



Consulting Associates, Incorporated

89 10 0483

BOISE OFFICE -
VERNON RAVENSCROFT
HELEN CHENOWETH

October 27, 1989

PHONE (208) 345-2670
1843 BROADWAY, SUITE 102
BOISE, IDAHO 83706

PAC 0010

PP BL
RA BF
JV

Mr. Stan Allen
Coordinator for Protected Areas Amendments
& Idaho State Fish & Game Department
109 West 44th Street
Boise, Idaho 83714

Dear Mr. Allen:

Please accept this letter, the attached "Protected Areas Petition" Exhibit #1, and other attached documents as Mr. Earl Hardy's petition that the Box Canyon protected area designation, (ID#4756) be declassified.

This petition is based upon the following chronology of events and documentation of those events:

1. In 1971 the Idaho State Legislature enacted a measure which became Idaho Code 67-4310. That code was subsequently amended and currently reads as per Exhibit #2.

2. On November 8, 1983 according to the authority of Code 67-4310, the State of Idaho (Land Board) and Mr. Earl Hardy (owner-petitioner) entered into a contract (Exhibit III) which speaks in specific detail to the comprehensive multiple use development and protection of the Box Canyon property and Box Canyon Creek as situated on private property belonging to Mr. Hardy.

a. The Idaho State Fish & Game Dept. participated in the negotiations leading to the consummation of this contract.

b. The Idaho State Parks & Recreation Dept. participated in the negotiations leading to the ~~consumption~~ of this contract.

CONSUMMATION

c. The Idaho State Water Resources Dept. also participated in these negotiations.

d. Mr. Hardy, in full good faith, has proceeded to fully protect the upper canyon as per contract and to confine his development activities elsewhere on his private property within the provisions and limitations of that contract.

OCT 31 1989

October 27, 1989

3. On February 18, 1986 the Federal Energy regulatory Commission issued a preliminary permit (Exhibit IV) authorizing an analysis of a potential hydro site in the middle reach of Box Canyon Creek. This permit by virtue of Mr. Hardy's limitations in his application fully conformed to the provisions of the State contract cited next above.

Both the Idaho Dept. of Fish & Game and Idaho State Parks & Recreation departments were informed and were participants in the preliminary permit procedure.

4. On January 27, 1989 Mr. Hardy made application to F.E.R.C. for a minor license authorizing the construction of a small 645KW generating plant in the middle reach of the Box Canyon Creek (Exhibit V). Again this action was specifically within the restrictions of the State contract.

Both state departments (IDF&G, IDP&R) have been participants in that licensing procedure. Full documentation of consultations, correspondence, studies, surveys and field trips can be supplied if requested.

5. On August 9, 1988 William F. Ringert, Attorney for Mr. Earl Hardy, presented a protest to the then pending classification of Box Canyon Creek by the Northwest Power Planning Council. That protest is attached (Exhibit VI).

6. October 3, 1989 Consultant Ravenscroft met with council member, James Goller and biologist Montgomery to determine procedure for amendment or declassification of a currently classified stream.

7. October 17, 1989 Consultant Ravenscroft met with Coordinator Stan Allen and Mr. Will Reed, both of the Idaho Fish & Game Dept. to specifically initiate the Power Planning Council Consultation process.

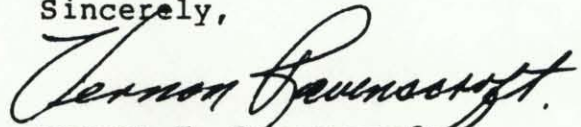
Petitioner Hardy submits that the NWPPC classification is an unnecessary duplication of the comprehensive protection of Box Canyon Creek which is already provided by Idaho State law and that the retention of the classification can only tend to confuse and/or jeopardize the ongoing good faith compliance with the terms of the Idaho State-Hardy Contract on the part of all parties signatory thereto.

Page 3 Mr. Stan Allen

October 27, 1989

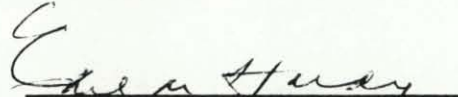
We respectfully petition the declassification of Box Canyon Creek (ID#4756) as per this petition and by this letter also reaffirm the protest to that classification as submitted on August 8, 1988 by Attorney W.F. Ringert.

Sincerely,



Vernon F. Ravenscroft
Consultant

Affirmed:


Earl Hardy, Petitioner

VFR/cg

cc: Dr. Peter Paquett
James Goller
Robert Saxvick

"67-4310. Box Canyon -- Appropriation of waters in trust for people -- Lands devoted to natural scientific study and limited recreational use -- Legislative finding of fact concerning desirability of public use of water and private land within upper Box Canyon -- Legislative direction for cooperation by state agencies to facilitate negotiations. -- The park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

"Only a portion of that stream which is known as Box Canyon Creek, situated in the northwest quarter (NW $\frac{1}{4}$) of section 27, township 8 south, range 14 east of the Boise Meridian; and

"The east half (E $\frac{1}{2}$) of the northeast quarter (NE $\frac{1}{4}$), in section 28, township 8 south, range 14 east of the Boise Meridian.

"The preservation of water in the area described for its scenic beauty, natural scientific study value, and limited recreational purposes necessary and desirable for all citizens of the state of Idaho is hereby declared to be a beneficial use of such water.

"No fee shall be required in connection with said appropriation by the park and recreation board or the permit issued in connection therewith, but license shall issue at any time upon proof of beneficial use to which said waters are now dedicated.

"The park and recreation board, or its successor, shall be deemed to be the holder of such permit, in trust for the people of the state, and the public use of the waters in the specific area herein described is declared to be of greater priority than any other use except that of domestic consumption.

"It is a legislative finding of fact that the waters arising upon the above described tract within the natural channel of Box Canyon Creek and the private lands within the confines of the canyon walls are desirable for public use in connection with the preservation of the area in its present condition as a place for natural scientific studies and limited recreation for the citizens of the state of Idaho.

"The state board of land commissioners is hereby authorized to adjust the boundary established by the provisions of this section by excluding from the operation of this section those lands and waters lying downstream from a point one hundred (100) feet downstream from the crest of the falls in the west half (W ½) of the northwest quarter (NW ¼) of section 27, township 8 south, range 14 east, Boise Meridian, provided they are successful in negotiating with the present landowner, or his successors, those restrictive covenants deemed necessary by the board to promote the public interest for the canyon lands as well as for the waters arising within that canyon, all as declared by this section, and the state board of land commissioners is authorized to expedite the negotiations with the landowner so far as is consistent with the public interest. In order to facilitate these negotiations, all concerned state agencies, namely the department of water resources, the department of fish and game, and the department of parks and recreation are hereby instructed to cooperate with the state board of land commissioners and with the property owner as necessary to assist the orderly, factual, and amicable process of negotiation between the state board of land commissioners and the property owner."

AGREEMENT IMPLEMENTING IDAHO CODE SECTION 67-4310,
AS AMENDED BY SESSION LAWS OF 1982, CHAPTER 369

THIS AGREEMENT, Made and entered into this 8th day of November, 1983, between EARL M. HARDY of Boise, Idaho, hereinafter referred to as the "Owner", and the STATE OF IDAHO, acting by and through its Board of Land Commissioners, hereinafter referred to as the "State":

W I T N E S S E T H:

1. PURPOSE OF THE AGREEMENT

The purpose of this agreement is to implement the provisions of Chapter 369 of the Idaho Session Laws of 1982, by adjusting the boundary established by the provisions of Idaho Code § 67-4310, and by establishing restrictive covenants deemed necessary to promote the public interest for certain canyon lands and waters arising within Box Canyon, as described in Idaho Code § 67-4310, and other related purposes as hereinafter stated.

2. IDENTIFICATION OF LANDS INVOLVED

There is identified in Idaho Code § 67-4310, as amended by S.L. 1982, Chap. 369, a point (the base point) located 100 feet downstream from the crest of the falls in the west half of the northwest quarter of Section 27, Township 8 South, Range 14 East, Boise Meridian. For purposes of this agreement a line is hereby established through that point, extending northeasterly from the middle of Box Canyon Creek to a point on the canyon rim and thence north 0°12' east to a point on the north boundary line of Section 27, Township 8 South, Range 14 East, Boise Meridian, and extending southwesterly from the middle of Box Canyon Creek to a point on the canyon rim and thence south 0°12' west to a point on the south boundary line of the southwest quarter of the northwest quarter of

said Section 27. Those lands described in Idaho Code § 67-4310 which lie easterly and southerly of said line are sometimes hereinafter referred to as the lands above the base point, and the portions of said described lands lying westerly and northerly of said line are sometimes hereinafter referred to as the lands lying below the base point. Unless otherwise indicated, "land" or "lands", as used in this agreement, refers to land owned by the Owner.

3. RESTRICTION ON OWNER'S USE OF LAND

A. The Owner reserves the right for himself, his family, and their guests, to use of the land above the base point, subject to the following limitations:

(i) The land will be kept in its present condition except as it may be altered by forces of nature; no artificial or mechanical alteration (except the access road) will be made by the Owner or others;

Specifically, without limiting the foregoing provision, no construction of any kind (except the access road) shall be done by the Owner or others, and no material disturbance or removal of plants, soil or rocks, and no diversion of water or alteration of the stream channel, shall be made by the Owner or others.

(ii) These conditions apply to lands above the base point within the canyon and to the lands above the base point and above the canyon rim lying within 250 feet of the rim.

B. The Owner's use of the land lying below the base point shall be limited as follows:

(1) The land above the canyon rim will be used

only for residential purposes, consisting of ^{not} more than three homes, and for agricultural purposes, including fences, farm buildings, access and service roads, and other improvements related to residential or agricultural use, and for power transmission lines and related service road and support structures;

(ii) Use of land below the rim shall be as follows:

(a) Water diversion works in the stream channel and bank, and a hydroelectric generation facility, with penstock, service roads, appurtenant buildings, transmission lines and other support service structures will be constructed and used in this area. Plants, soil and rock will be disturbed or removed as necessary during construction and in the operation of the facility;

(b) Residential use, limited to one home, with an access road, fences and outbuildings. The least practicable disturbance of plants, soil and rocks will be caused during construction of the home, fences and outbuildings;

(c) Recreational use will be made of the land, including construction of foot or horse trails, with the least practicable disturbance of plants, soil or rocks, during construction and use of the trails;

(d) Rock will be removed for use in construction of roads on the property below the base point, or for use in the construction of

hydroelectric generating facilities and related improvements and structures, or in the construction of the homes above the rim.

4. DEDICATION TO LIMITED PUBLIC USES

A. Land in the canyon above the base point, including the stream channel, shall be dedicated to limited public uses in the following categories, and no other uses shall be permitted or authorized, unless expressly stated in some other part of this agreement:

(i) Recreational use in the form of viewing and sightseeing, by not more than an average of 20 persons per day during any 365-day period;

(ii) Natural scientific studies by the Idaho Department of Parks and Recreation, the Idaho Department of Fish and Game, the University of Idaho, Idaho State University, Boise State University, and the College of Idaho, and by such other individuals or public or private entities as are specifically authorized by a committee composed of the Owner or his representative designated in writing, and a person designated by the Idaho State Board of Land Commissioners. The committee also shall adopt guidelines to be followed in conducting the studies, as hereinafter specified;

(iii) All recreational use and natural scientific studies shall be conducted in such manner as not to disturb or remove plants, soil or rocks, or divert water from Box Canyon Creek or alter the stream channel, except that samples of plants, soil, rocks or water may be taken and removed, if authorized by the guidelines;

(iv) Reasonable access for the purposes stated in subparagraph (i) through (iii), above. No additional roads or trails shall be constructed on the land above the base point without the consent of the Owner as to location, size and type of construction, and the Owner agrees that such consent shall not be withheld unreasonably. .

B. Land above the canyon rim and above the base point may be used for access as hereinafter provided, and for the construction, use and maintenance of one combination residence and administration building and not more than two outbuildings for storage of such equipment and supplies as are reasonably necessary for the uses contemplated by this Agreement and for related laboratory and study purposes. Construction of any such buildings shall not be commenced until the Owner has approved the location and design, which approval shall not be withheld unreasonably by the Owner.

C. Lands below the base point shall not be used by any persons or entities without the express written consent of the Owner or his representative designated in writing.

5. MANAGEMENT

A. Management guidelines for the use of the land and water in the canyon above the base point shall be prepared, and from time to time may be revised, by a committee composed of the Owner (or his representative designated in writing) and a person appointed by the Idaho Board of Land Commissioners. The guidelines, and any revisions thereof, made by the committee shall be submitted to the Board of Land Commissioners for approval, and shall become effective upon approval by the Board. Use of the

land and water in the canyon above the base point shall be managed by the Idaho Department of Parks and Recreation or by such other agency or entity as may be designated by the Board of Land

Commissioners and approved by the Owner under the guidelines and revisions made and approved as specified in this paragraph. Such management shall be subject to the provisions of Section 3A of this Agreement. The Department of Parks and Recreation, or any other agency or entity designated for management as hereinbefore provided, may, in connection with such management, contract with any public, non-profit or private organization for the performance of services required in connection with such management, but any such contract shall not be effective until approved by the Board of Land Commissioners and by the Owner.

B. The land and water below the base point, and the land above the canyon rim above the base point, shall be managed by the Owner, subject to the restrictions imposed on his use by the terms and conditions of this agreement.

6. CHANGES IN WATER PERMIT AND IN APPLICATION FOR PERMIT

A. As authorized by Session Laws of 1982, Chapter 369, the boundary established by the provisions of Idaho Code § 67-4310 is hereby adjusted by excluding from the operation of § 67-4310 those lands and waters lying downstream from the base point hereinbefore identified.

The Idaho Department of Parks and Recreation shall file with the Director of the Department of Water Resources of the State of Idaho an application to amend its pending application (No. 36-7198) for an appropriation under § 67-4310, to change the area covered by the application and by the appropriation to conform to the adjustment in boundary made in the preceding paragraph.

B. The State agrees that it will not file protests against any application for a change in point of diversion, place of use or nature of use that the Owner might file with the Director of the Department of Water Resources of the State of Idaho in order to amend Water Permit No. 36-7175 to change from fish propagation above the base point to hydropower generation below the base point. The Owner agrees that he will withdraw his protest against the pending application (No. 36-7198) of the Idaho Department of Parks and Recreation for a water permit as authorized by Idaho Code § 67-4310, and that he will not file any further protests against that application. The State further agrees that, if the Owner elects to file an application for a new water permit in lieu of amending Permit No. 36-7175, the State will not file a protest against any such application for a new permit for the appropriation of waters of Box Canyon Creek for hydropower generation, on any grounds other than minimum stream flow.

C. The Owner agrees that approval by the Idaho Department of Water Resources of changes in point of diversion, place of use, and nature of use under Water Permit No. 36-7175, or issuance of any new water permit to the Owner for the use of waters of Box Canyon Creek for hydropower generation, may be conditioned upon the other provisions of this Agreement becoming effective, and the Owner further agrees that he shall not construct any diversion works or divert any water from Box Canyon Creek for hydropower generation under Water Permit No. 36-7175 or under any such new permit, until this Agreement has become fully effective.

D. The State agrees that approval by the Idaho Department of Water Resources of Application No. 36-7198, and the issuance of a water permit under that application, may be conditioned upon the

other provisions of this Agreement becoming effective, and the parties acknowledge that it is their mutual intention that the Owner shall not be entitled to proceed with an appropriation for hydropower generation purposes until this Agreement has become fully effective, and that the State shall not be entitled to proceed with its appropriation for the purposes stated in Idaho Code § 67-4310 until this Agreement has become fully effective.

7. AD VALOREM TAXES AND ROAD MAINTENANCE

A. So long as this agreement continues in force and effect, the State agrees that it will cooperate with the Owner, to the fullest extent permitted by the laws of this state, in urging that the Owner's land affected by this Agreement shall be assessed for ad valorem tax purposes in a manner that reflects the public benefits to be derived from the operation of this Agreement and that reflects the limitations on the Owner's use of the land resulting from the operation of this Agreement.

B. Subject to the availability of state funds, the State and the Owner shall share equally in the costs and expense of maintaining that portion of the main access road that is located upon the lands above the base point and upon lands owned by a third party, adjacent to the lands above the base point. The State shall not use the main access road when it does not have funds available to pay its share of the maintenance.

8. DURATION, ENFORCEMENT AND TERMINATION

A. The Owner's dedication of the land above the base point to the State for the purposes and upon the conditions specified in this agreement shall continue in force and effect for so long as the State shall use that land for the purposes herein specified and shall comply with the conditions imposed by this agreement.

point, and its use of land above the rim and above the base point for the purposes specified in Section 4B, shall not commence until the Idaho Department of Parks and Recreation, or some other agency or entity designated and approved as provided in Section 5A, has assumed, and has begun discharging, the management responsibilities specified in Section 5A.

B. The Owner shall have the right to enforce by injunction the conditions imposed by this agreement for use of the lands above the base point. No cause of action for damages shall accrue to the Owner by reason of the State's violation of any condition imposed by this agreement on the use of the land above the base point, but this waiver shall not apply to any officer, agent or employee of the State acting beyond the course and scope of his employment.

If the State shall violate any condition of this agreement with respect to use of the lands above the base point, and such violation shall continue for a period of 365 consecutive days following delivery of written notice from the Owner requiring compliance with the condition then being violated by the State, the Owner shall have the absolute right to declare the dedication to the State and the restrictive covenants made by the Owner in this agreement to be terminated, and upon such declaration being made in writing and delivered to the State, the dedication and the restrictive covenants shall terminate and shall be of no further force and effect whatsoever.

C. The limitations and restrictions upon his use of his property in the northwest quarter of Section 27 and in the east half of the northeast quarter of Section 28, Township 8 South,

Range 14 East, B.M., to which the Owner has herein agreed, shall continue in full force and effect until this Agreement is terminated as provided in subsection B of this section 8, immediately above.

D. The State shall have the right to enforce by injunction compliance with any limitation, restriction or restrictive covenant to which the Owner has herein agreed. No cause of action for damages shall accrue to the State or to any third party beneficiary by reason of the Owner's violation of any provision of this agreement.

E. If this agreement shall be terminated as hereinbefore provided, the Owner, immediately upon such termination, shall have the right to resume full and complete use and control of his property in the northwest quarter of Section 27 and in the east half of the northeast quarter of Section 28, Township 8 South, Range 14 East, B.M.

9. INDEMNIFICATION

Because this agreement contemplates that the Owner shall not have complete control over the use of the lands above the base point, the State agrees to indemnify and hold harmless the Owner from all claims of every kind and nature whatsoever made by any person on account of injury or other damage arising out of the negligent or otherwise wrongful acts or omissions of the State and those of its employees acting within the course and scope of their employment or duties whether arising out of a governmental or proprietary function, where the State, or any governmental entity involved in the wrongful acts or omissions, if a private person or entity would be liable for money damages under the laws of the State of Idaho. To the extent allowed by law, the State agrees to

defend the Owner in any action brought for any such claim, and agrees to pay all reasonable attorney fees and costs, whether incurred in court or out of court, necessary for the defense of any such claim.

10. CONDITIONS PRECEDENT

The parties acknowledge that the Owner intends to construct and operate a hydrogeneration facility on the lands below the base point, and intends to divert water from Box Canyon Creek for use in trout propagation facilities to be located in Blind Canyon, to the south of Box Canyon Creek, and that various permits, licenses, easements and other forms of authorization are necessary for the construction and operation of those facilities. Therefore, the parties agree that this agreement shall not become effective until the Owner shall have obtained all licenses, permits, easements, rights of way, and other forms of authorization for activities or rights to the use of the water and land, or renewals or extensions thereof, required for the construction and operation of the hydrogeneration facility on the lands below the base point and required for the construction and operation of (a) diversion works on Box Canyon Creek, (b) a water transmission facility from Box Canyon Creek to Blind Canyon, (c) trout propagation facilities in Blind Canyon, and (d) water discharge facilities from the Blind Canyon trout propagation facilities into the Snake River.

11. GENERAL PROVISIONS

A. The section headings in this agreement are intended for convenience of reference, only, and are not intended to be used in the interpretation or construction of this agreement.

B. The parties to this agreement contemplate that they, and any third party beneficiaries of this agreement, shall be guided

by rules of reasonableness and the spirit of cooperation in both the performance of this agreement and the use of the property covered by this agreement.

C. The parties acknowledge that it is their desire to coordinate both the Owner's use and the State's use of lands under this Agreement with other activities contemplated by the Owner on other nearby lands, as indicated in Section 10, above. In that regard, the Idaho Department of Fish and Game has advised the Owner that the Department will request that the Bureau of Land Management of the United States Department of the Interior impose a condition on any right of way granted pursuant to the Owner's application (Serial No. I-2880, for a right of way from Box Canyon Creek to Blind Canyon) requiring that this Agreement become fully effective before the Owner can make use of the right of way. The parties further acknowledge that the Idaho Department of Fish and Game deems itself obligated to request that certain conditions be imposed by the Federal Energy Regulatory Commission in the granting of any exemption or license for hydropower generation by the Owner in Box Canyon, and the parties agree that they will attempt to agree upon terms to be submitted to the Federal Energy Regulatory Commission with respect to any such exemption or license.

D. The covenants herein contained shall bind, and the benefits and advantages hereof shall inure to, the parties hereto and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the Owner has hereunto subscribed his name, and the State has caused its name to be hereunto subscribed by its officials hereunto duly authorized, all as of the day and year herein first above written.



Earl M. Hardy
Earl M. Hardy (Owner)

STATE OF IDAHO

By John P. ...
Title, President of the State Board of
Land Commissioners, and Governor
of the State of Idaho

COUNTERSIGNED:

W. T. ...
Secretary of the State of Idaho

...
Director, Department of Lands

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 8th day of November, 1983, before me, the undersigned, a notary public in and for said state, personally appeared EARL M. HARDY, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

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

Clara C. McCornick
Notary Public for the State of Idaho
Residing at Boise, Idaho

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 16 day of November, 1983, before me, the undersigned, a notary public in and for said state, personally appeared John V. Evans, known to me to be the Governor for the State of Idaho, and acknowledged to me that he executed the foregoing instrument for and on behalf of the said State of Idaho and said Board of Land Commissioners.

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

John L. Dwyer
Notary Public for the State of Idaho
Residing at Idaho City, Id.

34 FERC ¶ 62,360

-2-

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Anita Kay Hardy, Barbara J. Harper
and Earl M. Hardy) Project No. 9452-000

ORDER ISSUING PRELIMINARY PERMIT
(Issued February 18, 1986)

The Permittee ^{1/} filed an application for preliminary permit under Section 4(f) of the Federal Power Act (Act), 16 U.S.C. 797(f), for the proposed water power project, as described in the attached public notice.

Notice of the application was published in accordance with Section 4(f) of the Act and the Commission's regulations. All protests that have been filed, motions to intervene that have been granted, together with all comments filed by Federal, State, and local agencies have been fully considered in determining whether to issue this permit.

Effects of This Preliminary Permit:

The purpose of any preliminary permit is to maintain priority of application for a license during the term of the permit while the Permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and to prepare an acceptable application for license. A preliminary permit does not authorize construction of any project works. This permit does require the Permittee to conduct certain studies, but under conditions which will assure that those studies cause no significant adverse environmental impacts. For these reasons, the issuance of this preliminary permit is not a major Federal action significantly affecting the quality of the human environment.

Any objections to issuance of the permit by commenting parties or agencies were based upon impacts of future construction and/or operation of the project, not upon impacts associated with the studies to be performed under the permit.

Any concerns raised in the comments, protests, or motions to intervene addressing the potential effects of actually constructing and operating the proposed project are not affected by the issuance of a preliminary permit.

^{1/} In this, "Permittee" refers to the applicant or applicants named in the caption for this proceeding.

DC-A-11

The Articles of this permit provide for studies, in coordination with the appropriate agencies, to address the technical, economic, and environmental considerations related to the proposed project. Should the Permittee find the project to be feasible and file a development application, all interested persons and agencies will be given notice and have an opportunity to review the application, present their comments concerning the project and the effects of its construction and operation, and seek to participate in the proceeding.

For the purpose of assuring the cooperation required by the terms of the permit, a liaison officer must be designated to act for the Permittee in keeping appropriate Federal, State, and local agencies specified in this permit currently informed about the progress of investigations throughout the term of the permit. The liaison officer must communicate with those agencies within 60 days from the date of issuance of this permit.

The named Permittee is the only party entitled to the preference and priority of application for license afforded by this preliminary permit. In order to invoke this permit-based priority and preference in any subsequent licensing competition, the named Permittee must file an application for license as the sole applicant, thereby evidencing its intent to be the sole licensee and hold all proprietary rights necessary for the construction, operation and maintenance of the proposed project. Should any other parties intend to hold during the term of any license issued any of these proprietary rights necessary for project purposes, they must be included as joint applicants in any application for license filed. In such an instance where parties other than the Permittee are added as joint applicants for license, the joint application will not be eligible for any permit-based preference or priority. City of Fayetteville Public Works Commission, Project No. 3137, et al., "Order Determining Preference, Issuing Preliminary Permit and Denying Competing Application" (16 FERC ¶61,209).

The Director orders:

(A) A preliminary permit is issued to the Permittee for the proposed project as described in the attached notice, for a period effective the first day of the month in which this permit is issued, and ending either ~~the~~ the effective date or on the date that a development application submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject to the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

RECEIVED
FEB 28 1986

January 27, 1989

Ms. Lois D. Cashell
Acting Secretary
Federal Energy Regulatory Commission
825 N. Capitol Stree N.E.
MS 208 RB
Washington, D.C. 20426

Re: Project 9452-000-Idaho
Hardy Box Canyon Project
A Minor License Application less than 1.5 megawatts

Dear Ms. Cashell:

We are enclosing the original and 14 copies of a minor license application for the proposed Hardy Box Canyon project #9452. The application is submitted as completion of the preliminary permit procedure.

Sincerely,



Vernon F. Ravenscroft

VFR:jb

Enclosures: Original application
14 copies

Ringert, Clark, Harrington, Reid, Christenson & KaufmanCHARTERED
LAWYERSWILLIAM F. RINGERT
D. BLAIR CLARK
ANDREW M. HARRINGTON
JAMES G. REID
JEFFREY R. CHRISTENSON
JAMES P. KAUFMAN
MICHAEL J. GAFFNEY
LAURA E. BURR
LEA C. ADAMS

SAMUEL KAUFMAN (1921-1988)

599 WEST BANNOCK STREET
P.O. BOX 2773
BOISE, IDAHO 83701
TELEPHONE (208) 342-4801

August 9, 1988

Northwest Power Planning Council
851 S.W. 6th, Suite 1100
Portland, Oregon 97204

Re: Idaho Protected Areas

Gentlemen:

I write as attorney for Anita Kay Hardy, Barbara J. Harker and Earl M. Hardy, who own lands in Sections 27 and 28, Township 8 South, Range 14 East, Boise Meridian, in Gooding County, Idaho; and who are the applicants for a proposed hydropower development on Box Canyon Creek, Idaho, FERC Project No. 9452.

This letter constitutes my clients' protest against the inclusion of Box Canyon and Box Canyon Creek within the protected area designation which is to be considered by your Council at its meeting this week. We learned just yesterday that a revised recommendation for the inclusion of Box Canyon Creek had been submitted to your Council, and, of necessity this protest will not be as complete or precise as we would prefer. Accordingly, we ask that the record be kept open for the submission of additional information in support of the protest at a later date.

Box Canyon Creek has been the subject of consideration by the State of Idaho for a number of years. In the 1970's the State Legislature authorized a minimum stream application by the Department of Parks and Recreation. In 1982, the Legislature authorized an agreement with Mr. Hardy, which was completed in 1983, and imposed restrictive covenants on the use of the land in the Box Canyon area, in exchange for certain concessions regarding the minimum stream flow application and Mr. Hardy's proposal for a hydroelectric project.

Additional reasons for this protest and for my clients' request that Box Canyon Creek not be included in the protected area designation are as follows:

1. The Bureau of Land Management (BLM) conducted lengthy studies and investigations, and held public hearings, in connection with a right of way application made by Mr. Hardy at a point on Box Canyon Creek downstream from the proposed hydroelectric site. A great deal of input from the public in general and from interested state agencies, including the Idaho Department of Fish and Game, was involved in the BLM's consideration of the right of way application. The right of way granted by the BLM requires a 75 c.f.s. bypass in Box Canyon Creek and requires that the restrictive covenants in the agreement with the State of Idaho and several other restrictions be observed, all designed for the protection of both aquatic and riparian habitat;

2. The BLM also required that a fish ladder be installed at the downstream diversion point. Previously, another trout production facility had been installed upstream without a fish ladder, and at the present time there is no means by which anadromous or other fish can make their way upstream to the point of the proposed hydroelectric site;

3. The proposed hydroelectric site is approximately 100 feet downstream from the falls, which completely block further upstream migration, and the hydroelectric project would have little or no effect on upstream migration;

4. There is no evidence that anadromous fish migrate to the mouth of Box Canyon Creek;

5. The Idaho Water Resource Board, at the request of the BLM, has filed an application for minimum stream flow in Box Canyon Creek below the proposed point of diversion for Mr. Hardy's trout production facilities, that being the same point at which the 75 c.f.s. bypass is required;

6. The lands in the Box Canyon area owned by Mr. Hardy would be managed by the Idaho Department of Parks and Recreation, or by some other suitable entity, under the terms of the agreement between Mr. Hardy and the State of Idaho;

Northwest Power Planning Council
August 9, 1988
Page Three

7. A coordinated effort has been going on for several years in an effort to preserve the portion of Box Canyon and Box Canyon Creek above the falls in their present condition, which is relatively natural and pristine. The hydroelectric facility and the trout propagation facility have been an integral part of the negotiations, and the agreement with the State of Idaho requires that all necessary licenses, permits and other authorizations for the hydroelectric facility and the trout propagation facility be obtained by Mr. Hardy before the agreement becomes effective and binds the land with the restrictive covenants, which are extremely beneficial to the public in general. Mr. Hardy holds a permit with priority earlier than the State's minimum flow application in the upper portion of the canyon, and does not wish to develop trout production facilities in the upper portion of the canyon, if the other facilities can be approved and constructed. However, that permit expires in January of 1990, and my clients are very much concerned that the delay created by designation of Box Canyon Creek as a protected area could very well leave Mr. Hardy no development alternative other than the construction of trout production facilities in the upper canyon. The balance is very delicate and we ask your serious consideration of this matter in order to afford the canyon and the stream far greater protection than a protected area designation would provide.

A copy of the Agreement between the State of Idaho and Mr. Hardy is enclosed, and we request that it be made part of the record in this matter. We earnestly urge that the Agreement be considered carefully and that the points raised above also be considered before any action is taken with respect to Box Canyon Creek, and ultimately that a determination be made that Box Canyon Creek should not be included within the protected areas of Idaho.

Thank you very much for your attention to this matter.

Yours very truly,



W. F. Ringert

WFR:am
Enclosure
cc: Commissioner James A. Goller
Commissioner Robert Saxvik