

142 FERC ¶ 61,192  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Idaho Power Company

Project Nos. 1975-101  
1975-102  
2061-085  
2061-086

ORDER AMENDING LICENSES AND  
APPROVING SNAIL PROTECTION PLAN

(Issued March 21, 2013)

1. On May 5, and 11, 2010,<sup>1</sup> Idaho Power Company, licensee, filed applications to amend the licenses for its Bliss Project No. 1975 and Lower Salmon Falls Project No. 2061, respectively. The amendment applications propose to change operation of both projects from run-of-river to load-following. The projects are located on the Snake River in Gooding, Elmore, and Twin Falls Counties, Idaho. Both projects occupy lands administered by the U.S. Department of the Interior's (Interior) Bureau of Land Management. The Lower Salmon Falls Project also occupies lands within the Hagerman Fossil Beds National Monument managed by Interior's National Park Service (NPS).
2. As discussed below, this order grants the requested amendments. In addition, the order approves the licensee's plan for the protection of a federally listed threatened snail species affected by the licensee's proposed changes in operation of the two projects.

**Background**

3. The Commission's predecessor, the Federal Power Commission, issued 50-year original licenses authorizing the construction and operation of the Bliss and Lower

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<sup>1</sup> The licensee filed supplements to its applications on August 17 and 26, and September 12 and 30, 2011.

Salmon Falls Projects in 1949 and 1951, respectively.<sup>2</sup> The Commission issued new licenses for the Lower Salmon Falls and Bliss Projects and three other Idaho Power Snake River projects on August 4, 2004. Starting farthest upstream, they are the Shoshone Falls Project No. 2778, the Upper Salmon Falls Project No. 2777, the instant Lower Salmon Falls Project No. 2061, the instant Bliss Project No. 1975, and the C.J. Strike Project No. 2055.<sup>3</sup> The first four projects are sometimes referred to as the Mid-Snake Projects.

4. Under their original licenses, Idaho Power operated the Lower Salmon Falls and Bliss Projects in a load-following mode. Initially, the relicense applications for the two projects proposed to continue operating in a load-following mode. However, in 2004, the licensee submitted a settlement agreement with Interior's U.S. Fish and Wildlife Service (FWS) for the protection of federally listed threatened or endangered snail species. As pertinent here, the agreement required the licensee to operate its Lower Salmon Falls and Bliss Projects in a run-of-river mode and, during the first five years of the new licenses, to conduct a study of threatened or endangered snail populations at the Bliss, Lower Salmon Falls, and C.J. Strike Projects. Based on the results of the study, the agreement required the licensee to develop and file for Commission approval a plan for the protection of such populations at the three projects. The terms of the agreement are set forth in Appendix B to the 2004 relicense order for the Bliss Project.<sup>4</sup>

5. Articles 401, 402, and 403 of the new licenses for the Lower Salmon Falls and Bliss Projects implement provisions of the 2004 agreement.<sup>5</sup>

6. Article 401 in the licenses for the Bliss and Lower Salmon Falls Projects requires the projects to be operated in a run-of-river mode, except during periods when federally listed snail populations are studied, as contemplated by the 2004 agreement. The

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<sup>2</sup> *Idaho Power Co.*, 8 FPC 1177 (1949) (Bliss Project), and *Idaho Power Co.*, 10 F.P.C. 1469 (1951) (Lower Salmon Falls Project).

<sup>3</sup> See August 4, 2004 orders issuing new licenses for the Shoshone Falls Project No. 2778, *Idaho Power Co.*, 108 FERC ¶ 61,125 (2004); the Upper Salmon Falls Project No. 2777, *Idaho Power Co.*, 108 FERC ¶ 61,126 (2004); the Lower Salmon Falls Project No. 2061, *Idaho Power Co.*, 108 FERC ¶ 61,127 (2004); the Bliss Project No. 1975, *Idaho Power Co.*, 108 FERC ¶ 61,128 (2004); and the C.J. Strike Project No. 2055, *Idaho Power Co.*, 108 FERC ¶ 61,129 (2004).

<sup>4</sup> *Idaho Power Co.*, 108 FERC at 61,713-47.

<sup>5</sup> *Idaho Power Co.*, 108 FERC at 61,676-78 (Lower Salmon Falls); and *Idaho Power Co.*, 108 FERC at 61,701-02 (Bliss).

reservoir elevation at the Lower Salmon Falls Project must remain within 1.0 foot of full pool (2,798 feet mean sea level (msl)),<sup>6</sup> and the Bliss reservoir must remain within 1.5 feet of full pool (2,654 feet msl).<sup>7</sup>

7. Article 402 of the licenses requires the licensee to implement a study plan, which stipulates monitoring federally listed snail populations during two years of run-of-river operation and two years of load-following operation, to determine the effects, if any, of the projects' run-of-river operations on the snails. Idaho Power filed the results of this study on July 2, 2009.

8. Article 403 of the licenses requires the licensee to develop and file with the Commission for approval a snail protection plan, based on the results of the Article 402 snail study. The licensee filed the required plan, proposing measures for the protection of the threatened Bliss Rapids Snail at the Bliss and Lower Salmon Falls Projects on March 30, 2010, and revised the plan on July 20, 2012.<sup>8</sup>

### **Proposed License Amendments**

9. The licensee seeks an amendment of Article 401 of the licenses to change the operating mode of the projects from run-of-river to load-following operation, as well as Commission approval of its proposed Snail Protection Plan to mitigate the effects of such load following on the threatened Bliss Rapids snail. The Snail Protection Plan is described below.

10. At the Lower Salmon Falls Project, the licensee proposes to maintain a minimum flow of 3,500 cubic feet per second (cfs), maintain the headwater elevation within 2.0 feet from full pool elevation, i.e., between 2,796 and 2,798 feet msl, and limit the tailwater ramping rate to no more than 2.5 feet per hour and 5.0 feet per day. At the Bliss Project, the licensee proposes to maintain a minimum flow of 4,500 cfs, maintain the headwater elevation within 2.0 feet from full pool, i.e., between 2,652 and 2,654 feet msl,

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<sup>6</sup> See *Idaho Power Co.*, 114 FERC ¶ 62,033 (2006); Order Amending License Article 401 and Errata Notice (issued January 19, 2006).

<sup>7</sup> See *Idaho Power Co.*, 114 FERC ¶ 62,032 (2006); Order Amending License Article 401 and Errata Notice (issued January 19, 2006).

<sup>8</sup> Idaho Power also filed the plan in the docket for the C.J. Strike Project No. 2055 to fulfill the requirements of that license as well. See Articles 410 and 411 of the C.J. Strike license, *Idaho Power Co.*, 108 FERC at 61,763. The Commission will act on the plan as it relates to that project separately.

and limit the tailwater ramping rate to 3.0 feet per hour and 6.0 feet per day. The licensee proposes no changes to project facilities or authorized installed capacity.

### **Public Notice**

11. On September 13, 2010, the Commission issued public notice of the amendment applications, soliciting comments, protests, and motions to intervene. In response, the State of Idaho and American Whitewater filed timely motions to intervene in the proceedings.<sup>9</sup> Interior, representing FWS and the National Park Service (NPS), filed a late motion to intervene, which was granted by notice issued March 30, 2011.<sup>10</sup> Olin Gardiner, a local boating outfitter, FWS, and NPS filed comments on the applications. NPS opposes the proposed license amendment for the Lower Salmon Falls Project.

12. On March 30, 2011,<sup>11</sup> Commission staff conducted a teleconference with the licensee, resource agencies, and other interested entities regarding the details of the proposed license amendments. Commission staff, the licensee, and resource agency representatives visited the two projects on June 27 through 29, 2011.<sup>12</sup>

13. On June 26, 2012, Commission staff issued its draft Environmental Assessment (EA) for the two proposed license amendments, also addressing the licensee's proposed Snail Protection Plan. The licensee, NPS, FWS, and Idaho Department of Fish and Game (Idaho DFG) filed comments on the draft EA.

14. On November 13, 2012, FWS filed a biological opinion and concurrence with staff's determination of the impacts of the licensee's proposed load-following operations at the two projects on federally listed threatened and endangered snail species. After considering all of the comments filed in the proceedings, the Commission staff prepared a final EA which was issued on March 14, 2013. References in this order to the EA are to the final EA, unless otherwise noted.

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<sup>9</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2012).

<sup>10</sup> 18 C.F.R. § 385.214(d) (2012).

<sup>11</sup> See Commission staff call summary, including a list of participants, placed in the proceeding record by Commission staff on April 14, 2011.

<sup>12</sup> See Notice of Site Visits, issued June 9, 2011.

15. The EA, biological opinion, motions to intervene, comments, and recommendations have been fully considered in determining whether, or under what conditions, to approve the amendments of license and snail protection plan.

### **Water Quality Certification**

16. Under section 401(a)(1) of the Clean Water Act (CWA),<sup>13</sup> the Commission may not authorize construction or operation of a hydroelectric project that may result in a discharge into navigable waters unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes such construction or operation.

17. On May 28, 1998, Idaho Department of Environmental Quality (Idaho DEQ) issued water quality certifications for the continued operation and maintenance of the Bliss and Lower Salmon Falls Projects under section 401 of the Clean Water Act. The water quality certificates were incorporated into the project licenses by ordering paragraph (D) of each license. By letter filed October 12, 2010, Idaho DEQ stated that the proposed amendments do not require new water quality certifications.

### **Section 10(j) Conditions**

18. Section 10(j)(1) of the FPA<sup>14</sup> requires the Commission to include license conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,<sup>15</sup> to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project. No federal or state fish and wildlife agencies filed recommendations under section 10(j)(1).

### **National Historic Preservation Act**

19. Under section 106 of the National Historic Preservation Act (NHPA)<sup>16</sup> and its implementing regulations,<sup>17</sup> federal agencies must take into account how each of its

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<sup>13</sup> 33 U.S.C. § 1341(a)(1) (2006).

<sup>14</sup> 16 U.S.C. § 803(j)(1) (2006).

<sup>15</sup> 16 U.S.C. § 661 *et seq.* (2006).

<sup>16</sup> 16 U.S.C. § 470f (2006).

<sup>17</sup> 36 C.F.R. Part 800 (2012).

undertakings could affect historic properties. Historic properties are districts, sites, buildings, structures, traditional cultural properties, and objects significant in American history, architecture, engineering, and culture that are eligible for inclusion in the National Register of Historic Places.

20. To satisfy its NHPA responsibilities at relicensing, the Commission in Article 411 of the Lower Salmon Falls Project license and Article 412 of the Bliss Project license require the licensee to implement a Cultural Resources Management Plan (CRMP) and associated Programmatic Agreement for the projects. Implementation of the CRMP developed for each project would continue under the proposed license amendments. By letter dated June 30, 2011, the licensee submitted its license amendment applications for the two projects and supplemental information to the Idaho State Historic Preservation Office (SHPO). The SHPO did not file any comments in response to the submittals.

21. We concur with staff's findings in the EA that the proposed action will not adversely affect any known historical resources at the Bliss and Lower Salmon Falls Projects.<sup>18</sup> By letter dated June 26, 2012, to the SHPO and the Shoshone Bannock and the Shoshone-Paiute Tribes, Commission staff requested concurrence with this determination and stated that, in the absence of a reply from these entities within 30 days, the Commission would assume their concurrence. None of these entities replied to staff's letter, so their concurrence is presumed.

### **Endangered Species Act**

22. Section 7 of the Endangered Species Act<sup>19</sup> requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species, or cause the destruction or adverse modification of the critical habitat of such species. The federally listed threatened Bliss Rapids snail (*Taylorconcha serpenticola*) and endangered Snake River physa (snail species) (*Physa natracina*) occur in the proposed action area.

23. On June 2, 2009, the licensee filed a report on studies of federally listed snails conducted at the Bliss and Lower Salmon Falls Projects pursuant to Article 402 of the licenses for the two projects. The study report reviewed the effects of operation of the projects, including load-following operation, on federally listed snails. In the report, the licensee concluded that load-following operation at the Bliss and Lower Salmon Falls Projects would affect threatened Bliss Rapids snails in river areas that would be dewatered. On March 30, 2010, based on the results of its snail study, the licensee filed

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<sup>18</sup> EA at 56-58.

<sup>19</sup> 16 U.S.C. § 1536 (2006).

its Bliss Rapids Snail Protection Plan (Snail Protection Plan) pursuant to Article 403 of the licenses.

24. Commission staff in the EA concurs with the licensee's finding and concludes that the proposed load-following operations at the two projects may have long-term, minor adverse impacts on the Snake River physa and would likely adversely affect the Bliss Rapids snail.<sup>20</sup> On June 26, 2012, Commission staff requested formal consultation with FWS on staff's determination regarding these species.

25. On November 13, 2012, the FWS filed its biological opinion and concurrence with staff's determination. FWS concluded in its opinion that licensee's proposed change to load following at the Bliss and Lower Salmon Falls projects is not likely to jeopardize the continued existence of the Bliss Rapids snail or the Snake River physa. For the Bliss Rapids snail, FWS states that, because the licensee will implement the measures in the Snail Protection Plan, FWS concludes that no reasonable and prudent measures and incidental take terms and conditions are necessary for the licensee's proposed action. For the Snake River physa, FWS concluded that the proposed action will not jeopardize the Snake River physa and is unlikely to result in significant adverse impact to the species as a whole. Given this, it found that no reasonable and prudent measures are required. Furthermore, FWS stated that, given the apparent rarity of the species in the action area, incidental take is not anticipated to be significant and no incidental take terms and conditions were therefore required.

### **Opposition to Proposed Amendment of the Lower Salmon Falls Project License**

26. Managed by NPS, the Hagerman Fossil Beds National Monument occupies over 4,000 acres located along nearly seven miles of the western and southern shore of the Lower Salmon Falls Project reservoir.<sup>21</sup> About 58 acres of the monument are within the project boundary. The Hagerman Fossil Beds date to the late Pliocene Epoch (about 3-4 million years ago) and contain the fossils of over 140 faunal and 35 floral species, representing the last vestiges of species that existed before the last Ice Age and the earliest "modern" flora and fauna. The fossil beds are recognized nationally and internationally as containing one of the world's richest fossil deposits from the late

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<sup>20</sup> EA at 51-52.

<sup>21</sup> The Lower Salmon Falls Project was originally licensed in 1951, before the Hagerman Fossil Beds National Monument was established by Title III of the Arizona-Idaho Conservation Act of 1988, P.L. 100-696. Title III provides for the continuation of existing electrical generating and transmission facilities.

Pliocene epoch in quantity, quality, and diversity, and have been the subject of over 200 scientific papers.<sup>22</sup>

27. A major geologic component of the fossil beds is the Glenns Ferry Formation, which is composed of poorly consolidated and highly erodible fine sands, silts, and clays and contains abundant fossils. The steep walls of the several hundred feet deep canyon through which the Snake River flows are primarily comprised of this formation, which has led to significant landslides capable of damaging or destroying fossils. Between 1979 and 2005, at least two of seven major landslides occurring within the Hagerman Fossil Beds National Monument took place within the Lower Salmon Falls Project boundary with an additional two occurring on nearby lands managed by the Bureau of Land Management.<sup>23</sup>

28. NPS opposes the licensee's proposed action for the Lower Salmon Falls Project, asserting that proposed load-following operations allow reservoir level fluctuations, which could have an adverse impact on the Hagerman Fossil Beds National Monument.<sup>24</sup> It asserts that water infiltrating into the banks of the Lower Salmon Falls reservoir and then drained as the reservoir elevation is lowered creates hydraulic pressure that can result in shoreline erosion. Such erosion, it contends, could lead to slumping of material along the reservoir banks, thereby removing support of the overlooking bluffs and causing landslides that could damage the monument's paleontological and archeological resources. The NPS refers to one site in particular, identified as site 10TF148, as an example of erosion that can be attributed to project operations.

29. To address these concerns, the NPS recommends that the licensee be required to perform a study to document the effects of load-following versus run-of-river operations on fossil and pre-historic resources in the monument area. If the Commission does not require such a study, NPS recommends in the alternative that we require the licensee to establish a monitoring program to document the effects of erosion on the Monument. NPS notes that, although the licensee is conducting monitoring of both cultural resources and shoreline erosion under its CRMP and other required plans, the CRMP and other monitoring addresses only cultural resources, not paleontological resources.

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<sup>22</sup> NPS letter of October 13, 2010, at 1.

<sup>23</sup> EA at 54.

<sup>24</sup> *See* NPS comments filed on October 13, 2010, July 6, 2011, and July 23, 2012. NPS did not raise any concerns regarding damage to cultural or paleontological resources from load-following operations at the Bliss Project.

30. The EA finds that there are several causes of erosion in the area of the project, including overland or groundwater flow from manmade or natural causes, natural stream flow, reservoir fluctuation, and wave action generated by wind or boat wakes. The EA finds that shoreline erosion caused by load-following operations would have occurred shortly after the projects were constructed in the 1950's and concludes that the process of erosion and instability caused by load-following would have slowed in the many years of load-following operation since project construction and is no longer a significant source of shoreline erosion. The EA explains that the erosion at site 10TF148 is the result of surface runoff and/or perched aquifers discharging well above the level of influence from the reservoir. The EA concludes that the project-related contribution to shoreline erosion is minor under current operation and would continue to be minor under load-following operation.<sup>25</sup>

31. As to NPS' statement that the licensee is monitoring erosion for cultural and archeological resources, but not paleontological resources, the EA notes that the licensee monitors known cultural and archeological resource sites identified by the licensee in its CRMP<sup>26</sup> for the project. In particular, site 10TF148, the only specific site identified by NPS, has been monitored annually since 2006 under the CRMP. Under the CRMP, if impacts from erosion are identified at monitored sites, the CRMP requires the licensee to evaluate and protect archeological and cultural resources in consultation with resource agencies.<sup>27</sup> In addition, if previously unidentified archeological and cultural resources sites are discovered during project activities, the licensee is required to consult with the resource agencies to assess the site and determine the appropriate course of action.<sup>28</sup>

32. Additionally, the EA notes that the licensee conducted shoreline erosion monitoring in 1994 and again in 2005 under the Land Management Plan required by Article 413 of the license,<sup>29</sup> in order to determine the causes and extent of shoreline erosion occurring at the project. The survey included the entire length of the shoreline, including the area of the Hagerman Fossil Beds National Monument. The monitoring results from the two years were compared to assess whether the extent of shoreline

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<sup>25</sup> EA at 57.

<sup>26</sup> See Lower Salmon Falls Project license Article 412, *Idaho Power Co.*, 108 FERC at 61,681, and the licensee's revised CRMP filed on December 14, 2001.

<sup>27</sup> EA at 58.

<sup>28</sup> CRMP at 45.

<sup>29</sup> See *Idaho Power Co.*, 114 FERC ¶ 62,318 (2006), Order Modifying and Approving Land Management Plan.

erosion had changed during this time period. Results indicate that there was no significant difference in shoreline erosion between the monitoring years. In addition, the licensee's monitoring indicated that shoreline erosion was the result of human-caused factors coupled with highly erodible soils and that reservoir fluctuations had a minor impact on shoreline erosion.<sup>30</sup> Under the Land Management Plan, the licensee is required to conduct the next full-length shoreline erosion survey in 2014. Following the completion of the survey, the licensee must consult with the resource agencies, including the NPS, and address any agency concerns regarding shoreline erosion.

33. Under the CRMP and Land Management Plan, the licensee monitors the project area for evidence of erosion and evaluates identified sites to determine if project operations are the cause of the erosion. The licensee then consults with the resource agencies, including the NPS, on the monitoring results and recommendations for future monitoring. This monitoring would identify any areas of erosion, including any areas that may contain paleontological resources. The annual consultations under the CRMP and Land Management Plan provide a forum for discussing issues related to erosional impacts of project operations on archeological resources.

34. We concur with staff's above-discussed findings in the EA. Issues related to erosional impacts of project operations are being addressed under these existing requirements. Therefore, additional (separate) study and monitoring requirements for paleontological resources are not necessary.

### **Snail Protection Plan**

35. Filed for Commission approval pursuant to Article 403 of the licenses for the Bliss and Lower Salmon Falls Projects,<sup>31</sup> the licensee's Snail Protection Plan describes monitoring requirements and protective measures and defines the evaluation criteria (levels of population trend or distribution decline) that will be used to initiate measures designed to reverse, reduce, or mitigate observed declines in the Bliss Rapids snail.<sup>32</sup>

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<sup>30</sup> EA at 55.

<sup>31</sup> The proposed plan was docketed P-2061-085 for the Lower Salmon Falls Project and P-1975-101 for the Bliss Project.

<sup>32</sup> The licensee's plan does not propose any measures for the Snake River physa, stating that protection of the species was covered in the relicensing proceedings for the projects. *See* Snail Protection Plan at 1. As explained in the EA, the Snake River physa prefers deep-water habitat and would be protected by the proposed minimum flow requirement for each project, and the zone of daily water level fluctuations at the projects likely represents less than 5 percent of the species' habitat within the action area. *See* EA at 52-53.

The plan outlines (1) protection measures to address current threats to the species, (2) how Bliss Rapids snail monitoring will be conducted (Appendices 1 and 2), (3) the level of decline (relative to snail abundance and distribution) and at which point conservation actions will be implemented, and (4) how these decisions will be made.<sup>33</sup> The plan states:

[Idaho Power] is committing to fulfilling the goals identified in this Plan to ensure the long-term protection and conservation of Bliss Rapids snails. Thus, should load-following operations be judged responsible for significant Bliss Rapid snail mortality and/or harm that threatens the long-term conservation and persistence of the species, [Idaho Power] will cease or modify load-following operations at the Bliss and/or Lower Salmon Falls Projects. However, [Idaho Power] cannot be responsible for removing all other threats outside of its control.<sup>34]</sup>

36. The licensee's plan contemplates development of the types of measures listed in Section 5 of the plan to address project impacts to the Bliss Rapids snail based on monitoring of populations of the species at various locations in the river basin both upstream and downstream of the two projects.

37. Under the licensee's proposed plan, a Bliss Rapids Snail Technical Team (Technical Team) that would include licensee and FWS representatives would meet at least annually to review results of annual and biennial snail abundance monitoring data collected in Snake River reaches downstream of the Bliss and Lower Salmon Falls Dams,<sup>35</sup> and in 12 specified springs and tributaries.<sup>36</sup>

38. During each review of monitoring data, the Technical Team would assess possible causes of any adverse impacts to snail populations and investigate appropriate measures to be taken by the licensee to mitigate for adverse impacts resulting from project operations. Measures based on such monitoring could include, but would not be limited to: (1) reintroduction/re-establishment of Bliss Rapids snails to appropriate habitats; (2) habitat improvements at protected spring sites; (3) pollution abatement efforts adjacent to, or in, aquifer recharge areas that could affect springs; (4) the purchase of spring habitats and or surface or ground water rights, should they become available, that

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<sup>33</sup> Snail Protection Plan at 3.

<sup>34</sup> Snail Protection Plan at 3.

<sup>35</sup> Snail Protection Plan, Appendix 1.

<sup>36</sup> Snail Protection Plan, Appendix 2.

would provide water quality and quantity improvements to Bliss Rapids snail habitat; and (5) modification of hydroelectric operations to reduce or eliminate Bliss Rapids snail habitat exposure. Some of these measures could be outside the Commission's jurisdiction to enforce (e.g., pollution abatement efforts adjacent to, or in, aquifer recharge, acquisition or exercise of water rights). In such cases, the plan provides that these would be a matter for approval by a three-person panel comprised of a licensee and FWS expert on the Bliss Rapids snail and a third snail expert mutually agreed upon by the other two.<sup>37</sup>

39. As noted above, in its Biological Opinion, FWS concluded that no reasonable and prudent measures or incidental take terms and conditions were necessary, based on the licensee's commitment to implement all the measures in the Snail Protection Plan.<sup>38</sup> We conclude that the Snail Protection Plan's adaptive management through monitoring of Bliss Rapids snail populations would help protect Bliss Rapids snail populations affected by load-following operations at the two projects. Ordering paragraph (D) of this order approves the Snail Protection Plan. However, as noted above, we are mindful that implementation of some of the plan's contemplated future measures may have to be administered and enforced by entities other than the Commission.

40. Ordering paragraph (E) additionally provides that, if the monitoring data show that load-following operations are responsible for significant Bliss Rapids snail mortality or harm and threaten the long-term conservation and persistence of the species, the Commission may require that load-following operations at one or both projects cease or be modified, after notice and opportunity for hearing.<sup>39</sup>

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<sup>37</sup> July 20, 2012 revision to the Snail Protection Plan.

<sup>38</sup> Monitoring at 2 of the 12 spring and tributary sites, the Cove Creek and Malad River sites, is already required by Idaho Power's license for the Malad River Project No. 2726, which is located on the Malad River, a tributary to the Snake River. Article 406 of the license for that project requires the licensee to implement a snail protection plan specifically for the Cove Creek site and Article 407 of the license requires the licensee to monitor Bliss Rapids snail populations at the project to determine their distribution and densities. *See Idaho Power Co.*, 110 FERC ¶ 61,345 (2005).

<sup>39</sup> Standard Article 15 in the licenses for both projects provides that the Commission may order, upon its own motion or upon recommendation of the Secretary of the Interior or a state fish and wildlife agency, reasonable modifications of project structures and operation for the conservation of fish and wildlife resources, after notice and opportunity for hearing.

41. Finally, we also require in ordering paragraph (E) that the licensee file annual reports on any actions taken under the plan in the preceding year and on any licensee or team actions planned for implementation in the coming year.

### **Section 10(a)(1) of the FPA**

42. Section 10(a)(1) of the FPA<sup>40</sup> requires that any project for which the Commission issues a license 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.

#### **A. Power Benefits**

43. The Northwest Power and Conservation Council have reported that the northwest region is outgrowing its capacity to provide peaking power and needed flexibility.<sup>41</sup> Switching to load following at the Bliss and Lower Salmon Falls projects would decrease annual energy production by a total of 7,384 megawatt-hours (MWh) because the two projects would be generating for fewer hours (overall) than they currently generate under run-of-river operations. However, during peak electrical demand periods, load following at the two projects would produce 28,881 more MWh each year than is currently produced during peak demand periods. Also, increasing the licensee's ability to follow electrical load would help moderate voltage fluctuations and increase the projects' dependable capacity. Such benefits are important, especially considering the likely addition to the grid of non-dependable variable generation sources such as wind and solar power.<sup>42</sup>

#### **B. Riparian Habitat and Wildlife**

44. The proposed amendments would increase fluctuations in the project reservoirs and in the Snake River downstream of the projects. Such fluctuations would affect wetland and riparian habitats as well as federally listed threatened or endangered snail species. In order to minimize the impacts of these fluctuations, the licensee proposes specific limits on reservoir elevations and tailwater ramp rates. At the Bliss Project, the licensee proposes to maintain the headwater elevation within 2.0 feet from full pool and limit the

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<sup>40</sup> 16 U.S.C. § 803(a)(1) (2006).

<sup>41</sup> *See* EA at 3 (citing Sixth Northwest Conservation and Electric Power Plan, February 2010).

<sup>42</sup> EA at 3.

tailwater ramping rate to 3.0 feet per hour and 6.0 feet per day. At the Lower Salmon Falls Project, the licensee proposes to maintain the headwater elevation within 2.0 feet from full pool elevation and limit the tailwater ramping rate to no more than 2.5 feet per hour and 5.0 feet per day.

45. The EA concludes the licensee's proposed switch to load following at the Bliss and Lower Salmon Falls projects with the proposed ramping rates and limits on reservoir elevations would have an adverse impact on riparian habitat and wildlife.<sup>43</sup> To mitigate these impacts, the licensee proposes to implement a Riparian Habitat Mitigation Plan<sup>44</sup> and its Snail Protection Plan (which is discussed above).

46. In the EA, staff recommends that any approval of the proposed license amendments include a requirement to implement the proposed Riparian Habitat Mitigation Plan. We agree. Ordering paragraph (G) of this order requires the licensee to file for Commission approval a final Riparian Habitat Mitigation plan developed in consultation with specific resource agencies to help mitigate for the adverse impacts of load following. The plan must provide for the licensee's acquisition and maintenance of 59.5 acres of quality wetland and riparian lands for inclusion in the Bliss Project and 5 acres of similar lands for inclusion in the Lower Salmon Falls Project. The plan must: (1) identify the parcels to be acquired for each project; (2) include a timeline for acquiring the lands; and (3) include provisions for ongoing maintenance, monitoring, and adaptive management and reporting.

### **C. Operation Compliance Monitoring Plans**

47. To ensure licensee compliance with the specifications for load-following operation of the Bliss and Lower Salmon Falls Projects authorized by this order, we require in ordering paragraph (F) of this order that the licensee file revisions to its approved project operation compliance monitoring plans for the two projects required by Article 404 of each project license. The revised plans are to be developed in consultation with the U.S. Geological Survey, FWS, Idaho DFG, and Idaho DEQ.

### **D. Fishery Resources and Recreation**

48. The EA concludes that water level fluctuations under the proposed load-following operation would generally cause long-term, minor to moderate negative impacts to fishery resources at both the Bliss and Lower Salmon Falls reservoirs, and in the flowing

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<sup>43</sup> EA at 40.

<sup>44</sup> See licensee's Draft Riparian Mitigation Plan, included as Attachment 1 to licensee response to staff request for additional information filed on August 17, 2011.

waters downstream of each project.<sup>45</sup> The EA also concludes that load following would be expected to have a long-term minor adverse impact on water-related recreation in the project area. Because the impact to fishery resources is expected to be minor, we do not anticipate any major impact to recreational fishing.<sup>46</sup> The proposed amendments would only impact water elevations in the reservoirs and rivers. Therefore, recreational activities such as hiking, picnicking, camping scenic viewing would not be affected by the proposed amendments.<sup>47</sup>

49. A seven-mile-long reach of the Snake River downstream from Lower Salmon Falls Project dam is used by canoeists, rafters, and kayakers.<sup>48</sup> In comments filed before issuance of staff's draft EA, intervenor American Whitewater expressed concern that load following at the two projects might adversely affect whitewater boating experiences. It therefore asserted that additional information was needed on optimal flows and range of acceptable flows for whitewater recreation and the time of day, week, and year of such flows.<sup>49</sup>

50. The EA acknowledges that recreation such as boating in the reaches downstream from the two project dams may be affected under load following depending upon the timing of releases and recreational use as well as river characteristics at specific points under different flow regimes. The EA concludes that the licensee's proposed ramping rates and reservoir and tailwater operating constraints would limit rapid changes in flow and would help prevent boaters and fishermen from being adversely affected by significant and unexpected rises or drops in river stage. The public would be alerted to these changing conditions through publication of real-time information on river flows as provided by the licensee's website and its posting of boater safety and whitewater river class information at appropriate access sites within the reach of river used by boaters.<sup>50</sup>

51. Based on the above discussed findings, staff in the EA does not recommend any additional mitigation for load-following impacts on fishery resources and recreation. We concur with staff's findings.

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<sup>45</sup> EA at 37 and 44.

<sup>46</sup> EA at 45.

<sup>47</sup> EA at 45.

<sup>48</sup> EA at 44.

<sup>49</sup> *See* American Whitewater's motion to intervene filed on October 13, 2010.

<sup>50</sup> EA at 44.

## Conclusion

52. Commission staff's EA concludes that the licensee's proposed license amendments authorizing load-following operation at its Bliss and Lower Salmon Falls projects would not significantly affect water quality at the two projects, would have long-term minor to moderate impacts on fishery resources; minor long-term adverse impacts on recreation resources, and adverse long-term impacts on riparian habitat and wildlife. It also finds that the contribution of load-following operation of the Lower Salmon Falls Project to shoreline erosion in the area of the project that includes the Hagerman Falls National Monument would be minor. With regard to threatened and endangered snails, the EA concludes that water level fluctuations under the licensee's proposed load-following operation of the Bliss and Lower Salmon Falls Projects would have long-term minor adverse impacts to the federally listed endangered Snake River physa and would adversely affect the threatened Bliss Rapids snail. The EA concludes that such impacts to the Bliss Rapids snail could be mitigated through implementation of the licensee's proposed Snail Protection Plan while project area Snake River physa populations would be protected by the licensee's proposed minimum flows for each project.

53. Based on staff's analysis in the EA, we conclude that the licensee's proposed amendments of its licenses for the Bliss and Lower Salmon Falls projects would not constitute a major federal action significantly affecting the quality of the human environment. We also conclude that the projects, as amended by this order, are best adapted to a comprehensive plan for improving or developing the Snake River. Finally, we modify and approve the Snail Protection Plan for the Lower Salmon Falls and Bliss Projects.

### The Commission orders:

(A) Idaho Power Company's applications to amend the licenses for the Lower Salmon Falls Project No. 2061-086 and the Bliss Project No. 1975-102, filed May 5, 2010, and May 11, 2010, respectively, and supplemented on August 17 and 26 and September 12 and 30, 2011, are approved as set forth below, effective on issuance of this order.

(B) Article 401 of the license for the Bliss Project No. 1975 is revised to read as follows:

Article 401. Project Operation. The licensee shall maintain the project reservoir at no more than 2.0 feet below the full pool elevation of 2,654 feet above mean sea level. The licensee shall also restrict maximum tailwater ramping rates to 3.0 feet per hour and 6.0 feet per day and shall release from the project into the Snake River a minimum flow of 4,500 cubic feet per second at all times.

The operational requirements above may be temporarily modified if required by operating emergencies beyond the control of the licensee and for short periods upon mutual agreement among the licensee, U.S. Fish and Wildlife Service (FWS), and Idaho Department of Fish and Game (Idaho DFG). Temporary modifications may include the need to:

- (a) protect the performance, integrity, reliability, or stability of the licensee's electrical system or any electrical system with which it is connected, including the need to provide the Western Electric Coordinating Council and North American Electric Reliability Corporation reserves;
- (b) compensate for an unscheduled loss of generation;
- (c) provide generation during severe weather, energy shortages or periods of market instability;
- (d) inspect, maintain, repair, replace, or improve the licensee's electrical system, including the system associated with the project;
- (e) prevent injury to person(s) or damage to property;
- (f) assist in search and rescue activities;
- (g) respond to emergencies beyond the control of the licensee;
- (h) adjust flows for the annual Three Island Crossing Celebration; and
- (i) address other situations when the licensee, FWS, and Idaho DFG agree upon variation in operations in advance.

With regard to the temporary modifications described in (a) through (i) above, the licensee shall:

- (1) minimize the duration of altered flows (i.e. operations outside the parameters defined above) to the extent possible when temporary modifications occur;
- (2) provide immediate notification to the FWS, via telephone or electronic mail, when temporary modifications occur that reduce flows below the required minimum flow;

(3) report any emergency operations to the FWS before they occur, when possible, or, if prior notification is not possible, within 7 days of emergency operations. The report shall include a complete and detailed description of events, including the amount of flow reduction or increase, and the duration of the event;

(4) by March 1 of each license year, file a report with the FWS, Idaho DFG, and the Commission providing an annual summary of operations including the dates, times, durations, and flows or ramp rates that occurred during the temporary modifications; and

(5) notify the Commission as soon as possible but no later than 10 days following any temporary modifications. The notification shall, to the extent possible, identify the cause, severity, and duration of the incident, and any observed or reported adverse environmental impacts resulting from the incident. The notification shall also include operational data necessary to determine compliance with the requirements of this article and a description of any corrective measures implemented at the time of the occurrence and the measures implemented or proposed to ensure that similar incidents do not recur.

(C) Article 401 of the license for the Lower Salmon Falls Project No. 2061 is revised to read as follows:

Article 401. Project Operation. The licensee shall maintain the project reservoir at no more than 2.0 feet below the full pool elevation of 2,798 feet above mean sea level. The licensee shall also restrict maximum tailwater ramping rates to 2.5 feet per hour and 5.0 feet per day and shall release from the project into the Snake River a minimum flow of 3,500 cubic feet per second at all times.

The operational requirements above may be temporarily modified if required by operating emergencies beyond the control of the licensee and for short periods upon mutual agreement among the licensee, U.S. Fish and Wildlife Service (FWS), and Idaho Department of Fish and Game (Idaho DFG). Temporary modifications may include the need to:

(a) protect the performance, integrity, reliability, or stability of the licensee's electrical system or any electrical system with which it is connected, including the need to provide the Western Electric Coordinating Council and North American Electric Reliability Corporation reserves;

(b) compensate for an unscheduled loss of generation;

- (c) provide generation during severe weather, energy shortages or periods of market instability;
- (d) inspect, maintain, repair, replace, or improve the licensee's electrical system, including the system associated with the project;
- (e) prevent injury to person(s) or damage to property;
- (f) assist in search and rescue activities;
- (g) respond to emergencies beyond the control of the licensee;
- (h) adjust flows for the annual Three Island Crossing Celebration; and
- (i) address other situations when the licensee, FWS, and Idaho DFG agree upon variation in operations in advance.

With regard to the temporary modifications described in (a) through (i) above and pursuant to the monitoring and reporting requirements of the incidental take statement filed by the FWS on November 13, 2012, the licensee shall:

- (1) minimize the duration of altered flows (i.e. operations outside the parameters defined above) to the extent possible when temporary modifications occur;
- (2) provide immediate notification to the FWS, via telephone or electronic mail, when temporary modifications occur that reduce flows below the required minimum flow;
- (3) report any emergency operations to the FWS before they occur, when possible, or, if prior notification is not possible, within 7 days of emergency operations. The report shall include a complete and detailed description of events, including the amount of flow reduction or increase, and the duration of the event;
- (4) by March 1 of each license year, file a report with the FWS, Idaho DFG, and the Commission providing an annual summary of operations including the dates, times, durations, and flows or ramp rates that occurred during the temporary modifications; and

(5) notify the Commission as soon as possible but no later than 10 days following any temporary modifications. The notification shall, to the extent possible, identify the cause, severity, and duration of the incident, and any observed or reported adverse environmental impacts resulting from the incident. The notification shall also include operational data necessary to determine compliance with the requirements of this article and a description of any corrective measures implemented at the time of the occurrence and the measures implemented or proposed to ensure that similar incidents do not recur.

(D) Pages 1-16 and Appendices 1 and 2 of Idaho Power Company's Bliss Rapids Snail Protection Plan, filed pursuant to license Articles 403 in P-1975-101 and P-2061-085 on March 30, 2010, and revised on July 20, 2012, are approved, except for any future adaptive management measures that are not within the Commission's jurisdiction to enforce.

(E) The licensee shall comply with the following additional requirements for the Bliss Project and Lower Salmon Falls projects:

(1) The licensee shall file annual reports with the Commission summarizing actions performed by the licensee or the Bliss Rapids Snail Technical Team under the approved Snail Protection Plan for the Bliss and Lower Salmon Falls Projects and any planned actions for the coming year. The annual reports shall include: (a) the results of any monitoring conducted under the plan during the year; (b) any threats or potential threats to federally listed snails that have been identified; (c) any actions the licensee took to protect federally-listed snails during the prior year; and (d) any actions that the licensee may take to protect federally listed snails in the coming year. The information in the annual reports shall be organized by project (Bliss and Lower Salmon Falls).

(2) Prior to filing the annual reports with the Commission, the licensee shall provide draft reports to the U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, and any other entity participating on the Bliss Rapids Snail Technical Team for review and comment. The licensee shall allow the agencies a minimum of 30 days in which to provide comments on the reports. Copies of any comments and recommendations received shall be included with the annual reports, along with responses to the comments. If the licensee does not adopt a recommendation from the resource agencies, the licensee shall include its reasons based on project-specific information. The annual reports shall be filed with the Commission by March 1 of the year following the year in which monitoring occurred. The first annual report, for the year 2013, shall be filed by March 1, 2014.

(3) If the Commission determines on the basis of snail population monitoring data collected pursuant to the snail protection plan approved by the Commission that

load-following operations at the Bliss Project No. 1975 or the Lower Salmon Falls Project No. 2061 are responsible for significant Bliss Rapids snail mortality and/or harm threatening the long-term conservation and persistence of that species, the Commission may require that load-following operations at one or both projects cease or be modified, after notice and opportunity for hearing.

(F) Within 90 days of the issuance date of this order, the licensee shall file, for Commission approval, revised Operation Compliance Monitoring Plans for the Lower Salmon Falls and Bliss Projects in order to monitor compliance with the requirements of Article 401 of those licenses, as amended in this order. The revised plans shall address the requirements of Article 404 of each project license. The licensee shall develop the revised plans in consultation with the U.S. Geological Survey, the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, and the Idaho Department of Environmental Quality. Following the revision of the plans in consultation with the resource agencies, the licensee shall provide a copy of the proposed plans to these agencies and allow them a minimum of 30 days to review and comment on the plans. The final plans filed with the Commission shall include documentation of consultation including copies of any comments received. The licensee shall address all comments and recommendations in its final plans filed with the Commission. If the licensee does not adopt a recommendation from the agencies, the licensee shall include its reasons based on project-specific information. The Commission reserves its authority to require the licensee to modify the plans.

(G) Within six months from the issuance date of this order, the licensee shall develop and file, for Commission approval, a Riparian Habitat Mitigation Plan in order to mitigate for the adverse impacts of load-following operations on wetland/riparian lands at the Bliss Project No. 1975 and the Lower Salmon Falls Project No. 2061. The plan shall provide for the acquisition and appropriate management of quality wetland and riparian lands: specifically, 59.5 acres for the Bliss Project and 5.0 acres for the Lower Salmon Falls Project. The plan shall: (1) identify the parcels to be acquired for each project; (2) include a timeline for acquiring the lands; and (3) include provisions for ongoing maintenance, monitoring, and adaptive management and reporting. The plan shall be developed in consultation with the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game. Following the development of the plan in consultation with the resource agencies, the licensee shall provide a copy of the proposed plan to these entities and allow them a minimum of 30 days to review and comment on the plan. The final plan filed with the Commission shall include documentation of consultation including copies of any comments received. The licensee shall address all comments and recommendations in its filing. If the licensee does not adopt a recommendation from the resource agencies, the licensee shall include its reasons based on project-specific information. The Commission reserves its authority to require the licensee to modify the plan in order to protect and enhance wetland/riparian habitat.

(H) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the issuance date of this order, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2012). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.