. The applicant also should develop a plan to assess changes in fish populations resulting from project operation and from the installation of the rock weirs. In the event that the results indicate that project

operation has adversely affected the fish populations of Mink Creek, this plan should include provisions for altering project operation or structures (i.e., constructing additional habitat enhancement structures) to minimize adverse effects.

Unavoidable Adverse Impacts: Construction of the project and the associated increase in Mink Creek's suspended sediment concentration would produce short-term, adverse effects on fish feeding and spawning.

5. Vegetation

Affected Environment: In the proposed project area, the slopes of the Mink Creek Canyon are vegetated with an upland forest dominated by bigtooth maple (Acer grandidentatum) and trembling aspen (Populus tremuloides). Other tree species are juniper (Juniperus sp.) and chokecherry (Prunus virginiana). Typical understory species are mountain myrtle (Pachistima myrsinites) and elderberry (Sambucus caerulea). Pastures for the most part replace the forest near the proposed powerhouse site on the south side of the creek. Typical grass species of the pastures are Kentucky bluegrass (Poa pratensis), slender wheatgrass (Agropyron pauciflorum), smooth brome (Bromus inermis), and timothy (Phleum pratense).

A 2,600-foot-long stretch of the bypass reach of Mink Creek is lined with a riparian forest dominated by aspen and birch (Betula fontinalis). Other tree species include dogwood (Cornus stolonifera), willow (Salix sp.), black cottonwood (Populus trichocarpa), and chokecherry. The understory consists of shrubs such as gooseberry (Ribes sp.), wild rose (Rosa woodsii), and elderberry, and a wide variety of forbs and grasses. The vegetation adjacent to the remainder of the bypass reach is similar to the forest occupying the canyon slopes.

Environmental Impacts and Recommendations: Clearing vegetation for the installation of the pipeline would affect approximately 10 acres of upland forest and 3 acres of pasture within a 50-foot-wide corridor. During the life of the project, the applicant would maintain a 20-foot-wide pipeline corridor in low-growing vegetation, affecting 4 acres of land currently occupied by forest.

IDFG recommends that the applicant prepare a plan to revegetate the project area after construction and to control undesirable plant species. The applicant agrees to do this (Robert Fackrell, 1986).

Revegetating disturbed areas would adequately mitigate project impacts on the upland forest and pastures. The applicant should include the revegetation measures in the plan required by FS to control soil erosion.

Project flow diversions could reduce the amount of riparian vegetation along the bypass reach. Interior says that riparian vegetation is relatively scarce in the region and that there should be no net loss of riparian vegetation. Interior recommends that the applicant quantify the amount of riparian vegetation in the project area, estimate the amount lost from project construction and operation, and design a mitigative plan to replace the lost riparian vegetation in kind. The applicant did not respond to Interior's recommendation.

Because riparian forest is scarce in the region and is of high value to wildlife, the staff agrees with Interior's recommendation that the applicant should replace in kind any riparian vegetation lost as a result of project construction and operation. The applicant should consult with FWS and IDFG about ways to quantify the amount of riparian vegetation lost from project construction and operation and ways to replace in kind any vegetation lost.

Unavoidable Adverse Impacts: During project construction, clearing vegetative ground cover would affect approximately 10 acres of upland forest and 3 acres of pasture. The applicant would maintain 4 acres of land currently occupied by forest in low-growing vegetation during the life of the project.

6. Wildlife Resources

Affected Environment: The proposed project area is used by mule deer (Odocoileus hemionus) in the spring, summer, and fall. Elk (Cervus canadensis) also use the project area, and there is some calving in the upper part of the Mink Creek drainage. Because of complaints of elk depredations, 50 elk were trapped and removed from the area within the past year. Moose (Alces alces) may use the Mink Creek drainage.

Raptors such as golden eagle (Aquila chrysaetos), rough-legged hawk (Buteo lagopus), and red-tailed hawk (B. jamaicensis) occur in the project area. Ruffed grouse (Bonasa umbellus) are common in the project area. Waterfowl such as mallard duck (Anas platyrhynchos) use the habitat provided by Mink Creek to a limited extent. Beaver (Castor canadensis) have used Mink Creek, as shown by old dams, lodges, and canals along the proposed bypassed reach, but there are no signs of recent beaver activity (Robert Fackrell, 1986).

Environmental Impacts and Recommendations: The applicant would maintain about 4 acres of upland forest habitat in low-growing vegetation to maintain and operate the project. Project flow diversions could reduce the amount of riparian vegetation along the bypass reach. The clearing of vegetative ground cover, increased noise, and human activity would cause wildlife to avoid the project area during the 18-month-long construction period.

Interior states that providing access to the Mink Creek Canyon through the proposed pipeline right-of-way, which would go further up the canyon than existing roads, might adversely affect mule deer and other wildlife. Interior recommends that the applicant mitigate the effects on wildlife of habitat loss and increased human disturbance of wildlife to the extent possible. The applicant did not respond to Interior's recommendation.

IDFG recommends that the applicant limit the use of the pipeline right-of-way to project or agency personnel and prohibit public vehicular use of the right-of-way; prohibit project personnel from carrying firearms for hunting while traveling on the pipeline right-of-way; and construct the project transmission line so as to prevent the electrocution of raptors. The applicant agrees with IDFG's recommendations (Robert Fackrell, 1986).

Revegetating the pipeline right-of-way after construction would mitigate the loss of approximately 4 acres of upland habitat. In addition, the applicant should replace the riparian habitat lost as a result of project construction and operation in kind.

FS requires the applicant to file with the Commission prior to construction a FS-approved plan to mitigate project impacts on wildlife. This plan should include measures to minimize the adverse effects that increased access would have on wildlife.

The applicant's proposal to raptor-proof the 6-mile-long project transmission line would protect raptors in the project area, and should be implemented.

Unavoidable Adverse Impacts: Wildlife would avoid the project area during the 18-month-long construction period. The long-term management of about 4 acres as right-of-way would decrease the amount of forest habitat available to some wildlife species.

7. Threatened and Endangered Species

Affected Environment: No plant or animal species federally listed as threatened or endangered is known to occur in the project area (letter from Charles Polityka, Regional Environmental Officer, Department of the Interior, Portland, Oregon, November 27, 1985).

Environmental Impacts and Recommendations: None.

Unavoidable Adverse Impacts: None.

8. Recreation and Other Land and Water Uses

Affected Environment: The proposed project would be located within a 16,300-acre area of the Cache National Forest known as the Mink Creek Roadless Area (FS No. 04176). FS states that the Mink Creek Roadless Area will be managed as a multiple-use area; the area thus will be open for uses incompatible with wilderness.

Present recreational use in the project area includes hunting and a limited amount of hiking. The annual recreational use of the Mink Creek Roadless Area is approximately 7,450 recreation-visitor-days, most of it during the fall hunting season (Robert Fackrell, 1984, application, exhibit E). Other than 15 miles of trails within the roadless area, there are no developed recreational facilities within or close to the project area.

In addition to recreation, lands and waters in the project area are used for cattle grazing, oil and gas leasing, and irrigated agriculture.

Environmental Impacts and Recommendations: Project construction would have a minor adverse impact on recreational use in the project area. The applicant does not propose any measures to mitigate that impact or to develop any new recreational facilities.

FS says the applicant should develop a plan for accommodating project-induced recreation, and would require the applicant to file with the Director of the Office of Hydropower Licensing such a plan. The plan would protect and enhance recreational resources of the project area.

Unavoidable Adverse Impacts: Dust and noise from the use of construction equipment would have a minor adverse impact on recreationists during construction.

9. Cultural Resources

Affected Environment: The applicant conducted an archeological and historic survey of the project area, and found no archeological or historic sites listed on or eligible for inclusion on the National Register of Historic Places (letter from Thomas Green, Idaho State Archeologist, Boise, Idaho, April 2, 1986).

Environmental Impacts and Recommendations: Project construction or changes in the location of project facilities could adversely affect buried or other archeological or historic sites not previously identified in the project vicinity that may be eligible for inclusion in the National Register.

If the applicant encounters any previously unidentified archeological or historic sites during construction, the applicant should halt construction in the vicinity of the sites and should consult a qualified archeologist, FS, and the Idaho State Historic Preservation Officer (SHPO) concerning the eligibility of the sites and any measures needed to avoid the sites or to mitigate effects to the sites. Before undertaking any other construction within the project boundaries, the applicant should consult with the SHPO and FS about the need to conduct an archaeological or historic survey and the need for avoidance or mitigative measures. In such instances, the applicant should file with the Commission a plan for conducting any necessary studies, together with a schedule for implementing the plan and a copy of a letter from the SHPO and FS accepting the plan and schedule, 6 months before any construction activity.

Unavoidable Adverse Impacts: None.

B. Alternative of No Action

Implementation of the no-action alternative would not change the existing physical or biological components of the area, but would preclude the use of the renewable water resources of Mink Creek to generate electricity.

C. Recommended Alternative

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

VI. FINDING OF NO SIGNIFICANT IMPACT

Approximately 13 acres of vegetative cover would be cleared during construction. Such activities as the burial of the pipeline and the installation of the diversion structure and the powerhouse would cause minor, short-term increases in soil erosion and the

turbidity and sedimentation levels of Mink Creek. The increased turbidity and sedimentation levels would adversely affect fish feeding and spawning. Wildlife would avoid the project area during the 18-month-long construction period because of increased human activity and noise. Operation of the project would cause flow reductions of up to 100 cfs in the 12,000-foot-long bypass reach. The long-term management of about 4 acres as pipeline right-of-way would decrease the amount of forest habitat available to some wildlife species. Implementing the applicant's and the staff's proposed mitigative measures would ensure that the environmental effects of project construction and operation would be insignificant.

In accordance with the National Environmental Policy Act of 1969, this environmental assessment was prepared for the Mink Creek Hydroelectric Project. On the basis of this independent environmental analysis, issuance of a license for the project would not constitute a major federal action significantly affecting the quality of the human environment.

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Robert A. Crowley--Hydroelectric Power and Resource Utilization (Civil Engineer; B. S., Engineering).

James T. Griffin--Cultural Resources (Archeologist; B.A., Anthropology; Master of Public Administration).

Peter A. Leitzke--Geology and Soils (Geologist; M.A., Geological Sciences).

Einar S. Olsen--Recreation and Other Land Uses (Environmental Protection Specialist; Master in Public Administration, Environmental Administration).

Martin Thorpe--Need for Power and Alternatives to the Proposed Project (Electrical Engineer; B.S., Electrical Engineering).

Form L-2
(Revised October, 1975)

FEDERAL POWER COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR
UNCONSTRUCTED MAJOR PROJECT
AFFECTING LANDS OF THE UNITED STATES

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

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

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

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

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

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

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

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

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

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

for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Form No. 202a
3/79

State of Idaho

AMENDED Department of Water Resources AMENDED

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: KEITH C. WICSON APPLICATION NUMBER: _____

CHECK: 19 MAY 1986

- ☑ Source.
- ☑ Point of diversion.
- ☑ County.
- ☑ Quantity of water and period of use.
- ☑ Description of diverting works.
- ☑ Time required for beneficial use of water.
- ☑ Place of use or acres irrigated.
- ☑ Map.
- ☑ Signature.
- ☑ Fee.

Field check by: _____
Date: _____
Comments: _____

- ☐ Yes ☑ No Field check required.
- ☐ Yes ☑ No Critical groundwater area.
- ☐ Yes ☑ No Request dam safety information. Sent by: _____ Date: _____
- ☑ Yes ☐ No* In form to receipt.

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

☐	Idaho State Health Department.	Copies sent by:	Date:
☑	Idaho Fish and Game Department.	MD	6-3
☐	Idaho Department of Lands.		
☐	U.S. Bureau of Land Management.		
☑	U.S. Forest Service.	MD	6-3
☑	Other WD 13 N	MD	6-3

PROCESSING:

- ☐ Yes ☑ No Platted by: _____ Map No. _____
- ☐ Yes ☑ No Other rights on same place of use. _____
- ☑ Yes ☐ No* In form for advertising. Final date for protests: ~~6-16-86~~ ~~6-23-86~~ 7-21-86
- ☑ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

statewide

- ☑ Affidavit of publication received. Date: _____
- ☑ Application published correctly. If not, record action taken: _____
- ☑ Fee amount, receipt date & number, recorded on application.
- ☑ Publication dates and paper, recorded on application.

withdrawn

- ☑ Protests, dates, withdrawal, etc., recorded on application.
- ☑ Recommendation & initial, recorded on application.
- ☑ Yes ☐ No Measuring device required.
- ☐ Yes ☑ No Access port required.
- ☑ Yes ☐ No Will water be delivered by watermaster? If yes, what district? 13N
- 5-18-84 Date of priority recommended.

Special conditions of approval or cover letter. Standard conditions of approval for hydropower, in a water district, with a FERC license.

01E, 05 (13N), 08A, 17G, 04, 17K, 25, ~~26A~~ N/A over 25 cfs., 27, 30

file copy destroyed KW

By: Ernest Carlson, Date: Aug 13, 1986.

STATE OFFICE REVIEW: 17G 17K 20A (1-13-1986) 25 27 30

L08, L14 09E 08A 04 01E 05 (13N, 17N, nk CE.)

☐ See attached sheet for more information.

By: KW Date: 8/19/86

RECEIVED AUG 18 1986

Department of Water Resources

Receipt letter 5/30

1mw = 1000 kw

3.1 mw = 3100 kw

POWER CALCULATIONS FOR APPLICATION NO. 13-7416

P = Kilowatts .74 X hp

Q = cfs 100.

H = feet 467

e = efficiency

see attached to 5/29/84 correspondence

___ 1.) Affidavit of Residency
___ 2.) Ownership of Facilities
___ 3.)*Financial Ability
___ 4.) Feasibility of Project
a. Plans, drawings
b. Economic analysis
License ___ 5.)*Compliance w/FERC

*only for projects of more than 25 cfs or more than 500 horsepower.

$e = \frac{P(11.8)}{QH} = \frac{3100(11.8)}{100 \times 467} = \frac{36580}{46700} = 0.78$

Based on the above calculations the proposed project must have an 78 % efficiency.

****

OVERLAP REVIEW per VAX:

P/D none (13-7416 does not show up - needs coding correction)

P/U 11-0834, 11-0835B, 11-0835A, 11-0836A } all irrig. rights

BYPASSED AREA by section - no power rights -

Recommend L14 for bypassed irrigation rights — KW 8/19/86

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
AUGUST 24, 1986

FACKRELL, ROBERT N.
P.O. BOX 1
PRESTON, ID 83263

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 13-7416

DEAR PERMIT HOLDER:

ENCLOSED IS A COPY OF YOUR APPROVED APPLICATION FOR PERMIT. WE DIRECT YOUR ATTENTION TO THE CONDITIONS OF APPROVAL ON THE FOURTH PAGE.

BE SURE TO NOTE THE SPECIAL CONDITION REQUIRING YOU TO INSTALL A MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS THAT WILL ENABLE THE WATERMASTER TO CONTROL YOUR RATE OF DIVERSION.

PLEASE BE ADVISED THAT PRIOR APPLICATIONS FOR PERMIT HAVE BEEN FILED TO APPROPRIATE WATER FROM YOUR SOURCE WHICH MAY IMPACT THE AVAILABILITY OF WATER TO BE USED UNDER THIS PERMIT. THEREFORE, YOU SHOULD BE SURE TO ANALYZE THE IMPACT OF THESE RIGHTS BEFORE MAKING A MAJOR INVESTMENT IN YOUR WATER USE PROJECT.

SINCERELY,

GARY SPACKMAN
SUPERVISOR, WATER ALLOCATION SECTION

GS: SC
ENCLOSURES

See File For
complete
Publication

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCROFT
HELEN CHENOWETH

PHONE (208) 345-2670
P.O. BOX 893
BOISE, IDAHO 83701

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

COMPETING APPLICATION

TO

PROJECT #7957-000

AND

APPLICATION FOR LICENSE

FOR THE

MINK CREEK HYDROPOWER PROJECT

A MINOR WATER POWER PROJECT

(5 megawatts or less)

FRANKLIN COUNTY

IDAHO

Prepared by:

Consulting Associates, Inc.

Boise, Idaho

October 5, 1984

EXHIBIT A
PROPERTY
EXHIBIT E
Agency Response

EXHIBIT A

PROPERTY

EXHIBIT E

Agency Response

COMPETING APPLICATION

TO

PROJECT #7957-000

AND

APPLICATION FOR LICENSE

FOR THE

MINK CREEK HYDROPOWER PROJECT

1. Mr. Robert Fackrell of Preston, Idaho, pursuant to Part 4 of the Federal Power Act, Subpart G, Sections 4.31, (a) and (b) 4.60 and 4.61, applies to the Federal Energy Regulatory Commission for a license for the Mink Creek Hydropower Project as described hereinafter.

This competing application for license for the Mink Creek Hydropower project is made after the applicant has properly and duly notified Cook Electric and all relevant agencies as required.

2. Location of the project is:

State: Idaho

County: Franklin

Nearby Town: Preston

Stream: Mink Creek, a tributary to Bear River

See File For
complete
Publication

See File For
Maps in Complete
Publication

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCROFT
HELEN CHENOWETH

PHONE (208) 345-2670
P.O. BOX 893
BOISE, IDAHO 83701

October 5, 1984

RECEIVED
OCT 9 1984
Department of Water Resources
Eastern District Office

Mr. Ronald D. Carlson
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup
Idaho Falls, ID 83401

Dear Mr. Carlson:

Please find enclosed the application for minor license to the Federal Energy Regulatory Commission for the proposed Mink Creek Hydropower Project located near Preston, Idaho, in Franklin County.

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

Sincerely,

Helen Chenoweth

Helen Chenoweth

HC:mf

Enclosure

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCROFT
HELEN CHENOWETH

PHONE (208) 345-2670
P.O. BOX 893
BOISE, IDAHO 83701

May 10, 1985

RECEIVED
MAY 13 1985
Department of Water Resources
Eastern District Office

Mr. Kenneth F. Plumb, Secretary
Office of Electric Power Regulation
FEDERAL ENERGY REGULATORY COMMISSION
825 N. Capitol Street, NE
Washington, DC 20426

Ref: Mink Creek Project #8646-000

Dear Mr. Plumb:

Per your request of letter dated January 8, 1985 requesting additional information on vegetation within the project area (4.61 (d) (2) (i), we transmit herewith a vegetative survey and an additional set of maps on which the vegetative types have been indicated.

We believe this now fully completes the additional information requested in the FERC letter of January 8, 1985.

All other materials were previously submitted timely on March 26, 1985. Because of winter snow conditions this material is just now available.

Sincerely,

Vernon F. Ravenscroft

VFR:mf

cc: Rob Fackrell
Ted Sorenson

See File For
complete
Publication

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCROFT
HELEN CHENOWETH

PHONE (208) 345-2670
P.O. BOX 893
BOISE, IDAHO 83701

March 26, 1985

RECEIVED
APR 1985
Department of Water Resources
Eastern District Office

Kenneth F. Plumb, Secretary
FEDERAL ENERGY REGULATORY COMMISSION
825 North Capitol Street, N.E.,
Washington, D.C. 20426

Re: Project No 8646-000-Idaho
Mink Creek Hydropower Project

Dear Sir:

The letter of January 8, 1985 in which requests were made for additional materials regarding environmental Exhibit E deficiencies in this project and additional information on the general features of the project will be addressed in this reply on the same two part basis:

1. Environmental Supplement

A. Vegetative Cover: We respectfully request an additional 60 day period for the submission of a specific survey to map the vegetative types on which the project features will be situated. The original application identified the vegetative cover for the area by exposure position. If this was not adequate, then we must again make a specific effort which work cannot be accomplished until the snow has melted in this canyon - high elevation area. The area was snowed in when your request was made (January 8, 1985) and remains inaccessible as of the date of this report (March 26, 1985).

The specific vegetative mapping will also include evaluation of the grazing pattern of the principal wildlife specie (Mule deer) and the domestic livestock which has had grazing rights in the area for many years.

B. Fishery Resources: Extensive fisheries work has been completed on the site and supplemental reports from the firm of Don Chapman, Consultants, Inc. is attached as Exhibit 1-A. These studies were coordinated with the Idaho Fish and Game Department, and the acceptance letter from that agency is attached - Exhibit 1-B.

The project sponsor has also coordinated repeatedly with the U.S. Forest Service and that agency's acceptance letter is attached - Exhibit 1-C.

C. Water Quality and Quantity: This is further addressed with supplemental reports from one of the two project's hydrologists, Mr. Cecil Thomas (resume attached) - Exhibit 1-D - and his report and finding of specific water quality analyses is attached - Exhibit 1-E.

It should be noted that this project collects water at the immediate point from which the springs issue out of a limestone formation and the waters are then conveyed to a lower level at a mountain meadow. The protection of the penstock will reduce natural erosion and streambed scouring which now takes place.

D. Expected Environmental Impacts: The exhibits listed above speak to the various environmental impacts which are minimal. The original application also covered these impacts in detail. Beyond the exhibits in this report and the original application, it should be reiterated here that the engineer and the federal agencies will both require reseeding of the land disturbed by the buried penstock and as per U.S. Forest Service requirements, already elaborated in the original application, any new powerlines will be raptor proof in design.

The major environmental concern to all parties has been the necessary by-pass flow to maintain the stream biota and the vegetative riparian habitat. As per the above listed exhibits, that flow has been determined to the satisfaction of all parties and will be a requirement of the state Water Resources Department permit, the special land-use permit from the U.S. Forest Service as well as the F.E.R.C. license.

E. Reasons for not undertaking measures proposed by agencies: As per exhibits listed above, it should be evident that all measures have been worked out with the principal agencies, namely, Idaho State Fish and Game and U.S. Forest Service. By reference to Exhibit 1-F of this report, it will be noted that requested information has been submitted to the Idaho Health and Welfare

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

September 26, 1990

Robert N. Fackrell
P.O. Box 1
Preston, ID 83263

RE: Permit to Appropriate Water No. 13-7416

Dear Mr. Fackrell:

The watermaster for Water District #13-N, Mink Creek, has informed the Department that, on several occasions, Mink Creek has been dewatered between the point of diversion for your hydropower plant, and the point of discharge back to Mink Creek. The watermaster represents that the stream has been dewatered below the Mink Creek Irrigation Company diversion, which is located within the bypass reach. The watermaster represents that you are not passing sufficient water to satisfy both the Mink Creek Irrigation Company rights, and the 10.0 cfs minimum bypass flow. Finally, the watermaster represents that the dewatering of Mink Creek has caused substantial fish kills in Mink Creek.

The purpose of this letter is to notify you of the way the hydropower project, including the required bypass flow, will receive water relative to other existing proprietary water rights. IDWR is the state agency responsible, through its local water district, for distributing water to those having the right to use it. IDWR believes that you need to be advised of its intended distribution plan.

The agreement between you and the protestants to application for permit no. 13-7416 states that a minimum bypass flow of 10.0 cubic feet per second must be maintained within the bypass reach, but then only requires that it be measured at the hydropower point of diversion. The FERC license incorporates the language of the agreement between the parties almost verbatim.

The watermaster will be instructed to deliver sufficient water past your point of diversion to satisfy proprietary rights plus the minimum bypass flow. At certain times of the year, Mink Creek Irrigation Company diverts 14.77 cfs. The watermaster will adjust your diversion gates to ensure that the proper amount of water is delivered downstream.

The watermaster represents that no measuring device is located below the Mink Creek Irrigation Company diversion. To ensure that the watermaster can measure the flows, the Department

may require the installation of a measuring device below the Mink Creek Irrigation Company's point of diversion.

Please consider this letter notice that, if flows in Mink Creek are reduced below 10.0 cfs in any portion of the bypass reach, the Department will seek civil penalties pursuant to Idaho Code § 42-351 for illegal diversion of water and non-compliance with the terms of the water right permit. The Department may also seek remedies pursuant to Idaho Code § 42-311.

Finally, assignment to the watermaster of monitoring your diversion, will require a great deal more of his time. The Department may impose some requirement for you to compensate the watermaster for your proportional share of extraordinary regulation not normally needed for regular consumptive water rights.

Respectively,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Eastern Region
FERC, J. Mark Robinson
F & G, Will Reed
Dean Smith

FISH POPULATIONS

IN MINK CREEK, FRANKLIN COUNTY, IDAHO, IN 1990

(FERC PROJECT 8646-001)

Robb - here's 1990
report for you to
distribute to agency
folks. Fish numbers
should make you happy -
they continue to increase!

Jack

Prepared By:

J. S. Griffith
Box 8007
Pocatello, Idaho 8320

23 September 1990

The Mink Creek Hydroelectric Project was completed in 1986 and modified flow and fish habitat in a portion of Mink Creek, Franklin County, Idaho. Licensing conditions included monitoring of changes in fish habitat and trout populations following construction of the project. The objective of this report is to describe the fish population in the 2.9-km section of Mink Creek affected by the hydropower project in 1990, during the fourth summer of operation.

A total of thirty-four pools were created during project construction by the placement of log and rock weirs. Trout in the eighteen of those pools selected for analysis were emunerated by electrofishing. Fish in the six "control" sections that were not affected by construction of the habitat structures but are partially dewatered in summer by project operation were also sampled. Changes in trout populations are assessed by comparisons with pre-project fish population data.

STUDY SITE

Mink Creek is a spring-fed headwater stream originating in the Bear River range approximately 9.6 km east of the Oneida Narrows Reservoir on Bear River. The project is located within sections 22, 23, and 27, Township 13 South, Range 41 East, Boise Meridian, Franklin Co., Idaho. The stream drains an area of 50 km^2. Stream elevation in the project reach ranges from 1777 m MSL at the intake structure to 1634 m at the powerhouse. Stream gradient exceeds 20% above the intake structure and averages 5% for the project stream reach.

RESULTS

On 26-27 August 1990, the numbers of trout using the eighteen pools that had been previously sampled in 1987-89 were assessed by electrofishing with a 300 volt DC backpack unit. Population estimates were made using the two-pass removal procedure. As in 1989, one pool (number 11) could not be sampled by electrofishing because beaver had constructed a dam over the top of the structure and the pool was too large and deep to sample effectively. In 1990, trout in this pool were counted by a snorkeler in a wet suit.

In 1990, a total of 48 age-1 and older cutthroat trout (Oncorhynchus clarki) were collected in the seventeen pools exclusive of pool 11 and an additional 11 individuals in pool 11 (Table 1). This represents a doubling over 1987-89 numbers of age-1 and older cutthroat trout (Tables 2-4).

Also in 1990, numbers of age-1 and older brook trout (Salvelinus fontinalis) increased substantially over 1987-89 levels in pools. A total of 832 older brook trout were collected in the seventeen pools exclusive of pool 11 and an additional 198 individuals were counted in pool 11 (Table 1). In 1988, the number was 449 and in 1989, 522 age-1 and older brook trout were collected (Tables 3 and 4). Size of both species of trout captured in 1990 was comparable to that in 1987-89.

As in the previous two years, age-0 cutthroat trout approximately 40 mm in length were seen in some sections but were not systematically collected because of their small size. Age-0 brook trout (70-100 mm) were less abundant in 1990 than in previous years (138 individuals in 1990 vs. 268 in 1989; Tables 1 and 4).

Six "control" sections, not affected by construction of the habitat improvement structures, were sampled in 1990. The numbers of age-0 and age-1 and older trout of both species in 1990 were comparable to 1988-89 levels (Table 5).

Additional snorkeling observations were made in the vicinity of the project powerhouse on 27 August 1990. The large pool extending from the powerhouse outfall downstream to the irrigation diversion headgate held in excess of 300 trout larger than 20 cm in length. More than half of these fish were cutthroat trout, some approximately 40 cm long. The remaining fish were brook trout.

Table 1. Numbers of trout collected by electrofishing in pools in Mink Creek, 26 August 1990.

Pool	cutthroat trout		brook trout	
	number	length, cm	number age 1 & older	number age 0
1	7	15-37	71	9
2	6	13-24	28	5
7	4	15-21	48	19
8	10	16-21	118	20
9	0	-	30	6
11	-	-	--	-
12	5	12-27	81	6
13	2	26-33	26	8
14	0	-	12	2
17	1	14	80	11
18	2	12-24	92	8
19	1	15	41	4
26	3	16-33	50	9
27	5	16-37	75	8
28	0	-	14	4
30	0	-	9	9
31	1	36	6	6
32	1	19	51	4
total	48		832	138

October 01, 1990

RECEIVED
OCT 4 1990
Department of Water Resources

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

RE: Permit to Appropriate Water No. 13-7416

Dear Keith,

In response to the letter of Mr. Gary Spackman dated September 26, 1990, I offer the following:

1. At no time that I am aware of has the Mink Creek been dewatered between my point of diversion and the point of discharge back into Mink Creek.

2. I have been contacted on occasion by Mr. Smith and advised that I needed to increase my bypass flow due to water use by Mink Creek Irrigation Company. On each and every occasion I have responded immediately to his request to increase the bypass flow.

3. There has not, to my knowledge, ever been any kind of "fish kill" caused by the operation of the Mink Creek Hydroelectric Facility. In fact, I received in the mail the annual fish population study done by Dr. Jack Griffith on the same day that I received the above referenced letter from Mr. Spackman. I have attached a copy of the study for your review and files.

4. I have made every attempt to cooperate fully with Mr. Smith with regard to the management of the Water of Mink Creek so as to be in compliance with my responsibilities. I will continue to make every effort to cooperate.

FACKRELL CONSTRUCTION CO., INC.

P. O. Box #1 • Preston, Idaho 83263 • (208) 852-1320
237 S. 300 E. • River Heights, Utah 84321 • (801) 752-7000

5. I have concern that the heated political climate surrounding the request for water right on the Bear River Narrows project may have in some way entered into this matter.

In summary, I have in the past fully cooperated in the management effort on Mink Creek. I have made every effort to see that appropriate flows have been maintained. I have provided bypass equipment that is manually operated for the use of Mr. Smith if he deems it necessary. And, I certainly intend to continue to cooperate fully.

Cordially,

Robert N. Fackrell

RNF/sf
cc: FERC, J. Mark Robinson
IDF&G, Will Reed
Enclosure

138587

May 31, 1991

ROBERT N. FACKRELL
P.O. BOX 1
PRESTON, ID 83263

PROOF DUE NOTICE

RE: PERMIT NO. 13-07416

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 August 1, 1991. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

SINCERELY,

Rita Fleck
Secretary/Records Manager

Enclosures

Form 217
07/90

RECEIVED
JUL 11 1991
Department of Water Resources

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

For Office Use Only
Amt. of Fee $ 600.00
Date 10.7.91
Receipt No. C021128
Received by MJH

The Idaho Department of Water Resources will consider this form as 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 or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 13-07416 Telephone No. 208-852-1320

2. Name(s) of Permit Holder(s): Robert N. Fackrell

3. Post Office Address: P.O. Box #1, Preston, Idaho 83263

4. Source of Water: Mink Creek

   a. If ground water, well driller's name: _____ Date drilled: _____

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

5. Extent of Use:

   Domestic _____ (No. of households) Irrigation _____ (No. of acres)

   Stockwater _____ (No. and type of stock) Other Hydroelectric

6. Total rate and/or volume for which proof is submitted 100 cfs _____ acre/feet

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

   Measuring device: Required? X Yes ___ No Installed? X Yes ___ No
   & LOCKABLE
   OR
   Flow Measurement Port: Required? ___ Yes X No Installed? ___ Yes X No

8. Fee Enclosed: $ 600.00 (See License Examination Fee Schedule)

9. Person to contact to accompany the Department representative during the field examination:

   Robert N. Fackrell 208-852-1320
   Name Telephone No.

   P.O. Box #1, Preston, Idaho 83263
   Address

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

June 7, 1991 _____
Date Signature (and title if on behalf of a company or organization)

August 6, 1991

ROBERT N. FACKRELL
P.O. BOX 1
PRESTON, ID 83263

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 13-07416

Dear Permit Holder:

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

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

Sincerely,

Rita Fleck
Secretary/Records Manager

c: IDWR - Region

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCROFT
HELEN CHENOWETH

PHONE (208) 345-2673
P.O. BOX 893
BOISE, IDAHO 83701

October 5, 1984

RECEIVED
OCT 9 1984
Department of Water Resources
Eastern District Office

. Ronald D. Carlson
)AHO DEPARTMENT OF WATER RESOURCES
150 Shoup
Idaho Falls, ID 83401

ear Mr. Carlson:

Please find enclosed the application for minor license the Federal Energy Regulatory Commission for the proposed nk Creek Hydropower Project located near Preston, Idaho, in anklin County.

If you have any questions please don't hesitate to call

Sincerely,

Helen Chenoweth

Helen Chenoweth

HC:mf

Enclosure

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCROFT
HELEN CHENOWETH

PHONE (208) 345-2670
P.O. BOX 883
BOISE, IDAHO 83701

May 10, 1985

RECEIVED
MAY 13 1985
Department of Water Resources
Eastern District Office

Mr. Kenneth F. Plumb, Secretary
Office of Electric Power Regulation
FEDERAL ENERGY REGULATORY COMMISSION
825 N. Capitol Street, NE
Washington, DC 20426

Ref: Mink Creek Project #8646-000

Dear Mr. Plumb:

Per your request of letter dated January 8, 1985 requesting additional information on vegetation within the project area (4.61 (d) (2) (i), we transmit herewith a vegetative survey and an additional set of maps on which the vegetative types have been indicated.

We believe this now fully completes the additional information requested in the FERC letter of January 8, 1985.

All other materials were previously submitted timely on March 26, 1985. Because of winter snow conditions this material is just now available.

Sincerely,

Vernon F. Ravenscroft

VFR:mf

cc: Rob Fackrell
Ted Sorenson

VEGETATION SURVEY FOR THE FACKRELL HYDROELECTRIC FACILITY
ON MINK CREEK

This survey was made April 27,1985,by Basil K.Crane Rt 2 Box 593
Preston, Id 83263

The new power line,about 1000 feet in length,from the existing power line to the powerhouse;the powerhouse and tailrace;and approximately the first 1200 feet of the penstock upstream from the powerhouse are within the riparian zone of Mink Creek.In this area this is a distinct vegetative type.

The vegetation was checked on three,one tenth acre plots in this zone.Plot No.1 was located midway between the existing power line and the powerhouse.Plot No.2 was located where the powerhouse is planned.Plot No.3 was about midway between the powerhouse and the point where the penstock leaves the riparian zone.
The vegetation was very similar on the three plots.The main difference was that the most abundant tree species on plot No.1 is birch while on plot No.3 it is aspen.The following plants were observed on these plots.

Birch	Betula fontinalis
Willow	Salix sp.
Aspen	Populus tremuloides
Dogwood	Cornus stolonifera
Chokecherry	Prunus virginiana
Elderberry	Sambucus caerulea
Black Cottonwood	Populus trichocarpa
Bigtooth maple	Acer grandidentatum
Hawthorne	Crataegus rivularis
Gooseberry	Ribes sp.
Wild rose	Rosa woodsii
Kentucky bluegrass	Poa pratensis
Slender wheatgrass	Agropyron pauciflorum
Smooth brome	Bromus inermis
Orchard grass	Dactylis glomerata
Wildrye	Elymus canadensis
Timothy	Phleum pratense

RECEIVED
MAY 1 1985

Sedge	Carex sp.
Baltic rush	Juncus balticus
Canada thistle	Cirsium arvense
Goldenpea	Thermopsis montana
Larkspur	Delphinium sp.
Western coneflower	Rudbeckia occidentalis
Stinging nettle	Urtica gracilis
Yarrow	Achillea lanulosa
Dandelion	Leontodon taraxacum
White clover	Trifolium repens
Cowparsnip	Heracleum lanatum
Burdock	Arctium minus
Geranium	Geranium sp.
Sweet anise	Osmorhiza occidentalis
Houndstongue	Cynoglossum officinale
Waterleaf	Hydrophyllum capitatum
False solomonseal	Vagnera amplexicaulis
Sourdock	Rumex occidentalis
Aster	Aster sp.

The riparian zone,as a distinct vegetative type,ends a few hundred feet upstream from where the penstock leaves it.Stream-side vegetation from here to the upper spring is practically the same as it is along the route of the penstock.

The route of the penstock is through a rather uniform decidious forest of maple and aspen.This was once a douglas fir forest. It was logged and burned almost a hundred years ago and was replaced by the present vegetation.A detailed check of the vegetation on four,one tenth acre plots,spaced at approximately 1400 foot intervals along the proposed penstock route,showed the following plants present.The vegetation along the entire route is rather uniform.Aspen tends to be somewhat patchy.Near the upper plot

some scattered douglas fir reproduction is beginning to appear.

Bigtooth maple	Acer grandidentatum
Aspen	Populus tremuloides
Juniper	Juniperus scopulorum
Chokecherry	Prunus virginiana
Kentucky bluegrass	Poa pratensis
Slender wheatgrass	Agropyron pauciflorum
Mt.brome	Bromus marginatus
Wildrye	Elymus canadensis
Oregon grape	Berberis repens
Sweet anise	Osmorhiza occidentalis
Thistle	Cirsium sp.
Larkspur	Delphinium sp.
Geranium	Geranium sp.
Snowberry	Symphoriocarpos oreophilus
Valerian	Valeriana occidentalis
Spring beauty	Claytonia lanceolata
Buttercup	Ranunculus sp.
Horsemint	Agastache urticifolia
Engelman aster	Aster engelmanii
Dandelion	Leontodon taraxacum
Sagebrush	Artemisia tridentata
Mulesear	Wyethia amplexicaulis
Gooseberry	Ribes sp.
Violet	Viola sp.
Waterleaf	Hydrophyllum capitatum
False solomonseal	Vagnera amplexicaulis
Houndstongue	Cynoglossum officinale
Western coneflower	Rudbeckia occidentalis
Serviceberry	Amelanchier alnifolia
Mt.myrtle	Pachistima myrsinites
Elderberry	Sambucus caerulea

To revegetate disturbed areas I would recommend pubescent wheatgrass and orchard grass in the decidious forest area. In the riparian zone if you are mainly concerned with ground cover, Kentucky bluegrass would do very well. If you want more forage production orchard grass and smooth brome would be better.

Basil R. Crane

MAP(S) TOO LARGE TO FILM - SEE FILE...

Resume for ... BASIL K.CRANE

Education;

1935,B.S.degree,forestry,Utah State Agric.College.Some Post-graduate study.

Work Experience; all with the U.S.Forest Service

1937,Chief-of Party,range survey,Humboldt National Forest, Nevada.

1938 to 1945,Forest Ranger,Toiyabe National Forest,Nevada.

1946 to 1950,Forest Supervisor's staff,range and wildlife mgnt.,Toiyabe National Forest,Nevada.

1950 to 1952,supervised the intermountian region's range revegetation program,Ogden,Utah.

1952 to 1953,Assistant Chief division of range and wildlife mgnt.,Ogden Utah.

1953 to 1955,Forest Supervisor,Uncompahgre and Grand Mesa National Forests,Delta,Colorado.

1955 to 1962,Assistant Regional Forester,range and wildlife mgnt.,Rocky Mt.Region,Denver,Colorado.

1962 to 1974,Deputy Regional Forester,Rocky Mt.Region, Denver,Colorado.

Dec.1974,Retired.

Publications;

October 1950,Journal of Range Management,"Condition and Grazing Capacity of Wet Meadows on the East Slope of the Sierra Nevada Mountains".

1984,University of Nevada Press,book,"Dust From an Alkali Flat."

I hereby certify that on the 10th day of May, 1985, I served a copy of the foregoing additional information for the Mink Creek Hydropower Project by Certified Mail, properly addressed with postage prepaid, to the following parties:

Mr. Kenneth F. Plumb, Secretary
Office of Electric Power Regulation
FEDERAL ENERGY REGULATORY COMMISSION
825 N. Capitol Street, N.E.
M.S. 208 R.B.
Washington, D.C. 20426

Mr. Arthur C. Martin
Regional Engineer
FEDERAL ENERGY REGULATORY COMMISSION
819 Taylor Street
Fort Worth, Texas 76102

Mr. Charles J. Hendricks, Forest Supervisor
U.S. FOREST SERVICE
Federal Building, Suite 294
250 So. 4th
Pocatello, Idaho 83201

Mr. John P. Wolflin, District Supervisor
U.S. FISH & WILDLIFE SERVICE
4620 Overland Road
Boise, Idaho 83705

U.S. ARMY CORPS OF ENGINEERS
Building 602
City/County Airport
Walla Walla, Washington 99362

Jerry Conley, Director
IDAHO DEPARTMENT OF FISH & GAME
P.O. Box 25
Boise, Idaho 83707

David Neider
Supervisor, Region 5
IDAHO FISH & GAME DEPARTMENT
P.O. Box 4229
Pocatello, Idaho 83201

Mr. Ronald D. Carlson
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup
Idaho Falls, Idaho 83401

Mr. Elmer W. "Bill" Smith, P.E.
Environmental Engineer
IDAHO DEPARTMENT OF HEALTH & WELFARE
Division of Environment
150 North 3rd Avenue
Pocatello, Idaho 83201

State of Idaho
DEPARTMENT OF PARKS AND RECREATION
Statehouse
Boise, Idaho 83702

Mr. Gordan Garland
NATIONAL PARK SERVICE
450 Golden Gate Avenue
San Francisco, California 94102

Mr. Warren Chapman
COOK ELECTRIC
P.O. Box 1071
Twin Falls, Idaho 83303

Helen Chenoweth

Helen Chenoweth
Consulting Associates, Inc.

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCROFT
HELEN CHENOWETH

PHONE (208) 345-2670
P.O. BOX 893
BOISE, IDAHO 83701

EXHIBIT A

PROPERTY

EXHIBIT E

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

COMPETING APPLICATION

TO

PROJECT #7957-000

AND

APPLICATION FOR LICENSE

FOR THE

MINK CREEK HYDROPOWER PROJECT

A MINOR WATER POWER PROJECT

(5 megawatts or less)

FRANKLIN COUNTY

IDAHO

Prepared by:

Consulting Associates, Inc.

Boise, Idaho

October 5, 1984

See File For complete Publication

Consulting Associates, Incorporated

BOISE OFFICE
VERNON RAVENSCHOFT
HELEN CHENOWETH

PHONE (208) 345-2670
P O BOX 883
BOISE, IDAHO 83701

March 26, 1985

RECEIVED
APR 1 1985
Department of Water Resources
Eastern District Office

Kenneth F. Plumb, Secretary
FEDERAL ENERGY REGULATORY COMMISSION
825 North Capitol Street, N.E.,
Washington, D.C. 20426

Re: Project No 8646-000-Idaho
Mink Creek Hydropower Project

Dear Sir:

The letter of January 8, 1985 in which requests were made for additional materials regarding environmental Exhibit E deficiencies in this project and additional information on the general features of the project will be addressed in this reply on the same two part basis:

1. Environmental Supplement

A. Vegetative Cover: We respectfully request an additional 60 day period for the submission of a specific survey to map the vegetative types on which the project features will be situated. The original application identified the vegetative cover for the area by exposure position. If this was not adequate, then we must again make a specific effort which work cannot be accomplished until the snow has melted in this canyon - high elevation area. The area was snowed in when your request was made (January 8, 1985) and remains inaccessible as of the date of this report (March 26, 1985).

The specific vegetative mapping will also include evaluation of the grazing pattern of the principal wildlife specie (Mule deer) and the domestic livestock which has had grazing rights in the area for many years.

B. Fishery Resources: Extensive fisheries work has been completed on the site and supplemental reports from the firm of Don Chapman, Consultants, Inc. is attached as Exhibit 1-A. These studies were coordinated with the Idaho Fish and Game Department, and the acceptance letter from that agency is attached - Exhibit 1-B.

See file for complete Publication

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 13-07416

Priority: May 18, 1984

Maximum Diversion Rate: 100.00 CFS
Maximum Diversion Volume: 27663.0 AF

This is to certify, that ROBERT N FACKRELL
PO BOX 1
PRESTON ID 83263 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated May 18, 1984; and has submitted Proof of Beneficial Use on July 10, 1991. An examination indicates that the works have a diversion capacity of 100.000 cfs of water from:

MINK CREEK tributary to **BEAR RIVER**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
POWER	01/01 to 12/31	100.00 CFS	27663.0 AF

LOCATION OF POINT(S) OF DIVERSION: SWNE , Sec. 23, Township 13S, Range 41E
FRANKLIN County

PLACE OF USE: POWER

TWN	RGE	SEC	
13S	41E	28	NESE

CONDITIONS OF APPROVAL AND REMARKS

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

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 13-07416

CONDITIONS OF APPROVAL AND REMARKS

8. The water right confirmed in this license 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 license and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this license.
9. Use of water under this water right will be regulated by the watermaster of State Water District No. 13N.
10. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.
11. 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 8646-001 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.
12. This right is subject to an agreement dated 1/13/86 between the right holder and protestant(s) to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources. Included in this agreement is the maintenance of a minimum bypass flow. The department retains jurisdiction over this right to require the installation of a measuring device below the Mink Creek Irrigation Company's diversion if needed for measurement of bypass flows by the watermaster.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 30th day of JUNE, 1997.

Acting for KARL J. DREHER, Director

DEAN SMITH IS THE WATERMASTER — DON'T WE WANT TO TELL HIM HE HAS AUTHORITY TO SHUT OFF THE WATER TO THE HYDRO PLANT IF THEY ARE NOT IN COMPLIANCE?

August 28, 1990

Dean C. Smith
3168 East Hwy 36
Preston, ID 83263

RE: Fackrell Mink Creek Power Plant

Dear Mr. Smith:

You asked some questions about the Mink Creek Power Plant at our hearing in Preston on August 21, 1990. Enclosed are copies of the water right permit and portions of the FERC license granted to Mr. Fackrell.

Mr. Fackrell is required to maintain a constant minimum instream flow of 10.0 cfs except during a 45 day period during the high run-off when he must release a greater amount of water for flushing flows.

The state water right requires that a measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works. The Department will interpret this provision to mean that the permit holder must install both a measuring device in Mink Creek to ensure release of the minimum streamflow, and also a ~~measuring device to measure water being diverted.~~ lockable control device on its diversion so that it may be shut off if necessary.

If water is being diverted without the measuring devices being completed, the Department will take necessary steps to require installation. Furthermore, if the minimum streamflow is not being maintained, and you or other people have knowledge of the failure to maintain the minimum streamflow, please file an affidavit with this office, and the Department will take appropriate action. I am sure the Federal Energy Regulatory Commission would also like to know if its minimum streamflow conditions have not been complied with.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure
cc: Robert Fackrell

COPY

SECURITY AGREEMENT COVERING WATER PERMIT

This Security Agreement ("Agreement") is made this 6th day of September, 1991, by and between **ROBERT N. FACKRELL** and **STEPHANIE C. FACKRELL**, husband and wife ("Debtor") and **FIRST SECURITY BANK OF IDAHO, N.A.** ("Secured Party").

RECITALS

1. Debtor is the owner of a certain water permit issued by the Idaho Department of Water Resources, identified as Permit No. 13-7416 (the "Water Permit"). A true and correct copy of the Water Permit is attached as **Exhibit A**.

2. Pursuant to a Loan Agreement between Debtor, Fackrell Construction Company, Inc. and Secured Party dated September 6, 1991 (the "Loan Agreement"), Debtor agreed to grant Secured Party a security interest in all of its right, title and interest in and to the Water Permit as collateral security for repayment of the indebtedness identified in the Loan Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and conditions contained herein and the recitals set forth above, which constitute a material part of this Agreement, the parties agree as follows:

SECURITY INTEREST

1. In accordance with Idaho Code Section 42-207, Debtor hereby pledges and grants to Secured Party as security for the prompt repayment of the indebtedness and prompt performance of Debtor's obligations referred to in the Loan Agreement, a security interest in and to the Water Permit, and a security interest in and to all water permits or applications therefor acquired by Debtor on or after the date hereof relating to the hydroelectric facility known as the Mink Creek Hydroelectric project ("Mink Creek Hydroelectric Permits").

2. In accordance with Idaho Code Section 42-207, Debtor hereby authorizes and requests the Director of the Idaho Department of Water Resources to record the existence of the security interest granted hereunder with respect to the Water Permit and to all Mink Creek Hydroelectric Permits or water licenses arising from said Water Permit or Mink Creek Hydroelectric Permits ("Water Licenses") acquired by Debtor.

3. Debtor shall execute and deliver to Bank, concurrent with Debtor's execution of this Agreement, and at any time or times hereafter at the request of Bank, all financing statements, continuation financing statements, fixture filings,

security agreements, chattel mortgages, assignments, affidavits, reports, notices and schedules and all other documents that Bank may reasonably request, in form satisfactory to Bank, to perfect and maintain perfected Bank's security interests in the Water Permit and Mink Creek Hydroelectric Permits or Water Licenses.

4. Debtor has not and shall not grant a security interest in the Water Permit, Mink Creek Hydroelectric Permits or Water Licenses to any other party so long as the indebtedness and Debtor's obligations referred to in the Loan Agreement remain unsatisfied.

5. Debtor will undertake all actions necessary to continue the Water Permit or Mink Creek Hydroelectric Permits in full force and effect and agrees to timely file each proof of application to a beneficial use required by Idaho Code Section 42-217. Debtor agrees to abide by the terms of the Water Permit and all Mink Creek Hydroelectric Permits and to take all actions necessary under Idaho Code Sections 42-201 through 42-247 to ensure Debtor receives a license for the water rights evidenced by the Water Permit and all Mink Creek Hydroelectric Permits and to ensure that no such water rights or license is lost or impaired through forfeiture, abandonment, change of point of diversion and place of use, or otherwise under the laws of the state of Idaho.

6. Debtor will provide Bank with evidence of the issuance or denial of a license pursuant to the Water Permit and each Mink Creek Hydroelectric Permit immediately following notice by the Idaho Department of Water Resources.

7. Upon Debtor's default in repayment of the indebtedness or performance of Debtor's obligations referred to in the Loan Agreement, Bank shall have all rights referred to in the Loan Agreement, together with all rights of a secured party under the Idaho Uniform Commercial Code and other applicable Idaho law.

IN WITNESS WHEREOF, Debtor has executed this Agreement this 6th day of September, 1991.

Robert N. Fackrell

Stephanie C. Fackrell

Form 202
3/78

Ident. No. 13

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR PERMIT AMENDED

To appropriate the public waters of the State of Idaho

1. Name of applicant Robert N. Fackrell Phone 208-852-152:

   Post office address P.O. Box 1, Preston, ID 83263

2. Source of water supply Mink Creek which is a tributary of Bear River

3. Location of point of diversion is SW ¼ of NE ¼ of Section 23 Township 1

   Range 41E B.M. Franklin County, additional points of diversion if any:

   (unsurveyed)

4. Water will be used for the following purposes:

   Amount 100.0 ~~cfs~~ (cfs or ~~acre-feet per annum~~) Power purposes from 1/1 to 12/31 (both dates inc:

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

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

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

5. Total quantity to be appropriated:

   a. 100.0 cubic feet per second and/or b. _____ acre-feet per a:

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. concrete and steel diversion structure with a 60" diameter bypass and 48" diameter penstock

   b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total re:
      capacity _____ acre-feet, materials used in storage dam: _____
      Period of year when water will be diverted to storage _____ (Month/Day) to _____ (Month/Day) inc:

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

7. Time required for the completion of the works and application of the water to the proposed ben:
   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: NE ¼ of SE ¼ of Section 28 Township 13S
      Range 41E B.M.
      (2) Amount of power to be generated: 3.1 mw. horsepower under 467 feet of
      (3) List number of each kind of livestock to be watered _____
      (4) Name of municipality to be served _____, or number of families
      supplied with domestic water _____.
      (5) If water is to be used for other purposes describe: _____

PEMCAD-Bayonne, N. J.

EXHIBIT
A

TWP	RANGE	SEC.	NE¼								SW¼				SE¼			
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼

Total number of acres to be irrigated ___

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

9. a. Who owns the property at the point of diversion U.S. Forest Service

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

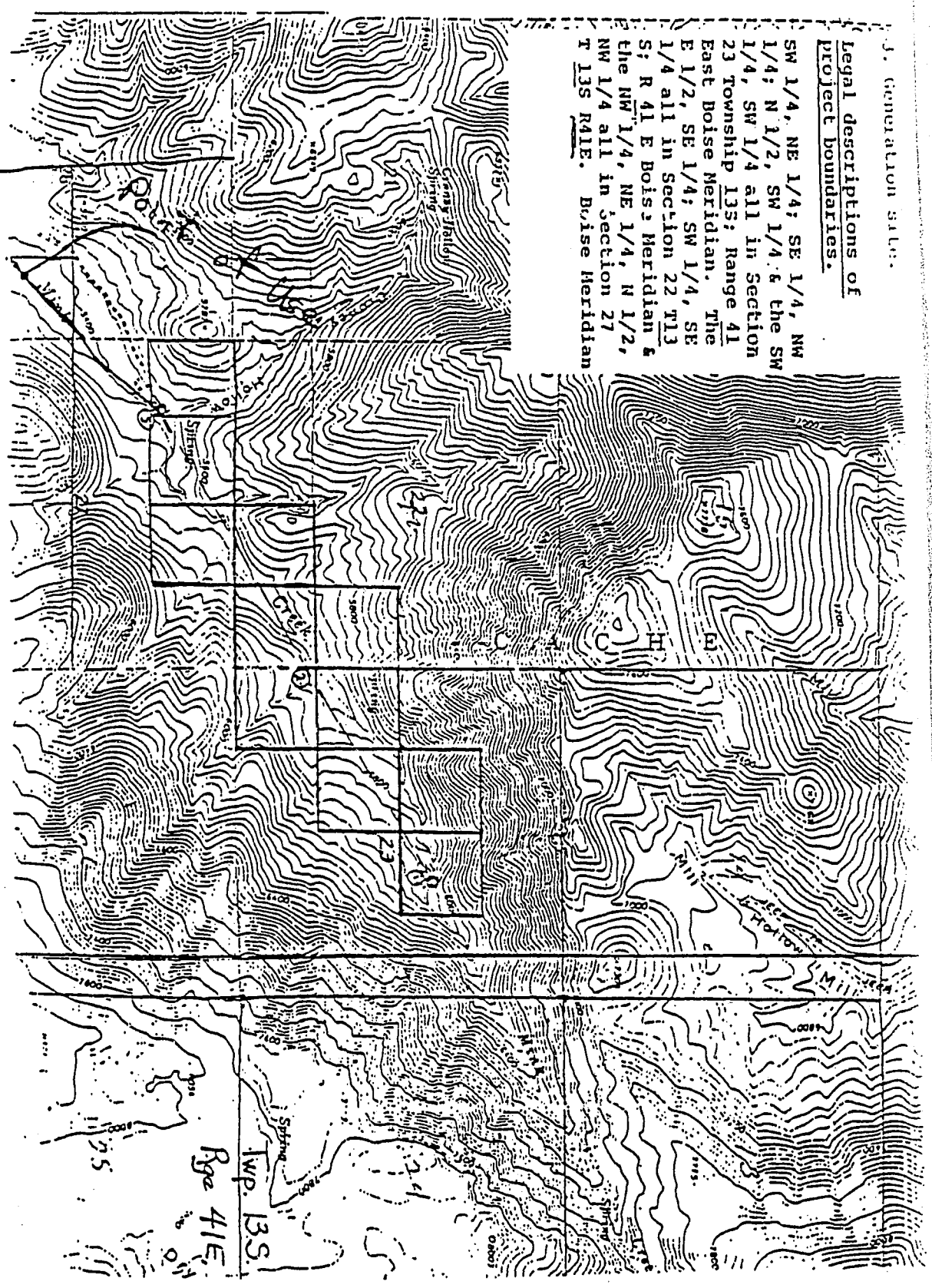
c. If the property is owned by a person other than the applicant, describe the arrangement enab applicant to make this filing Applicant has secured agreement with Valdo for construction of project on Mr. Benson's property. A speci use permit is being obtained from USFS.

10. Remarks The application is being amended in order to accurately describe the hydro-electric project as presented in the application for license before the Federal Energy Regulat Commission.

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

Legal descriptions of project boundaries.

SW 1/4, NE 1/4; SE 1/4, NW 1/4; N 1/2, SW 1/4 & the SW 1/4, SW 1/4 all in Section 23 Township 13S; Range 41 East Boise Meridian. The E 1/2, SE 1/4; SW 1/4, SE 1/4 all in Section 22 T13S R 41 E Boise Meridian & the NW 1/4, NE 1/4, N 1/2, NW 1/4 all in Section 27 T 13S R41E. Boise Meridian



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

(Applicant)

Proposed Priority 5/18/84

Received by DW Date 5-15-86 Time 1:30 P

Preliminary check by KW Fee $ 20.00

Receipted by MO Date 5/20/86 # 39639

Publication prepared by MO Date 5/21/86

Published in Preston Citizen Lewiston Trib. Times News Idaho Statesman Eg. Ad Citizen

Publication dates 5/29 + 6/5/86

Publication approved DW Date 8-01-86

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by DW

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 S of Idaho No. 13-7416, and said application is hereby APPROVED.

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on o- fore August 1, 19 91.

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

   d. Other: SEE ATTACHED SHEET FOR CONDITIONS d thru

Witness my hand this 20th day of August, 1986.

L. Glen Saxton

Chief, Operations Bureau

ATTACHMENT TO CONDITIONS OF APPROVAL

For Permit No. 13-7416

d. Water used under this permit if discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.

e. 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.

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

g. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.

h. The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director on the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

i. 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.

j. This permit is subject to the agreement dated 1/13/1986 between permit holder and protestant(s) to the extent such agreement covers matters within the jurisdiction of the Department of Water Resources.

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

l. Use of water under this permit shall be non-consumptive.

m. A separate stream alteration permit from the IDWR is required for any activity in the stream channel other than construction and/or maintenance of the diversion structure. If your proposed construction or operation involves construction of an outfall or any other work in the stream channel other than a water diversion, you must contact the Department and obtain a Stream Channel Alteration permit prior to the start of construction.

n. Use of water under this permit is subject to control by the watermaster of State Water District No. 13N, Mink Creek.

Witness my hand this 20th day of August, 1986.

L. Glen Saxton

Chief, Operations Bureau

May 13, 1986

Mr. Ernest Carlsen
Assistant Regional Supervisor
State of Idaho Department of Water Resources
150 Shoup - Suite 15
Idaho Falls, Idaho 83402

Dear Mr. Carlsen,

Please find enclosed the corrected amended application for permit on the Mink Creek Hydro Electric project. Also enclosed is the twenty dollar fee for this amendment. Should there be any additional information needed, please advise me.

Sincerely,

Robert N. Fackrell

RNF/sk
Enclosure

FACKRELL CONSTRUCTION CO., INC.

P. O. Box #1 • Preston, Idaho 83263 • (208) 852-13
P. O. Box 345 • Richmond, Utah 84333 • (801) 723-21

FACKRELL CONSTRUCTION CO., INC.

Amendment Fee on Mink Creek Water Right

FACKRELL CONSTRUCTION CO., INC.
P.O. BOX 1
PRESTON, IDAHO 83263
PHONE 852-1320

FIRST SECURITY BANK
OF IDAHO, N.A.
PRESTON OFFICE
5 N. STATE ST. PRESTON, ID 83263
92-6

№ 6702
CHECK NO. 1241

**********Twenty and no/100 Dollars********** DATE 05/13/86 AMOUNT $20.00

PAY TO THE ORDER OF
State of Idaho
Department of Water Resources
150 Shoup - Suite 15
Idaho Falls, Idaho 83402

AUTHORIZED SIGNATURE

"006702" :124100064:016 00105 34"

m 202
3

Ident. No. 13-7416

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR PERMIT AMENDED

To appropriate the public waters of the State of Idaho

. Name of applicant Robert N. Fackrell Phone 208-852-1522

Post office address P.O. Box 1, Preston, ID 83263

'. Source of water supply Mink Creek which is a tributary of Bear River

. Location of point of diversion is SW ¼ of NE ¼ of Section 23 Township 13S

Range 41E B.M. Franklin County, additional points of diversion if any: ____

(unsurveyed)

. Water will be used for the following purposes:

Amount 100.0 ~~cfs~~ (cfs or acre-feet per annum) Power purposes from 1/1 to 12/31 (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)

. Total quantity to be appropriated:

a. 100.0 cubic feet per second and/or b. _____ acre-feet per annum.

. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. concrete and steel diversion structure with a 60" diameter bypass and 48" diameter penstock

b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

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

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

'. 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).*

. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: NE ¼ of SE ¼ of Section 28 Township 13S Range 41E B.M.

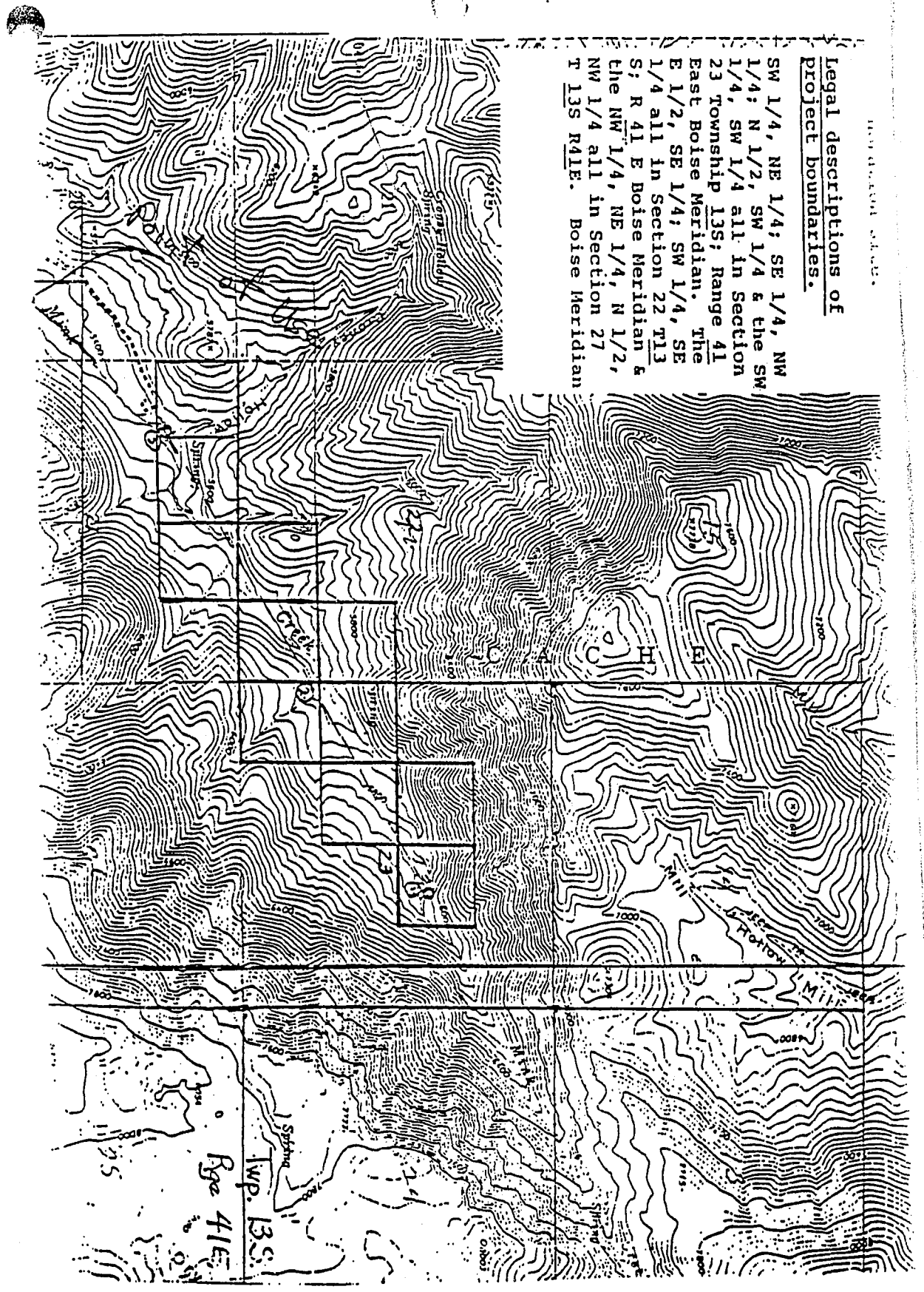
(2) Amount of power to be generated: 3.1 mw. horsepower under 467 feet of head.

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

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

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

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



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

(Applicant)

LAND SURVEYORS

CONSULTING CIVIL ENGINEERS

ALLRED BUDGEN
AND
ASSOCIATES

30 SOUTHEAST FIRST WEST
PRESTON IDAHO
83263 852-1653

40 EAST FOOTE AVE.
SODA SPRINGS IDAHO
83276 547-4141

MINK CREEK POWER PROJECT

TAILRACE EASEMENT
July 2, 1986

An easement for construction and maintenance of a tailrace ditch over the following parcel in Section 28, T 13 S, R 41 E, B.M., Franklin County and further described as follows:

Beginning at the East quarter corner of said Section 28, which is S 00°08' E 33.0' by record from a witness corner monument set in 1975 by the B.L.M.; thence S 39°39'27" W 1216.04'; thence S 75°43'22" W 98.05' to the True Point of Beginning, a ½" rod; thence S 75°43'22" W 49.14' to a ½" rod; thence S 87°34'00" W 93.67' to the East end of the diversion dam wingwall; thence along the East bank of Mink Creek N 22°33'41" E 86.09'; thence N 36°40'40" E 61.21'to a ½" rod; thence S 01°41'00" E (S 1° 41 E by record)45.57' to a ½" rod; thence N 84°52'00" E 64.00' (N 84°52' E 64.0' by record) to a ½" rod; thence S 05°08'00" E (S 5°08' E by record) 72.95' to the True Point of Beginning Containing 0.2 acres of land.

LAND PLANNERS CONSULTING CIVIL ENGINEERS

[illegible]

PRESTON [illegible] 40 EAST 2ND E AVE.
83263 [illegible] SODA SPRINGS IDAHO
83276 547-4141

MINK CREEK POWER PROJECT

Power Line & Road Easement In
U.S.A. Property

An easement for access 30 feet wide over the following described property in Section 28, T 13 S, R 41 E., B.M., Franklin County;

Beginning at the East quarter corner of said Section 28 which is S 0°08' E 33.0' by record from a witness corner monument set in 1973 by the B.L.M.; thence S 47°43'52" W 1576.21' (based on astronomic North) to the True Point of Beginning; which is on the center line of said easement and is also on the boundary of a parcel owned by the United States of America and filed under inst. no. 83354 in the official records of Franklin County; thence N 58°38'00" W (N 58°38' W by rec.) 15.62' along said boundary line; thence N 47°34'34" E 39.16'; thence N 21°56'04" E 53.34' to a point on the boundary line of said parcel; thence S 05°08'00" E (S 5°08' E by record) 65.93' along said boundary line; thence S 21°56'04" W 1.47'; thence S 47°34'34" W 37.26' to a point on said boundary line; thence N 58°38'00" W (N 58°38' W by rec.) 15.62' along said boundary line to the True Point of Beginning.

Also an easement for access 30 feet wide, 15 feet on each side of the following described line in Section 28, T 13 S, R 41 E, B.M., Franklin County.

Beginning at the East quarter corner of said Section 28; thence S 49°10'25" W 1462.50' to the True Point of Beginning which is on the boundary line of the parcel filed under inst. no. 83354 in Franklin County; thence N 21°56'04' E 81.20'; thence N 35°01'17" E 146.79'; thence N 44°19'14" E 45.93' to a point which is S 52°50'08" W 1204.67' from the said East quarter corner of Section 28. The side lines of said easement to lengthen and shorten as needed to terminate at the boundary line of said parcel filed under inst no. 83354.

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

CERTIFICATE

I, Robert L. Clarke, Comptroller of the Currency, do hereby certify that:

1. The Comptroller of the Currency, pursuant to Revised Statutes 324, et seq., as amended, 12 U.S.C. 1, et seq., as amended, has possession, custody and control of all records pertaining to the chartering, regulation and supervision of all National Banking Associations.

2. "First Security Bank of Idaho, National Association", Boise, Idaho, Charter No. 14444, is a National Banking Association formed under the laws of the United States and is authorized thereunder to transact the business of banking on the date of this Certificate.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 13th day of August, 1991.

Comptroller of the Currency

LAW OFFICE

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
CHARTERED

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
Paul S. Street
Loren C. Ipsen
Larry C. Hunter
Glenna M. Christensen
Mark S. Prusynski
Morgan W. Richards, Jr.
Michael G. McPeek
Stephen R. Thomas
Jon S. Gorski
Gary T. Dance
Gerald T. Husch
Thomas V. Munson
Kirk R. Helvie
Thomas C. Morris

Michael E. Thomas
Mark B. Perry
James C. deGlee
Christine E. Nicholas
Nicholas B. Spencer
Patricia M. Olsson
Grant T. Burgoyne
Dan S. Jackson
Stephen J. Olson
Brian L. McMahan
Patrick J. Kole
Andrew P. Doman
David S. Jensen
Ray E. Smith
Gregory J. Vietz
Allen K. Davis
Bradley J. Williams

FIRST SECURITY BUILDING
911 WEST IDAHO
POST OFFICE BOX 829
BOISE, IDAHO 83701

Telephone (208) 345-2000

Facsimile (208) 345-2340

Willis C. Moffatt
(1907-1980)

****

Donna Brown Wisdom
Office Administrator

Gary T. Dance
Attorney in Charge
Eastern Idaho Offices

IDAHO FALLS, IDAHO
155 North Woodruff
Post Office Box 1367
83403

Telephone (208) 522-6700
Facsimile (208) 522-5111

POCATELLO, IDAHO
1110 Call Creek Drive
Post Office Box 4941
83201

Telephone (208) 233-2001

Idaho WATS: 1 (800) 422-2889
ABA Net 010

October 11, 1991

RECEIVED
OCT 15 1991
Department of Water Resources

Mr. Keith Higginson
Director
Idaho Dept. of Water Resources
1301 North Orchard
Boise, ID 83706

Re: Security Interest in Water Permit No. 13-7416
MTBR&F File No. 4-620.555

Dear Mr. Higginson:

This office represents First Security Bank of Idaho, N.A., in connection with certain loans to Robert N. and Stephanie C. Fackrell. In connection with that lending relationship, the Fackrells have granted to First Security Bank of Idaho, N.A., a security interest in Permit No. 13-7416.

Pursuant to Idaho Code § 42-207, enclosed is a copy of the security agreement granting a security interest in Permit No. 13-7416, together with a copy of a certificate from the Comptroller of the Currency dated August 13, 1991 evidencing the authority of First Security Bank of Idaho to transact business as a national banking association. As you may know, under the Idaho Bank Act, and more particularly Idaho Code § 26-202, banks organized under the laws of the United States and issued an organization certificate by the Comptroller of the Currency need not obtain approval of the Director of the Idaho Department of Finance to transact banking business within the state of Idaho. If you have any questions as to First Security Bank of Idaho possessing the qualifications set forth in Idaho Code § 42-206, please call so we may further discuss your concerns.

The transfer was made in good faith for the purpose of securing financing extended by First Security Bank of Idaho to the Fackrells and was not made for purposes of speculation or delay.

Thank you for your assistance in filing evidence of this transfer.

Very truly yours,

Christine E. Nicholas

Christine E. Nicholas

CEN/jlm
Enclosure

Form 219
6/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

RECEIVED
JAN 22 1996
Department of Water Resources

A. GENERAL INFORMATION Permit No. 13-7416

1. Owner: ROBERT N. FACKRELL Phone No (208) 852-3111

Current Address: P.O. BOX 1, PRESTON, ID 83263

2. Accompanied by: OWNER EXAM DATE : 6/27/95

Address: N/A Phone No. N/A

Relationship to Permit Holder: N/A

3. Source: MINK CREEK tributary to BEAR RIVER

B. OVERLAP REVIEW

1. Other water rights with the same place of use: ~~13-00895A~~, ~~13-00896A~~ N.A.

2. Other water rights with the same point of diversion: NONE

C. DIVERSION AND DELIVERY SYSTEM

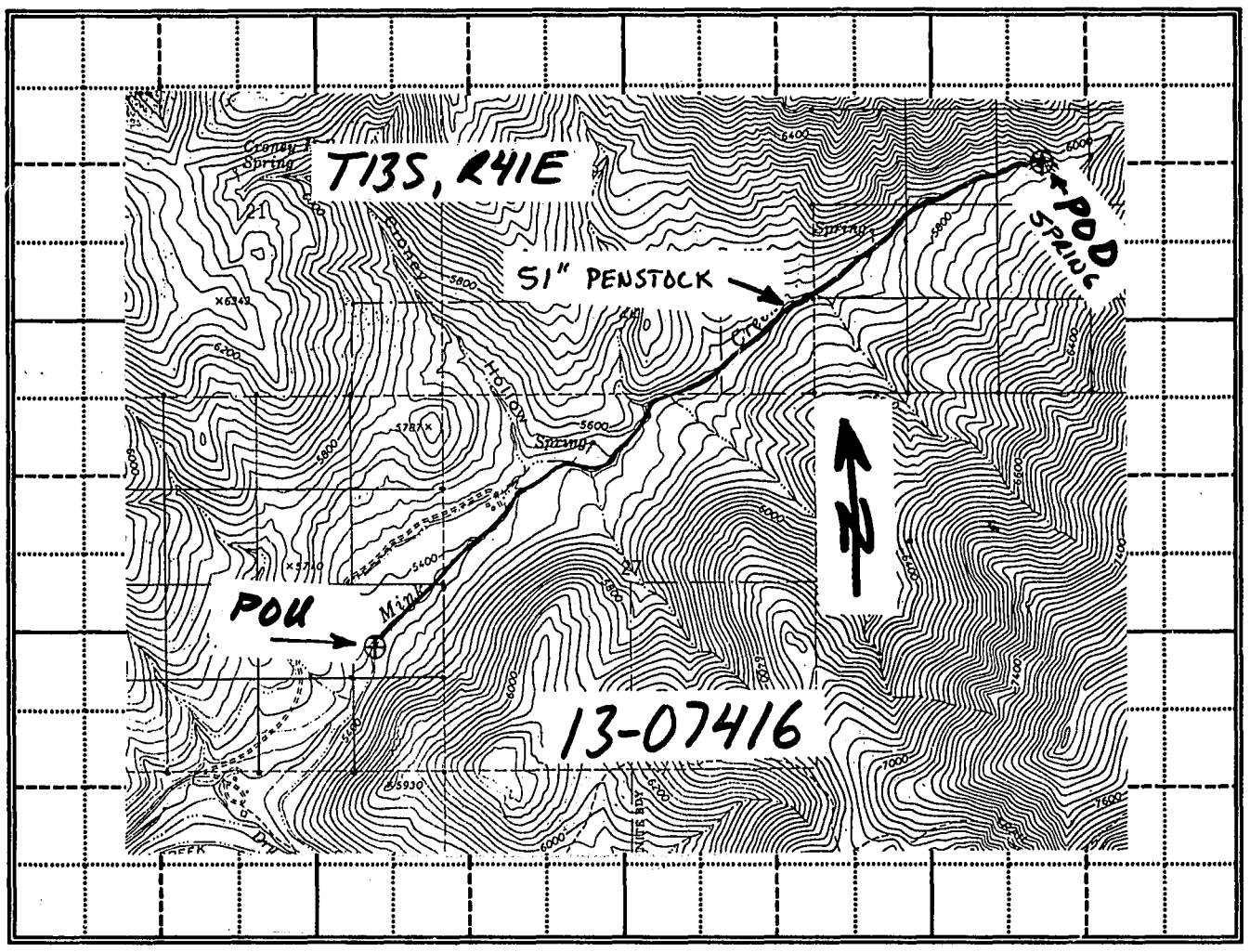
1. **Point(s) of Diversion:**

Ident No.	Gov't Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		SE	SW	NE	23	13S	41E	FRANKLIN	U.S.G.S. TOPO MAP

2. **Place(s) of Use:** Indicate Method of Determination ON SITE

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13S	41E	28													P				

3. **Delivery System Diagram**: Indicate all major components and distances between 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

2. **Measurements:** _____

_____

_____

E. NARRATIVE/REMARKS/COMMENTS

SEE ATTACHMENT. * TED SORENSEN ENGINEERS

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

F. FLOW CALCULATIONS ____ Additional Computation Sheets Attached

Measured Method:

POLYSONIC READING Q = 49.44CFS UPPER TURBINE x 2 = 98.88CFS
2.219E-4CPH

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:

NON-CONSUMPTIVE USE

H. RECOMMENDATIONS PERMIT LIMITS TO TURBINE RATED FLOW-100CFS.

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
POWER	1/1	12/31	100 CFS	
		Totals:	100 CFS	

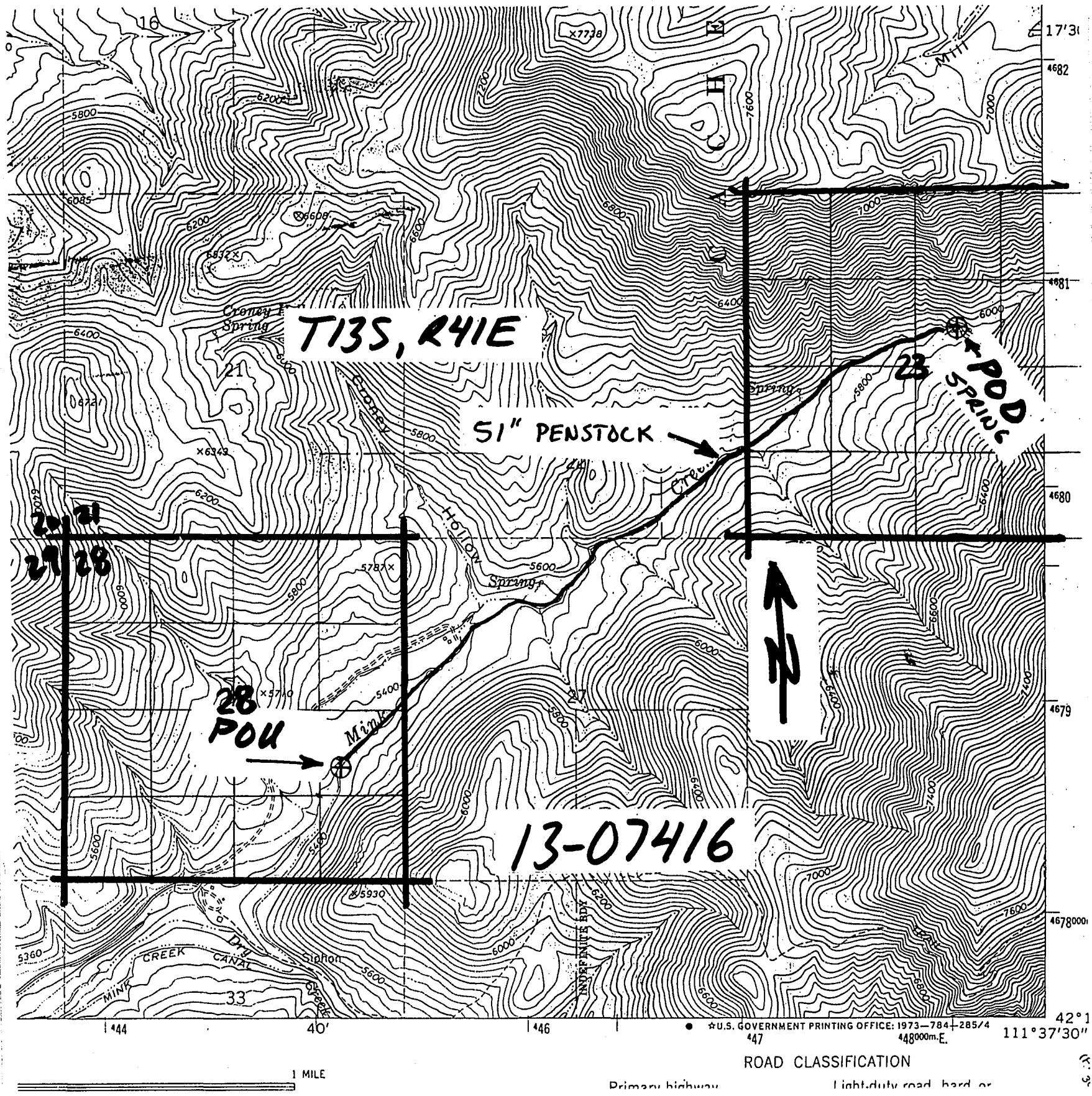
2. Recommended Amendments

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

I. AUTHENTICATION

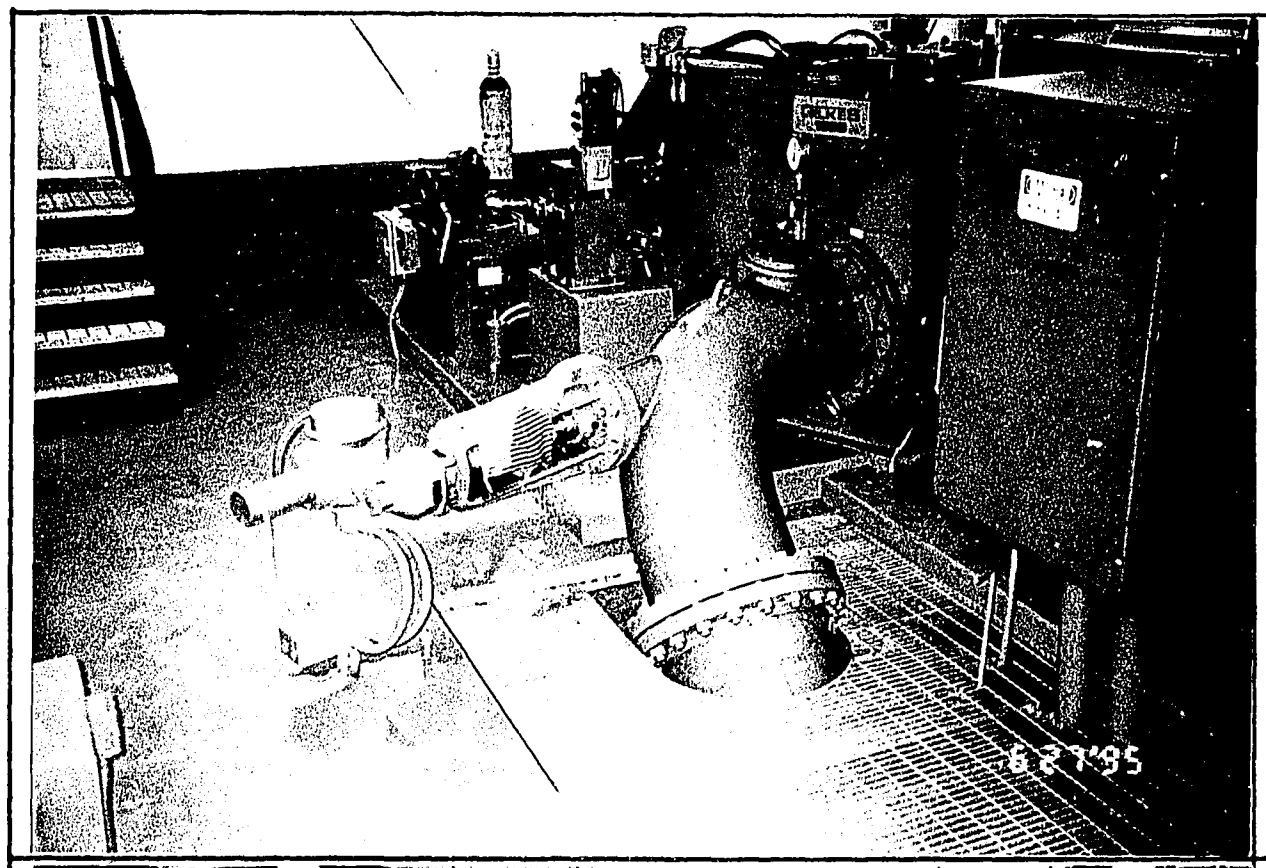
Field Examiner's Name Simpkins Date 1-11-96

Reviewer H. G Jones Date 1-12-96 SEAL


T13S, R41E
51" PENSTOCK
28 POU
13-07416
2, 21
27, 28
23 POD
SPRING
Creney Spring
Hollow Spring
Mink Creek
Dry Canal
Siphon
INDEFINITE BDY
16
21
28
33
40'
1 MILE
ROAD CLASSIFICATION
Primary highway
Light-duty road, hard or
☆U.S. GOVERNMENT PRINTING OFFICE: 1973—784-285/4
42°1
111°37'30"

POWER GENERATION

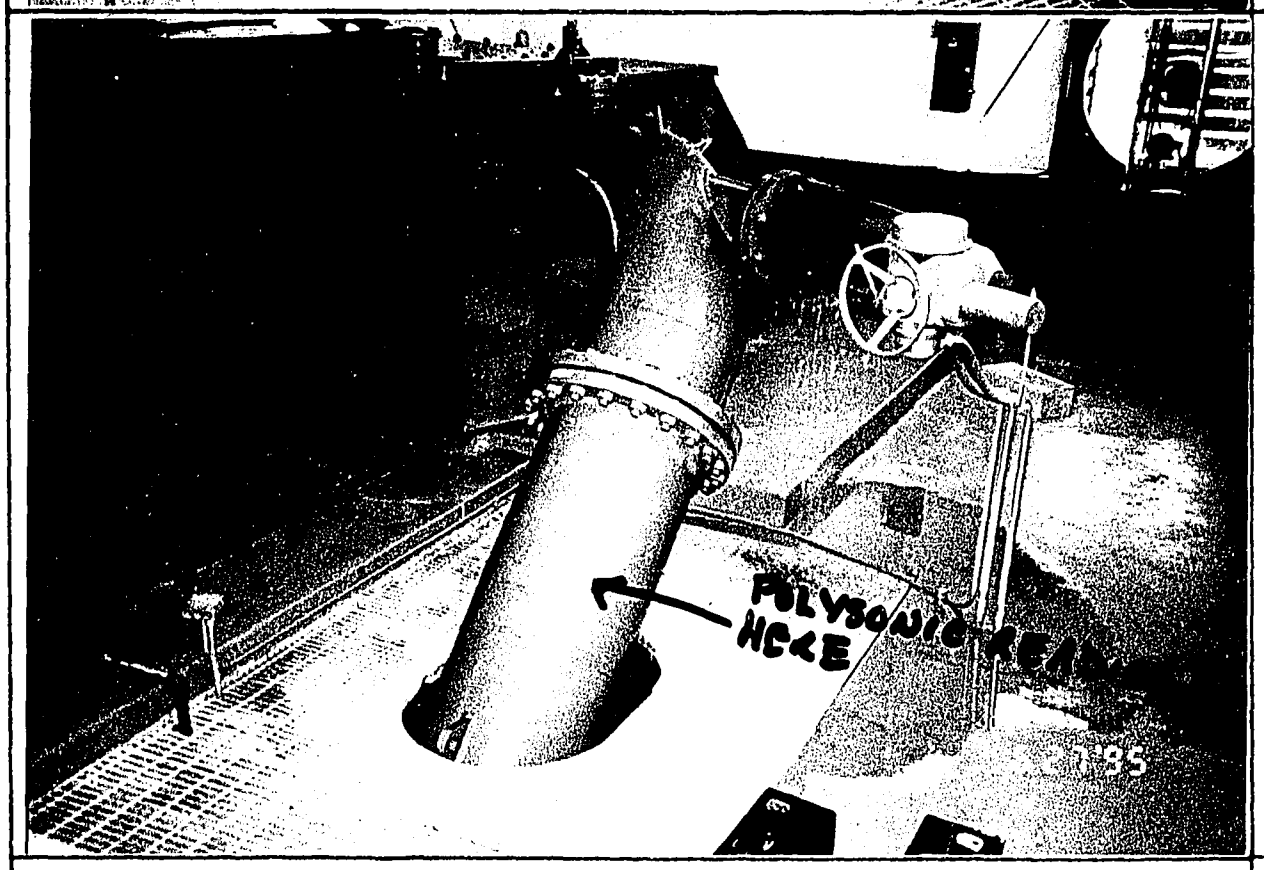
212



INTERIOR OF POWER PLANT.

NO READING ON THIS SIDE OF MACHINE

LOWER TURBINE



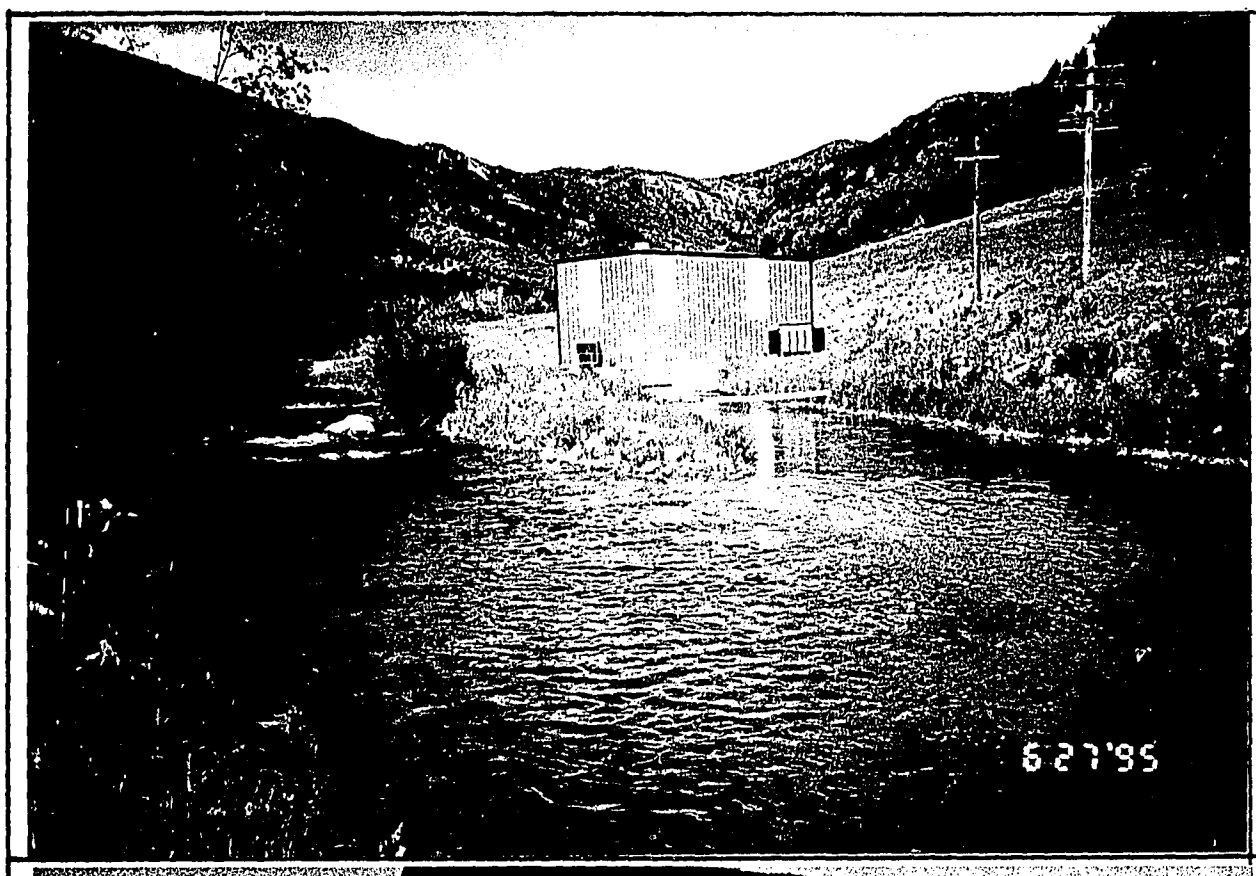
UPPER TURBINE

CFS READING TAKEN THIS SIDE.

13-07416

ROBERT N. FACKRELL
POWER GENERATION

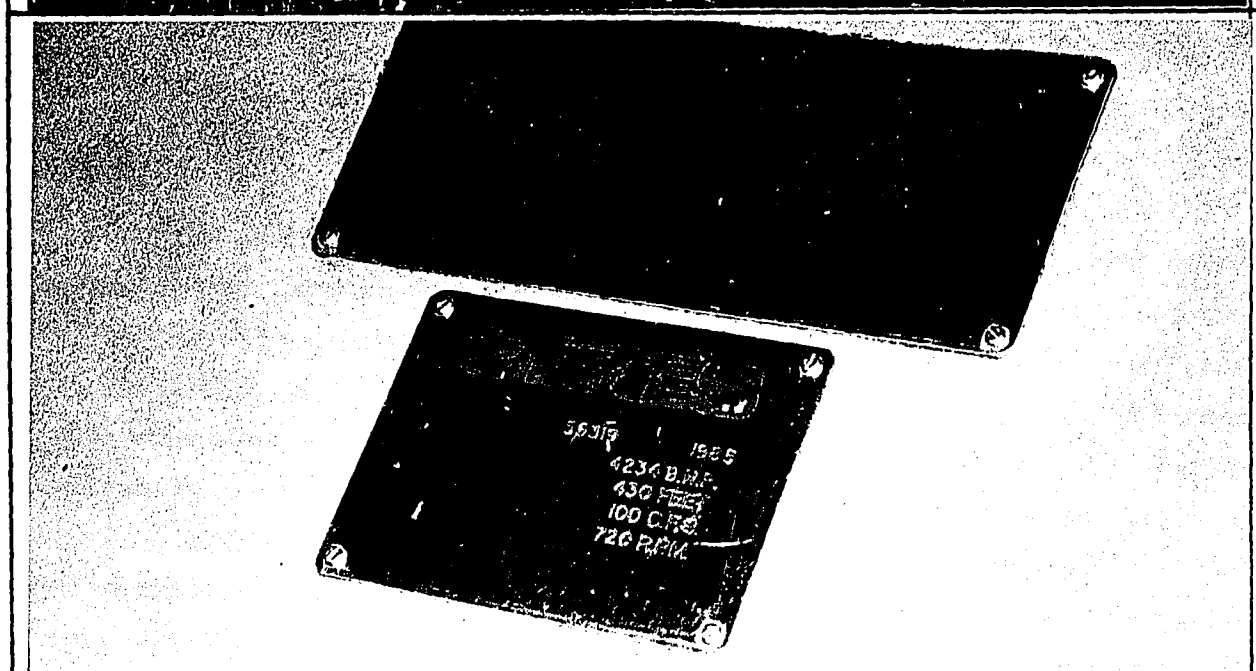
1/12



VIEW OF POWER HOUSE POW

→ DISCHARGE CHANNEL TO ↘

← MINK CREEK



NAME + SPECIFICATION OF TURBINE.

13-07416

13-7416 type 4

```
0883.8  MMSEC
100.12  % T0

06-27 16:0200
+002.50 %  AI2

PRINTER USE
?       YES

MODE SELECT
        INPUT

OUTER DIAMETER
24.0500  IN

PIPE MATERIAL
?       CS,SS

WALL THICKNESS
0.3441   IN

INNER LINING
?       NO LING.

KIND OF FLUID
?       ANOTHER

SOUND VELOCITY
1460     M/S-

SENSOR MOUNTING
?       V

TYPE OF SENSOR
?       SMALL

DATA CHANGE
?       NO

SPACING
19.668   IN V

ZERO MODE
        CLEAR

ZERO MODE
        AUT ZERO

06-27 16:0400 *R
+002.60 %  AI2

MODE SELECT
        T0 CHECK

0883.8  MMSEC
100.12  % T0

06-27 16:0400 *R
+  1.563E 4GPM

MODE SELECT
        T0 CHECK

0883.7  MMSEC
100.12  % T0

06-27 16:1800 *R
+  2.223E 4GPM

06-27 16:2700 *R
+  2.219E 4GPM
```

13-7416 type 5

```
0883.8  MMSEC
100.12  % T0

06-27 16:0200
+002.50 %  AI2

PRINTER USE
?       YES

MODE SELECT
        INPUT

OUTER DIAMETER
24.0500  IN

PIPE MATERIAL
?       CS,SS

WALL THICKNESS
0.3441   IN

INNER LINING
?       NO LING.

KIND OF FLUID
?       ANOTHER

SOUND VELOCITY
1460     M/S-

SENSOR MOUNTING
?       V

TYPE OF SENSOR
?       SMALL

DATA CHANGE
?       NO

SPACING
19.668   IN V

ZERO MODE
        CLEAR

ZERO MODE
        AUT ZERO

06-27 16:0400 *R
+002.60 %  AI2

MODE SELECT
        T0 CHECK

0883.8  MMSEC
100.12  % T0

06-27 16:0400 *R
+  1.563E 4GPM

MODE SELECT
        T0 CHECK

0883.7  MMSEC
100.12  % T0

06-27 16:1800 *R
+  2.223E 4GPM

06-27 16:2700 *R
+  2.219E 4GPM
```

SONIC METER READOUT

13-07416

E. NARRATIVE

ON 6/27/95 A BENEFICIAL USE FIELD EXAM WAS CONDUCTED WITH MR. FACKRELL, FOR A HYDRO PROJECT DIVERSION, ON PERMIT # 13-07416.

POINT OF DIVERSION IS FROM FROM MINK CREEK WHERE WATER IS TAKEN INTO A 51 INCH PENSTOCK. THE PENSTOCK LATER REDUCES TO 36 INCH AND AT PLACE OF USE, REDUCES AGAIN TO TWO 24 INCH STEEL PIPELINES PRIOR TO ENTERING TURBINE.

THE POWER TURBINE USES AN ENGLISH BUILT "GILKES" TURBINE GENERATOR.

TURBINE # 56319
RATED OUTPUT 4,234 B.H.P.
RATED NETT HEAD 430 FEET
RATED FLOW 100 C.F.S.
SPEED 720 R.P.M.
APPROX. ELEVATION DROP 520 FEET

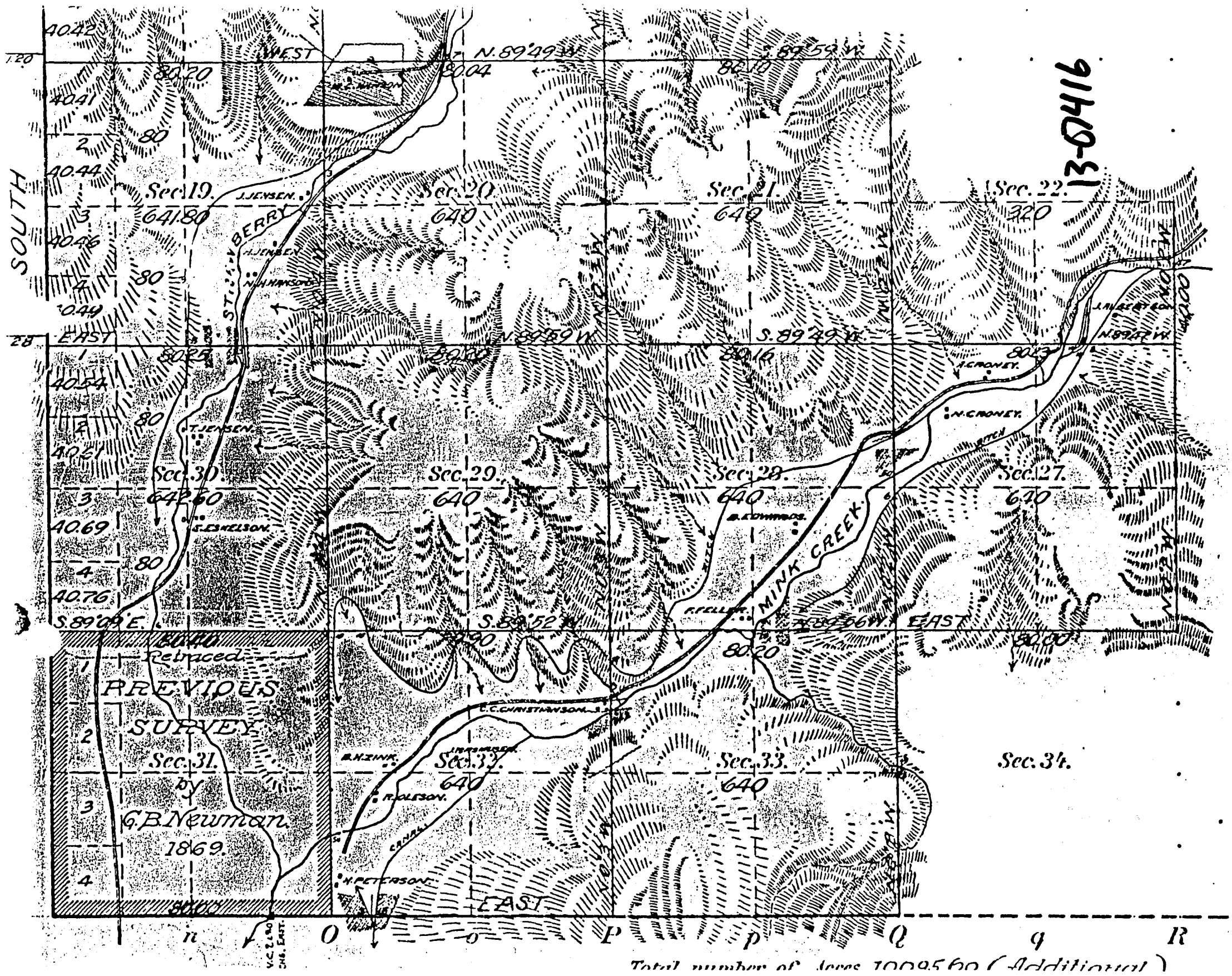
TYME-FLYTE POLYSONIC METER USED FOR CFS FLOW TESTING
MODEL TF-P SERIAL # 7M0263

NO ACCESS TO LOWER TURBINE FOR TESTING

UPPER TURBINE (RIGHT)
410 FT HEAD
NOZZEL 78 % OPEN
READING 2.219E-4GPM = 49.44 CFS X 2 = 98.88 CFS
NEEDLE SET AT 66% COMBINES BOTH

LOWER TURBINE (LEFT)
422 FT HEAD
NOZZEL 74 % OPEN
NO READING -- STRUCTURAL DESIGN PROBLEMS
NEEDLE SET AT 66%

13-07416



Total number of Acres 10095.60 (Additional)

91403-0416

Water Right file 13-7416

72 FERC ¶ 64,

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AUG 24 1995
Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Robert Fackrell — Project No. 8646-015
Idaho

13-7416

ORDER AMENDING FLUSHING FLOWS

(Issued August 17, 1995)

Robert Fackrell (licensee) requested, by letters dated May 5, 1991, and December 12, 1992 to the Commission, an amendment to the flushing flows required in article 103 of the license for the Mink Creek Project (FERC No. 8646).

Background

Article 103 requires the licensee to maintain a continuous minimum flow in the project's bypass reach of 10 cubic feet per second (cfs) for most of the year. The article also requires higher flushing flows (for channel maintenance) according to the schedule in Table 1.

Table 1. Flow/Flushing Requirements of Article 103.

Duration	Minimum Flow Releases (cfs)
Day 1 thru 4	60
Day 5 thru 11	75
Day 12 thru 18	90
Day 19 thru 25	105
Day 26 thru 32	120
Day 33 thru 39	150
Day 40	130
Day 41	110
Day 42	90
Day 43	70
Day 44	50
Day 45	30
Day 46 thru December 31	10
January 1 thru Day 1	10

where Day 1 is the day that flow attains a rate of 90 cfs and equals or exceeds that rate for 24 hours, but in no event earlier than April 1.

The licensee may temporarily modify the minimum flows if required by emergencies beyond the control of the licensee. The licensee may also modify the minimum flows for short periods upon mutual agreement between the licensee and the U.S. Forest Service.

In a January 13, 1985, Water Right Resolution[1] between the licensee and the U.S. Forest Service (FS), a minimum flow of 10 cfs for the Mink Creek Project was established, along with additional flows to be released over a 45-day period to preserve the integrity of the stream channel. The 45-day period of increased flows each year is necessary to flush sediment and debris from the stream, maintain bends and channel bars, and create the average morphological character of the stream channel. As part of the Water Right Resolution, the FS stated that the instream hydrograph may be proportionately adjusted to reflect the natural streamflow hydrograph at the diversion point after additional stream flow measurements have better defined the natural hydrograph, and upon mutual agreement between the applicant and the FS.

Under section 4(e) of the Federal Power Act, the licensee is subject to the flow/flushing 4(e) conditions submitted by the FS during the license application process. Consequently, the FS filed with the Commission the flow/flushing requirements as stated in the Water Right Resolution. These requirements were incorporated into the license for the Mink Creek Project as article 103.[2]

FS's Proposed Changes and Licensee's Request to Amend Article 403

In a letter dated September 15, 1987, to the licensee, the FS again indicated that the instream hydrograph may be proportionately adjusted after additional streamflow measurements have better defined the natural hydrograph. The FS also stated that the licensee's inflow measurements showed that the original flow estimates overestimated the peak discharges on Mink Creek. Therefore, in the September 15 letter, the FS proposed revised minimum flow releases (Table 2).

Table 2. Forest Service Proposed Changes to Article 103

Duration	Revised (1987) Minimum Flow Releases (cfs)
Day 1 thru 4	30
Day 5 thru 11	37.5
Day 12 thru 18	45

[1] WATER RIGHT RESOLUTION between Robert N. Fackrell and the United States of America - USDA Forest Service Permit No. 13-7416 signed January 13, 1986.

[2] Article 103, as written in the license, did not include the language that the hydrograph may be adjusted after additional measurements better defined the natural hydrograph, upon mutual agreement between the licensee and the FS.

Day 19 thru 25	52.5
Day 26 thru 32	60
Day 33 thru 39	75
Day 40	65
Day 41	55
Day 42	45
Day 43	35
Day 44	25
Day 45	15
Day 46 thru December 31	10
January 1 thru Day 1	10

where day 1 is the day that flow from the spring attains a rate of 110 cfs and equals or exceeds that rate for 24 hours, but in no event earlier than April 1.

The FS further explained that the method used to construct the above instream flow hydrograph was based on the fact that the peak discharge in 1987 was 70 cfs. The FS stated the March snowpack in the Mink Creek recharge area was 55% of average long-term snow-water content and that the normal peak discharge based on these facts would be estimated at 130 cfs. Thus, the FS recommended the peak on the estimated natural hydrograph should be adjusted down to reflect the 130 cfs rate. Therefore the FS proportionately adjusted the instream flow hydrograph down by the reduced natural hydrograph stream flow rates. Accordingly, the licensee filed its request with the Commission, to amend the flushing flows required in article 103 of the project license.

Agency comments

The U.S. Fish and Wildlife Service (FWS), in a letter dated March 14, 1988, to the licensee, had no objection concerning the flow/flushing requirements as revised by the FS in Table 2. In a March 16, 1988 letter, the Idaho Department of Fish and Game (IDFG) stated they would not object to the proposed flows (Table 2) for the spring of 1988, but questioned the adjustment based on only one abnormal flow year. The IDFG further requested that the flow/flushing requirements be readjusted as additional flow data is obtained.

In an April 23, 1991, the IDFG stated they understood that the flow/flushing requirements of the license were interim until better hydrologic data could be obtained. The IDFG again stated, as in their 1988 letter, that they became concerned when it appeared that the FS had only used one year's data to amend the flushing flow requirements. The IDFG preferred that the FS compile a larger data base to determine flow/flushing requirements.

By letter dated April 7, 1994, to the licensee, the FS stated that "article 103 terms of your FERC permit allow flow

adjustments based on forecast streamflows." The FS reported that based on a March 1994 snowpack that was 85% of normal, the minimum flow releases for 1994 should be adjusted to 85% of the previously revised minimum flows (Table 3).

Table 3. Forest Service Proposed Changes to Article 103 Based on Forecast Stream Flows (April 1994).

Duration	Revised (1987) Minimum Flow Releases (cfs)	Adjusted 1994 Minimum Flow (cfs)
Day 1 thru 4	30	25.5
Day 5 thru 11	37.5	32
Day 12 thru 18	45	38
Day 19 thru 25	52.5	44
Day 26 thru 32	60	51
Day 33 thru 39	75	64
Day 40	65	55
Day 41	55	47
Day 42	45	38
Day 43	35	30
Day 44	25	21
Day 45	15	13
Day 46 thru Dec. 31	10	10
Jan. 1 thru Day 1	10	10

where day 1 is the day that flow from the spring attains a rate of 93.5 cfs and equals or exceeds that rate for 24 hours, but in no event earlier than April 1. Further, the FS stated that under no circumstances can the licensee divert more than 100 cfs through the power plant and any excess flows must remain in the stream channel.

In another letter to the licensee, dated May 12, 1994, the FS stated that actual runoff for 1994 was closer to 70% to 75% of normal flows and that the licensee could adjust flows to 75% of the permitted flow adjustments (Table 4).

Table 4. Forest Service Proposed Changes to Article 103 Based on Forecast Stream Flows (May 1994).

Duration	Revised (1987) Minimum Flow Releases (cfs)	Re-adjusted 1994 Minimum Flow (cfs)
Day 1 thru 4	30	22.5
Day 5 thru 11	37.5	28
Day 12 thru 18	45	34
Day 19 thru 25	52.5	39.5
Day 26 thru 32	60	45
Day 33 thru 39	75	56
Day 40	65	49
Day 41	55	41

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JUN 24 1994

Day 42	45	34
Day 43	35	26
Day 44	25	19
Day 45	15	11
Day 46 thru Dec. 31	10	10
Jan. 1 thru Day 1	10	10

The FS again stated that under no circumstances can the licensee divert more than 100 cfs through the power plant. Any excess flows must remain in the stream channel.

Staff's preliminary analysis

By letter dated March 28, 1995, the Director, Division of Project Compliance and Administration (Director) requested the licensee, FS, FWS, and IDFG review and provide comments on staff's preliminary analysis regarding the proposed flushing flows. Staff's preliminary analysis concluded that article 103 should be amended as follows:

Article 103. Licensee shall maintain in the bypassed stream reach a continuous minimum flow as shown on the quantification below, and as measured immediately downstream from the point of diversion on Mink Creek, for maintaining favorable conditions for water flows and for the protection of fish and wildlife resources. The licensee may temporarily modify minimum flows if required by emergencies beyond the control of the licensee. The licensee may also modify minimum flows for short periods upon mutual agreement between the licensee and the Forest Service.

Instream Flow Claim: a continuous instream flow equivalent to an average of 17,000 acre-feet per year (39.1% of historic flow) defined and distributed as follows:

a. Minimum flow rates: the rate for Day 1 and for each and every succeeding day or period throughout the entire year as follows:

Duration	Streamflow (cfs)
Day 1 thru 4	30.0
Day 5 thru 11	37.5
Day 12 thru 18	45.0
Day 19 thru 25	52.5
Day 26 thru 32	60.0
Day 33 thru 39	75.0
Day 40	65.0
Day 41	55.0
Day 42	45.0
Day 43	35.0
Day 44	25.0

Day 45	15.0
Day 46 thru December 31	10.0
January 1 thru Day 1	10.0

b. Day 1: the day that flow attains a rate of 90.0 cfs and equals or exceeds that rate for 24 hours, but in no event earlier than April 1.

c. If, for any year, the Forest Service determines, based on the measured March snowpack in the Bear River basin, that flow adjustments should be made to the above flow regime according to forecast stream flows, the licensee shall file, with the Commission, a report, that includes a copy of the Forest Service's letter indicating such adjustments are necessary for that particular year, prior to Day 1. The report shall include documentation that the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game were served copies of the Forest Service's letter.

d. If the minimum flow falls below the requirements under paragraph (a) above, the licensee shall file a report with the Commission within 30 days of the incident. The report shall, to the extent possible, identify the cause, severity, and duration of the incident, and any observed or reported adverse environmental impacts resulting from the incident. The report shall also include: 1) operational data necessary to determine compliance with article 103; 2) a description of any corrective measures implemented at the time of occurrence and the measures implemented or proposed to ensure that similar incidents do not recur; and 3) comments or correspondence, if any, received from the resource agencies regarding the incident. Based on the report and the Commission's evaluation of the incident, the Commission reserves the right to require modifications to project facilities and operations to ensure future compliance.

e. In the event that natural flows do not attain the rates decreed above, the United States shall be entitled to the natural flows actually occurring during the time periods described above.

Comments on staff's preliminary analysis

The FS, by letter dated March 31, 1995, concurred with staff's preliminary analysis that the flushing flows should be modified. The FS stated that proposed flows have maintained channel stability and fisheries habitat over the past several years and should continue to do so. The FS also concurred with

the proposed changes to paragraphs c, d, and e in the amended article.

By letter dated April 14, 1995, the IDFG commented that they want input into the proposed flow changes before any decisions regarding the changes are made. The IDFG also stated it would be very beneficial if the FS could provide snowpack information and flow requirements as soon as they become available. The IDFG also specifically stated that it should be consulted before any proposed changes to the flushing flows.

The FWS, by letter dated May 2, 1995, concurred with staff's preliminary analysis on the flow changes. The licensee, in a letter filed with the Commission on May 15, 1995, also concurred with staff's analysis.

Discussion and Conclusions

In 1987, the FS suggested adjusting the flushing flows to 50% of those listed in license article 103. The licensee agreed with this and received concurrence from the FWS. The IDFG stated they would accept this for 1987, but asked that the flows be reevaluated, since this adjustment was based on only one year of streamflow data. However, when the flow releases were changed by the licensee in 1987, as recommended by the FS, the licensee did not notify the Commission of the flow release changes, nor request the Commission amend article 103. From 1988 thru 1993, the licensee operated the project according to the adjusted flows established by the FS (Table 2).

Article 402 requires the licensee to annually make available, to the Commission and the resource agencies, the record of minimum flows obtained from the licensee's continuous monitoring gage. By letter dated September 19, 1989, to the licensee, the Commission's Portland Regional Office (PRO) requested that the licensee graphically illustrate the minimum flow regime for Mink Creek annually. The Commission's PRO required the licensee to take the continuous monitoring data recorded at the project and provide a detailed graphical illustration of the flow regime to the Commission and the agencies.

Since 1988, the licensee has annually filed graphical illustrations of the minimum flow regime for the Mink Creek Project that are lower than the flushing flows required by article 103. The licensee was informed by Commission staff that until an order was issued approving the adjusted flows, the licensee was required to release the flushing flows set forth in license article 103. The licensee responded that he complied with FS channel maintenance flushing flows rather than the flows required in the license, since FS has jurisdiction over this matter.

In May 1991 and December 1992, the licensee made requests to amend article 103 of the project license. The licensee received concurrence from the FWS in 1988. In response to the IDFG's request that the adjustment to flushing flows be made after looking at several years of streamflow data, the FS looked at flow records from 1987 through 1993 and determined that their original reduction of 50% was still valid. The IDFG did not provide comments on the adjusted flushing/flow regime.

The FS has reviewed streamflow data from 1987 to 1993 and has concluded that their original reduction of 50% is sufficient to maintain favorable conditions for water flows and for the protection of fish and wildlife resources. Commission staff concurs that the flushing flows recommended by the FS (Table 2) are sufficient to maintain the stream channel and protect the fish and wildlife resources.

The FS, in the April and May 1994 letters, included the condition that under no circumstances can the licensee divert more than 100 cfs through the power plant and that any flows must remain in the stream channel. Since the project has a maximum hydraulic capacity of 100 cfs, this condition does not need to be included in article 103.

The IDFG, in their comments on staff's preliminary analysis, recommended that the FS consult with the IDFG before modifying the minimum flow requirements. This condition was not included in the FS's comments on the article. Since article 103 was incorporated in the project license as a 4(e) condition imposed by the FS, and no mention was made by the FS that it consult with the IDFG on any proposed changes to the flushing flows, IDFG's recommendation that it be consulted prior to any flow changes will not be included in article 103. However, we would encourage any informal consultation between the resource agencies or the resource agencies and the licensee concerning any proposed changes in the flushing flows.

The flushing flows originally proposed in staff's preliminary analysis, and concurred with by the licensee and the resources agencies, should be adequate to protect the fish and wildlife resources of Mink Creek, and should, therefore, be approved.

The Director orders:

(A) Article 103 of the project license for the Mink Creek Project (FERC No. 8646) is amended as follows:

Article 103. Licensee shall maintain in the bypassed stream reach a continuous minimum flow as shown on the quantification below, and as measured immediately downstream from the point of diversion on Mink Creek, for maintaining

favorable conditions for water flows and for the protection of fish and wildlife resources. The licensee may temporarily modify minimum flows if required by emergencies beyond the control of the licensee. The licensee may also modify minimum flows for short periods upon mutual agreement between the licensee and the Forest Service.

Instream Flow Claim: a continuous instream flow equivalent to an average of 17,000 acre-feet per year (39.1% of historic flow) defined and distributed as follows:

a. Minimum flow rates: the rate for Day 1 and for each and every succeeding day or period throughout the entire year as follows:

Duration	Streamflow (cfs)
Day 1 thru 4	30.0
Day 5 thru 11	37.5
Day 12 thru 18	45.0
Day 19 thru 25	52.5
Day 26 thru 32	60.0
Day 33 thru 39	75.0
Day 40	65.0
Day 41	55.0
Day 42	45.0
Day 43	35.0
Day 44	25.0
Day 45	15.0
Day 46 thru December 31	10.0
January 1 thru Day 1	10.0

b. Day 1: the day that flow attains a rate of 90.0 cfs and equals or exceeds that rate for 24 hours, but in no event earlier than April 1.

c. If, for any year, the Forest Service determines, based on the measured March snowpack in the Bear River basin, that flow adjustments should be made to the above flow regime according to forecast stream flows, the licensee shall file, with the Commission, a report, that includes a copy of the Forest Service's letter indicating such adjustments are necessary for that particular year, prior to Day 1. The report shall include documentation that the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game were served copies of the Forest Service's letter.

d. If the minimum flow falls below the requirements under item (a) above, the licensee shall file a report with the Commission within 30 days of the incident. The report shall, to the extent possible,

identify the cause, severity, and duration of the incident, and any observed or reported adverse environmental impacts resulting from the incident. The report shall also include: 1) operational data necessary to determine compliance with article 103; 2) a description of any corrective measures implemented at the time of occurrence and the measures implemented or proposed to ensure that similar incidents do not recur; and 3) comments or correspondence, if any, received from the resource agencies regarding the incident. Based on the report and the Commission's evaluation of the incident, the Commission reserves the right to require modifications to project facilities and operations to ensure future compliance.

e. In the event that natural flows do not attain the rates decreed above, the United States shall be entitled to the natural flows actually occurring during the time periods described above.

(B) Unless otherwise directed in this order, the licensee shall file an original and seven copies of any filing required by this order with:

The Secretary
Federal Energy Regulatory Commission
Mail Code: DPCA, HL-21.1
825 North Capitol Street, N.E.
Washington, D.C. 20426

In addition, the licensee shall serve copies of these filings on any entity specified in this order to be consulted on matters related to these filings. Proof of service on these entities shall accompany the filings with the Commission.

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

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

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Robert Fackrell

Project No. 8646-033
Idaho

13-7416

ORDER AMENDING LICENSE

(Issued August 11, 1995)

On July 17, 1995, Robert Fackrell (licensee) filed an application to amend Article 102 of the project license for the Mink Creek Project.[1]

The licensee filed this application in response to a request from the Caribou National Forest, Montpelier Ranger District (FS). In a letter dated July 10, 1995, the FS noted the excellent condition of the project and proposed that the frequency of the inspections should be reduced to 3-year intervals.

This is a reasonable request. Therefore, Article 102 should be amended to require the licensee to consult with the FS every three years. All other requirements of the article should be retained.

The Director orders:

(A) Article 102 of the license for the Mink Creek Project (FERC No. 8646) is amended as follows:

Article 102: Starting in 1998 and every 3 years thereafter, on or about the anniversary date of the license, the licensee shall consult with the Forest Service with regard to measures needed to ensure protection and development of the natural resource values of the project area. Within 2 months following said meeting, the licensee shall file a report with the Commission of any recommendations made by these agencies. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the project and its operation which may be necessary to accomplish natural resource protection and development.

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

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

[1] See Order Issuing License (5MW Or Less) And Dismissing Application For Preliminary Permit With Prejudice, 35 FERC, ¶ 62,580 (1986). Article 102 states:

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

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Robert Fackrell

Project No. 8646-027
Idaho

13-7416

ORDER MODIFYING AND APPROVING TROUT MONITORING RECOMMENDATIONS

(Issued August 10, 1995)

On January 28, 1993 and supplemented August 24, 1993, Robert Fackrell (licensee) filed a final report, under article 404 of the project license, on the monitoring of trout populations below the Mink Creek Hydroelectric Project (FERC No. 8636). Article 404 required the licensee to file the results of the fish population monitoring, to include a schedule for filing recommendations, if needed, for modifying project structures or operation in the event the project is determined to have adversely affected the fish resources of Mink Creek. Comments from the Idaho Department of Fish and Game (IDFG), the U.S. Fish and Wildlife Service (FWS) and the U.S. Forest Service (FS) were included with the licensee's filing.

Background

The trout population monitoring was required to provide information sufficient to determine the adequacy of the fish habitat enhancement structures in mitigating project-related impacts on the fish resource. The licensee was required to install the enhancement structures under article 403. Thus, the licensee installed 34 rock and log weirs. Below each weir, a one-meter deep plunge pool was created to reduce the flow and provide additional pool habitat.

In the Commission's November 28, 1986 Order Modifying in Part and Approving in Part Fish Population Monitoring Plan, the licensee was required to monitor changes in the size of trout populations as well as changes in the physical habitat associated with the installation of habitat improvement structures. The licensee was also required, for the first five years of project operations, to file annual reports that included an analysis of changes that occurred in the physical habitat and trout populations of Mink Creek. Sampling was conducted by electrofishing with a 300 volt DC backpack unit. Population estimates were made using a two-pass removal procedure in 17 of the 34 pools present below the project. The same 17 pools were sampled each year of the study.

In the November 1986 Commission order, it was stated that the decision to continue the monitoring program after 5 years should be based on the data accumulated over the five-year study period. It was also stated that construction of the fish enhancement structures may sufficiently mitigate for project-

related impacts to the fish resource, making further monitoring unnecessary.

Results of 5-year study

In the January 28, 1993 filing, the licensee reported that the numbers of age-1 and older trout that have been sampled annually since 1987 in 17 of 34 pools substantially increased, especially in 1989-90. Since 1990, these numbers seem to have stabilized. The licensee stated that in 1992, 45 cutthroat and 768 brook trout were collected, and if the unsampled pools held similar numbers, the 1992 population in all pools combined would be approximately 90 cutthroat and 1500 brook trout. The licensee concluded that trout populations have increased substantially in the study portion of Mink Creek since initiation of project operation in January 1987. The number of age-1 and older fish has approximately tripled, and while brook trout remain the dominant species, the population of cutthroat trout also appears to have benefitted. Therefore, based on the monitoring study results, the licensee proposes no recommendations for modifying project structures or operation.

Agency comments

By letter dated June 23, 1993, the licensee requested comments from the FWS, IDFG, and FS on the results of the fish population monitoring. In this letter, the licensee recommended no modifications of project structures or operations due to no apparent adverse effects on the fish resources of Mink Creek. In an August 24, 1993 filing, the licensee stated that no response was received from the agencies concerning the June 23 letter.

Commission staff, by letter dated March 28, 1995, provided staff's preliminary analysis of the results of the 5-year trout monitoring study and requested comments from the FS, IDFG, and the FWS on the licensee's recommendations and staff's analysis.

The FS, by letter dated March 31, 1995, concurred that no modifications to project structures or operations are required. The FS did recommend that the licensee continue maintaining the structures on a yearly basis to insure structural integrity and function. The FS also stated they would like to receive an annual report from the licensee on the status and condition of each of the habitat improvement structures by October 1 each year.

The IDFG, by letter dated April 14, 1995, concurred that trout numbers have increased in the areas of the rock and log weirs, but also commented there are no comparisons of trout numbers in areas where weirs were not built. The FWS, by letter dated May 2, 1995, also concurred with the licensee's conclusions

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Department of Water Resources

42 FERC ¶ 63,1 . .

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Robert Fackrell

Project No. 8646-021
Idaho

13-7416

ORDER AMENDING SIDE CHANNEL GAGING REQUIREMENTS

(Issued August 11, 1995)

By letter dated July 15, 1991, Robert Fackrell (licensee) requested an amendment to article 402 of the license for the Mink Creek Project (FERC No. 8646). Article 402 states that the licensee shall construct and operate streamflow gages, as required by article 8, in the bypass reach, including side channels, of Mink Creek below the project dam in a manner to allow continuous monitoring of the Mink Creek Project minimum flows required by article 103. Further, the licensee is required to annually make available to the U.S Fish and Wildlife Service (FWS), the U.S. Forest Service (FS), the Idaho Department of Fish and Game (IDFG) and the Commission's Portland Regional Office (PRO) Director, the record of minimum flows obtained from these gages.

Licensee's proposal

During an April 5, 1988, on-site inspection of the Mink Creek Project which was attended by staff from the Commission's PRO, IDFG, and the FWS, it was agreed that, because downstream irrigators withdraw water from the side channels, and therefore continually thwart the licensee's efforts to divide the flow equally in the side channels, the requirement for placing a gage and recording the flows in the side channels was not necessary. The licensee was advised, in a letter from the Commission's PRO dated September 19, 1989, to seek concurrence from the resource agencies and submit a request to the Commission that the license article be amended to delete the requirement.

Agency comments

By letter dated September 22, 1989, the licensee requested concurrence from the FWS and the IDFG regarding the removal of the requirement to install gages in the side channels as required by article 402. The FWS responded to the licensee, by letter dated October 11, 1989, requesting further information showing all agricultural diversions in relation to major project works, such as diversion structures and tailrace return flows. Comments were not received from the IDFG.

Regarding this issue, staff prepared a preliminary analysis that was sent to the licensee, FWS, IDFG, and FS. In the analysis, staff concluded that the licensee's request to amend article 402 and delete the side channel gaging requirement should

be approved. Concurrence on the deletion of the side channel gaging requirements was received from the FS, by letter dated March 31, 1995, the IDFG, by letter dated April 14, 1995, the FWS, by letter dated May 2, 1995, and the licensee, by letter filed May 19, 1995.

Discussion and Conclusions

The licensee has attempted to divide the flow equally in the side channels of the diversion. However, downstream irrigators continually alter the flow back into the one side channel. During an Operations Inspection conducted by staff from the Commission's PRO on June 30, 1989, the licensee showed staff how he attempted to divide the flow and how the irrigators blocked his attempts.

From the results of the licensee's five year trout population monitoring study conducted between 1987 and 1992, the trout population has substantially increased during this time frame. Cutthroat trout populations have slightly increased, while brook trout populations have nearly doubled. Therefore, since the streamflow was established to protect trout, the flows that the licensee has been releasing appear to be adequate to protect the populations of cutthroat and brook trout below the Mink Creek Project.

There are no license requirements for the licensee to divide the flow equally in the side channels of the diversion. Although the licensee has made an effort to protect the aquatic resources of both channels by directing flows into both channels, these attempts are negated by the withdrawal of water made by the downstream irrigators. Therefore, the licensee's request to amend article 402 to delete the side channel gaging requirements should be approved.

The Director orders:

(A) Article 402 of the project license for the Mink Creek Project (FERC No. 8646) is amended as follows:

> The licensee shall construct and operate streamflow gages as required by standard license article 8 in the bypass reach of Mink Creek below the project dam in a manner to allow continuous monitoring of the Mink Creek Project minimum flows required by article 103. Further the licensee shall annually make available to the U.S Fish and Wildlife Service, Forest Service, the Idaho Department of Fish and Game, and the Commission's Portland Regional Office Director, the record of minimum flows obtained from these gages.

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AUG 18 1995
Department of Water Resources

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 2, 1997

Robert N. Fackrell
P.O. Box 1
Preston, ID 83263

RE: Water Right 13-07416

Dear Water Right Holder(s):

We are in the process of reviewing your permit for the purpose of issuing a license. In order to complete this process I need some additional information from you. We need a schematic of the system. Information in the file indicates the facility uses one turbine rated at 100 cfs. Our examiner's photos identify an upper and lower turbine. In your schematic diagram, please clarify this "oddity" for us.

We also need flow records from 8/86 to 7/91 or the best 12 month period in that range. This information is needed to establish an annual volume for the license and to help us understand the system so that the flow recommended for licensing is accurate.

Thank you for your help in this matter. If you have any questions, please feel free to contact me at (208) 327-5452.

Sincerely;

Sharla Curtis
Water Resource Agent

SC:cb

MEMORANDUM

DATE: June 16, 1997

TO: Sharla Curtis

FROM: Shelley W. Keen SWK

RE: Water Right 13-07416

This morning Robert Fackrell called in response to your request for more information about his use of water under permit 13-07416. He told me that there is only one turbine, but the flow is split and directed to two different nozzles that cause water to impact the turbine at two different angles. He also told me that he will supply you with information about the annual diversion volume for the hydropower facility.

K:\WRMEMOS\1307416.DOC

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JUN 18 1997
Department of Water Resources

June 16, 1997

Ms. Sharla Curtis
Idaho Department Of Water Resources
1301 North Orchard Street
Boise, Idaho 83720-9000

Dear Sharla,

In response to your request of June 2, 1997, I present the following:

1. The photos provided by your examiner indicating an "upper and lower turbine" must be incorrectly labeled. Most likely what the examiner was referring to was an upper and lower nozzle. There are two nozzles on the single turbine, one of which directs the water flow toward the top of the turbine runner, and the remaining nozzle which directs the flow of water toward the bottom of the turbine runner. There is only one turbine at the facility, which is rated at 100 cfs.

2. The best annual flow of water through the turbine occurred last year. During 1996 there was a total of 10,711,260 kilowatt hours of electricity produced by the facility. It takes approximately 1 cfs. of water flowing for 1 hr. to produce 32 kilowatt hours of electricity. Or 3,600 cubic feet of water to produce 32 kwh of electricity. (1 X 60 = 60, 60 X 60 = 3,600.) Thus the total flow through the turbine during 1996 was 1,205,017,200 cubic feet. (10,711,260 kwh ÷ 32 = 334,727 each 32 kwh units. 334,727 X 3,600 cubic feet = 1,205,017,200 cubic feet cubic feet of water.) This totals 27,663 acre feet of water that passed through the turbine during the calendar year of 1996. (1,205,017,200 ÷ 43,560 = 27,663 acre feet.)

Please understand that the flows vary on an annual basis, and the above information is for the calendar year of 1996 only. I anticipate 1997 to have higher flows than 1996. Also understand that a significant amount of water by-passes the electrical generating facility, so this information is not applicable for determining the actual flow of Mink Creek.

If there is anything additional that I may help you with, please call me at 208-852-3111.

Cordially,

Robert N. Fackrell

FACKRELL CONSTRUCTION CO.

P. O. Box #1 • Preston, Idaho 83263 • (208) 852-1320
or 852-1522

MEMORANDUM

TO: File 13-07416

FROM: Sharla

DATE: June 25, 1997

RE: Recommendation Adjustment(s)

The final license recommendations for Right 13-07416 are based on the following:

H. RECOMMENDATIONS

Power	1/1 - 12/31	100.0 cfs	27,663.0 afa

A volume based on year-round constant flow is not reasonable. The volume, therefore, is based upon the volume calculation submitted by the right holder in his letter of June 16.

Examiner: Don Simpkins
Exam Date: June 27, 1995

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 1, 1997

ROBERT N FACKRELL
PO BOX 1
PRESTON ID 83263

RE: WATER RIGHT NO. 13-07416

Dear Water Right Holder(s):

The Department of Water Resources (the Department) has issued the enclosed license confirming that a water right has been established in accordance with the permit referenced above. The license is a **preliminary order** issued by the Department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as further described below:**

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

The appeal must be f ed within twenty-eight (2 days of this preliminary order becoming final. See section 6 -5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

Shelley Walter Keen

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

CERTIFICATE OF MAILING

I hereby certify that on the **1st** day of **July, 1997**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (Approved License)** to the person(s) listed below:

Water Right No. 13-07416

ROBERT N FACKRELL
PO BOX 1
PRESTON ID 83263

Kari Lynn Townsend
Secretary