

108 FERC ¶ 61,126
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Idaho Power Company

Project No. 2777-007

ORDER ISSUING NEW LICENSE

(Issued August 4, 2004)

1. This order issues, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),¹ a new license to Idaho Power Company (Idaho Power or licensee) to continue operation and maintenance of the 34.5-megawatt (MW) Upper Salmon Falls Project No. 2777. The project is located on the Snake River in Gooding and Twin Falls Counties, Idaho.
2. This order also approves, as it applies to the Upper Salmon Falls Project, an offer of settlement filed by Idaho Power on behalf of itself and the U.S. Fish and Wildlife Service (FWS) with respect to the relicensing of the Upper Salmon Falls Project and four other Idaho Power projects on the Snake River. The settlement agreement contains provisions relating to the protection of specific federally listed threatened and endangered snail species. The new license issued in this order for the Upper Salmon Falls Project includes conditions consistent with the terms of the agreement, which is attached as Appendix B to the order issuing a new license for the Bliss Project No. 1975, which order we are also issuing today.

¹ 16 U.S.C. §§ 808 and 797, respectively.

BACKGROUND

3. Today the Commission is issuing new licenses for five Idaho Power projects located on the central portion of the Snake River Basin, in south-central Idaho.² Starting furthest upstream, they are the 12.5-MW Shoshone Falls Project No. 2778, at river mile (RM) 615;³ the Upper Salmon Falls Project (RM 580); the 60-MW Lower Salmon Falls Project No. 2061(RM 573); the 75-MW Bliss Project No. 1975 (RM 560); and the 82.8-MW C.J. Strike Project No. 2055 (RM 494-518).⁴ The first four projects, located along a 57-mile-long reach of the river, are sometimes referred to as the Mid-Snake Projects.

4. More than 1,000 miles long, the Snake River is the largest tributary of the Columbia River. The Snake River has been heavily developed, as evidenced by the 23 dams on its mainstem, impounding nearly 50 percent of the river. Of the 37 million acre-feet of water that drains into the river each year, more than 14 million acre-feet are diverted for irrigation, municipal, and various other uses. The resulting impacts on the resources of the Snake River have included inundation of fish spawning, wildlife, riparian, and island habitat.⁵

² The Snake River is a navigable waterway of the United States from its mouth on the Columbia River (which flows to the Pacific Ocean) to the mouth of Henrys Fork, at about river mile 774. Idaho Power Company, 14 FPC 71 (1955).

³ River miles are counted beginning at the mouth of a river.

⁴ On the Malad River, a tributary entering the Snake River between the Bliss Project and the Lower Salmon Falls Project, is Idaho Power's 20.7-MW Malad Project No. 2726, a two-development run-of-river project whose current license expires July 31, 2004.

⁵ See City of Idaho Falls, Idaho, 80 FERC ¶ 61,342 at 62,129 (1997).

PROJECT DESCRIPTION

5. Construction and operation of the Upper Salmon Falls Project was originally licensed with a 50-year term effective June 1, 1949.⁶ At the request of Idaho Power, the license expiration date was subsequently accelerated to 1998.⁷ The project has continued to operate under annual licenses.⁸

6. The Upper Salmon Falls Project includes a variable height concrete diversion structure (main diversion dam) composed of a 240-foot-long gated spillway section, a 610-foot-long gravity dam section with flashboards, a 275-foot-long intake structure, and two gravity sections at the abutments totaling 420 feet in length; a 5.8-mile-long, 50-acre reservoir at a normal maximum water surface elevation of 2,878.2 feet above mean sea level (msl) and a gross storage capacity of 600 acre-feet; a 3,200-foot-long concrete lined canal formed in part by a 1,380-foot-long concrete wall spanning Dolman Rapids that serves as a canal overflow section; two powerhouses (Plants A and B), each containing two turbine-generator units totaling 34.5 MW of installed capacity; a 1.8-mile long bypassed reach comprising the 1.3-mile-long North Channel and a 0.5-mile-long unnamed section; and a 0.25-mile-long bypassed reach known as Dolman Rapids. The outflow from the project empties into Idaho Power's Lower Salmon Falls Project reservoir.

7. The current average annual generation at the Upper Salmon Falls Project is 310,976 megawatt-hours (MWh). Idaho Power currently operates the project as a run-of-river facility whereby, except for minor fluctuations caused by changing inflows, headwater elevations are held at 2,841 feet msl at Plant A and 2,878.2 feet msl at Plant B; consequently, at any point in time, outflows from the project approximate inflows to the reservoir.

PROCEDURAL HISTORY

8. Idaho Power filed its application for a new license for the Upper Salmon Falls Project on December 20, 1995. Public notice of the application was issued, and August 29, 1996, was the deadline to file comments, protests, and motions to intervene.⁹

⁶ Idaho Power Co., 7 FERC ¶ 61,253 (1979).

⁷ Idaho Power Co., 65 FERC ¶ 62,095 (1993).

⁸ See FPA section 15 (a)(1), 16 U.S.C. § 808(a)(1).

⁹ See notice issued June 24, 1996.

Intervenors in the proceeding are the U.S. Department of the Interior (Interior), National Oceanic and Atmospheric Administration-Fisheries (NOAA Fisheries), State of Idaho, Oregon Department of Fish and Wildlife, Columbia River Inter-Tribal Fish Commission (Inter-Tribal Commission), Shoshone-Bannock Tribes (Tribes), Middle Snake Recreation Work Group, Middle Snake Regional Water Resources Commission, Elmore County Wildlife Club, and joint movants Idaho Rivers United, American Rivers, Federation of Fly Fishers, Friends of the Earth, Idaho Conservation League, and Idaho Wildlife Federation (jointly, Conservation Groups).¹⁰ The Conservation Groups oppose issuance of a new license for the project as proposed by Idaho Power.

9. In January 2002, the Commission issued for comment a draft Environmental Impact Statement (EIS) that evaluated the potential environmental impacts of continued operation of the Mid-Snake Projects, including Upper Salmon Falls. Comments on the draft EIS were filed by Idaho Power, Interior, the U.S. Environmental Protection Agency (EPA), the Tribes, the Inter-Tribal Commission, Idaho Rivers United and American Rivers (Idaho Rivers), and the Idaho Departments of Fish and Game, Environmental Quality, Water Resources, and Parks and Recreation. In August 2002, the Commission issued the final EIS for the four projects.¹¹

10. On February 12, 2004, Idaho Power amended its relicense application with the filing of a proposed settlement agreement between it and FWS covering the four Mid-Snake projects (including Upper Salmon Falls) and the C.J. Strike Project. The agreement would resolve issues related to the protection of federally listed threatened and endangered snail species and their habitat within the five project areas.

11. The Commission issued public notice of the agreement on February 17, 2004. The Idaho Department of Fish and Game (Idaho DFG) filed comments in support of the agreement. Idaho Rivers United and American Rivers (jointly, Idaho Rivers) filed comments and a protest in opposition.

12. The Commission has considered all the comments and interventions filed in this proceeding in determining whether, and under what conditions, to issue a new license for the Upper Salmon Falls Project.

¹⁰ State of Idaho and Shoshone-Bannock Tribes filed late motions to intervene, which were granted by notice issued December 5, 2002.

¹¹ Separate draft and final EISs were prepared for the C.J. Strike Project.

ORIGINAL RELICENSING PROPOSAL

13. Initially, Idaho Power proposed continuing to operate the project as a run-of-river facility while implementing additional measures for the protection and enhancement of project area resources.¹² For aquatic resources these measures include: (1) assisting the Idaho DEQ in the development of a watershed management plan; (2) removing aquatic vegetation collected on the trashracks; (3) maintaining minimum flows in the bypassed reaches; (4) monitoring water quality; (5) funding various water quality measures; (6) annually stocking the project reservoir with rainbow trout; (6) developing a white sturgeon conservation plan; (7) enhancing spring habitats for federally listed snails, Shoshone sculpin,¹³ and rainbow trout; and (8) developing a snail conservation plan. For terrestrial resources, Idaho Power proposed to manage project lands to protect and enhance rare plant communities, riparian and wetland habitats, and wildlife. For recreation, Idaho Power proposed a number of enhancements to boating facilities and parking areas. As described below, this relicensing proposal has been modified by the settlement agreement.

THREATENED AND ENDANGERED SPECIES AND THE MODIFIED RELICENSING PROPOSAL

14. Section 7(a) of the Endangered Species Act of 1973 (ESA)¹⁴ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of designated critical habitat. When a federal agency determines that a proposed action may affect a threatened or endangered species, it must consult with FWS or NOAA Fisheries and obtain a biological opinion on whether the action is likely to result in a violation of the ESA. After the initiation of formal consultation, section 7(d) of the ESA¹⁵ prohibits an agency from making any irreversible or irretrievable commitment of resources that would foreclose the formulation or implementation of any reasonable and prudent alternative measures which would not violate section 7(a)(2).

¹² EIS section 2.1.5 at pp. 17-22.

¹³ This is a small fresh-water fish (bull-head).

¹⁴ 16 U.S.C. § 1536(a).

¹⁵ 16 U.S.C. § 1536(d).

15. Federally listed species that occur in the area of the Mid-Snake Projects are four endangered snail species -- the Utah valvata, Idaho springsnail, Banbury Springs Lanx, and Snake River physa -- and the threatened Bliss Rapids snail and bald eagle. The draft EIS concluded that relicensing the Mid-Snake Projects under any of the alternatives analyzed would not adversely affect the bald eagle but that relicensing of the Lower Salmon and Bliss Projects would likely adversely affect, respectively, two and three of the snail species.¹⁶

16. Federally listed species that occur in the area of the C.J. Strike Project are the endangered Idaho springsnail and threatened bald eagle. The draft EIS issued for the C.J. Strike Project found that relicensing that project would likely adversely affect the Idaho springsnail but not likely adversely affect the bald eagle.¹⁷

17. In light of the above, on January 16 and May 21, 2002, the Commission staff requested formal consultation with FWS under section 7(a)(2) of the ESA as to the Mid-Snake and C.J. Strike Projects, respectively.

18. Subsequently, Idaho Power and FWS engaged in discussions that led to the filing of the proposed settlement agreement. Under the agreement, Idaho Power, in cooperation with FWS, would, during the first six years (study period) of any new licenses issued, study the effects of the C.J. Strike and Mid-Snake Projects' operations on specific listed snail species.

19. During the first five years of the study period, the Bliss and Lower Salmon Falls Projects would be operated for at least two years in a load-following mode and two years in a run-of-river mode, but during the fifth year, both projects would be operated in a run-of-river mode unless a work group selected pursuant to the agreement¹⁸ decided that

¹⁶ The draft EIS concluded that relicensing the Lower Salmon Falls Project would be likely to adversely affect the Snake River physa and Bliss Rapids snail, while relicensing the Bliss Project would be likely to adversely affect the Idaho springsnail, Snake River physa, and Bliss Rapids snail. The draft EIS found that relicensing the Shoshone Falls and Upper Salmon Falls Projects would not likely adversely affect any of the listed snails. Draft EIS at pp. 408-409. The final EIS did not alter the conclusions of the draft EIS with respect to these effects. Final EIS at p. 290.

¹⁷ Draft EIS section 6.6.3 at 242. The final EIS for the C.J. Strike Project did not alter this conclusion. Final EIS at 250.

¹⁸ See sections 4.6 and 4.7 of the agreement.

another year of load-following operations would be necessary for study purposes. The work group would have the discretion to establish an operating regime for the sixth year, but if the group did not establish a regime, Idaho Power would operate those projects in a run-of-river mode for that year.¹⁹

20. At the end of the above-described study period, Idaho Power would submit for Commission approval a snail protection plan proposing additional measures on behalf of listed snail species, together with any project operational changes required by such new measures.²⁰ The agreement provides that, pending approval of the snail protection plan, Idaho Power will operate the C.J. Strike Project as a load-following facility and the Bliss and Lower Salmon Falls Projects as run-of-river facilities.

21. Following the filing of the agreement, the Commission staff, by letter of February 26, 2004, affirmed its previous conclusions about the effects on threatened and endangered species and requested FWS's biological opinion with respect to Idaho Power's relicense applications as modified by the proposed settlement agreement.

22. FWS issued its biological opinion on May 14, 2004. As to the Upper Salmon Falls Project, FWS concurred with the Commission staff's conclusion that Idaho Power's modified proposal was not likely to adversely affect the Snake River physa snail, Bliss Rapids snail, and bald eagle. However, contrary to the Commission staff's finding, FWS determined that the modified proposal was likely to adversely affect the Utah valvata snail. The biological opinion also concluded that none of the five projects was likely, individually or in combination, to jeopardize the continued existence of any of the listed

¹⁹ Throughout the study period, the Shoshone Falls and Upper Salmon Falls Projects would continue their existing run-of-river operations, and the C.J. Strike Project would continue its existing load-following operations.

²⁰ Article 4.4.4 of the agreement provides for Idaho Power and FWS to request inclusion of a requirement for such a snail protection plan in the new licenses issued for the Lower Salmon Falls, Bliss, and C.J. Strike Projects. Under Article 4.3.5 of the agreement, the snail protection plan would take the place of the snail conservation plan proposed in Idaho Power's relicensing applications for the Upper Salmon Falls, Lower Salmon Falls, Bliss, and C.J. Strike Projects, except as to measures related to the protection and enhancement of spring habitat of listed snail species on lands owned by Idaho Power.

snail species studied, because the project would not reduce the reproduction, status, or distribution of the species to the point of appreciably reducing the likelihood of their survival and recovery.²¹

23. Section 7(b) of the ESA provides that if, after consultation, the ESA agency concludes that the proposed action will not jeopardize the continued existence of a species, the ESA agency shall provide the action agency with a written statement that specifies the impact of incidental taking on the species, specifies those reasonable and prudent measures that the ESA agency considers necessary or appropriate to minimize such impact, and sets forth the terms and conditions that must be complied with to implement those measures.

24. The biological opinion includes an incidental take statement that specifies that no measures beyond Idaho Power's modified proposal have been identified by FWS as necessary to reduce the incidental take of the Utah valvata snail at the Upper Salmon Falls Project, and concludes that the modified proposal minimizes incidental take to the extent practicable.

WATER QUALITY CERTIFICATION

25. Under section 401(a)(1) of the Clean Water Act (CWA),²² the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency has issued water quality certification for the project or has waived certification by failing to act within a reasonable period of time, not to exceed one year.²³ Section 401(d) of the CWA provides that state certification shall become a condition of any federal license or permit that is issued.²⁴ Only a reviewing court can revise or delete these conditions.²⁵

²¹ See FWS's biological opinion, filed with the Commission on May 18, 2004.

²² 33 U.S.C. § 1341(a)(1).

²³ The Commission's regulations provide the full one-year waiver period. See 18 C.F.R. § 4.38(f)(7)(ii) (2004).

²⁴ 33 U.S.C. § 1341(d).

²⁵ See *American Rivers v. FERC*, 129 F.3d 99 (D.C. Cir. 1997).

26. On May 21, 1998, the Idaho Department of Environmental Quality (Idaho DEQ) issued timely water quality certification for the four Mid-Snake Projects. The certification attached and incorporated the terms of a consent order negotiated by Idaho Power and Idaho DEQ.²⁶ The certification is conditioned on Idaho Power's compliance with the consent order; there are no certification conditions other than those in the consent order, and the consent order itself does not separate conditions from the text. However, item 13 of the consent order lists the activities that Idaho Power is required to conduct or fund.

27. Under the consent order, Idaho Power must: (1) monitor dissolved oxygen and temperature at each project; (2) install equipment at the Upper Salmon Falls, Lower Salmon Falls, and Bliss Projects to remove aquatic vegetation from the intake structures; (3) maintain a minimum flow of 50 cfs in the North Channel at Upper Salmon Falls; and (4) operate the projects so as not to increase water level fluctuations beyond those that reflect the project's historic mode of operation ranges.²⁷ In addition, the consent order requires Idaho Power to make the following payments: (1) a minimum of \$15,000 per year to assist in the implementation of the Middle Snake River Watershed Management

²⁶ Idaho DEQ received Idaho Power's request for certification on December 12, 1995. On December 10, 1996, Idaho DEQ denied certification on the ground that it had had insufficient time to review Idaho Power's data. Idaho Power appealed the denial on January 14, 1997, and in the ensuing months, Idaho DEQ solicited comments on the certification request and reviewed additional information. The consent order was intended to resolve all issues raised in Idaho Power's appeal.

²⁷ The 1998 consent order required Idaho Power to submit to Idaho DEQ a description of the historic mode (the preceding 15 years) of operation of the four Mid-Snake Projects, including data on fluctuations in water levels within each impoundment and downstream from each dam. The consent order further provided that Idaho Power may not deviate from the historic mode of operation without Idaho DEQ's prior approval. Idaho DEQ clarified that the consent order does not affect the ability of other state agencies to propose or of the Commission to adopt different load-following operations, as long as the operations do not cause greater water level fluctuations than those allowed under the consent order. *See* State of Idaho Agencies' comments filed November 17, 2000, at 5-7.

Plan; (2) up to \$2.5 million to Idaho DEQ for the agency's acquisition of spring sources on the Snake River; and (3) \$50,000 to Idaho DEQ annually for 10 years, to be used for long-term water quality monitoring.²⁸

28. For the effective administration of its licenses, the Commission requires clarity in license requirements. Idaho DEQ's single certification establishes payment obligations for the four Mid-Snake Projects collectively and thereby creates ambiguity as to the licensee's obligation under each separate license. Because the certification conditions become conditions of each license, Idaho Power might appear required to make separate payments in the full amounts indicated above under each license. However, we presume that this not Idaho DEQ's intent. To resolve this ambiguity, Article 406 requires Idaho Power to consult with the Idaho DEQ and to submit a plan for Commission approval allocating the funding requirements among the four Mid-Snake Projects. Idaho Power may submit a single plan for all four projects.

29. The water quality certification, including the consent decree, is attached as Appendix A to this order. Ordering paragraph (E) incorporates the certification conditions of Appendix A as conditions of the license.²⁹

²⁸ The consent order also requires Idaho Power to pay Idaho DEQ \$500,000 for acquisition of spring sources and \$750,000 for the development of artificial wetlands, settling ponds, or other systems to reduce the amount of nutrients and sediments entering the middle Snake River. These contributions have already been made. See State of Idaho Agencies comments filed November 17, 2000, at p. 70 and final EIS at p. 24, respectively.

²⁹ The consent order was modified on February 11, 2000, to permit a conditional waiver of Idaho Power's \$2.5 million spring sources payment to the extent that Idaho Power loans this amount to the Nature Conservancy to acquire spring habitats, as set forth in a memorandum of understanding among Idaho DEQ, Idaho Power, and the Nature Conservancy. The consent order has been further modified, most recently in December 2003, to extend deadlines in this waiver provision beyond projected dates for issuance of licenses. Because the water quality certification has not been amended accordingly, Appendix A does not include these subsequent modifications to the consent order.

SECTION 18 OF THE FPA

30. Section 18 of the FPA, 16 U.S.C. § 810, provides that the Commission shall require the construction, operation, and maintenance by a licensee of such fishways as the Secretaries of Commerce or the Interior may prescribe. Commerce and Interior timely asked the Commission to reserve their respective authorities to prescribe fishways.³⁰ It is the Commission's policy to include in a license, on request of the agencies, an article reserving the Commission's authority to require the licensee to construct, operate, and maintain such fishways as the agencies might prescribe in the future. Article 410 of the license contains this reservation.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES**A. Recommendations Pursuant to Section 10(j) of the FPA**

31. Section 10(j)(1) of the FPA, 16 U.S.C. § 803(j)(1), requires the Commission, when issuing a license, to include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act³¹ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by a project.

32. For the Upper Salmon Falls Project, Interior, NOAA Fisheries, and Idaho DFG submitted 17 recommendations that fall within the scope of section 10(j). Two of these recommendations were later withdrawn.³² The license contains conditions consistent with the remaining recommendations. These adopted measures require the licensee to: (1) develop a white sturgeon conservation plan that includes an evaluation of the feasibility of providing fish passage at the project (Article 407); (2) annually stock a total of 3,000 pounds of rainbow trout in the project reservoir and Snake River upstream to

³⁰See Commerce and Interior's letters to the Commission dated November 9 and 17, 2000, respectively.

³¹16 U.S.C. § 661 *et seq.*

³²By letter filed March 27, 2002, NOAA Fisheries withdrew its recommendation for limiting Idaho Power's ability to interfere with salmon augmentation flows released from upstream federal projects. Idaho DFG's recommendation for a Shoshone sculpin reintroduction plan was withdrawn by letter filed on March 27, 2002. Idaho DFG now recommends that Shoshone sculpin populations be monitored on company-owned lands.

Shoshone Falls (Article 408); (3) develop a habitat management plan for Banbury Springs and the island near Briggs Creek (Article 411); (4) maintain a 50-cfs minimum flow in the project's North Channel as required by the project's water quality certification; (5) maintain a 200-cfs minimum flow in the Dolman Rapids area of the project (Article 402); (6) implement a spring habitat protection plan that includes monitoring of Shoshone sculpin on project lands (Article 409); (7) develop a land management plan for the protection of upland, riparian, and wetland habitats that includes noxious weed control, grazing management, and vegetation restoration for project lands (Article 412);³³ (8) use adaptive management to evaluate the success of the various enhancement plans (Article 413); and (9) maintain instream flows at project springs (Article 409).³⁴

B. Recommendations Pursuant to Section 10(a)(1) of the FPA

33. Idaho DFG and FWS made recommendations that are not specific measures to protect, mitigate damages to, or enhance fish and wildlife; consequently, we do not consider these recommendations under section 10(j) of the FPA. Instead, we consider these recommendations under the broad public-interest standard of FPA section 10(a)(1), 16 U.S.C. § 803(a)(1).³⁵

³³ Idaho DFG and FWS recommend vegetation management for project-area lands that are owned by Idaho Power or that are part of Idaho Power's mitigation package. The agencies did not define the project area. This license requires vegetation management on project lands, which will now include Banbury Springs (Article 301). However, this requirement does not extend to any other Idaho Power-owned lands outside of the project boundary, and we do not believe that expansion of the project boundary to include additional lands is warranted.

³⁴ NOAA Fisheries recommended that the license include reopener provisions for additional measures for anadromous fish, project operations, and water quality monitoring. This license includes, in standard Article 15, the Commission's reservation of authority to reopen the license to modify project structures and operations for the conservation and development of fish and wildlife resources.

³⁵ Section 10(a)(1) requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

34. Idaho DFG and FWS recommend that Idaho Power develop and implement a program for long-term monitoring of fish and wildlife in the middle Snake River. The Commission often requires licensees to evaluate the effectiveness of specific enhancement measures, as we do here in Articles 409, 411, and 412. However, the program recommended by Idaho DFG and FWS is too broad in scope (*i.e.*, not tied to project-specific effects) to be a reasonable requirement upon this project license.³⁶

35. Idaho DFG recommends that Idaho Power file with the Commission an annual statement of its progress in carrying out the protection, mitigation, and enhancement measures required by a new license. The statement would describe the status of implementation, the expenditures required, and the monitoring results of the measures' effectiveness. Idaho DFG's recommendation is essentially satisfied by the inclusion of Article 413, which requires an annual meeting among Idaho Power, Idaho DFG, FWS, and NOAA Fisheries to discuss the progress and results of monitoring required by the new license.³⁷

36. FWS recommends that Idaho Power develop an acquisition program to secure critical habitat areas to help sustain federally listed species and other resource values along the Snake River corridor. This license requires specific measures for the protection and enhancement of habitats for listed snails, including run-of-river operation (Article 401), minimum flows (Article 402 and Appendix A), and spring habitat protection (Articles 409 and 411). Interior's recommendation is too broad in scope to be a reasonable requirement upon this license.³⁸

HISTORIC PROPERTIES

37. On March 20, 2002, the Idaho State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Commission's Office of Energy Projects executed a Programmatic Agreement for managing historic properties that may be affected by the relicensing and continued operation of the Upper Salmon Falls Project. Article 415 requires the licensee to implement the agreement, including but not limited to

³⁶ See EIS section 4.1.3.5.

³⁷ Article 413 also requires that a summary of the meeting be submitted to the Commission.

³⁸ See EIS section 4.1.4.7.

the Cultural Resources Management Plan for the project. The agreement serves to satisfy the Commission's responsibilities under section 106 of the National Historic Preservation Act.³⁹

INTERVENOR CONCERNS

A. Adequacy of Protection Measures

38. Idaho Rivers opposes issuance of any new license as modified by the settlement agreement. It argues that, under *Confederated Tribes and Bands of the Yakima Indian Nation v. FERC*, 746 F.2d 466 (9th Cir. 1984) (*Yakima*), any license conditioned by the settlement agreement in this proceeding would fail to adequately protect fish and wildlife as required by the FPA, because such a license would improperly defer consideration and development of fishery protection measures until after relicensing. Idaho Rivers also contends that the agreement fails to provide for interim measures for the protection of listed snail species or other fish and wildlife during the initial six-year study period established by the agreement or for any long-term protection measures for the remaining term of the new licenses. It argues that the C.J. Strike Project and each of the Mid-Snake Projects should be relicensed as year-round run-of-river facilities, because load-following operation of the projects would jeopardize listed snail species and their habitat.

39. *Yakima* does not require the Commission to have perfect information before it acts, nor does it imply that all environmental concerns must be definitively resolved before a license is issued. The test is whether, given uncertainty, the Commission's action meets the standard for judicial review, which requires that the Commission's decision be supported by substantial evidence.⁴⁰ The new licenses for the C.J. Strike and Mid-Snake Projects meet this test by requiring specific measures for the protection of listed snail species and their habitat, both during and after the initial six-year study period required by the settlement agreement, based on evidence and findings set forth in the EIS.⁴¹

³⁹16 U.S.C. § 470s.

⁴⁰*See* U.S. Dept. of the Interior v. FERC, 952 F.2d 538, 546 (D.C. Cir. 1992).

⁴¹ By contrast, in *Yakima* the Commission issued a new license but specifically deferred the study and resolution of fish-protection issues at the project to a separate proceeding, involving several projects, in which the issues were to be addressed comprehensively.

40. In the case of the Upper Salmon Falls Project, the project will continue to be operated in a run-of-river mode, mooting Idaho Rivers' concerns about load-following operations. The new license contains measures that will protect listed snail species and other fish and wildlife over the entire license term, including: (1) run-of-river operation (Article 401); (2) bypassed reach minimum flows (Article 402 and Appendix A); (3) water quality monitoring (Article 404 and Appendix A); (4) aquatic vegetation removal for purposes of improving water quality (Article 405 and Appendix A); and (5) spring habitat management and protection (Articles 409 and 411).

41. Idaho Rivers also contends that issuance of any license as conditioned by the settlement agreement would violate the Commission's duty under section 7(a)(2) of the ESA⁴² to use the best available scientific information to ensure that Commission action approving any new license does not jeopardize threatened and endangered species. It argues that, instead of providing specific measures to protect listed snail species, the agreement improperly delays protecting these listed species for six years because of uncertainties about the probable impacts of project operations on such species. It contends that the ESA requires the Commission to give listed snail species the benefit of the doubt with regard to the need for protection by requiring all five projects to operate run-of-river at all times under the new licenses.

42. The new license for the Upper Salmon Falls Project requires measures, which apply over the entire term of the license, for the protection of aquatic resources, including listed snail species, based on currently available scientific information. The biological opinion concludes on the basis of this information that these measures should ensure that the listed snail species are not jeopardized during the term of the license.⁴³

43. As to each of the five projects we are relicensing today, the new licenses adequately address all of the fish and wildlife concerns identified in staff's environmental analysis, as discussed in each license order. That additional operational or other

⁴² 16 U.S.C. § 1536(a)(2).

⁴³ Idaho Rivers argues that the agreement improperly allows for issuance of new licenses prior to completion of the ESA consultation process required under 16 U.S.C. § 1536(a)(2). However, issuance of the biological opinion concluded the consultation process. Idaho Rivers also argues that the agreement fails to provide for the reinitiation of consultation at the end of the proposed six-year study period. Articles 4.4.1 and 4.5.3 of the agreement state that, under 50 C.F.R. § 402.16, consultation may be reinitiated to consider any previously unexamined potential effects on listed species that could come about as a result of proposed modifications to the new licenses.

measures may be found appropriate after the snail studies are concluded represents not a deferral of environmental protection but the possibility of additional protection based on information not now available.

B. NEPA Compliance

44. In comments submitted prior to the filing of the agreement, the Conservation Groups assert that the range of alternatives studied in the EIS is too limited, and that the four alternatives assessed in the EIS are only slightly different from each other. They also contend that the EIS's cumulative impact analysis was inadequate.⁴⁴

45. The EIS considered four alternative development approaches (load-following as originally licensed, load-following with certain enhancements, seasonal run-of-river, and year-round run-of-river). Under the National Environmental Policy Act of 1969 (NEPA), the range of alternatives that must be discussed in an EIS is a matter within an agency's discretion.⁴⁵ A discussion of environmental alternatives need not be exhaustive and need only provide sufficient information to permit a reasoned choice of alternatives.⁴⁶ With regard to cumulative impacts, an EIS analysis of a number of projects in a river basin need not necessarily examine all projects in a basin.⁴⁷ The EIS adequately analyzed the Shoshone Falls, Upper Salmon Falls, Lower Salmon Falls, and Bliss Projects, as well as three other downstream projects in the Snake River Basin, the Upper and Lower Malad Project No. 2726, the C.J. Strike Project No. 2055, and the Hells Canyon Project No. 1971, with respect to resources affected by the first four projects. The EIS's cumulative effects analysis zone of effects extended from Milner Dam above Shoshone Falls to Lower Granite Dam below Hells Canyon, a distance of nearly 500 miles. The EIS evaluated the cumulative effects of the Mid-Snake and C.J. Strike Projects, in combination with other activities in the basin, on the resources of concern, including

⁴⁴ See Conservation Groups' comments on the EIS filed on September 23, 2002.

⁴⁵ See *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551-52 (1976).

⁴⁶ See *North Carolina v. Federal Power Commission*, 533 F.2d 702 (1976).

⁴⁷ See, e.g., *Central Maine Power Co. of New Hampshire*, 81 FERC ¶61,251 (1997).

water quality and quantity, sediment transport, resident fish, federally listed aquatic mollusks, riparian/wetland habitat, bald eagles, native grasslands and shrublands, and recreation use patterns.⁴⁸

46. The Conservation Groups maintain further that the EIS was inadequate because it did not consider additional mitigation measures, including resident fish passage, minimum flows at all affected reaches, actions for the benefit of spawning gravels, funding of land acquisition and management at higher levels than proposed by Idaho Power, construction of anti-entrainment devices, and establishment of a decommissioning fund.

47. The EIS did consider these measures,⁴⁹ and the licenses for the four Mid-Snake Projects include pertinent provisions in these areas. As to the Upper Salmon Falls Project, this license includes Article 407, which requires the preparation of a white sturgeon conservation plan. The plan would include measures for the protection of, mitigation of damages to, and enhancement of white sturgeon, as well as an evaluation of the feasibility of providing upstream and downstream passage for white sturgeon and, concurrently, for rainbow trout. Article 401 of this license requires run-of-river operation and Article 402 requires the release of a minimum flow. This license includes a spring habitat protection plan (Article 409), based on findings in the EIS that preservation of spring habitats for resident trout would provide greater benefits than actions such as manipulating substrates in the main-stem river or creating spawning channels as recommended by the Conservation Groups.

48. In the case of additional land acquisition, the EIS concluded that Idaho Power would only need to acquire and manage additional lands if load-following were continued at the Lower Salmon Falls and Bliss Projects.⁵⁰ This license requires run-of-river operation; therefore, requiring Idaho Power to fund additional land acquisition at the Upper Salmon Falls Project would be inappropriate. With respect to a decommissioning fund, the Commission does not generically impose retirement funding requirements on licensees, but considers the need for a fund on a case-by-case basis.⁵¹ Because there are

⁴⁸ See EIS at pp. 335-355.

⁴⁹ See section 4 of the EIS.

⁵⁰ See section 4.1.3.1 of the EIS.

⁵¹ Policy Statement on Project Decommissioning at Relicensing, 60 Fed. Reg. 339, (Jan. 4, 1995), III FERC Stats. & Regs., Preambles ¶ 31,011 (Dec. 14, 1994).

no data to suggest that the lives of the mid-Snake River Projects may end within the next 30 years, or that Idaho Power is not financially viable, there is no reason to require the establishment of a trust fund.

STATE AND FEDERAL COMPREHENSIVE PLANS

49. Section 10(a) (2) of the FPA requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. We have identified 11 comprehensive plans⁵² that are applicable to the four Mid-Snake Projects and have found no conflicts.

APPLICANTS' PLANS AND CAPABILITIES

50. In accordance with sections 10(a)(2)(C) and 15(a) of the FPA, we have evaluated Idaho Power's record as a licensee with respect to the following: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission service; (G) cost effectiveness of plans; and (H) actions affecting the public.

⁵²(1) Monument Resource Area Proposed Management Plan and Final Environmental Impact Statement, 1984, Bureau of Land Management, Department of the Interior, Shoshone, Idaho.; (2) Land and Resource Management Plan for the Sawtooth National Forest, 1987, USDA Forest Service, Twin Falls, Idaho; (3) Idaho Fisheries Management Plan -2001 to 2006, 2001, Idaho Department of Fish and Game, Boise, Idaho; (4) Idaho Water Quality Standards and Wastewater Treatment Requirements, 1997, Idaho Department of Health and Welfare, Division of Environment, Boise, Idaho; (5) 1998 Idaho Comprehensive Outdoor Recreation and Tourism Plan, July 1998, Idaho Department of Parks and Recreation, Boise, Idaho; (6) Comprehensive State Water Plan: Milner Dam to King Hill, 1993, Idaho Water Resource Board, Boise, Idaho; (7) Comprehensive State Water Plan, Snake River: Milner Dam to King Hill, 1993, Idaho Water Resource Board; (8) Northwest Conservation and Electric Power Plan, 1998 (Revised), Northwest Power Planning Council, Portland, Oregon; (9) Protected Areas Amendments and Response to Comments, Document 88-22, 1988, Northwest Power Planning Council, Portland, Oregon; (10) 2000 Columbia River Basin Fish and Wildlife Program, 2000 (Revised), Northwest Power Planning Council, Portland, Oregon; and (11) Draft white sturgeon management plan: status and objectives of Idaho's white sturgeon resources in the Snake River, 2003, Idaho Department of Fish and Game, Boise, Idaho.

A. Conservation Efforts

51. FPA section 10(a)(2)(C) requires the Commission to consider the extent of electric consumption efficiency programs in the case of license applicants primarily engaged in the generation or sale of electric power. Idaho Power is such an applicant. Idaho Power has programs to promote cost-effective conservation and load management for residential, commercial, industrial, and agricultural customers. Through these programs, Idaho Power is making satisfactory efforts to conserve electricity and reduce peak hour demands.

B. Compliance History and Ability to Comply with the New License

52. Based on a review of Idaho Power's compliance with the terms and conditions of the existing license, we find that Idaho Power's overall record of making timely filings and of compliance with its license is satisfactory.

C. Safe Management, Operation, and Maintenance of the Project

53. We have reviewed Idaho Power's management, operation, and maintenance of the Upper Salmon Falls Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. We conclude that the dams and other project works are safe, and that there is no reason to believe that Idaho Power cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

54. We reviewed Idaho Power's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. We find that Idaho Power has been operating the project in an efficient manner within the constraints of the existing license and is likely to continue to do so under a new license.

E. Need for Power

55. The Upper Salmon Falls Project, with a rated capacity of 34.5 MW, historically has generated an annual average of 311 gigawatt-hours (GWh) of electricity, which Idaho Power uses to meet its system load requirements. Idaho Power operates 17 hydroelectric facilities, totaling 1,707 MW of nameplate capacity. These hydroelectric facilities provide about 1,071 average megawatts (aMW), about 60 percent of Idaho Power's total system requirements under median water conditions. The balance of Idaho Power's firm generation resources are coal-fired thermal purchases from independent power producers, and seasonal power exchanges.

56. In addition to Idaho Power's need for power, we looked at the regional need for power. The Upper Salmon Falls Project is located in the Northwest Power Pool (NWPP) area of the Western Electricity Coordinating Council (WECC) region. The NWPP area includes all or major portions of the states of Washington, Oregon, Idaho, Wyoming, Montana, Nevada, and Utah; a small portion of northern California; and the Canadian provinces of British Columbia and Alberta. For the period 2003 through 2012, WECC anticipates peak demand and annual energy requirements in the NWPP area to grow at annual compound rates of 2.5 and 2.3 percent, respectively. Resource capacity margins for this winter-peaking area range between 30.5 and 42.1 percent of firm peak demand over this 10-year period, assuming planned additions totaling 11,863 MW are constructed on schedule. For the WECC region as a whole, the summer reliability margin is projected to fall below the recommended minimum of 14 to 15 percent by about 2010 without the new capacity additions that were uncommitted as of the December 2003 date of the WECC's 10-Year Coordinated Plan Summary.⁵³

57. We conclude that the region has a need for power over the near term and that the Upper Salmon Falls Project, which supplies a part of the current regional electricity demand, could continue to help meet part of the regional need for power. We conclude further that present and future use of the project's power, its low cost, its displacement of nonrenewable fossil-fired generation, its contribution to a diversified generation mix, and its maintenance of existing capacity support a finding that the power from the Upper Salmon Falls Project will help meet a need for power in the northwest and throughout the entire WECC region in both the short and long term.

F. Transmission Services

58. The project includes no primary transmission lines. Transmission facilities that are required to be licensed include the generator leads, station transformers, and buses located at the two project powerhouses. Project power is connected to Idaho Power's 138-kilovolt (kV) transmission line at the switchyards next to each powerhouse. Idaho Power proposes no changes that would affect transmission facilities.

G. Cost-Effectiveness of Plans

59. Idaho Power is not proposing, nor does this order approve, any change in the installed capacity at the Upper Salmon Falls Project. The project has a plant factor of 97.4 percent, which would indicate the possibility that additional capacity may be

⁵³ Western Electricity Coordinating Council, 10-Year Coordinated Plan Summary, December 2003.

economically developed at the site; however, Idaho Power investigated several alternatives for increasing capacity and found that the current capacity development utilizes the full economic potential of the site. We concur that additional capacity would not be cost-effective. Idaho Power does propose, and this order approves, numerous plans and operational procedures for the protection, mitigation and enhancement of environmental resources in the Snake River basin. Our review of Idaho Power's record as an existing licensee indicates that these plans are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

60. The Upper Salmon Falls Project generates electricity used to serve the needs of the public. Idaho Power also pays taxes annually to local and state governments, and the project provides employment opportunities. Environmental enhancement measures and recreational improvements included in the license will generally improve environmental quality and will have a beneficial effect on public use of project facilities for recreational purposes.

ECONOMIC BENEFITS OF PROJECT POWER

61. In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, the Commission considers a number of public interest factors, including the economic benefit of the project power. As was articulated in *Mead Corp.*,⁵⁴ we employ an analysis that uses current costs to compare the costs of the project and likely alternative power, with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the analysis is to provide general estimates of the potential power benefits and costs of a project, and reasonable alternatives to project power.

⁵⁴72 FERC ¶ 61,027 (1995).

62. Under the no-action alternative, the Upper Salmon Falls Project generates 310,976 MWh annually. The current annual value of this amount of power is \$11.773 million (about \$38/MWh), and the current annual cost is \$2.045 million (about \$7/MWh), resulting in a net annual benefit of \$9.727 million (about \$31/MWh).⁵⁵

63. As licensed in accordance with the agreement, the water quality certification conditions, and the other requirements adopted herein, the project will produce an average of about 304,445 MWh⁵⁶ of energy annually, at an annual cost of \$2.392 million (about \$8/MWh). The total annual value of that generation will be \$11.469 million (about \$38/MWh). Thus, based on current costs, the project's average net benefits will decrease by \$0.650 million annually to \$9.077 million (about \$30/MWh).

COMPREHENSIVE DEVELOPMENT

64. Sections 4(e) and 10(a)(1) of the FPA, 16 U.S.C. § 797(e) and 803(a)(1), require the Commission, in acting on license applications, to give equal consideration to the developmental and environmental uses of the waterway on which a project is located. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

65. In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). For projects with useable water storage, these benefits include their value as almost instantaneous load-following response to dampen voltage and frequency

⁵⁵ All generation and cost information is taken from the Commission's EIS. Power value is based on Idaho Power's year 2000 peak and off-peak avoided energy costs plus the value of firm capacity based on the cost of new combined cycle combustion turbine capacity. In addition to the annual production costs included in this economic summary of project licensing alternatives, under the agreement Idaho Power has agreed to fund studies totaling \$2.84 million related to determining the effects of load-following operations on federally listed snail species. Some portion of this cost would be allocable to each of Idaho Power's hydroelectric projects on the middle-Snake, including the Upper Salmon Falls Project.

⁵⁶ This calculation includes the effects of higher tailwater levels associated with run-of-river operations at the Lower Salmon Falls Project on generation at the Upper Salmon Falls Project. See table 6-11 of the EIS.

instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout. The Upper Salmon Falls Project operates in a run-of-river mode and its ability to provide ancillary services to the grid are limited.

66. Based on our review of Idaho Power's relicensing proposal and other alternatives, we find that the offer of settlement is in the public interest, and we conclude that operation of the Upper Salmon Falls Project as proposed, with the additional enhancement measures recommended by staff, will be best adapted to a comprehensive plan for the use, conservation, and development of the Snake River and its tributaries for beneficial public purposes. Operation of the project in the manner required by this license will protect and enhance fish and wildlife resources, water quality, recreational resources, and cultural resources. The electricity generated from the Upper Salmon Falls Project will be beneficial, because it will continue to reduce the use of fossil-fueled, electric generating plants, thereby conserving nonrenewable energy resources and reducing atmospheric pollution.

LICENSE TERM

67. Pursuant to section 15(e) of the FPA,⁵⁷ relicense terms shall not be less than 30 years nor more than 50 years from the date on which the license is issued. Our general policy is to establish 30, 40, and 50-year terms for projects with, respectively, little, moderate, or extensive redevelopment, new construction, new capacity, or additional environmental measures.⁵⁸

68. In issuing both new and original licenses, the Commission coordinates the expiration dates of licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing.⁵⁹ The Commission's intention is to consider cumulative impacts, to the extent practicable, at the time of licensing and relicensing, and to reduce the need to resort to the use of reserved authority. In this instance, the expiration dates of the new

⁵⁷16 U.S.C. § 808(e).

⁵⁸See Consumers Power Company, 68 FERC ¶61,077, at pp. 61,383-84 (1994).

⁵⁹See Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts: Policy Statement, FERC Stats. & Regs. Preambles ¶ 31,010 (December 14, 1994), 59 Fed. Reg. 66,718 (December 28, 1994).

licenses for the Upper Salmon Project, the three other Mid-Snake Projects, and the C.J. Strike Project should be coordinated, because the five projects will be operated in compliance with a single plan for the protection of listed snail species in the river basin. Because issuance of new licenses for these five projects involves only modest environmental measures, 30-year license terms, effective on the same date, are appropriate for each of the projects. Accordingly, the new license term for the Upper Salmon Falls Project will be 30 years, effective the first day of the month in which this order is issued.

The Commission orders:

(A) This license is issued to Idaho Power Company (licensee) to operate and maintain the Upper Salmon Falls Hydroelectric Project, for a period of 30 years, effective the first day of the month in which this license is issued. The license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G included in the application for new license filed on December 20, 1995:

<u>Exhibit G-</u>	<u>FERC Drawing No. 2777-</u>	<u>Showing</u>
1	1001	General Plan

(2) Project works consisting of:

(1) a 1,620-foot-long, 27.5-foot-high concrete diversion dam consisting of a 240-foot-long, gated spillway section, a 610-foot-long gravity dam section, a 275-foot-long intake structure, and two gravity abutment sections totaling 420 feet in length; (2) a 1-mile-long, 50-acre reservoir at normal maximum water surface elevation of 2,878.2 feet mean sea level (msl), with gross storage capacity of 600 acre-feet; (3) a 3,200-foot-long concrete lined canal from the diversion dam to Plant B; (4) Plant B, a 133-foot-long by 113-foot-wide by 90-foot-high concrete powerhouse containing two, 8.25-MW fixed blade, vertical propeller turbine generators; (4) a low, 1,380-foot-long, concrete gravity wall across Dolman Rapids downstream from Plant B, diverting flow into the Plant A canal, consisting of a 15-to-25-foot-deep excavated canal section and a 200-foot-long concrete gravity canal with overflow section; (5) Plant A, a 110-foot-long by 105-foot-

wide by 90-foot-long concrete powerhouse containing two, 9.0-MW fixed blade, vertical propeller turbine generators for a total installed project capacity of 34.5 MW; and other appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F listed below:

Exhibit A: Sections A.1 through A.5 and table B.1.2-1 filed on December 20, 1995.

Exhibit F: The following Exhibit F drawings filed on December 20, 1995:

<u>Exhibit F-</u>	<u>FERC Drawing No. 2777-</u>	<u>Showing</u>
1	1001	General Plan
2	1002	Elevation & Profiles
3	1003	Sectional Views for General Plan
4	1004	Cross-Section of Powerhouse A
5	1005	Cross-Section of Powerhouse B
6	1006	Elevations of Powerhouse A
7	1007	Elevations of Powerhouse B
8	1008	Plan View of Powerhouse A
9	1009	Plan View of Powerhouse B
10	1010	Main Single Line Diagram

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

(C) Exhibits A, and F, as designated in ordering paragraph (B) above, are approved and made part of this license. Exhibit F shall be refiled in the Commission's electronic file format as specified in Article 203.

(D) Within 45 days of license issuance, the licensee shall submit a revised Exhibit G with the Commission for approval and in accordance with the format described in Article 203. The revised project boundary shall include the project reservoir as described in ordering paragraph (B).

(E) This license is subject to the conditions submitted by the Idaho Department of Environmental Quality under section 401 of the Clean Water Act, as those conditions are set forth in Appendix A to this order.

(F) This license is subject to articles set forth in Form L-3 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States," and the following additional articles.

Article 201. Administrative Annual Charges. The licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued, for the purpose of reimbursing the United States for the Commission's administrative costs, pursuant to Part I of the Federal Power 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 34,500 kilowatts.

Article 202. Amortization Reserve. Pursuant to section 10(d) of the Federal Power Act, 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. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock 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. Exhibit Drawings. Within 45 days of the date of issuance of this license, the licensee shall file the approved Exhibit F drawings described in ordering paragraph (C) in aperture card and electronic file formats.

(1) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (e.g., P-1234-1001 through P-1234-####) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections, Portland Regional Office.

(2) The licensee shall file two separate sets of exhibit drawings in electronic format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. The drawings must be identified as **(CEII) material under 18 CFR §388.113(c)**. Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension [e.g., P-1234-1014, G-1, Project Boundary, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4
RESOLUTION – 300 dpi desired, (200 dpi min)
DRAWING SIZE FORMAT – 24” X 36” (min), 28” X 40” (max)
FILE SIZE – less than 1 MB desired

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points, arranged in a triangular format. The latitude and longitude coordinates, or State plane coordinates, of each reference point must be shown and identified on the drawing.

(3) The licensee shall file three separate sets of the project boundary vector data in a geo-referenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format) with the Secretary of the Commission, ATTN: OEP/DHAC. The file name shall include: FERC Project Number, data description, date

of this license, and file extension [e.g., P-1234, boundary vector data, MM-DD-YYYY.SHP]. The geo-referenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. A single electronic boundary data file is preferred and must contain all reference points shown on the individual project boundary drawings. The latitude and longitude coordinates, or State plane coordinates, of each reference point must be shown. The data must be accompanied by a separate text file describing the map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this license, and file extension [e.g., P-1234, project boundary metadata, MM-DD-YYYY.TXT].

Article 204. *Headwater Benefits.* If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 301. *Revised Exhibits.* Within 45 days of the date that the Commission approves the Banbury Springs and Briggs Creek Habitat Management Plan required by Article 411, the licensee shall submit revised Exhibit G drawings, as appropriate with the Commission for approval and in accordance with the format described in Article 203. The revised project boundary shall include and clearly identify ownership and acreage of all lands subject to the management plan. Along with the drawings, the licensee shall include a written statement clarifying the precise ownership and acreage of the lands within the Banbury Springs and Briggs Creek Management Areas. The exhibits shall have sufficient detail to adequately delineate the relative location of project features. The licensee shall submit six copies to the Commission, one copy to the Commission's Portland Regional Director, and one to the Director, Division of Hydropower Administration and Compliance.

Article 401. Project Operation. The licensee shall operate the project in a run-of-river mode for the protection of the aquatic resources and riparian vegetation of the Snake River in the project area. The licensee shall at all times act to minimize the fluctuation of the reservoir surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream from the project tailrace, approximate the sum of inflows to the reservoir.

Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee and the Idaho Department of Fish and Game. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 402. Dolman Rapids Minimum Flow. Commencing within 60 days of Commission approval of the Operational Compliance Monitoring Plan required by Article 403, the licensee shall release at the upper diversion dam into the Dolman Rapids bypassed reach a minimum flow of 200 cubic feet per second, or inflow to the project reservoir, whichever is less, for the protection of invertebrate production, trout rearing, angling opportunities, riparian vegetation, and aesthetics.

This flow may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee and the Idaho Department of Fish and Game. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 403. Operational Compliance Monitoring Plan. Within six months of license issuance, the licensee shall file with the Commission, for approval, an operational compliance monitoring plan.

The plan shall include at a minimum:

- (1) a description of the exact location of each gage, the method of calibration for each gage, the frequency of recording for each gage, and a monitoring schedule;
- (2) a description of how the project would maintain compliance with the operational requirements of Articles 401 and 402 and item 13(a)(iv) of the consent order included as part of the Clean Water Act section 401 Water Quality Certification (WQC);

- (3) if additional project structures or modifications to project facilities, including minimum flow release structures and gates, are proposed to maintain compliance with the operational requirements of Article 402 or item 13(a)(iv) of the consent order, then: (a) detailed design drawings of the structures and modifications; (b) interim measures for maintaining compliance with the operational requirements; and (c) a schedule for constructing the structures or making the modifications;
- (4) a provision for maintaining a log of project operation and generation;
- (5) a provision for providing the gaging and project operation and generation data to the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NOAA Fisheries), Idaho Department of Fish and Game (Idaho DFG), and Idaho Department of Environmental Quality (IDEQ) within 30 days of the date of the agency's request for the data; and
- (6) an implementation schedule for the plan.

The licensee shall prepare the plan after consultation with the U.S. Geological Survey, FWS, NOAA Fisheries, Idaho DFG, and IDEQ. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 404. Dissolved Oxygen and Water Temperature Monitoring. Within six months of license issuance, the licensee shall file for Commission approval, a plan to monitor dissolved oxygen (DO) and water temperature in the Snake River downstream of the project as required by item 13(a)(ii) of the consent order included as part of the Clean Water Act section 401 Water Quality Certification (WQC) for the project.

In addition to the provisions specified in item 13(a)(ii) of the consent order, the plan shall include a provision for monitoring water temperature and DO between March 1 and November 15 at 10-minute intervals to the nearest 0.1 degree Celsius and 0.1 milligrams per liter and a schedule for:

- (1) implementation of the program;
- (2) consultation with the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NOAA Fisheries), Idaho Department of Fish and Game (Idaho DFG) and Idaho Department of Environmental Quality (Idaho DEQ), concerning the results of the monitoring; and
- (3) filing the monitoring results, agency comments, and licensee's response to agency comments with the Commission.

The licensee shall prepare the plan after consultation with the FWS, NOAA Fisheries, Idaho DFG and Idaho DEQ. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 405. Aquatic Vegetation Removal. Within six months of license issuance, the licensee shall file for Commission approval, a plan for installing and operating equipment at the project to remove and dispose of aquatic vegetation that gathers at the project intake as required by item 13(a)(iii) of the consent order included as part of the Clean Water Act section 401 Water Quality Certification (WQC) for the project.

In addition to the provisions specified in item 13(a)(iii) of the consent order, the plan, at a minimum, shall include:

- (a) detailed design drawings of the operating equipment;
- (b) an operations plan indicating the dates of operation and frequency of aquatic vegetation removal from the intake; and
- (c) an implementation schedule.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NOAA Fisheries), Idaho Department of Fish and Game (Idaho DFG) and Idaho Department of Environmental Quality (Idaho DEQ). The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan, including installation and operation of aquatic vegetation removal equipment, shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 406. *Administration of the Water Quality Certification Funding Requirements.* Within six months of license issuance, the licensee shall file for Commission approval, a plan detailing how the funding requirements required by item 13(b) of the consent order included as part of the Clean Water Act section 401 Water Quality Certification for the project will be allocated among the Bliss Project No. 1975, Lower Salmon Falls Project No. 2061, Upper Salmon Falls Project No. 2777, and Shoshone Falls Project No. 2778. The plan shall also include, at a minimum, provisions to file with the Commission documentation of completion of the funding requirements and an implementation schedule.

The licensee shall prepare the plan after consultation with the Idaho Department of Environmental Quality (Idaho DEQ). The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to Idaho DEQ, and specific descriptions of how Idaho DEQ's comments are accommodated by the plan. The

licensee shall allow a minimum of 30 days for Idaho DEQ to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 407. White Sturgeon Conservation Plan. Within one year of license issuance, the licensee shall file for Commission approval, a White Sturgeon Conservation Plan. The purpose of the plan is to evaluate limiting factors affecting white sturgeon populations and develop and implement measures to protect, mitigate damages to, and enhance Snake River white sturgeon populations in the project area.

The plan, at a minimum, shall include the following:

- (1) specific descriptions of measures proposed for the protection, mitigation, and enhancement of white sturgeon in the project area, the estimated cost of such project specific measures, and all other costs associated with the plan;
- (2) an evaluation of the feasibility of providing upstream and downstream fish passage for white sturgeon at the project dam, including measures and designs that would concurrently provide upstream and downstream passage for adult rainbow trout in the project area; and
- (3) an implementation schedule.

The licensee shall prepare the plan and schedule after consultation with the U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, Idaho Department of Environmental Quality, U.S. Bureau of Reclamation, Oregon Department of Fish and Wildlife, U.S. Forest Service, U.S. Environmental Protection Agency, the Shoshone-Paiute Tribe, the Nez Perce Tribe, and the Columbia Intertribal Fish Commission. The licensee shall include with the plan and schedule documentation of consultation, copies of comments and recommendations on the completed plan and schedule after it has been prepared and provided to the agencies and tribes, and specific descriptions of how the agencies' and tribes' comments are accommodated by the plan and schedule. The

licensee shall allow a minimum of 30 days for the agencies and tribes to comment and to make recommendations before filing the plan and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan and schedule. Implementation of the plan and schedule shall not begin until the licensee is notified by the Commission that the plan and schedule are approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 408. Rainbow Trout Stocking. Within one year of license issuance, the licensee shall file for Commission approval, a plan to annually stock a total of 3,000 pounds of rainbow trout in the project reservoir and Snake River upstream to Shoshone Falls for purposes of improving sport fishing in the project area.

The plan, at a minimum, shall include:

- (1) specific descriptions of stocking locations, the timing and approximate number of fish to be stocked at each location, and the size of fish to be stocked;
- (2) a provision to file with the Commission by December 31 of every fifth year of the license term, a report evaluating the success of the stocking program, including any proposals to increase, decrease, or terminate stocking. The report shall include copies of any comments and recommendations provided by Idaho DFG. The licensee shall allow a minimum of 30 days for the Idaho DFG to comment and to make recommendations on the completed report before filing it with the Commission; and
- (3) an implementation schedule.

The licensee shall prepare the plan after consultation with the Idaho DFG. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Idaho DFG, and specific descriptions of how their comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the Idaho DFG to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 409. Spring Habitat Protection Plan. Within one year of license issuance, the licensee shall file for Commission approval, a plan to protect spring water habitats and monitor Shoshone sculpin populations on project lands.

The plan, at a minimum, shall include the following:

- (1) descriptions and specific locations of spring water habitats on project lands;
- (2) an evaluation of project activities that may potentially impair or threaten aquatic life, including snails and Shoshone sculpin, or degrade the quality or quantity of spring water habitats, including rainbow trout spawning habitats;
- (3) identification of specific conservation measures for the protection of spring water habitats from degradation, including maintenance of instream flows, fencing, and revegetation;
- (4) a detailed protocol and schedule for monitoring the status of Shoshone sculpin populations on project lands every other year;
- (5) a provision to provide the Shoshone sculpin monitoring results to the U.S. Fish and Wildlife Service (FWS), Idaho Department of Fish and Game (DFG), and Idaho Department of Environmental Quality (DEQ) at the end of each monitoring season; and
- (6) an implementation schedule.

The licensee shall prepare the plan after consultation with FWS, Idaho DFG, and Idaho DEQ. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how their comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 410. Reservation of Authority - Fishways. Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce under section 18 of the Federal Power Act.

Article 411. Banbury Springs and Briggs Creek Habitat Management Plan. Within 6 months of license issuance, the licensee shall file for Commission approval a final Habitat Management Plan for Banbury Springs and the Briggs Creek Island as outlined in the conceptual enhancement and monitoring measures included in Exhibit E.6.5-B of the application for a new license for the project filed on December 20, 1995, and updated in response to the Commission staff's additional information request (AIR) No. 43, filed with the Commission on April 5, 1999. In addition to the measures outlined in the conceptual plan, the final plan shall include for:

(a) Banbury Springs

- (1) a description of the measures to be used to restore and enhance upland and riparian vegetation at Morgan Lake, including detailed information about the methods, schedule and costs, site plans, and design drawings for removal of the berm forming the lake; vehicle access controls; and establishment of riparian vegetation; and
- (2) detailed management plans to protect chatterbox orchid and water birch communities, including, but not limited to: (i) measures to control access and grazing, (ii) erection of handrails along the boardwalk if appropriate, (iii) educational signing, (iv) maintenance, and (v) monitoring.

(b) Briggs Creek Island and Banbury Springs

- (1) a revised schedule and cost for implementing the plan.

The licensee shall finalize the plan after consultation with the U.S. Fish and Wildlife Service, U.S. Bureau of Land Management, and Idaho Department of Fish and Game. The licensee shall include with the plan documentation of consultation, copies of

comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 412. *Middle Snake River Land Management Plan.* Within six months of license issuance, the licensee shall file for Commission approval a final Middle Snake River Land Management Plan based on the conceptual Middle Snake River Land Management Plan provided in Exhibit E.6.5-A of the application for new license filed with the Commission on December 20, 1995. In addition to identifying and explaining the policies, standards, guidelines, and land use designations that shall be followed to protect and manage environmental resources and public use and safety as outlined in the conceptual plan, the final plan shall also, at a minimum include:

- (1) site-specific maps and detailed information showing schedules, costs, target species, control methods, performance standards, monitoring and re-treatment measures that shall be implemented to control noxious weeds on lands within the project boundary during the first 5 years of the plan;
- (2) site-specific maps and detailed information showing schedules, costs, protection methods, grazing management, monitoring, and maintenance measures that shall be implemented to protect shorelines and riparian habitat on lands within the project boundary during the first 5 years of the plan; and
- (3) a provision for review, consultation, and revision of the plan every 5 years throughout the license period.

The licensee shall update and finalize the Middle Snake River Land Management Plan after consultation with the National Park Service, U.S. Fish and Wildlife Service, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, Idaho Department of Fish and Game, Idaho Department of Parks and Recreation, and Idaho Department of Environmental Quality. The licensee shall file with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how their comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan

with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 413. Annual Review Meeting. By no later than December 31 of each license year, the licensee shall:

- (1) consult with the Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Idaho Department of Environmental Quality to determine the interest and need for a meeting for purposes of discussing the progress of monitoring activities required by this license, including any monitoring results;
- (2) if one or more of the agencies deem a meeting necessary, host and coordinate the meeting, file a summary of the meeting with the Commission, and submit copies of the meeting summary to the participating agencies; and
- (3) if all the agencies do not deem a meeting necessary, file a statement with the Commission indicating that there was no agency interest in a meeting and submit copies of the statement to all of the agencies.

Article 414. Visual Resource Management Plan. Within one year of license issuance, the licensee shall file for Commission approval a Visual Resource Management Plan for the project. The purpose of the plan is to protect the visual character of the landscape in the vicinity of the Upper Salmon Falls Project. At a minimum, the plan shall include provisions for the following:

- (1) establishment of specific visual quality guidelines for project activities, operations, maintenance, and facilities; and
- (2) identification of other high priority areas where special protection measures may be needed to address project maintenance activities or future facility upgrades.

The licensee shall prepare the plan after consultation with the National Park Service, U.S. Bureau of Land Management, and Idaho Department of Parks and Recreation. The licensee shall include with the plan documentation of consultation,

copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how their comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 415. Historic Properties. Upon license issuance, the licensee shall implement the "Programmatic Agreement Among the Commission, the Advisory Council on Historic Preservation, and the Idaho State Historic Preservation Officer for Managing Historic Properties that May Be Affected by a License Issuing to the Idaho Power Company for the Continued Operation of the Bliss, Lower Salmon Falls, and Upper Salmon Falls Hydroelectric Power Projects in Twin Falls and Jerome Counties Idaho (FERC Nos. 1975, 2061, 2777)," executed on March 20, 2002, including but not limited to the Cultural Resources Management Plan for the project. In the event that the Programmatic Agreement is terminated, the licensee shall continue to implement the provisions of its approved Cultural Resources Management Plan. The Commission reserves the authority to require changes to the Cultural Resources Management Plan at any time during the term of the license. If the Programmatic Agreement is terminated, the licensee shall obtain approval from or make notification to the Commission and the State Historic Preservation Officer where the Cultural Resources Management Plan calls upon the licensee to do so.

Article 416. Recreation Management Plan. Within one year of license issuance, the licensee shall file for Commission approval a Recreation Management Plan for the project. The purpose of the plan is to provide guidance for implementation of recreation enhancement measures and for management of project recreation resources. At a minimum, the plan shall include provisions for the following:

- (1) continuing to operate and maintain the Upper Salmon Falls Power Plant A Picnic Area;
- (2) maintaining and enhancing the existing Owsley Bridge Boat Launch Facility, including enlarging the parking area, installing a vault toilet, improving the boat ramp and dock facilities, graveling the parking area, and redesigning traffic patterns;

- (3) developing and implementing an interpretation and information plan for the public to provide educational and safety information to visitors, including panels and wayside exhibits;
- (4) providing buffer zones around all developed recreation facilities, access developments, and resource value areas, including, in particular, maintenance of the fence at Dolman Rapids to exclude livestock from riparian habitat; and
- (5) consultation every 6 years with the National Park Service, Idaho Department of Parks and Recreation (Idaho DPR) and other interested parties to determine if a formal needs assessment, in conjunction with FERC Form 80, is necessary for reviewing the adequacy of the Recreation Management Plan.

For items (2) and (3) of the recreation enhancement measures listed above, the plan shall include, at a minimum, site plans and design drawings; a discussion of how the needs of the disabled were considered in the planning and design of each facility; detailed erosion and sediment control measures; and a schedule for implementation and maintenance.

The licensee shall prepare the plan after consulting with the National Park Service, U.S. Bureau of Land Management, Idaho Department of Fish and Game, and Idaho DPR. The licensee shall include with the plan, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how their comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No land-clearing or land-disturbing activities associated with the plan shall begin until the Commission notifies the licensee that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission. A copy of the approved Recreation Management Plan, with construction schedule and management measures, shall be filed with the Commission's Regional Office in Portland, Oregon.

Article 417. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use 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, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. 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 use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (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 or roads where 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 certification 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 water craft at a time and are located at least one-half mile (measured over project waters) 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 project waters at normal 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 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, 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 map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

- (1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.
 - (2) Before conveying the interest, the 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 the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (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; and (iii) the grantee shall not unduly restrict public access to project waters.
 - (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 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 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) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(H) This order is final unless a request for rehearing is filed within 30 days of the date of its issuance, as provided in section 313 of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix A

State of Idaho Water Quality Certification

Attachment to May 21, 1998 Water Quality Certification

IDAHO DEPARTMENT OF HEALTH AND WELFARE

In the matter of:)	CONSENT ORDER
)	
Idaho Power Company)	Idaho Code § 39-108
FERC Relicensing of Middle)	
Snake River Hydropower Projects)	

1. Pursuant to the Idaho Environmental Protection and Health Act, Idaho Code § 39-108 through 39-130, the Idaho Department of Health and Welfare, Division of Environmental Quality (Department) enters into this Consent Order with Idaho Power Company (IPC).

2. IPC is the owner and operator of four hydropower facilities located on the middle Snake River in Idaho. The middle Snake River is a 94 mile reach of the Snake River located generally between Milner Dam and King Hill, Idaho. These facilities are identified as follows: Upper Salmon Falls (FERC No. 2777), Lower Salmon Falls (FERC No. 2061), Bliss (FERC No. 1975), and Shoshone Falls (FERC No. 2778). IPC is seeking long-term relicensing as required by the Federal Energy Regulatory Commission (FERC) for these hydropower facilities.

3. IPC agrees to all the terms of this Consent Order without the issuance of a notice of violation or the holding of a compliance conference pursuant to Idaho Code § 39-108. IPC agrees that all terms of this Consent Order are enforceable under applicable state and federal law.

4. In December 1995, IPC filed applications with the FERC to relicense the Upper Salmon Falls, Lower Salmon Falls and Bliss hydropower facilities. On December 12, 1995, the Department received from IPC a request for water quality certification pursuant to § 401 of the Clean Water Act for these three facilities.

5. On December 10, 1996, the Department denied certification with respect to the Upper Salmon Falls, Lower Salmon Falls and Bliss facilities. This denial was based upon

the Department's conclusion that it had insufficient time to fully review the data presented by IPC and therefore could not, at that time, provide § 401 certification that operation of the referenced facilities would comply with the Idaho Water Quality Standards. The Department also notified IPC that it intended to receive public comments with respect to the referenced facilities and that it would continue to evaluate the data presented and the public comments received. The Department encouraged IPC to reapply for § 401 water quality certification. The Department's denial of § 401 certification is attached hereto as Exhibit A and incorporated herein by reference.

6. On January 14, 1997, IPC filed a contested case appeal challenging the Department's December 10, 1996 decision to deny water quality certification. IPC's petition for initiation of a contested case is attached hereto as Exhibit B and incorporated herein by reference.

7. In February and March 1997, the Department published a notice seeking public comment with respect to its consideration of § 401 certification for the Upper Salmon Falls, Lower Salmon Falls and Bliss facilities. The Department received comments for a thirty (30) day period ending March 19, 1997.

8. Additional data with respect to the Upper Salmon Falls, Lower Salmon Falls and Bliss facilities was provided to the Department by IPC on January 27, 1997, February 4, 1997, and February 21, 1997. Consistent with the Department's December 10, 1996 letter, the Department has reviewed and analyzed this additional information, public comments received, and other relevant data regarding water quality conditions in the middle Snake River, and has reconsidered § 401 certification for the Upper Salmon Falls, Lower Salmon Falls and Bliss facilities.

9. In May 1997, PC filed an application with FERC in order to relicense its Shoshone Falls facility. On May 23, 1997, the Department received a request from IPC for § 401 certification with respect to this facility. In March 1998, the Department published a notice seeking public comment with respect to its consideration of § 401 certification for the Shoshone Falls facility. The Department received public comments for a thirty (30) day period ending April 23, 1998.

10. For a number of years, water quality in the middle Snake River has not complied with the Idaho Water Quality Standards and Wastewater Treatment Requirements (Water Quality Standards), including, without limitation, numerical criteria for dissolved oxygen and temperature and narrative criteria relating to excess nutrients, oxygen-demanding materials, sediment and the impairment to designated beneficial uses. The designated uses for the middle Snake River identified in the Water Quality Standards include agricultural water supply, cold water biota, salmonid spawning and primary and

secondary contact recreation. The Department's review of relevant water quality data, including the data provided by IPC, indicates that the IPC hydropower facilities may contribute to the current impaired water quality in the middle Snake River and the violations of Water Quality Standards.

11. In 1990, the Department listed the middle Snake River as water quality limited under § 303 of the Clean Water Act. As a result of this listing, the Department, working cooperatively with all affected industries, including the hydroelectric industry, developed the Middle Snake River Watershed Management Plan. This Plan was submitted to and approved by the U.S. Environmental Protection Agency (EPA) as a Total Maximum Daily Load (TMDL) as required under § 303(d) of the Clean Water Act. The Middle Snake River Watershed Management Plan provides for a phased approach and outlines actions to be taken by various industries to restore conditions in the middle Snake River which meet Idaho Water Quality Standards. The hydroelectric industry provided a Proposed Watershed Reduction Plan that was used in developing the Middle Snake River Watershed Management Plan. IPC contributed to the hydroelectric industry plan and continues to be involved in the Watershed Management Plan/TMDL process.

12. It is expressly understood by both parties that the purpose and intent of this Consent Order is to outline specific actions that IPC shall take to mitigate water quality impacts of the hydropower facilities at issue and to achieve, in conjunction with other proposed actions taken pursuant to the Middle Snake River Watershed Management Plan, compliance with Idaho Water Quality Standards.

13. IPC shall conduct the following activities:

a. IPC shall conduct the following activities PC has proposed as part of its December 1995 Protection, Mitigation and Enhancement measures:

i. IPC shall make available money or other resources, at a minimum cost of Fifteen Thousand Dollars (\$15,000) per year, to assist in the further development and implementation of the Middle Snake River Watershed Management Plan/TMDL. The money or other resources shall be available from the effective date of this Consent Order until the expiration of the FERC licenses for the facilities or until such an earlier date as the Department determines IPC's participation is no longer necessary. Amounts not expended in one year will be carried over to the next. PC shall submit to the Department, by January 1 of every year after the effective date of this Consent Order, a description of its contributions,

in the past year, to the Middle Snake River Watershed Management Plan/TMDL.

ii. IPC shall install and operate permanent water quality monitoring equipment at each of the four facilities to monitor dissolved oxygen and temperature at twenty (20) minute intervals from April 1 to October 30 of each year. The monitoring information shall be reported to the Department on a monthly basis. Within thirty (30) days of the effective date of this Consent Order, IPC shall identify and send to the Department for approval the location of the monitoring equipment, a description of the monitoring equipment, the date by which the equipment shall be installed and a QA/QC plan to meet the requirements of this provision of the Consent Order.

iii. IPC shall design, install and operate equipment at the Upper Salmon Falls A, Lower Salmon Falls, and Bliss facilities to remove aquatic vegetation that gathers at intake structures. IPC has already installed such equipment at the Upper Salmon Falls B facility, and shall continue to operate this equipment. The aquatic vegetation shall be removed from the river and disposed of in an appropriate manner. Within thirty (30) days of the date the FERC licenses are issued, IPC shall submit to the Department, for its approval, a description of the equipment IPC intends to install and the date by which the equipment shall be installed. IPC shall not install such equipment prior to receiving the Department's approval.

iv. Upon the issuance of the FERC licenses, IPC shall maintain a 50 cfs minimum flow in the North Channel at the Upper Salmon Falls facility. IPC shall make those modifications to the facility necessary to maintain the 50 cfs minimum flow.

b. IPC shall conduct the following additional activities:

i. IPC shall pay to the Department, in the manner and in the amount described below in this paragraph, funds for the acquisition of spring sources on the middle Snake River in order to protect and enhance water quality and habitat for aquatic species.

(1) As of the effective date of this Consent Order, IPC shall make available Five Hundred Thousand Dollars (\$500,000) to be paid to the Department when the Department determines the funds are necessary for the acquisition of spring sources on the middle Snake River. Within thirty (30) days of receipt of the Department's written request, IPC shall pay the Five Hundred Thousand Dollars (\$500,000) to the Department.

(2) If the FERC licenses for all four IPC facilities are issued before January 1, 2001, IPC shall pay to the Department Two Million, Five Hundred Thousand Dollars (\$2,500,000) in addition to the sum paid pursuant to subparagraph (1). This amount shall be paid to the Department within thirty (30) days of the date the last FERC license is issued.

(3) If the FERC licenses are not issued by January 1, 2001, IPC shall pay to the Department, in addition to the sum paid pursuant to subparagraph (1), Two Million, Five Hundred Thousand Dollars (\$2,500,000) increased by the 30-year treasury-bill rate plus 2% determined on an annual basis and compounded annually from January 1, 2001 until the date of payment. This amount shall be paid to the Department within thirty (30) days of the date the last FERC license is issued for the four facilities.

ii. On or before January 5, 1999, IPC shall pay to the Department Seven Hundred and Fifty Thousand Dollars (\$750,000) for the design, development and construction of artificial wetlands, settling ponds or other systems or facilities to prevent or reduce the nutrients and sediments entering the middle Snake River.

iii. On January 1 of each of the next ten (10) years after the effective date of this Consent Order, IPC shall pay to the Department Fifty Thousand Dollars (\$50,000) to monitor long-term water quality conditions and changes as a result of the implementation of the TMDL.

iv. Within ninety (90) days of the effective date of this Consent Order, IPC shall submit to the Department a description of the historic mode of operation of the four facilities, including fluctuations in water levels within each impoundment and downstream from each dam that occur as a result of IPC load following practices at the four facilities. The description shall include the historic mode of operation based upon an analysis of the last

fifteen years of operating data. IPC shall not deviate from the historic mode of operation unless IPC first submits to the Department, and the Department approves, a plan that describes the amount of fluctuation and the effects of such fluctuation on erosion, sediment loading to the river, water quality and aquatic habitat.

c. The funds paid to the Department by IPC under the terms of this Consent Order shall be used by the Department exclusively for the purposes described in this Consent Order.

14. Upon execution of this Consent Order, the Department shall issue § 401 water quality certification, consistent with the terms of this Consent Order, with respect to the four facilities. The Department's § 401 certification is contingent upon IPC's compliance with the terms of the § 401 certification and this Consent Order.

15. IPC hereby stipulates and agrees that, if IPC fails to commence conduct or complete on time any activity required by this Consent Order, or conduct any such activity in a manner that does not comply with the terms of this Consent Order (hereafter "Violation"), IPC shall pay to the Department a Stipulated Penalty of Ten Thousand Dollars (\$10,000) for each Violation and for each and every day IPC commits a Violation, unless the Penalty is reduced or excused by the Department as provided in this paragraph; provided, however, before the Department may recover a Stipulated Penalty under this Consent Order, the Department shall notify IPC in writing of the alleged Violation and may provide IPC a reasonable opportunity to cure the Violation. For the Department to recover a penalty from IPC for matters covered by this Consent Order, the Department must give IPC notice of the alleged Violation for which the Department seeks a penalty within thirty (30) days of the Department's actual knowledge of such Violation. If the Department fails to provide IPC with such notice of alleged Violation in a timely manner, the penalty is hereby deemed to be waived by the Department. Upon receipt of such a written notification from the Department, IPC shall reply, in writing, within fourteen (14) days to such alleged Violation and shall (a) explain the reason for the alleged Violation and the proposed means and time required to remedy the same, or (b) state why IPC believes that the Department's claim is incorrect. The Department shall thereafter respond to IPC's reply by notifying IPC whether it will allow IPC an opportunity to cure the Violation and whether IPC must pay all or a portion of the Stipulated Penalty. The Department shall not unreasonably refuse to allow IPC an opportunity to cure the violation. Penalties shall be paid by IPC to the Department within twenty-one (21) days of IPC's receipt of the Department's final response. IPC expressly recognizes that failure to comply with the terms of this Consent Order may result in a district court action for specific performance of the Consent Order, civil penalties awarded in a district court action over and above the Stipulated Penalties paid by IPC

("Statutory Penalty"); assessment of costs and attorney fees, restraining orders, injunctions, and other relief as the court considers to be just and reasonable under the circumstances; provided, however, IPC shall receive credit for any penalty paid in the assessment of any subsequent penalty so that there shall be no duplicate (double recovery) Stipulated or Statutory Penalty for the same Violation.

16. Except with respect to those activities expressly addressed by this Consent Order, this Consent Order shall not in any way affect IPC's obligations to comply with any provision of the Idaho Water Quality Standards or any applicable local, state, or federal laws. This Consent Order shall not limit the Department's authority under the Idaho Environmental Protection and Health Act, the Idaho Water Quality Standards, the Federal Water Pollution Control Act (Clean Water Act), or any other applicable law.

17. All communications required by this Consent Order shall be addressed to: Regional Administrator, Twin Falls Regional Office, Division of Environmental Quality, 601 Pole Line Road, Suite 2, Twin Falls, Idaho 83301. IPC's contact shall be Idaho Power Company, Manager of Environmental Affairs, P.O. Box 70, Boise, Idaho 83703.

18. All work undertaken in accordance with this Consent Order shall not deviate from approved plans or specific requirements of this Consent Order without prior notification and written approval by the Department.

19. In case any provision or authority of this Consent Order is determined to be invalid or unenforceable, the remainder of this Consent Order shall remain enforceable.

20. This Consent Order shall bind IPC, its successors and assigns, and any other corporation, entity or person that owns or operates the hydropower facilities at issue.

21. The effective date of this Consent Order shall be the date of signature by the Department's representative.

22. Execution of this Consent Order shall resolve all issues raised in the pending contested case appeal filed by IPC. Within five (5) days of the effective date of this Consent Order, IPC shall voluntarily dismiss the appeal with prejudice.

23. The parties agree that this Consent Order fully satisfies only the concerns of the Department with respect to the IPC relicensing and does not constitute approval or an authorization from any other local, state or federal agency and further does not affect any other agency involvement in the FERC relicensing process for the four facilities.

DATED this 22nd day of May, 1998.

By:

Wallace N. Cory, Administrator
Division of Environmental Quality
Idaho Department of Health and Welfare

DATED this _____ day of , 1998.

By:

Power Company

Title: