

Name Lacomb Irrigation District
By % Howard Gabel, Sec.
Address 41358 Lacomb Dr. Lebanon, OR 97355
34138 E. Lacomb Rd.
Lebanon, Or. 97355

Date filed September 29, 1980
Priority September 29, 1980 for 45.0 cfs
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Date of approval NOV 25 1986

CONSTRUCTION
Date for beginning NOV 25 1987
Date for completion OCT 1 1988
Extended to

Date for application of water OCT 1 1989
Extended to

PROSECUTION OF WORK
Form "A" filed Started
Form "B" filed Oct. 1, 1988 (Ltr 12/6/88)
Form "C" filed Oct. 1, 1988 (Ltr 12/6/88)

FINAL PROOF
Blank mailed
Proof received
Date certificate issued

Application No. 60823
Permit No. 49822
Certificate No.

Stream Index, Page No. 2-43 D
Plans in hydro flat file drawer 6

FEES PAID		
Date	Amount	Receipt No.
<u>9/29/80</u>	<u>123.00</u>	<u>20736</u>
<u>12-15-80</u>	<u>217.40</u>	<u>21953</u>
<u>8-5-82</u>	<u>141.00</u>	<u>32268</u>
	Cert. Fee	

FEES REFUNDED		
Date	Amount	Check No.
<u>1/23/87</u>	<u>32 -</u>	<u>6370</u>

ASSIGNMENTS				
Date	To Whom	Address	Volume	Page

REMARKS
CARD FOR B OCT 19 1988
power alarm 879
See Plans - Flat File HE 1-4

Lacomb Phone #'s

Norm Camp - TKO

916-221-1611

Steve Janik - TKO atty

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Dick Kingsley - Lacomb
Atty.

258-3194

President

11-17-2002

Helvi McKenna

541-259-2160

34385 Wild Rose Ln.

Lebanon, OR 97355



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS CA. LIC. 391436

See Plans - Flat File HE 1-4

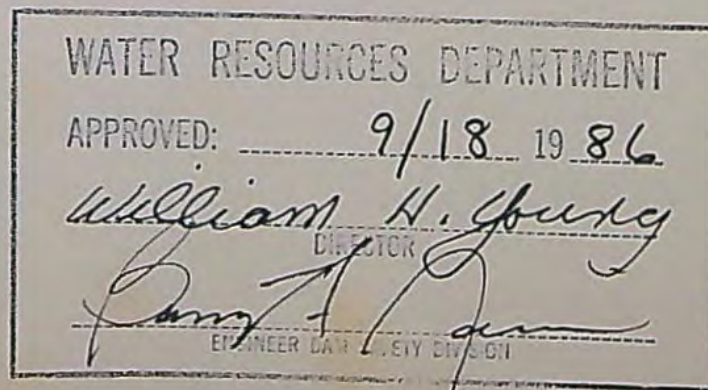
LACOMB HYDROELECTRIC PROJECT

SCOPE OF WORK

PROJECT SPECIFICATIONS

Application No. 60823

Permit No. 49822



ITEM 1 - MOBILIZATION

Mobilize men and equipment to the job site. Establish a field office to be used through the course of construction.

ITEM 2 - INTAKE

Furnish and install complete; including all labor, materials and equipment to construct the intake structure as shown on the attached plans.

ITEM 3 - CANAL RECONSTRUCTION

Furnish all labor, materials and equipment to increase the capacity of the canal to 65 cfs. Refer to the attached canal profile and details.

Station 0+00 to 21+50.

Reconstruct the canal by lowering and re-shaping as shown on drawings as well as lining the invert with 2 1/2 inches of unreinforced air blown mortar.

Station 31+20 to 107+50

Reconstruct canal by raising the canal bank. Embankment material will be excavated from borrow pits adjacent to the canal. Hand trim the vegetation from the canal section. The embankment material will be compacted to 90% density.

Station 117+50 to 176+50

Reconstruct the canal by excavating and reshaping the existing section.

The work on the canal is a reconstruction of the existing canal. The Contractor does not warrant the integrity of the existing or finished canal or leakage from the canal. The contractor is limited to performing the reconstruction in a good workmanship manner in accordance with the attached plans.

Clearing the canal banks and borrow areas will be cleared as required for construction. The brush will be piled for burning and the merchantable timber will be decked for the owner. Any stumpage costs to the land owner will be paid by the owner.

OVERFLOW WEIR:

Furnish and install complete; in accordance with the attached plans, two overflow weirs, one each upstream of the pipe intake structures.

ITEM 4 - PIPELINES

PIPE:

The pipe will be coal tar enamel lined in accordance with AWWA C203-78, steel manufactured, in accordance with AWWA C200-80. The joints will be weld bell and spigot welded on only the inside or outside. The interior lining will not be repaired at the field welds. Angle fittings will be mitered with 22 1/2 degrees maximum per miter in accordance with AWWA C208-83. Thrust blocks will be installed where necessary and will be sized based on soil pressure and safety factors of 1.5.

TRENCH:

Excavate whatever material amounted to provide a minimum of 18 inches of cover over the pipe unless specified otherwise. Bedding and backfill will be native material selected to maximum size of six inches and placed uncompacted, except when pipe is in traveled areas. In traveled areas the bedding and backfill shall be aggregate base and compacted to 95% of normal consolidation pressure.

PENSTOCK:

Furnish and install approximately 1,200 feet of 39 inch OD by 3/16 inch wall pipe from the forebay to the powerhouse. The Shingle Mill Road crossing will be in accordance with the Linn County encroachment permit and the Snow Peak Road crossing will be in accordance with the requirements of Willamette Industries.

PRESSURE TESTING:

Upon completion of the pipeline and thrust block installation and backfilling, the pipe shall be hydrostatically tested by slowly filling the pipeline and visually checking for leaks. The pipes will be monitored continuously for 24 hours and periodically for one year after acceptance by the Owner. Leaks shall be repaired and retested at no additional cost to the Owner.

FLUME PIPE:

Furnish and install approximately 1000 feet of 54 inch OD by 1/4 inch wall pipe to replace the existing flume. The flume will be pushed to the side of the pipe alignment and abandoned. The pipe will be installed along the toe of the existing bench, buried from 1/3 to 1/2 of its diameter. The top portion will be exposed. The entrance to the flume pipe will have a transition from the canal to the pipe including a trash rack with 4 inch spacing. At the option of the contractor the transitions will be fabricated, painted metal or reinforced concrete. Metal transitions will be fabricated 3/16" steel.

SLIDE BYPASS PIPE:

Furnish and install approximately 300 feet of 39 inch by 3/16 inch wall pipe and approximately 780 feet of 48 inch by 3/16 inch wall pipe. The pipe will be buried with a minimum of two feet of cover except for approximately 50 feet across the draw. The 50 feet across the draw will be supported on reinforced concrete pillars with a maximum clear span of 40 feet between pillars. A 12 inch gate valve will be located adjacent to one of the pillars. The concrete pillars will be designed for support and thrust with a minimum safety factor of 1.5. The entrance and exits to and from the pipe will have a transition structure from the canal to the pipe. The entrance transition structure will have a trash rack with a maximum of 4 inch spacings. At the option of the contractor the transitions will be either reinforced concrete or fabricated painted metal.

ITEM 5 - FOREBAY

Furnish all labor, equipment and materials to construct the forebay as shown on the attached plans. The forebay will include a stoplog controlled irrigation outlet, overflow weir and drainage system, trash rack covered penstock intake.

ITEM 6 - POWERHOUSE

The powerhouse will be as shown in the attached preliminary drawings. The foundation and substructure will be reinforced concrete, the walls will be split-faced masonry block. All surfaces of the interior of the powerhouse will be painted in a color selected by the Owner. The roof will be metal construction and will be removable for the installation and removal of equipment.

The powerhouse will include a ventilation system as required, powerhouse lighting and electrical outlets. A work bench and storage cabinet for spare parts will be provided. The doors will be hollow-core metal with a dead bolt lock and weather stripping. The air intake louvers will be provided with filters to minimize dust in the powerhouse.

The tailrace will be constructed from the powerhouse to the existing creek channel and will be rock lined to minimize erosion. The powerhouse parking area will be surfaced with a minimum of 6" of gravel.

The grounding grid in the foundation of the powerhouse will be provided as required by the generator and switchyard fault currents.

ITEM 7 - TURBINE/GENERATOR/SWITCHGEAR

TURBINE:

Francis turbine supplied by Gilkes of Kendal, England (turbine order is attached)

GENERATOR:

The generator will be a 1055KVA, 4160 volt manufactured by KATO. The generator specifications and order is attached.

TURBINE/GENERATOR CONNECTION

The connection will be a solid coupling without a flywheel. Turbine is overhung off of generator shaft.

BEARING LUBRICATION

All of the bearings will be sleeve type. The generator bearing which carries the thrust will have an oil circulating and cooling system. The oil circulating pump is required during overspeed which requires battery back-up. There are two oil pumps. One is a mechanical pump mounted on the generator shaft, the other is an electrical pump mounted on the main oil sump. The cooling system will feed oil through the heat exchange which is part of the penstock casing.

SPARE PARTS

The RTA contract allows for a total of \$7,500 for spare parts.

INSURANCES

- 1) Turbine
Gilkes is providing a CIF delivery to Port of Seattle.
- 2) Generator
KATO is providing insurance for their equipment to the Project.

SINGLE LINE DIAGRAM

Single line diagram is attached

UTILITY REQUIREMENTS

- 1) Protective relays
 - a) Current relays
 - b) Over and undervoltage relays
 - c) Overcurrent/undervoltage relays
 - d) Frequency relays
 - e) Ground fault relay
 - f) Line impedance relays
- 2) All protective relays are required to be utility grade.

METERING

- 1) Kilowatt 3Ø
- 2) Generator Voltage 3Ø
- 3) Line Voltage 3Ø
- 4) Generator Current 3Ø
- 5) Power Factor
- 6) Vars
- 7) Diversion Water Level
- 8) Speed
- 9) Bearing Temperatures
- 10) Stator Temperature
- 11) Generator Neutral Current
- 12) Nozzel Position
- 13) Battery Voltage

NORMAL SHUT DOWN SEQUENCE

- 1) Power will be reduced by closing the wicket gates (approximately one minute).
- 2) Main breaker will be opened by reverse power relay.
- 3) Conditions for normal shutdown.
 - a) hot bearing level 2
 - b) hot generator winding
 - c) oil pump failure
 - d) DC system low voltage
 - e) manual/normal stop push button
 - f) governor low oil pressure
 - g) reverse power (motoring)
- 4) Emergency Shut Down Sequence
 1. Main breaker opens
 2. Generator/overspeeds
 3. Wicket gates begin to close
 4. Bearing oil pumps will have battery backup to continue lubrication during overspeed until the unit stops rotating.
 5. Conditions for emergency shutdown.
 - a) protective relay signal
 - b) grid failure
 - c) manual emergency stop push button
 - d) contactor opens while running
 - e) generator fault level 2
 - f) transformer neutral overcurrent
 - g) generator neutral overcurrent
 - h) generator differential overcurrent(acutally a sum of the currents not equal to zero method)

- i) undervoltage
- j) overvoltage
- k) voltage controlled overcurrent
- m) overfrequency
- n) turbine overspeed

5. Starting Sequence

1. Starting sequence will be both manual and automatic with one button.
2. Clearance signal from all protection and alarms.
3. Synchronize with governor and auto-synch by incrementally adjusting the wicket gate.
4. Close breaker.
5. Increase power by opening wicket gates which are controlled by diversion water level.

The contractor will make a substantial effort, but not guarantee to successfully develop an auto restart. The proposed plan at this time is:

- a) An emergency stop would be performed.
- b) The computer would check the cause of fault.
- c) If the faults were certain line faults, the computer would restart the system and close the breaker if the faults cleared.
- d) The control would then return to water level.
- e) If the faults did not clear after 5 to 10 minutes or if unacceptable faults tripped the unit, or if more than three trips are received in one hour, it would shut down.

Alarms

- 1) Alarm only signals will be sent under the following conditions:
 - a) Hot bearing Level 1
 - b) Generator fault Level 1
 - c) Bearing oil high or low

Telemetry System

1. The telemetry system will be centered around a computer similar to Scotts Flat project. The system will have the following features:
 - a) Video monitoring presentation of alarms and analog signals.
 - b) Automatic telephone dialing to operators and others of alarms and shut downs.

2. The computer will monitor:
 - a) All emergency stop signals
 - b) All normal stop signals
 - c) All alarm signals
 - d) Status of turbine isolation valve.
 - e) Wicket gate position.
 - f) Water level
 - g) Bearing temperature
 - h) Kilowatts 0 to 1000
 - i) Kilovars 1000 to 0 to +1000
 - j) Speed RPM 0-2000
 - k) Power Factor 50% to 0 to +50%
3. The computer may be accessed over the telephone by another computer or by remote telephone.
 - a) If by computer all computered monitored information can be accessed by the remote computer.
 - b) If by voice the computer will audibly state alarm conditions and kilowatt production.

Other Miscellaneous Signals

1. Initial conditions
 - a) Emergency stop - not active
 - b) Normal stop - not active
 - c) Low bearing oil flow and turbine spinning
 - d) Turbine isolation valve open.
2. Turbine isolation valve closed.
3. Oil pump running.
4. Apply field.
5. Contactor open.
6. Auto/manual sync.
7. Auto water level control.

Motor DC System

1. The DC system will provide emergency back-up power to the following:
 - a) computer and telemetry controls
 - b) turbine isolation valves
 - c) oil pump
2. The valve motors shall be 240 volt single phase. AC power through an automatic transfer switched inverter shall be supplied.

(May change to a DC system)

3. The DC system shall have sufficient capacity to operate the valve through two cycles and the oil pump for two hours.
4. The DC system will be 120 volts.
5. The batteries shall be a deep cycle type suitable for the service
6. The status of the DC system will be monitored and alarmed.

Control DC System

1. Isolated from motor system to prevent motors from interfering with computer controls.
2. Automatic transfer switch from line to inverter in less than 11 milliseconds to insure proper and continuous computer operation.
3. Sufficient DC power to run computer and telemetering for two hours or more.
4. Computer grade non-interruptable power system.

Diversion Control Cables

1. The control cables for the water level signal from the diversion to the powerhouse will be two twisted pairs installed in 1 1/2 PVC buried conduit.
2. Pull boxes will be installed at maximum intervals of 500 feet.
3. If any of the conduit must be installed exposed, the conduit will be schedule 40 galvanized metal.

ITEM 8 - ACCESS ROADS

Description:

There is approximately 2.5 miles of access road to the diversion and 1100 feet to the powerhouse. Permanent, all-weather gravel access roads will be developed to the diversion and powerhouse. The roads will be approximately 10 feet wide, with the gravel layer six inches thick.

Drainage:

Culverts will be installed where necessary.

Road Grade:

The centerline road grade will not exceed 20%.

Encroachment Permits:

The contractor will acquire encroachment permits for access roads from Linn County for the forebay area and from Willamette Industries for the powerhouse area.

Gravel:

The cost for the access roads is based on acquiring the gravel from a nearby pit from Willamette Industries at no cost to the contractor.

ITEM 9 - SWITCHYARD/POWERLINE

Main Power Transformer:

1. Size 1000 KVA
2. 4160 VAC, 6 Delta to 20,784 VAC Wye phase to phase
3. Neutral on 20,784 side will be low Z grounded
4. Outdoor type, pad mounted, oil filled
5. Underground entrance of 20KV
6. Underground entrance of 4KV
7. Four taps will be provided, two above and two below on 2 1/2% increments.
8. Oil level indicator.
9. Automatic pressure release
10. Temperature indicator with an alarm and a trip contact.
11. Oil drain valve with a sampling device.
12. Non PCB type oil.
13. Manufacturer shall test transformer and furnish a copy of the test results.

Station Power:

1. The station power will be provided through either a single 10KVA 3Ø or three 5KVA 1Ø 120/240V to 4160V pole mounted transformers.

Switch & Surge Arrestors

The switchyard will include pole mount 20 air switch and surge arrestors.

Transformer Pad

The transformer pad will be concrete with a ground grid.

Grounding

The yard inside the fence and the fence will be grounded.

Utility Metering

PP & L cabinet and related transformers are not included in the RTA contract.

High Voltage Switch

1. Three phase, 60Hz, AC
2. 20,784 VAC phase to phase
3. Switch will be pole mounted

The powerline from the switchyard to the County Road (approximately 1200 feet) will be designed for 20,000 volts in accordance with the Government Order 95, National Electric Code and applicable State of Oregon codes. The powerline will also be constructed in accordance with the latest Raptor Proof requirements and follow the penstock route.

The powerline will be as approved by the utility company. An air-disconnect switch will be furnished at the terminous pole near the County Road.

ITEM 10 - INSTALLATION & COMMISSIONING

All equipment will be installed in accordance with the manufacturers' recommendations and standards. Prior to starting the plant all manufacturers recommended tolerances will be verified in order to validate warranties.

All pre-parallel testing will be performed in order to assure the utility that the adequate protective relays and devices have been installed. After the utility has approved the pre-parallel testing the system will be brought on line to generate power.

PERFORMANCE TESTING:

The performance test of the generating unit and each other portion of the project shall be designed so as to ensure that the work meets the equipment guarantees including the power output guarantees. The power output testing performed by the Contractor will be limited to the test described herein. The Owner may perform any additional tests he determines necessary.

Complete start-up, shutdown, load pick up and load inspection tests will be carried out to verify the regulation performance guarantees.

The above test will be carried out in addition to the standard mechanical and electrical checks and tests and the mechanical run and commissioning tests for this type of generating equipment.

Complete operational tests will be carried out on all mechanical and electrical service auxiliaries.

The tests will be carried out in accordance with requirements of the following standards and any other standards customarily followed in accordance with the highest standards generally prevailing in the industry:

IEC	AGMA
ASME	ASTM
NEMA	IEEE
CMA	ANSI

Water flow measurements will be made based on a measurement at the intake structure and standard weir formulas, or by Ott Water. Ott Water costs will be paid by the Owner.

Pressure or head measurements will be made with commercially available three inch diameter pressure gages, with the smallest scale available, located at the intake to the turbine.

Turbine efficiencies will be calculated based on flow measurements, pressure measurements, kilowatt meter readings and stated or calculated losses of the generator and other equipment between the meter and the turbine. Turbine efficiency tests will be made at the highest flow rate possible depending on the available water and at two lower flow rates as determined by the Owner.

Utility protective relays will be tested as required by PP & L. All equipment will be demonstrated to be in full operating condition.

OPERATOR TRAINING:

Operators as provided by the Owner will be trained to operate and maintain the plant. The plant will be designed and constructed with the intention of the project being operated by unskilled personnel. The main qualifications of the operator that will be required is that he is reliable and can take directions.

OPERATIONS AND MAINTENANCE MANUALS:

The Contractor will provide O & M Manuals. The O & M Manuals will include:

- a) As-Built Drawings of the entire project.
- b) O & M Manuals from the turbine and generator manufacturers', including maintenance instructions.
- c) Manufacturers' catalog and technical information for each device used in the project.
- d) Operator's instructions for all starting and shut down procedures.
- e) Daily, weekly, monthly and annual maintenance procedures.
- f) Outline for data to be collected.
- g) Normal and abnormal limits on monitoring devices.

GENERAL

CLEARING AND PIONEERING

The clearing and pioneering work will include all work necessary for the subsequent phase of work. Merchantable timber will be cut, trimmed and decked for handling by the Owner. Brush will be pushed to the site of the alignment of the canal or pipeline. Where brush is piled it will be burned.

REINFORCED CONCRETE

CONCRETE:

1. Concrete design, mixing and placing will meet the codes and standards set forth by the American Concrete Institute (ACI) and the American Society for Testing and Materials (ASTM).
2. All concrete test samples and concrete testing will be in accordance with ASTM C 172, ASTM C31 and ASTM C 39.
3. Compressive field strength will be no less than 3000 psi after 28 days (unless noted otherwise).
4. Concrete slump will be between 2 to 4 inches.
5. Horizontal construction joints will be prepared to expose clean, solidly embedded aggregate over the entire joint surface to an amplitude of 1/4 inch. All laitance and standing water will be removed.

REINFORCEMENT:

1. Reinforcing steel will be deformed bars and conform to ASTM A-615 Grade 40 less than #5; Grade 60 #5 or larger (unless noted otherwise).
2. All detailing fabrication and erection of reinforcing steel, unless noted otherwise will follow the ACI "Manual of Standard Practice for Detailing Reinforced Concrete Structures" (the latest edition).
3. All dimensions shown for location of main reinforcing steel and noted "clear" (or clr.) are to the face of the bar and denote clear coverage.
4. Walls will be reinforced at tops, bottoms, corners, edges, intersections and intermediately, so as to form a continuous grid work tying all parts of the concrete or block structure together.

5. Splices in continuous reinforcing will have laps of 40 bar diameters (5 X bar #) minimum in masonry construction and 32 bar diameters (4 X bar #) minimum in concrete construction. Except where shown otherwise, horizontal laps in adjacent bars will be staggered 5'-0" minimum.
6. Provide reinforcing steel dowels at construction joints. Dowels will be same size and spacing as reinforcing steel. See concrete note #5.
7. Unless specifically noted otherwise, concrete coverage will be:

Concrete cast against ground (except slabs) 3"	
Concrete to be in contact with ground	
weather or water, but is placed against	
forms:	
#5 or larger	2"
less than #5	1 1/2"
Concrete not to be exposed to ground,	
weather or water	
Beams and Columns	1 1/2"
Slabs, Joists, Walls	3/4"

FORMWORK/FALSEWORK:

1. All formwork will meet the safety requirements set forth by the Division of Occupational Safety and Health (OSHA).
2. Formwork will be removed only after the concrete has sufficient strength to support its own weight and the weight of loads placed upon it.

STRUCTURAL STEEL:
STEEL

1. Unless otherwise noted, structural steel will conform to ASTM A-36 and bolts will conform to ASTM A-307 (cadmium plated, unless noted as stainless steel).
2. Bolt holes will be 1/16" maximum larger than bolts.
3. Shop drawings will be submitted before fabrication.
4. Structural steel will be fabricated and erected in accordance with the latest AISC Specifications and Code of Standard Practice.
5. Welding will be electric arc in accordance with AWS Standards, using only certified welders.
6. Painting
 - a) Cleaning, removing all dirt, grease, oil, loose rust or other loose material. Light sanding, sand blasting or an acid wash may be necessary.
 - b) Prime - One coat of Rust-Oleum 2169 red primer.
 - c) Finish Coats - Two coats of Rust- Oleum Industrial Coatings.

COMPACTION DENSITY STANDARD:

Standard Proctor ASHTO T-99 or ASTM D698

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FEDERAL ENERGY
REGULATORY COMMISSION

APR 25 2007

PORTLAND
REGIONAL OFFICE



April 4, 2007

Pat Reagan
FERC
101 SW Main Street, Suite 905
Portland, OR 97204

P-6648

Reference #: Lacombe 6648

To Whom It May Concern,

The Lacombe Irrigation District in Lebanon, OR is in the process of planning for the replacement of the fish screen at its diversion point on Crabtree Creek in Linn County, Oregon. The current rotary drum screen has been determined to be in need of replacement by Oregon Department of Fish and Wildlife. A passive horizontal Farmers Screen will be installed, greatly improving fish passage and reducing operation and maintenance costs.

Three copies of the engineering plans and all permits have been included with this letter along with specifications and quality control information from the project contract documents. The project construction is planned to begin on or around July 15th, 2007 and to be completed by December of 2007.

Lacombe Irrigation District and Farmers Conservation Alliance have worked closely with the Federal and State resource agencies to design a project that meets or exceeds all state and federal requirements for fish passage and streamside construction.

If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Les Perkins
Farmers Conservation Alliance

CC: Lacombe Irrigation District



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Oregon Fish and Wildlife Office
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266

Phone: (503)231-6179 FAX: (503)231-6195

Reply To: 6449.0601
File Name: FCA/Lacomb Project
TS Number: 06-2458

AUG 21 2006

Les Perkins
Farmers Conservation Alliance
P.O. Box 1621
Hood River, OR 97031

Dear Mr. Perkins:

This letter is in regards to the Lacomb Irrigation Screening Project in Linn County, Oregon. The Fish and Wildlife Service (Service) is working in cooperation with the Farmers Conservation Alliance (FCA) through the Partner's for Fish and Wildlife Program to restore habitat conditions at Crabtree Creek, tributary to the Santiam River. These benefits will be accomplished through placing a horizontal flat plate fish screen at the irrigation diversion site that will safely pass fish at all river flows.

The Service is pleased to notify you that Federal environmental and cultural clearances for the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and a Level I Contaminant Survey have been completed. Also, if State and/or local permits are needed, they must be obtained before on-the ground activities commence. Please follow the terms and conditions of each permit, as well as the Project Design Standards (PDS's) set forth in this letter. PDS's for general and fish passage projects are enclosed, as well as the fish salvage protocols and reporting form. Please note PDSs pertaining to equipment operation, pollution and erosion controls, construction techniques, restoration materials, fish and wildlife requirements, and screening. The attached PDS's must be incorporated as part of the project in order to be in compliance with the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act.

The Landowner Agreement between the Service and the landowner, Lacomb Irrigation District has already been signed and returned to our office; therefore project activities may begin at any time.

In the unlikely event that; 1) archeological sites or deposits (e.g., arrowheads, rock chips, ground stone, square nails, "purple" glass, bone or even tin cans that may suggest a subsurface deposit that is greater than 50 years old) are discovered, 2) Environmental contaminants such as toxic chemicals or hazardous debris are unearthed (indications of contaminants may include dead or dying animals in the vicinity, localized spots of dead vegetation different from surrounding areas, discolored or oily water or soil, or strange smells), or 3) a sick, injured, or dead federally listed species is observed, please suspend work and notify the Service immediately at (503) 231-

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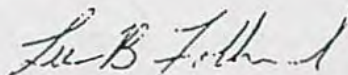
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IN AMERICA** 

6179. Upon Service review of the findings, work activities can only resume after the Service provides written confirmation. Should work continue without this confirmation, the Service will not be able to provide cost-share on the continued work.

In addition, any hazardous spills occurring because of project activities should be reported to the Oregon Emergency Response System at 1-800-452-0311 within 24 hrs. Emergency response, removal, transport, and disposal of hazardous materials must be done according to the U.S. Environmental Protection Agency and Oregon Department of Environmental Quality laws and regulations.

Please contact Timmie Mandish at (503) 231-6179 if you have any questions. We appreciate your commitment to conservation and thank you for participating in the Partners for Fish and Wildlife Program.

Sincerely,


for Kemper M. McMaster
State Supervisor

Enclosure

ATTACHMENT II

LANDOWNER AGREEMENT FOR RESTORATION PROJECTS UNDER THE OREGON PARTNERS FOR FISH AND WILDLIFE PROGRAM

THIS AGREEMENT, made and entered into this 27 day of JULY, 06, by and between, Lacombe Irrigation District (41984 Cutoff Drive, Lebanon, OR 97355); hereinafter called Owner (s), for themselves, executors, administrators, successors, and assigns; and the Fish and Wildlife Service (2600 S.E. 98th Avenue, Suite 100, Portland, OR 97266), hereinafter called the Service.

The Service enters into this Agreement pursuant to and in accordance with Section 1 of the Fish and Wildlife Coordination Act (48 Stat/401 as amended; 16 U.S.C. 661 et seq.) and Section 7 of the Fish and Wildlife Act of 1956, 16 U.S.C. 742f(a)(4).

The signatories to this agreement will work in partnership with the Service and other cooperators to accomplish specific restoration activities for the benefit of fish and wildlife resources on their property. The parties have a common interest in improving the current condition and/or expanding the extent of habitat on their lands, which are located in the (11S, 1E, 25), Willamette Meridian. This Agreement provides for the limited interchange of services, equipment, and funds to meet the objectives of the project. A project description, which includes the specific work to be completed, is attached hereto and incorporated herein as Attachment A (Project Scope).

The terms of this agreement will be for 10 years (*minimum of 10 years*) beginning upon signature 2006, and ending signature date in 2016. During this 10 year period, the Owner(s) agree not to intentionally compromise the integrity of the restoration work and site. The Owner(s) also agree(s) to:

1. Provide reasonable property access to Service, to plan, complete, and monitor the long-term condition of the project site on a yearly basis. Notice shall be given to Owner(s) or designated agent(s) prior to entering the site;
2. Obtain any Federal, State, and local permits, if required, for the project; and
3. Insure that no project activities begin until notification has been received from the Service Project Manager that all applicable Federal, State, and local regulations have been met and all necessary permits have been issued.

This agreement may be modified at any time by mutual written consent by authorized representatives of all the parties. Any party may seek termination of this agreement by providing notice in writing to the other parties that it desires the agreement to be terminated. Such termination shall be effective thirty (30) days after authorized representatives of all parties have agreed in writing to such termination. If termination is initiated by the Owner(s), the Service will be reimbursed for the portion of the costs of the restoration project provided by the Service.

This agreement does not authorize the Service to assume any ownership interest in or jurisdiction over said premises. The Owner(s) retains all rights to control trespass and retains all responsibility for taxes, assessments, and damage claims.

Each of the parties to this agreement agrees that it will be liable for its own acts and the acts of its employees, agents, representatives, subsidiaries, or affiliates, and the results thereof, in connection with the performance of its obligations under this agreement, and for its own acts and the acts of its employees, agents, representatives, subsidiaries, or affiliates, and the results thereof, that occur on the land, unless such acts or results arise from the negligent or willful acts, or omissions of the other parties to this agreement, their employees, agents, representatives, subsidiaries, or affiliates.

A change in ownership shall not change the terms of this agreement. The agreement and terms shall be in effect on the described land for the period of the agreement unless the agreement is terminated earlier in accordance with the provisions contained herein. The Owner(s) will notify the Service of changes in ownership within thirty (30) days. In the event of such transfer of ownership, the Owner(s) shall provide a copy of this agreement to the succeeding owner prior to such transfer.

Upon expiration or termination of this agreement, the Owner(s) assumes full and complete responsibility for all restoration developments made under this agreement.

Lacomb Irrigation District, guarantees ownership of the above-described land and warrant that there are no outstanding rights which interfere with this agreement.

IN WITNESS THEREOF, the parties have executed this Agreement on the day, month, and year last indicated:

Landowner(s):

By:

Ann Cate
(Signature)

Date: 7-27-06

U.S. Fish and Wildlife Service:

By:

Lu B. Fink
(Signature)

Date:

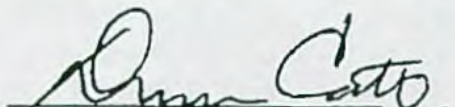
8/8/06

Title: *Supervisory Fish & Wildlife Biologist*

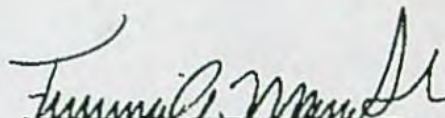
ATTACHMENT A:

Project Scope

FCA in cooperation with the landowner, Lacombe Irrigation District, USFWS, and other organizations will restore fish passage and habitat conditions for Winter Steelhead, Spring Chinook, Rainbow Trout, Cutthroat Trout, Pacific Lamprey fish species along Crabtree Creek, tributary to Santiam River. Restoration activities will include the installation of a horizontal flat plate screen at the current fish passable diversion structure to allow fish species unhindered passage and to eliminate risk of entrainment or loss into agricultural fields. *Lacombe Irrigation District retains ownership of this screen and agrees to maintain the screen in working order for the next 10 years.* Through this project, 13.5 miles of habitat will be opened to unhindered fish passage throughout all times of the year.


Owner(s) 7-27-06

Name: Lacombe Irrigation District
Phone: (541)451-2869


Service Project Manager

Name: Timmie Mandish
Phone: 503-231-6179

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
☎ 503-378-3805

Permit No.:	36725-RF
Permit Type:	Removal-Fill
Waterway:	Crabtree Creek
County:	Linn
Expiration Date:	August 14, 2007
Corps No.:	2006-00414

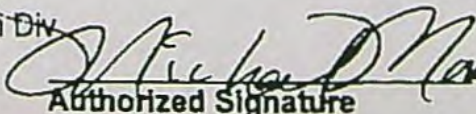
LACOMB IRRIGATION DISTRICT

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. A copy of the permit shall be available at the work site whenever operations authorized by the permit are being conducted.
6. Employees of the Department of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
7. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
8. In issuing this permit, the Department of State Lands makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390 and related administrative rules.
9. Permittee shall defend and hold harmless the State of Oregon, and its officers, agents, and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 - 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Department of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Department of State Lands, 503-378-3805.

Michael Morales, W Region Manager
Wetlands & Waterways Conservation Div.
Oregon Department of State Lands



Authorized Signature

August 14, 2006
Date Issued

ATTACHMENT A

Permittee: Lacombe Irrigation District

Special Conditions for Removal/Fill Permit No. 36725-RF

PLEASE READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT. This project may be site inspected by the Department of State Lands as part of our monitoring program. The Department has the right to stop or modify the project at any time if you are not in compliance with these conditions. A copy of this permit shall be available at the work site whenever authorized operations are being conducted.

1. This permit authorizes the placement of up to 500 cubic yards and removal of up to 20 cubic yards of rock, gravel, sand, and silt in T 11S, R 1E, Section 25, Tax Lot 4000 in Crabtree Creek, Linn County, as outlined in the attached permit application, map and drawings, dated June 2006.
2. **TURBIDITY/EROSION CONTROLS.** The authorized work shall not cause turbidity of affected waters to exceed 10% over natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient of 2% or less), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring intervals per 24 hour work period provided all practicable control measures have been implemented. This turbidity standard exceedance intervals applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land.

For projects in all other areas, the turbidity standard can be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects may also be subject to additional reporting requirements.

Turbidity shall be monitored during active in-water work periods. Monitoring points shall be at an undisturbed site (representative background) 100 feet upstream from the turbidity causing activity (i.e., fill or discharge point), 100 feet downstream from the fill point, and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard.

The following erosion control measures (and others as appropriate) shall be observed:

- a. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures shall be used sufficient to prevent movement of soil from uplands into waterways or wetlands.
- b. To prevent erosion, use of compost berms, impervious materials or other equally effective methods, shall be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
- c. Erosion control measures shall be inspected and maintained daily, or more frequently as necessary, to ensure their continued effectiveness and shall remain in place until all exposed soil is stabilized.
- d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas shall use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities shall be stabilized by mulching and native vegetative

Attachment A

36725-RF

Page 3 of 3

- plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the permitted work, they shall be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
- e. Where vegetative erosion control is being done on cut slopes steeper than 1H:2V, a tackified seed mulch shall be used so the seed does not wash away before germination and rooting.
 - f. Dredged or other excavated material shall be placed on upland areas having stable slopes and shall be prevented from eroding back into waterways or wetlands.
3. Erosion control measures shall be maintained as necessary to ensure their continued effectiveness, until soils become stabilized. All erosion control structures shall be removed when project is complete and soils are stabilized and vegetated.
 4. HAZARDOUS, TOXIC AND WASTE MATERIALS. Petroleum products, chemicals, fresh cement sandblasted material and chipped paint or other deleterious waste materials shall not be allowed to enter waters of the state. No wood treated with leach able preservatives shall be placed in the waterway. Machinery refueling is to occur off-site or in a confined designated area to prevent spillage into waters of the state. Project-related spills into water of the state or onto land with a potential to enter waters of the state shall be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
 5. All exposed soils shall be stabilized during and after construction in order to prevent erosion and sedimentation.
 6. If any archaeological resources and/or artifacts are uncovered during excavation, all construction activity shall immediately cease. The State Historic Preservation Office shall be contacted (phone: 503-986-0669).
 7. The Department of State Lands retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.
 8. Fill and removal activities in Crabtree Creek shall be conducted between July 15 and August 31, unless otherwise coordinated with ODFW and approved in writing by ODSL.
 9. Waste materials and spoils shall be placed in an upland location above the top of bank and shall be suitably stabilized to prevent erosion.
 10. There shall be no operation of equipment in the water. Work in the water shall be conducted from top of the bank.
 11. There shall be no heavy equipment operating or traversing outside the construction corridor or footprint.
 12. Fish salvage from the isolated work area shall occur in coordination with Oregon Department of Fish and Wildlife (i.e. in the presence of an ODFW biologist or with a Scientific collection Permit issued by ODFW).

August 14, 2006

J:\Attachment\westLASRF Removal Fill Permits\36725-RF.doc



**US Army Corps
Of Engineers (Portland District)**

Joint Permit Application Form



DATE STAMP

AGENCIES WILL ASSIGN NUMBERS

Corps Action ID Number

Oregon Department of State Lands No

SEND ONE SIGNED COPY OF YOUR APPLICATION TO EACH AGENCY

District Engineer
ATTN: CENWP-OP-GP
PO Box 2946
Portland, OR 97208-2946
503-808-4373

AND

West of the Cascades:
State of Oregon
Department of State Lands
775 Summer Street NE Suite 100
Salem, OR 97301-1279
503-378-3805

OR

East of the Cascades:
State of Oregon
Department of State Lands
1645 NE Forbes Road, Suite 112
Bend, Oregon 97701
541-388-6112

(1) Applicant Name and Address	Dean Castle, Chairman of the Board Lacomb Irrigation District 41984 Cutoff Drive Lebanon, OR 97355	Business Phone # Home Phone# 541.451.2869 FAX # 541.619.0626 E-mail:
Authorized Agent Name and Address (Signature required in Block 9) <input checked="" type="checkbox"/> Consultant <input type="checkbox"/> Contractor	Les Perkins Farmers Conservation Alliance P.O. Box 1621 Hood River, OR 97031	Business Phone # 541.490.4062 Home Phone# 541.352.4273 FAX # 541.386.1203 E-mail: lperkins@hoodriverelec tric.net
Property Owner Name and Address (If different than applicant) ¹		Business Phone # Home Phone# FAX # E-mail:

(2) PROJECT LOCATION

Street, Road or other descriptive location		Legal Description (attach tax lot map)		
Access off of Snow Peak Dr., Diversion at river mile 23.5 on Crabtree Creek. See attached directions.		Quarter/Quarter SW/SE	Section 25	Township 11S Range 1E
In or Near (City or Town) Lacomb	County Linn	Tax Map # 111e00		Tax Lot # ² 4000
Waterway Name (pick one) Crabtree Creek	River Mile (if known) 23.5	Latitude 44.59167 N		Longitude 122.65833 W
Do you consent to allow Corps or Dept. of State Lands staff to enter into the above-described property? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				

(3) PROPOSED PROJECT INFORMATION

Type:	<input checked="" type="checkbox"/> Fill	<input checked="" type="checkbox"/> Excavation (removal)	<input type="checkbox"/> In-Water Structure	<input type="checkbox"/> Maintain/Repair an Existing Structure
Brief Description:	Replacing an existing fish screen and constructing a new fish return.			
Fill				
<input type="checkbox"/> Riprap <input checked="" type="checkbox"/> Rock <input checked="" type="checkbox"/> Gravel <input checked="" type="checkbox"/> Sand <input checked="" type="checkbox"/> Silt <input type="checkbox"/> Clay <input type="checkbox"/> Organics <input type="checkbox"/> Other:				
Wetlands (cy)	Permanent	Temporary	Total Fill	
	Impact Area in Acres	L'	W'	H'
Waters (cy)	Permanent 500	Temporary 100	Total Fill 600	
	Impact Area in Acres or dimensions (feet)	L' 100	W' 50	H' 5
Removal				
<input type="checkbox"/> Riprap <input checked="" type="checkbox"/> Rock <input checked="" type="checkbox"/> Gravel <input checked="" type="checkbox"/> Sand <input checked="" type="checkbox"/> Silt <input type="checkbox"/> Clay <input type="checkbox"/> Organics <input type="checkbox"/> Other:				
Wetlands (cy)	Permanent	Temporary	Annually	Total Removal
	Impact Area in Acres	L'	W'	H'
Waters	Permanent 20	Temporary	Annually	Total Removal 20

NOTE: Italicized areas are not required by the Corps for a complete application, but are requested by DGL.

¹ If applicant is not the property owner, permission to conduct the work must be attached.² Attach a copy of all tax maps with the project area highlighted.

(cy)	Impact Area in Acres or dimensions (feet)	L'	100	W'	25	H'	5
Is the disposal area upland? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Impervious surface created? <input type="checkbox"/> <1 acre? <input type="checkbox"/> >1 acre?					
Are you aware of any state or federal Endangered Species on the project site?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If yes, please explain in the project description (in block 4)			
Are you aware of any Cultural/Historic Resources on the project site?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Is the project site within a national Wild & Scenic River?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Is the project site within a state Scenic Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					

(4) PROPOSED PROJECT PURPOSE & DESCRIPTION**Project Purpose and Need:**

Provide a description of the public, social or economic benefits of the project along with any supporting formal actions of a public body (e.g. city council, special district board), as appropriate.

The current fish screen at this location has been identified by Oregon Department of Fish and Wildlife as a screen in need of replacement. This project will benefit all fish species present by improving the screening device and providing safe return to the river channel for all fish species present. Fish will be excluded from the irrigation diversion canal, eliminating an entrainment issue. The new fish screen is substantially self-cleaning and has been shown to be safe for fish at all stages of life. The new fish screen will dramatically reduce operation and maintenance costs for Lacombe Irrigation District. This project will benefit all fish species present as well as the water users within the Lacombe Irrigation District with improved fish passage and more reliable and economic diversion of irrigation water. This project is part of Lacombe Irrigation District's Capital Improvement Plan. This project will include site restoration for an upland area that has been repeatedly disturbed and has had exposed soils for the past 3 decades. This project is partially funded with FRIMA funds administered by the Oregon Department of Fish and Wildlife. The funds are allocated to projects that are ranked as high priority by ODFW and USFWS.

Project Description: Include the following information:

- ☐ Volumes and acreages of all fill and removal activities in waterway or wetland separately
- ☐ Permanent and temporary impacts
- ☐ Types of materials (e.g., gravel, silt, clay, etc.)
- ☐ How the project will be accomplished (i.e., describe construction methods)
- ☐ For work in waterways where fish are likely to be present, complete and attach a plan to isolate the work area from the flowing water. (See the Section A of the Resource Plan Guidance Document.)
- ☐ If native migratory fish are present (or were historically present) and you are installing, replacing or abandoning a culvert or other potential obstruction to fish passage, complete and attach a statement of how the Fish Passage Requirements, set by the Oregon Department of Fish and Wildlife will be met. (See Section B of the Resource Plan Guidance Document.)
- ☐ For fish habitat or wetland restoration or enhancement activities, complete the supplemental Fish Habitat or Wetland Restoration and Enhancement form

This project will involve 600 cubic yards of fill material in a waterway. This material will be composed of rock and gravel from off-site, and silt/soil from on-site.

The removal of material from below the high water line will involve approximately 20 cubic yards of material. The removed material will be stored upland under an impervious surface for later use in final grading and restoration of the disturbed areas.

This project will replace an existing rotary drum fish screen with a horizontal Farmers Screen that allows for safe bypass of fish and debris. The new screen will be constructed within the area of the settling pond for the current screen to minimize new disturbance of the site. The construction area will be isolated by constructing a temporary bypass channel that will allow the current screen to be utilized during construction. The current screen has a head-gate that can be closed to isolate the project site during construction. The intake and head-gate will not be altered. Water flow will be stopped during construction phases that will affect the water quality. The project will proceed under the following schedule:

- 1) Close the head-gate and canal gate and open the fish return gate to allow the basin to drain to the river along with any fish present in the basin. A fish biologist from ODFW or USFW will be on hand to assist with any stranded fish.
- 2) Create a temporary channel to convey water to existing screen and to isolate the construction area. The head-gate and return to the river will be closed for this process to isolate the area.
- 3) Perform site grading and laying of rock base for fish screen construction. The base rock will be supplied from a local rock pit by the contractor. All removed material will be staged at least 150' from the waterway and will be used for final site grading.
- 4) Construct fish screen (concrete and steel). The concrete will be poured on site and the steel portion of the screen will be

fabricated off-site and then placed into the concrete frame.

- 5) Create new fish return channel.
- 6) Stop flow through existing screen by closing head gate and canal gate.
- 7) Tie in new screen to head-gate, fish return, and canal.
- 8) Open head-gate and begin flow across new screen.
- 9) Perform clean-up of construction site.
- 10) Plant disturbed area with native trees, shrubs, and grasses.

The construction project will require the use of a track-hoe and dumptruck for site grading and formation of the temporary bypass channel and new fish return. The access to the construction site is by a private graveled access road. There will be portable toilets located on site for the construction crew and construction debris will be hauled off site daily.

For additional information please see the attached Work Area Isolation Plan and Fish Passage Plan.

Project Drawings:

State the number of project drawing sheets included with this application: 12

A complete application must include a location map, site plan, cross-section drawings and recent aerial photo as follows and as applicable to the project:

- ☐ Location map (must be legible with street names)
- ☐ Site plan including
 - ☐ Entire project site and activity areas
 - ☐ Existing and proposed contours
 - ☐ Location of ordinary high water, wetland boundaries or other jurisdictional boundaries
 - ☐ Identification of temporary and permanent impact areas within waterways or wetlands
 - ☐ Location of staging areas
 - ☐ Location of construction access
 - ☐ Location of cross section(s), as applicable
 - ☐ Location of mitigation area, if applicable
- ☐ Cross section drawing(s) including
 - ☐ Existing and proposed elevations
 - ☐ Ordinary high water and/or wetland boundary or other jurisdictional boundaries
- ☐ Recent Aerial photo (1:200, or if not available for your site, the highest resolution available)

Will any construction debris, runoff, etc., enter a wetland or waterway? ☐ Yes ☒ No

If yes, describe the type of discharge and show the discharge location on the site plan.

Estimated Project Start Date: August 1, 2006

Estimated Project Completion Date: October 15, 2006

(5) PROJECT IMPACTS AND ALTERNATIVES

Describe alternative sites and project designs that were considered to avoid impacts to the waterway or wetland. (Include alternative design(s) with less impact and reasons why the alternative(s) were not chosen.) Describe what measures you will use (before and after construction) to minimize impacts to the waterway or wetland.

Alternative sites were not considered as this is replacement of an existing fish screen on an existing diversion. Alternative screen designs were not considered as the Farmers Screen was determined to be the best technology for the site by Oregon Department of Fish and Wildlife. The site plan shown represents the only way that the new screen could be fit into the existing site. Creating a new head-gate was determined to be too disruptive to the river channel and therefore was not seriously considered. This design was chosen because it has the least impact on the site and has the added benefit of eliminating a slack water pool off-channel that is attractive to fish. Fish currently come into the settling pond area and stay due to the slack water. The proposed design will eliminate the pool that is attractive to fish and will allow them safe passage out of the diversion if they do enter.

Measures used to minimize impacts are described in the attached Resource Plan.

Impact area is: ☐ Ocean ☐ Estuary ☒ River ☐ Lake ☐ Stream ☐ Freshwater Wetland

Describe the existing physical and biological characteristics of the wetland/waterway site by area and type of resource (Use separate sheets and photos, if necessary).

Crabtree Creek at the location of the Lacombe Irrigation District diversion has steep sloped banks with large boulders and rocks. There is scattered vegetation at the rivers edge made up primarily of alder and cedar trees. The river splits into two channels at the diversion. The stream substrate is rocky with areas of accumulated sediment. Crabtree Creek has large seasonal fluctuations of flow (50 CFS to 500 CFS) and a history of periodic flood events. The diversion is located in a large timber tract that is managed for timber production. Deer and elk are present as well as Salmon, Steelhead, and trout.

The project should not have any impact on water flows as the water right is not changing and the intake structure is not being modified. The project will redirect flow through the fish screen and water will be returned to the river approximately 200 feet downstream from the intake. Upstream and downstream flooding will not be effected by the project. The project will not result in erosion on adjacent land, and in fact will stabilize a previously exposed and eroded area.

The waterway is not large enough to permit navigation unless by kayak during high flow periods. This site is not accessible to the public as it is bordered by private land on both sides and is several miles up a gated road.

For wetlands, include

- ☐ Cowardin and Hydrogeomorphic (HGM) wetland class(s)
- ☐ Dominant plant species by layer (herb, shrub, tree)
- ☐ Whether the wetland is freshwater or tidal
- ☐ Assessment of the functional attributes of the wetland
- ☐ Identify any vernal pools, bogs, fens, mature forested wetland, or native wet prairies in or near the project area. Do any of these wetlands qualify as Special Areas of Concern (SAC)? (Refer to ORNHIC protocol dated May 4, 2005, http://www.oregon.gov/DCBS/RSJ/docs/streamlining_water/SPGP_docs/ORNHIC_protocol_5_05.pdf)

For waterways, include a description of, as appropriate:

- ☐ Condition of bank slopes (eroded, slope, etc.)
- ☐ Type and condition of riparian vegetation
- ☐ Channel morphology (i.e., structure and shape)
- ☐ Stream substrate
- ☐ History of prior disturbance
- ☐ Cause of erosion
- ☐ Fish and wildlife (type, abundance, period of use, significance of site)
- ☐ General hydrological conditions (e.g. stream flow, seasonal fluctuations)

Describe the existing navigation, fishing and recreational use of the waterway or wetland.

Resource Plan Requirements

- ☐ Describe the water quality conditions of the site and the expected effect of the project on these conditions.
- ☐ Describe the reasonably expected adverse effects of the development of this project and how the effects will be mitigated.
- ☐ For temporary disturbance of soils and/or vegetation in waterways, wetlands or riparian areas, complete and attach a Site Restoration Plan to restore the site after construction. See section E of the Resource Plan Guidance Document for plan requirements.
- ☐ For permanent impact to wetlands, complete and attach a Compensatory Wetland Mitigation (CWM) Plan. (See Section F in the Resource Plan Guidance Document for CWM plan requirements)
- ☐ For permanent impact to waterways or riparian areas, complete and attach a Compensatory Mitigation (CM) plan. (See Section G in the Resource Plan Guidance Document for CM plan requirements)
- ☐ For permanent impact to estuarine wetlands, you must submit an Estuarine Resource Replacement Plan. (See OAR 141-085-240 to OAR 141-085-257 for plan requirements)

In addition to any construction measures, complete and attach:

- ☐ A Sediment and Erosion Control Plan (See DEQ's Oregon Sediment and Erosion Control Manual at <http://www.deq.state.or.us/wq/wqpermit/ESCMannual.htm> (Section C of the Resource Plan Guidance Document))

- ☐ For a project with impervious surface (new or associated), complete and attach a post-construction stormwater management plan. (See Section D of the Resource Plan Guidance Document)

(6) **ADDITIONAL INFORMATION**

Adjoining Property Owners and Their Address and Phone Numbers (*if more than 5, attach printed labels*)

Tax Lot #'s 4000, 4100, 3800, 6300, and 3000:

Weyerhaeuser Company

PO Box 9777

Federal Way, WA 98063-9777

Phone: 253.924.2345

Tax Lot # 4700:

Pacific West Timber Co. LLC

C/O The Campbell Group LLC

1 SW Columbia St. STE 1700

Portland, OR 97258-0000

Phone: 541.393.0035

Tax Lot #'s 3600 and 6200:

Oregon and California Railroad

No address or phone number available.

Has the proposed activity or any related activity received the attention of the Corps of Engineers or the Department of State Lands in the past, e.g., wetland delineation, violation, permit, lease request, etc.? ☐ Yes ☒ No

If yes, what identification number(s) were assigned by the respective agencies:

Corps # _____ State of Oregon # _____

Has a wetland delineation been completed for this site?

☐ Yes ☒ No

If yes, by whom: _____

Has the wetland delineation been approved by DSL or the COE?

☐ Yes ☒ No

(If yes, attach concurrence letter.)

(7) CITY/COUNTY PLANNING DEPARTMENT AFFIDAVIT (to be completed by local planning official)	
<p>I have reviewed the project outlined in this application and have determined that:</p> <p><input type="checkbox"/> This project is not regulated by the comprehensive plan and land use regulations.</p> <p><input checked="" type="checkbox"/> This project is consistent with the comprehensive plan and land use regulations.</p> <p><input type="checkbox"/> This project will be consistent with the comprehensive plan and land use regulations when the following local approval(s) are obtained.</p> <p style="margin-left: 40px;"> <input type="checkbox"/> Conditional Use Approval <input type="checkbox"/> Development Permit <input type="checkbox"/> Other _____ </p> <p><input type="checkbox"/> This project is not consistent with the comprehensive plan. Consistency requires a</p> <p style="margin-left: 40px;"> <input type="checkbox"/> Plan Amendment <input type="checkbox"/> Zone Change <input type="checkbox"/> Other _____ </p> <p>An application <input type="checkbox"/> has <input type="checkbox"/> has not been filed for local approvals checked above.</p>	
<u>ROBERT WHEELER</u> Local planning official name (print)	<div style="display: flex; justify-content: space-between;"> <div> <u>Robert T. Wheeler</u> Signature </div> <div> <u>Senior Planner</u> Title </div> <div> <u>Lincoln</u> City / County </div> <div> <u>6/15/06</u> Date </div> </div> <p>Comments:</p>
(8) COASTAL ZONE CERTIFICATION	
<p>If the proposed activity described in your permit application is within the Oregon coastal zone, the following certification is required before your application can be processed. A public notice will be issued with the certification statement, which will be forwarded to the Oregon Department of Land Conservation and Development for its concurrence or objection. For additional information on the Oregon Coastal Zone Management Program, contact the department at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301 or call 503-373-0050.</p> <p style="text-align: center;">CERTIFICATION STATEMENT</p> <p>I certify that, to the best of my knowledge and belief, the proposed activity described in this application complies with the approved Oregon Coastal Zone Management Program and will be completed in a manner consistent with the program.</p>	
Print /Type Name _____ Applicant Signature _____	Title _____ Date _____
(9) SIGNATURE FOR JOINT APPLICATION	
<p>Application is hereby made for the activities described herein. I certify that I am familiar with the information contained in the application, and, to the best of my knowledge and belief, this information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the permits requested before commencing the project. I understand that payment of the required state processing fee does not guarantee permit issuance. The fee for the state application must accompany the application for completeness. Amount enclosed \$600.00.</p>	
<u>Dean Castle</u> Print /Type Name <u>DEAN CASTLE</u> Applicant Signature	<u>Chairman, Lacombe Irrigation District</u> Title <u>6-15-06</u> Date
<p>I certify that I may act as the duly authorized agent of the applicant.</p> <u>Les Perkins</u> Print /Type Name <u>[Signature]</u> Authorized Agent Signature	<u>Director, Farmers Conservation Alliance</u> Title <u>6-15-06</u> Date
<p>I certify that the applicant has my permission to conduct the project on my property.</p>	
Print /Type Name _____ Property Owner Signature ³ _____	Title _____ Date _____

Document1

³ If the project is on a state-owned waterway, you must contact the Land Management Division of the Department of State Lands for approval to proceed with this application. See www.oregonstatelands.us for a list of state-owned waterways.

Supplement: Fish Habitat and Wetland Restoration and Enhancement Activity Plan

This information is required for all fish habitat and wetland restoration and enhancement projects that are eligible for the SPGP.

This project involves activities that will provide

- ☐ Fish Habitat Enhancement
☐ Wetland Restoration and Enhancement
☐ Both Fish Habitat and Wetland Restoration and Enhancement

1. ACTIVITIES (complete applicable sections)

FISH ENHANCEMENT ACTIVITIES*	QUANTITY	CUBIC YARDS EACH		TOTAL CUBIC YARDS	
		Removal	Fill	Removal	Fill
Fish Rocks					
Deflectors					
Rock or Log Weirs					
Gravel Placement					
Pool/Pond Construction					
Back/Side Channel Construction					
Channel Construction					
Barrier Removal					
Woody Material					

WETLAND RESTORATION AND ENHANCEMENT ACTIVITIES*	QUANTITY	CUBIC YARDS EACH		TOTAL CUBIC YARDS	
		Removal	Fill	Removal	Fill
Ditch Plugging					
Water Diversion					
Drain Tile Removal or Destruction					
Dike Construction/Relocation					
Water Impoundment Structure					
Bank Excavation/Contouring					
Dike Removal/Breaching					
Surface Grading					
Other (describe)					

* Below ordinary high water line or within wetlands

2. **PROJECT DESCRIPTION.** Provide on separate sheet(s) a summary of the scope of the project, and describe how the project meets the requirements of the General Authorization for Fish Habitat Enhancement and/or Wetland Restoration and Enhancement.

3. FILL AND REMOVAL VOLUMES AND ACREAGE AFFECTED

_____ total cubic yards of fill below ordinary high water or within wetlands
 _____ total cubic yards of removal below ordinary high water or within wetlands

- ☐ Restore _____ acres of former (drained or diked) wetland
☐ Create _____ acres of new wetland
☐ Enhance _____ acres of existing wetland
☐ Convert _____ acres of wetland to upland

4. REQUIRED ATTACHMENTS (on 8.5 x 11 or 8.5 X 14 paper)

For all Wetland and/or Fish Habitat Enhancement projects

- ☐ Vicinity map showing project location
- ☐ Site plan map and/or aerial photo (approx. 1" = 400') showing:
- ☐ Location of existing structures, roads, streams and other pertinent features
- ☐ Location and boundaries of proposed fill and removal areas
- ☐ Cross section and/or grading plan showing existing grades and proposed grades
- ☐ List of adjacent property owners and their addresses. If more than five (5), supply labels.

For projects that involve Wetland Restoration and Enhancement activities

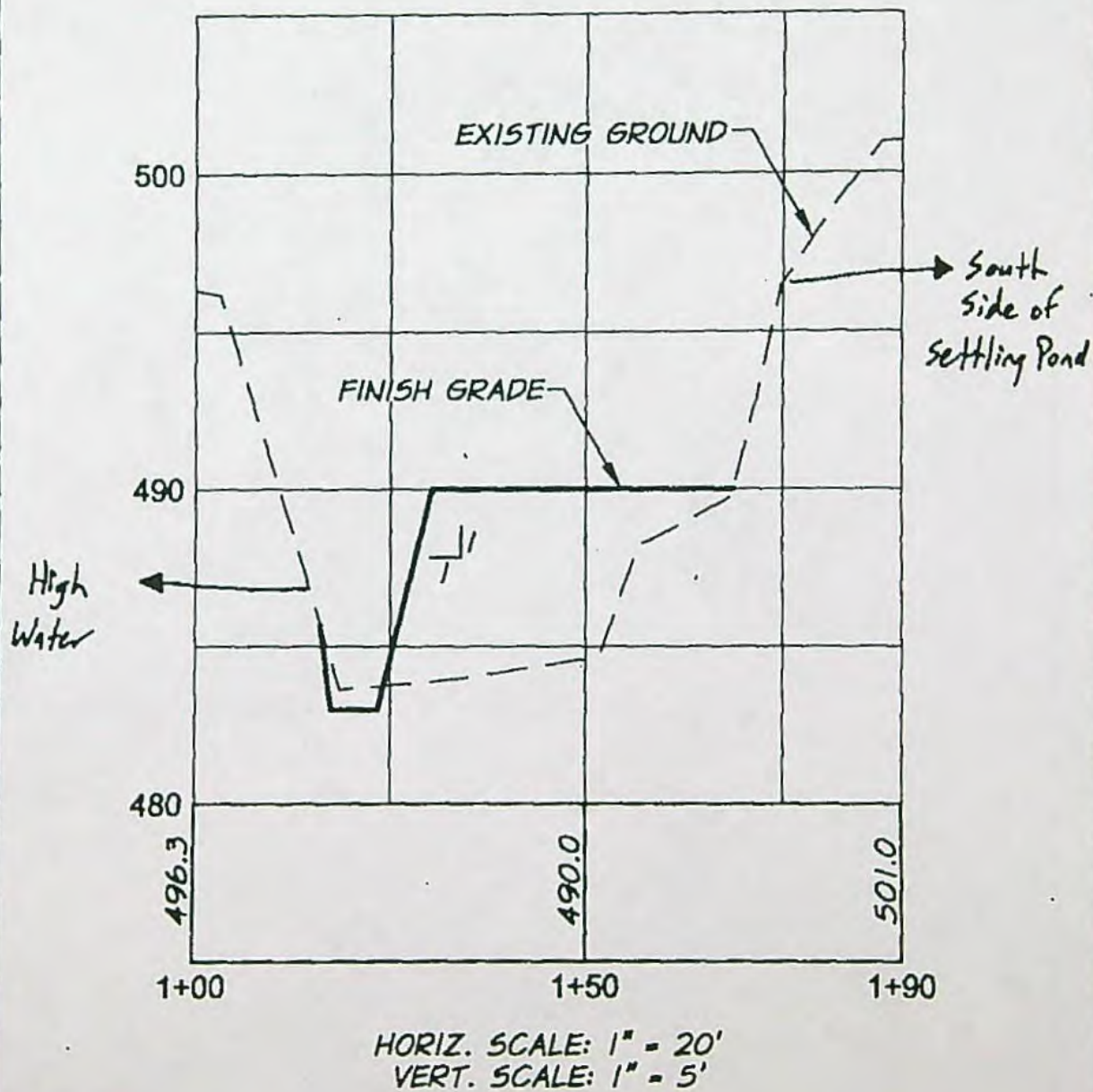
- ☐ Project site located on National Wetlands Inventory map
- ☐ Aerial photograph showing project boundaries
- ☐ Project Site located on soil survey map (if available)
- ☐ Location of all proposed construction, including dikes, water control structures, spoils placement, etc.
- ☐ Location & approximate boundaries of existing wetlands and wetlands to be restored and/or enhanced

5. ODFW REVIEW: I have evaluated the above project and find it will be constructed in a way that minimizes impact to aquatic resource values. The recommended in-water work period is

_____ to _____
ODFW Biologist Signature Date

6. By signing the removal-fill application the applicant certifies that they will complete the project according to the General Authorization for Fish Habitat Enhancement Rules (OAR 141-089-0100 through -0130) and General Authorization for Wetland Restoration and Enhancement Rules (OAR 141-089-0205 through -0240) and the attached plan and drawings.

Cross Section #1



**anderson
perry**
A ASSOCIATES, INC.

FARMERS CONSERVATION ALLIANCE

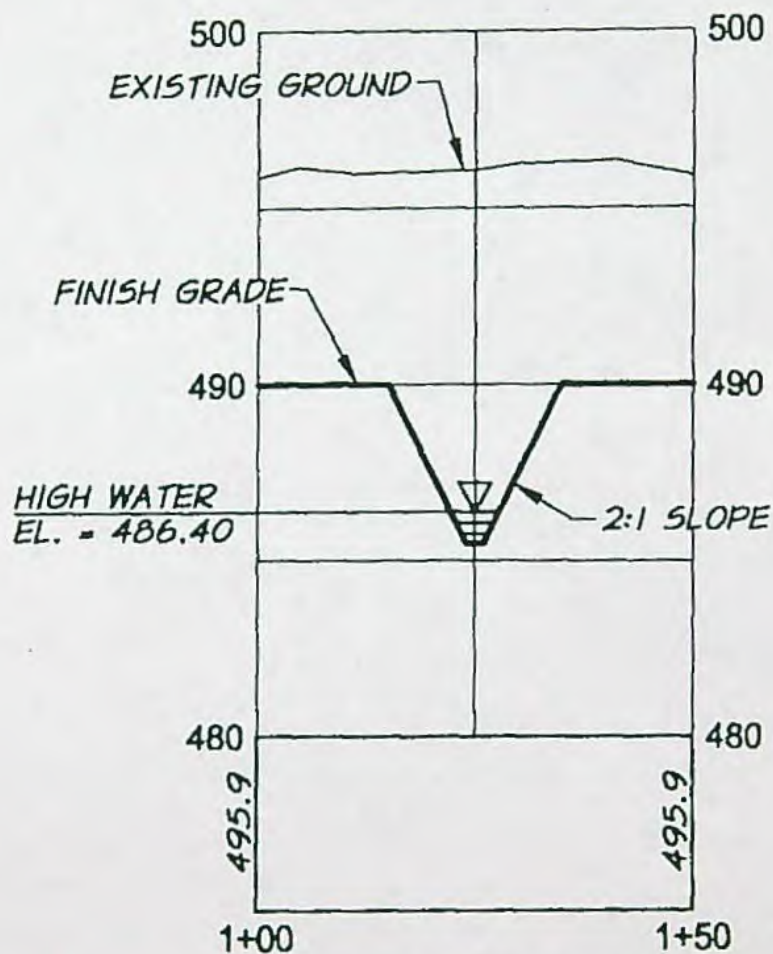
LACOMB FISH SCREEN IMPROVEMENTS

**EMBANKMENT WITHIN POND
CROSS SECTION**

FIGURE

1

Cross Section #2



HORIZ. SCALE: 1" = 20'
VERT. SCALE: 1" = 5'

NOTE

CUT VOLUME BELOW HIGH WATER
ELEVATION IS APPROXIMATELY 20 CU. YDS.

Work Area Isolation Plan

The work area will be isolated from the flow of water during construction. A temporary channel will be constructed that will completely isolate the water flow from the work area and will allow for the diversion of water during construction.

A fish salvage operation will be required prior to construction of the temporary channel to the current fish screen. The operation will follow the schedule below:

1. The head-gate will be closed and the fish return gate will be opened to allow water and fish to flow out to the river.
2. The fish return gate will be closed when the flow of water back to the river has subsided.
3. Under the supervision of USFWS and ODFW, a salvage operation will be performed to rescue any stranded fish. This will entail netting the stranded fish and releasing them in Crabtree Creek. All salvage operations will be photo documented and a written log will be maintained. This operation will be covered under authorization of Timmie Mandish with US Fish and Wildlife Service and with supervision by Wayne Hunt, Fish Biologist with ODFW.
4. The remaining water in the settling pond will be removed using pumps. The water will be pumped into the irrigation canal to minimize return of turbid water to Crabtree Creek.
5. The temporary channel will be constructed using rock from off-site and a waterproof liner.
6. The head-gate will be re-opened to allow water flow through the temporary channel to the existing rotary drum screen and fish return. Fish will be able to leave the temporary channel by either returning out through the headgate or by utilizing the fish return/bypass channel in the current rotary drum screen structure.
7. The new fish screen will be constructed in the isolated area.
8. The new fish return will be constructed and sandbagged to ensure that water and fish can not enter the new channel.
9. Upon completion of construction, the head-gate will be closed again and the fish return will be opened to allow all of the water in the temporary channel to drain to the river. Fish salvage equipment and personnel will be on hand to assist with salvage of any stranded fish.
10. The new connection to the new fish screen will be constructed and the temporary channel will be decommissioned.
11. The head-gate will be opened and the sand bags will be removed from the new fish return allowing water to flow over the screen and out of the new fish return.

The estimated flow in Crabtree Creek during the construction period is 40 to 50 CFS with a 20 CFS in-stream water right. Lacombe Irrigation District has a 28 CFS water right for irrigation in the summer months. Lacombe does not draw water for irrigation after the 30th of September.

Section A

Page 2

Equipment and materials list:

- Trackhoe and operator
- Backhoe and operator
- Dumptruck and operator
- Rock (pit-run from local rock pit)
- Water-proof liner for temporary channel
- Sandbags
- Pump (no screening necessary as fish will already be salvaged)
- Fish nets and buckets
- Camera

Contacts:

USFWS: Timmie Mandish, Fish and Wildlife Biologist, 503.231.6179, email: timmie_mandish@fws.gov

ODFW: Wayne Hunt, Fish Biologist, 503.378.6925, email: wayne.l.hunt@state.or.us

Section A

Page 4

Les Perkins

From: Timmie_Mandish@fws.gov
Sent: Thursday, June 08, 2006 10:33 AM
To: lperkins@hoodriverelectric.net
Subject: compliance for Lacombe & Greenpoint proj's

Les-

I wanted to reconfirm with you that on the Lacombe and North Greenpoint Creek projects that the Fish & Wildlife Service will be taking responsibility for federal permits. This includes the ESA, NEPA, SHPO, Corps clearances, as well as a Level 1 contaminants survey. I can provide you with documentation of these clearances once they are complete. Let me know if I can assist in any additional way or explain this process further.

Thanks,
Timmie

Timmie Mandish
Biologist, Partner's for Fish & Wildlife Program USFWS 2600 SE 98th, ste 100 Portland, OR 97216
503-231-6179
FAX 503-231-6195

Fish Passage Plan for Lacombe Irrigation District Project

Lacombe Irrigation District will be replacing a rotary drum screen with a new Farmers Screen (Horizontal Flat plate technology). Fish passage will be supplied during the construction process by utilizing the current screen and by-pass structure. A temporary conveyance channel will need to be constructed to allow water flow to the current screen and to isolate the construction area. The following plan will be implemented to allow for fish passage during construction.

1. The head-gate to the diversion will be closed and the by-pass for the current screen will be opened to allow the settling pond to drain to the river.
2. A salvage operation to save any stranded fish will occur as the water drains. Timmie Mandish with US Fish and Wildlife Service will oversee the salvage operation and supply coverage for take issues in coordination with National Marine Fisheries Service. Wayne Hunt (local ODFW Fish Biologist) will be on site to provide technical oversight of the operation. All activities will be photo-documented and a written log of all fish salvaged will be maintained.
3. After the salvage operation, the fish return will be closed and the settling pond will be pumped to remove any remaining water. The remaining water will be pumped into the irrigation canal to keep turbid water from entering Crabtree Creek.
4. A temporary channel will be constructed using rock from off-site and a waterproof liner. The temporary channel will convey water from the head-gate to the current rotary drum screen for the remainder of the construction process. Fish will be able to exit the temporary channel either by returning out through the head-gate, or by using the return/by-pass channel in the current rotary drum screen structure. This will isolate water flow so that the construction site is completely isolated from the water flow and Lacombe Irrigation District will be able to continue to supply water to its customers while protecting fish until the project is complete.
5. At the completion of construction of the new fish screen and the new fish return, the head-gate will be closed again and the fish-return will be opened to allow all of the water and any fish present to flow out of the temporary channel. When the water is all drained, the fish return will be closed. Fish salvage equipment and personnel will be on hand in the event that any stranded fish need to be salvaged.
6. A new connection to the new fish screen will be constructed and the temporary channel will be disconnected from the head-gate. When the connection to the new fish screen is complete, the head-gate will be opened and the new screen will begin operation.

All appropriate measures will be taken to protect fish from harm during this process. The construction site will be isolated from the flow of water from the river.

Section B

Page 2

Contacts:

USFWS: Timmie Mandish, Fish and Wildlife Biologist, 503.231.6719, email:
timmie_mandish@fws.gov

ODFW: Wayne Hunt, Fish Biologist, 503.378.6925, email: wayne.l.hunt@state.or.us

ODFW: Mike Lambert, Fish Passage Engineer, 503.947.6220, email:
Michael.b.lambert@state.or.us

NOAA/NMFS: Melissa Jundt, Engineer, 503.231.2187, email:
Melissa.jundt@noaa.gov

Section 8
Page 3

Les Perkins

From: Wayne Hunt [Wayne.L.Hunt@state.or.us]
Sent: Tuesday, June 13, 2006 4:01 PM
To: Les Perkins
Cc: Timmie_Mandish@fws.gov; LANDRUM Carrie; Steven Mamoyac
Subject: RE: Lacombe Passage Plan

Les,

I'm making an assumption that I didn't see stated in the draft plan: the temporary channel that will be constructed to convey water to the existing rotary screen will also bypass some of the water back to the stream to accommodate any fish that might be in the temporary channel. Is this correct? If so, the interim plan to provide passage is as good as the original and should work out fine.

Regarding an inwater work extension beyond the normal August 31 date: Since you are anticipating that all inwater work should be accomplished by August 31 except for connecting the newly constructed bypass channel to the stream, that single activity may be done later, but by October 15 (providing it is approved by DSL). Should other work be necessary or delays prevent the reconnection by the 15th, a request to modify your permit must be made through DSL and Carrie will contact me for my input.

I'll be anticipating your call for the salvage operation.

Wayne

From: Les Perkins [mailto:lperkins@hoodriverelectric.net]
Sent: Tuesday, June 13, 2006 12:20 PM
To: Wayne Hunt
Cc: Timmie_Mandish@fws.gov
Subject: Lacombe Passage Plan

Wayne,

Attached is a stab at a passage plan for Lacombe. Let me know what you think, I'm learning as I go so any feedback you have is very appreciated. That goes for you to Timmie!

Thanks,

Les

Les Perkins
Farmers Conservation Alliance
14 Oak Street ~ P.O. Box 1821
Hood River, OR 97031
ph. 541.490.4062
www.farmersscreen.org

6/13/2006

Section C

Page 1

Sediment and Erosion Control Plan for Lacombe Project

Construction methods will be utilized that will minimize creation of exposed soil or disturbed soil. The majority of the construction activities will take place on previously disturbed areas with currently exposed soil. The construction of the fish screen will occur in an area that has been disturbed and had exposed soils for over 30 years.

The major concern for this construction site will be to minimize erosion of stockpiled soils that will be used for grading and finishing of the site at the end of construction. Stockpiled soils will be covered with an impervious surface and will be surrounded with straw bales to minimize erosion and movement of sediment.

Movement of soils from the construction site to the river will be impeded by the berm that separates the construction site from the river. The construction site is at a lower elevation than the berm that separates the construction site from the river. A sediment fence will be placed on the north side of the access road along the river at the construction site to catch any sediment or soil that may dislodge from equipment working on the site.

Construction vehicles will be accessing the site via a graveled access road that is several miles long. Earth moving equipment will be hauled on site and then hauled off site so the soil from the tires and tracks of the equipment will not be tracking sediment onto roadways. Dumptrucks and other vehicles that will be entering the paved roadway will be kept on the graveled access road to minimize movement of soil off-site.

There are no storm drains at or near the construction site as it is located on forest land and is completely surrounded by forest lands.

Staging areas will be limited to previously disturbed areas that have historically been part of the screen facility footprint and access area. These areas are graveled and are currently used for vehicle and equipment access.

Construction materials will primarily consist of concrete, steel, rock, and on-site soil. There will not be any painting or use of liquid coatings or materials in conjunction with the construction project.

All contractors will be required to review this Sediment and Erosion Control Plan and to sign an agreement that they will abide by the plan and strive to minimize impact to the natural environment.

Section E
Page 1

Site Restoration Plan

There are two primary areas of concern for restoration of the construction site: the new fish return constructed in conjunction with the fish screen and the area directly south of the newly constructed screen that has historically been primarily made up of exposed soils. The construction site is located in a forested area that is managed for timber production and owned by Weyerhaeuser Corporation. The diversion site has been continually disturbed to manage sediment deposits within the settling basin of the existing screen. The new Farmers Screen will minimize the need for sediment management and therefore will reduce future impacts on the site due to decreased management and maintenance activities.

The new fish return will be constructed to convey bypass water, fish, and debris back to the river where it came from in a consistent and natural manner. Basically any fish, sediment, or debris entering the diversion will be immediately passed directly back to the river via the new fish return. The new return will be an open channel with a 2:1 slope on the banks. The banks of the fish return channel will be constructed to mimic the natural stream banks in the area. The banks will be composed of rock of varying size located on site along with soil and woody debris. The goal will be to create an environment that mimics the natural conditions of the stream banks in the area. The materials for the restoration of this portion of the site will be obtained from the project footprint. The banks of the fish return channel will be planted with native shrubs, trees, and herbaceous vegetation to mimic the natural streambanks in the vicinity.

The area directly south of the new fish screen will be graded to an appropriate slope to allow for planting of native vegetation (2:1 slope at maximum). This area has been disturbed with no woody vegetation and large areas of exposed soils for at least 30 years. The goal of the restoration of this area will be to create an environment that mimics the surrounding undisturbed areas. The restoration will include use of rocks, soil, woody debris, plant materials, and native plants stockpiled from the footprint of the project or from areas beyond the bankfull elevations at least 150 feet from the waters of the state. The restoration of this area will minimize erosion and restore habitat to an area that has been disturbed for at least 3 decades.

The restoration for both areas will occur at the end of the construction period (targeted to be October 15, 2006). The restoration will follow the timing and sequence below:

1. Final grading (October 1 to October 15, 2006)
2. Placement of woody debris, surface rocks, and plant material (October 1 to October 15, 2006)
3. Planting of trees, shrubs, and herbaceous vegetation (October 15 to October 30, 2006). This timing will depend on the rainfall and soil moisture at the time. It is assumed that the soil moisture at this time of year will be sufficient to allow for establishment of plants without irrigation.

[illegible]

Section 6

Page 2

4. Monitoring of site for success of erosion management and establishment of plants (November 2006 to June 2007)
5. On-going annual monitoring of restoration efforts (Every spring for 5 years with photo documentation and written report)

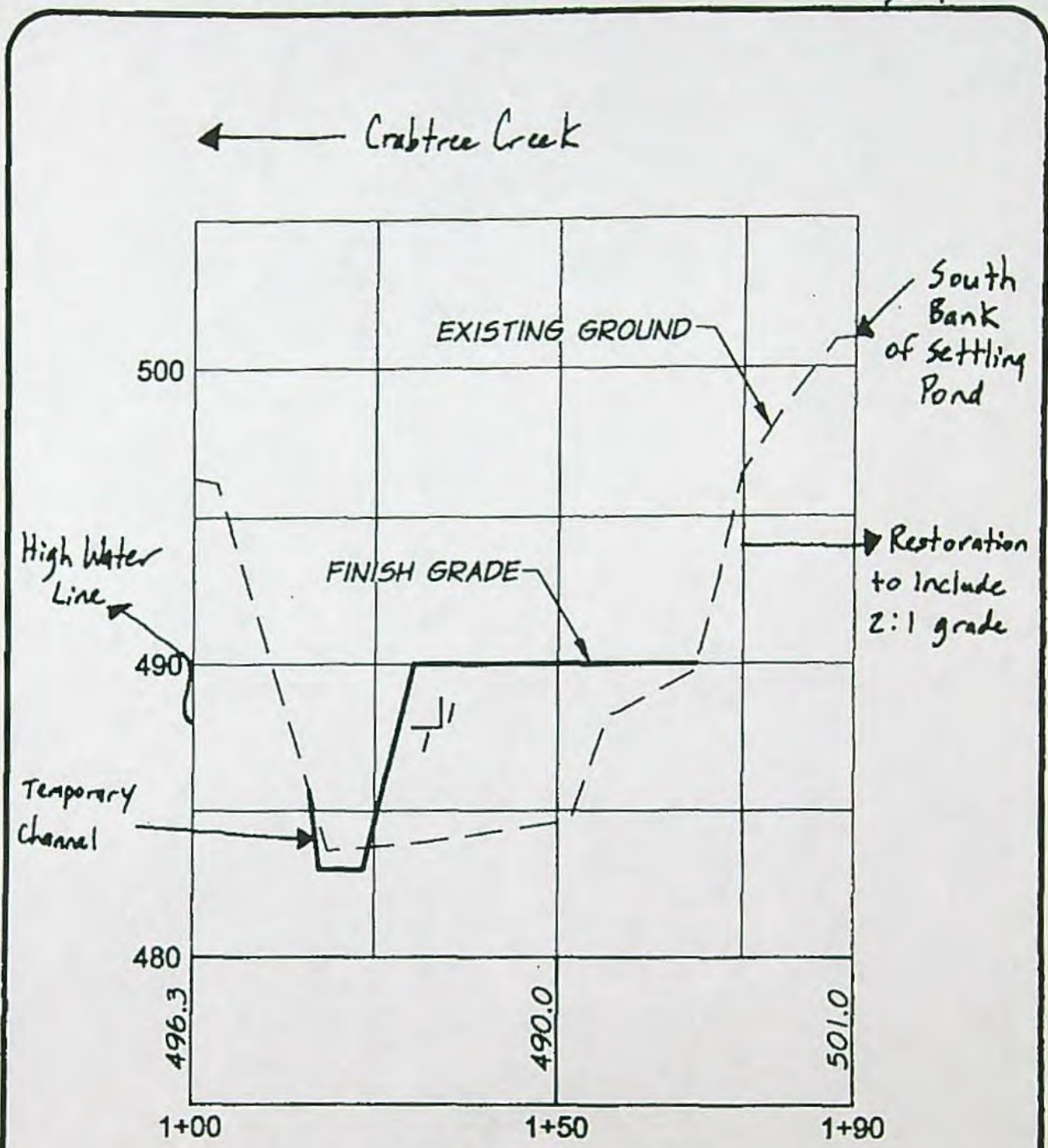
Exotic vegetation will be controlled by using only soils and material from the site. This will minimize the possibility of exotic and invasive species entering the site. The site will also be manually controlled every spring by removing any exotic or invasive species present. Establishment of healthy plants and vigorous growth patterns for herbaceous vegetation will limit the ability for exotic or invasive species to gain a foothold at the site.

The timing of planting and the location of the project make irrigation unnecessary.

The restoration areas will be monitored closely during the first year to ensure successful establishment of vegetation and minimum erosion. The site will be monitored annually for the next 4 years to document success or failure of the restoration efforts. All monitoring will entail photo documentation and a written report to be available for review by all pertinent agencies and to be housed at Lacombe Irrigation District. The site will be accessible to all pertinent agencies for monitoring and evaluation with adequate notification of Lacombe Irrigation District. The site is only accessible via a road that is gated and locked.

Area South of Fish Screen

SECTION C
Page 4

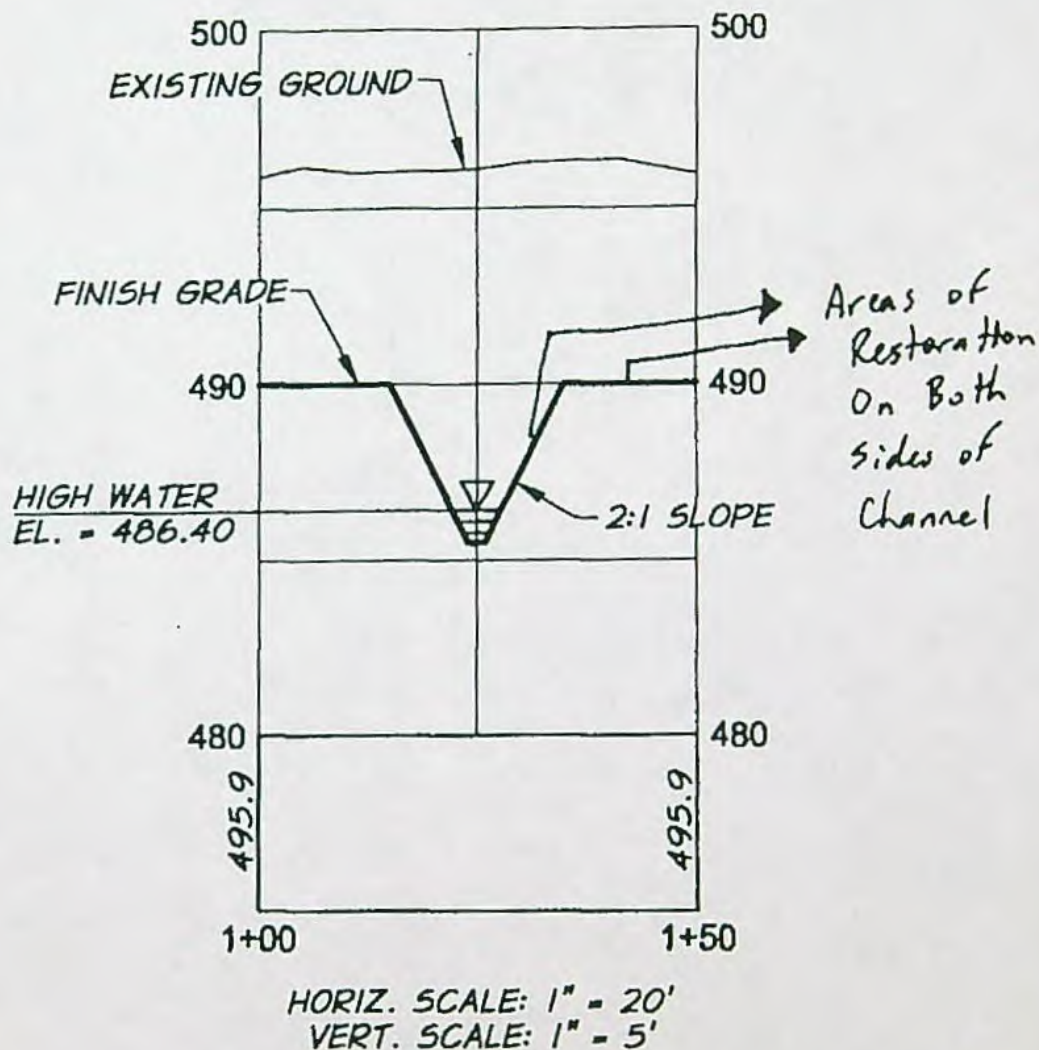


HORIZ. SCALE: 1" = 20'
VERT. SCALE: 1" = 5'

Fish Return Cross Section

Section L

Page 5



NOTE

CUT VOLUME BELOW HIGH WATER
ELEVATION IS APPROXIMATELY 20 CU. YDS.



FARMERS CONSERVATION ALLIANCE

LACOMB FISH SCREEN IMPROVEMENTS

BYPASS CHANNEL CROSS SECTION

FIGURE

2

LARGE-FORMAT IMAGES

One or more large-format images (over 8½" X 11") go here. These images are available in E-Library at:

For Large-Format(s):

Accession No.: 20070627-0021

Security/Availability:

☒ PUBLIC

☐ NIP

☐ CEII

☐ NON-PUBLIC/PRIVILEGED

File Date: 4/25/07 Docket No.: P-6648

Parent Accession No.: 20070627-0020

Set No.: 1 of 1

Number of page(s) in set: 17

Compensatory Mitigation Plan

The adverse effects of this project will be minimal and in fact will actually result in an improvement to the current diversion. The permanent impact to the waterway will be in the form of the new fish screen and return channel to the river. The fish screen will be placed in a previously disturbed area as will the new fish return channel.

The project includes restoration of a previously disturbed area south of the new fish screen that has historically been susceptible to erosion due to large areas of exposed soil and steep slopes with no vegetation. The project will also eliminate a large pool of slack water in the diversion area off of the river channel that is attractive to fish. Any fish entering the diversion after completion of this project will be returned quickly to the river channel.

Please refer to the Restoration Plan for specifics regarding restoration.

The restoration activities will be compatible with surrounding land uses. The project is surrounded by hundreds of acres of managed forest lands. Access to the restored site will be controlled as the site is surrounded by private property and is accessible only by a gated gravel road.

Please see the attached Site plan from the Restoration Plan as well as the monitoring plan from the Restoration Plan.



STATE OF OREGON

County of LINN

PERMIT TO APPROPRIATE THE PUBLIC WATERS

This is to certify that I have examined APPLICATION 60823 and do hereby grant the same SUBJECT TO EXISTING RIGHTS INCLUDING THE APPROPRIATE MINIMUM FLOW POLICIES ESTABLISHED BY THE WATER POLICY REVIEW BOARD and the following limitations and conditions:

This permit is issued to Lacombe Irrigation District, 41358 Lacombe Drive, Lebanon, Oregon, 97355, phone 451-2796, for the use of the waters of Crabtree Creek, a tributary of South Santiam River, for the PURPOSE of Development of 1747 theoretical horsepower at the Lacombe Irrigation District hydro-electric project,

that the PRIORITY OF THE RIGHT dates from September 29, 1980 for 45.0 cubic feet per second
August 5, 1982 for 20.0 cubic feet per second,

and is limited to the amount of water which can be applied to beneficial use and shall not exceed 65.0 cubic foot per second.

The POINT OF DIVERSION is to be LOCATED: 1300 feet South and 2600 feet East from the West quarter corner of Section 25, being within the NE 1/4 SW 1/4 Section 25, Township 11 South, Range 1 East, WM, in the County of Linn.

A description of the PLACE OF USE under the permit, and to which such right is appurtenant, is as follows:

SEE NEXT PAGE

Township 11 South, Range 1 East, WM Section 21 NE1/4 SW1/4 POWER PLANT

The right granted herein is expressly made inferior in right and subsequent in time to any appropriation of water from this source which may hereafter be made for domestic, municipal, irrigation or any other beneficial consumptive use, or for storage for such purposes; provided further that the project shall be constructed under the supervision of a registered professional engineer; provided further that the permittee shall comply with the provisions of the order of the Water Policy Review Board dated May 8, 1981, and by reference herein made part of this permit; provided further that the permittee shall, during the operational lifetime of the project, perform or allow the Water Resources Department to perform any tests or studies required by the department to evaluate the effectiveness of measures for the protection of fish; provided further that this permit may not be assigned to any non-municipal entity so as to result in a loss of ownership of the permit by a municipal corporation or district and that any proposed changes to the agreements between the permittee and TKO Power signed on June 19, 1986, and August 19, 1986, as amended on November 17, 1986, must be reviewed by the Water Resources Director to determine whether or not the permittee remains qualified as a municipal applicant.

This permit is subject to the installation of a measuring devise satisfactory to the Water Resources Director and the Oregon Department of Fish and Wildlife prior to the appropriation of water as described in this permit.

Actual construction work shall begin on or before November 25, 1987, and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 19 88.

Complete application of the water to the proposed use shall be made on or before October 1, 19 89.

Witness my hand this 25th day of November . 19 86.

/s/ WILLIAM H. YOUNG

WATER RESOURCES DIRECTOR

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

14466

40873

60823

U. S. POSTAL SERVICE
PS FORM 3547

↓ RETURN
TO SENDER ↓

↓ FEE DUE
70 CENTS ↓

60823
40873
G-14466

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

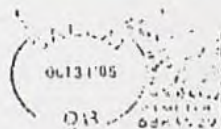
Oregon

Water Resources Department
725 Summer Street NE Suite A
Salem, OR 97301-1266

260

WR&ADJ

ADDRESS SERVICE REQUESTED



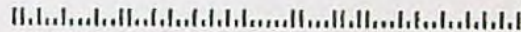
U.S. POSTAGE

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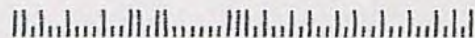
To: Lacombe Irrigation District
34138 East Lacombe Road
Lebanon, OR 97355

LACOMB 973550009 1505 05 11/02/05
LACOMB IRRIGATION DISTRICT
41754 CLARK SMITH DR
LEBANON OR 97355-9116
FORM 3547

97355%9116 H06A



97301/9933



TKO

POWER, INC. 9485 DESCHUTES ROAD • PO BOX 797 • PALO CEDRO CA 96073 • 916-547-5421

file
RECEIVED

Sept. 13, 1989

SEP 15 1989

Don Buell
Oregon Water Resources
3850 Portland Rd. N.E.
Salem, OR 97310

**WATER RESOURCES DEPT.
SALEM, OREGON**

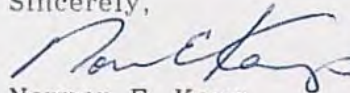
Re: Lacombe Hydro

Dear Don,

Consolidated Hydro, Inc. (CHI) and TKO Power (TKO) are in the process of merging TKO's general partnership hydroelectric interests with CHI. CHI currently operates about 40 hydro projects with over 100 megawatts of capacity on the east coast.

Pascal Brun, John Bernotavicz, Wayne Nelson or Jason James, all of whom are CHI representatives, may call you within the next two weeks to discuss the Lacombe Hydro FERC #6648 project. Please feel free to discuss any aspect of the project. Thank you for your cooperation.

Sincerely,



Norman E. Kamp
President TKO Power

NEK:dr
nek/chimrg



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

June 29, 1989

Jonathan E. Bloom
TKO Power, Inc.
9485 Deschutes Road
P.O. Box 797
Palo Cedro, CA 96073

RE: Application Number 60823

Dear Mr. Bloom:

We have received your letter stating that construction was complete and complete application of water has been made under permit number 49822.

At a later date, a representative of this office will make an inspection and survey your project.

You will be mailed a proposed certificate of water right covering the actual use of water as found by our Inspector. Any use described in the permit that was not made will not be included in the certificate.

In the meantime, the permit you hold is valid evidence of your right so long as you continue to use the water.

If you have any questions, please contact the Adjudication Section at 378-3066.

Sincerely,

Larry W. Jebousek, Manager
Adjudication Section

LWJ:jt

cc: Lacombe Irrigation District

0299j



STATE OF OREGON

County of LINN

PERMIT TO APPROPRIATE THE PUBLIC WATERS

This is to certify that I have examined APPLICATION 60823 and do hereby grant the same SUBJECT TO EXISTING RIGHTS INCLUDING THE APPROPRIATE MINIMUM FLOW POLICIES ESTABLISHED BY THE WATER POLICY REVIEW BOARD and the following limitations and conditions:

This permit is issued to Lacombe Irrigation District, 41358 Lacombe Drive, Lebanon, Oregon, 97355, phone 451-2796, for the use of the waters of Crabtree Creek, a tributary of South Santiam River, for the PURPOSE of Development of 1747 theoretical horsepower at the Lacombe Irrigation District hydro-electric project,

that the PRIORITY OF THE RIGHT dates from September 29, 1980 for 45.0 cubic feet per second
August 5, 1982 for 20.0 cubic feet per second,

and is limited to the amount of water which can be applied to beneficial use and shall not exceed 65.0 cubic foot per second.

The POINT OF DIVERSION is to be LOCATED: 1300 feet South and 2600 feet East from the West quarter corner of Section 25, being within the NE 1/4 SW 1/4 Section 25, Township 11 South, Range 1 East, WM, in the County of Linn.

A description of the PLACE OF USE under the permit, and to which such right is appurtenant, is as follows:

SEE NEXT PAGE

page two

Township 11 South, Range 1 East, WM Section 21 NE1/4 SW1/4 POWER PLANT

The right granted herein is expressly made inferior in right and subsequent in time to any appropriation of water from this source which may hereafter be made for domestic, municipal, irrigation or any other beneficial consumptive use, or for storage for such purposes; provided further that the project shall be constructed under the supervision of a registered professional engineer; provided further that the permittee shall comply with the provisions of the order of the Water Policy Review Board dated May 8, 1981, and by reference herein made part of this permit; provided further that the permittee shall, during the operational lifetime of the project, perform or allow the Water Resources Department to perform any tests or studies required by the department to evaluate the effectiveness of measures for the protection of fish; provided further that this permit may not be assigned to any non-municipal entity so as to result in a loss of ownership of the permit by a municipal corporation or district and that any proposed changes to the agreements between the permittee and TKO Power signed on June 19, 1986, and August 19, 1986, as amended on November 17, 1986, must be reviewed by the Water Resources Director to determine whether or not the permittee remains qualified as a municipal applicant.

This permit is subject to the installation of a measuring devise satisfactory to the Water Resources Director and the Oregon Department of Fish and Wildlife prior to the appropriation of water as described in this permit.

Actual construction work shall begin on or before November 25, 1987, and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 1988.

Complete application of the water to the proposed use shall be made on or before October 1, 1989.

Witness my hand this 25th day of November, 1986.

/s/ WILLIAM H. YOUNG

WATER RESOURCES DIRECTOR

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

TKO

POWER, INC. 9485 DESCHUTES ROAD • PO BOX 797 • PALO CEDRO CA 96073 • 916-547-5421

RECEIVED

December 6, 1988

DEC - 9 1988

Mr. Don Buell
Water Resources Dept.
3850 Portland Road N. E.
Salem, OR 97310

WATER RESOURCES DEPT.
SALEM, OREGON

Re: Permit No. 49822

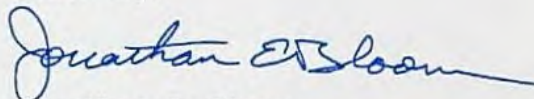
Dear Mr. Buell,

Lacomb Hydro Limited Partnership, (FERC exemptee 6648, Lacomb Irrigation District), has finished all construction work on the facility.

Construction was completed prior to October 1, 1988. The facility is currently operating at full production, and operates through most of the year.

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

Sincerely,



Jonathan E. Bloom

JEB:aw
WP:dbwr
Enclosure

OK For B, C
LWJ

B

STATE OF OREGON
Office of the Water Resources Director
Salem, Oregon 97310

60823

According to the terms of Permit No. 49822,
construction work was required to be completed on or before
OCT. 1, 1988

A blank upon which to notify this office of the completion of such work is attached to your permit. If the work has been completed, you should promptly fill out and forward this notice. If the work was not completed but has been prosecuted with reasonable diligence, an application for extension of time may be submitted.

If the work has been abandoned or has not been prosecuted with reasonable diligence, notice to this effect together with authority to cancel the permit would be greatly appreciated.

Form 690-10-91

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DEC - 9 1988

WATER RESOURCES DEPT.
SALEM, OREGON

Report on field inspection - Lacomb Power Project - 60823

Friday Jan. 23, 1987 Don Buell, Larry Tebousek

Talked to Keith Stewart of Ray Toney and Associates at power house. Power house is mostly complete. Turbine and generator are in place. Speed control & oiling system installed. Computer panel is on premises, wiring to start in February.

Continued tour: Tail race complete with barrier installed. Drove to diversion works, no sign of gaging station being installed. Wooden flume has been replaced with steel pipe. Turnouts have been rebuilt.

Concrete work on diversion appears to be complete with gratings in place. Work looks good. Two men were working on guard rails. First part of ditch has been grouted.

Departed area 2:00 PM



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SEP 17 1987

Department of Fish and Wildlife

WATER RESOURCES DEPT.
SALEM, OREGON

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

September 16, 1987

Mr. Bill Young
Director
Water Resources Department
3850 Portland Road, NE
Salem, OR 97310

RE: WRD 60823 - La Comb Irrigation District
FERC 6648

Dear Mr. Young:

As a condition of license for the Lacombe Irrigation District hydro-electric project, your Department requires that stream gauging acceptable to both Water Resources and Fish and Wildlife Departments be conducted. I have had several discussions with your staff regarding various gauging alternatives. Your staff has requested that I indicate to you in this letter that the Department of Fish and Wildlife concurs with the gauging plan developed by Water Resources Staff.

Because of a lack of a suitable location near the diversion, the Water Resources gauging plan is to install a permanent gauge just upstream of the powerhouse. The Department of Fish and Wildlife concurs, provided temporary gauging is also conducted just below the point of diversion and correlated with flows at the permanent gauge location. The correlation will determine if measurable inflow occurs between the point of diversion and the permanent gauge. If measurable inflow does occur, the correlation will indicate the appropriate adjustments to permanent gauge readings to ensure minimum flow requirements are met throughout the diversion reach. It is my understanding your staff has no objection to establishing this correlation.

Thank you for consulting with us on this matter.

Sincerely,

David W. Nichols
Hydropower Coordinator
Habitat Conservation Division

dns

c WRD - Buell
Applicant

September 16, 1987

MEMO

TO: DON BUELL, BUD BARTELS, BEN SCALES

FROM: BARRY NORRIS

RE: NEW GAUGE STATION, DISTRICT 2

DURING OUR DISCUSSION YESTERDAY SOME SUGGESTIONS WERE MADE AS TO PROVISIONS THAT MIGHT BE INCLUDED IN A LETTER TO THE OWNER OF THE POWER FACILITY. THAT LETTER WILL PROBABLY BE SOME INDICATION OF ACCEPTANCE OF COMPLIANCE WITH LICENSE CONDITIONS AND WILL BE SENT BY DON.

THE FOLLOWING IS A LIST OF POSSIBLE PROVISIONS TO THE ACCEPTANCE:

1. MINOR MAINTENANCE, ALONG WITH PERIODIC STREAM MEASUREMENTS, SHALL BE PERFORMED BY THE WATERMASTER. MAJOR MAINTENANCE SHALL BE THE RESPONSIBILITY OF THE POWER FACILITY OWNER. THE WATERMASTER SHALL MAKE THE DETERMINATION AS TO WHAT IS MAJOR MAINTENANCE. UPON NOTIFICATION, THE POWER FACILITY SHALL PERFORM MAJOR MAINTENANCE WITHIN A REASONABLE TIME.

2. IT SHALL BE UNDERSTOOD THAT THE CONFIGURATION, LOCATION, AND CONSTRUCTION OF THE GAUGE STATION IS BASED ON THE BEST INFORMATION AVAILABLE AT THIS TIME. WHEN LOCAL CONDITIONS ARE BETTER UNDERSTOOD IT MAY BE NECESSARY TO MAKE MODIFICATIONS TO INSURE AN ACCURATE AND MANAGEABLE STATION. SUCH MODIFICATIONS MIGHT INCLUDE RELOCATION, CERTAIN IMPROVEMENTS TO PROVIDE PERMANENCY, OR EQUIPMENT UPGRADE SUCH AS TELEMETRY. UPON NOTIFICATION BY THE WATERMASTER THE OWNER OF THE POWER FACILITY SHALL PERFORM THESE MODIFICATIONS WITHIN A REASONABLE TIME.

3. ALL CHARTS AND OTHER RECORD SHALL BECOME THE PROPERTY OF THE WATER RESOURCES DEPARTMENT. THE DEGREE OF RECORD WORK SHALL BE AT THE DISCRETION OF THE DIRECTOR OF THE WATER RESOURCES DEPARTMENT.

PLEASE PROVIDE DON WITH ANY COMMENTS YOU MAY HAVE ON THE ABOVE.

TKO Power

60823

POST OFFICE BOX 494310 • REDDING, CALIFORNIA 96049 • (916) 221-1611

RECEIVED

December 17, 1987

DEC 28 1987

WATER RESOURCES DEPT.
SALEM, OREGON

Federal Energy Regulatory Commission
Washington, D.C. 20426

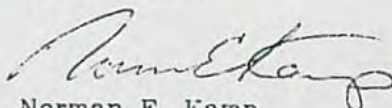
re: FERC project #6648, Lacombe Hydro.

Gentlemen:

We are pleased to announce that the Lacombe Hydro Limited Partnership project, which is managed by TKO Power, Inc., has moved its office to a new location. The new mailing address will be: P.O. Box 797, Palo Cedro, California 96073. This new address became effective on December 15, 1987.

Thank you for recording the change.

Respectfully,



Norman E. Kamp
President, TKO Power, Inc.

jb

cc: FERC, San Francisco, CA
Lacombe Irrigation Dist., Lebanon, OR
National Marine Fish Service, Portland, OR
Water Resources Dept., Portland, OR
U.S. Fish and Wildlife Service, Portland, OR
Army Corp of Engineers, Portland, OR
Dept. of Fish and Wildlife, Portland, OR
Pacific Power and Light, Portland, OR



Department of Fish and Wildlife

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

May 15, 1987

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, OR 97355

Re: Administrative and Assessment Fees for Hydroelectric Water Appropriation WRD 60823

Dear Sir/Madam:

The 1985 Oregon Legislative Assembly enacted Senate Bill 387 (copy attached) which provides that application and assessment fees shall be paid to the Oregon Department of Fish and Wildlife (Department) by persons who apply to the Water Resources Department for permits related to hydroelectric development. The fees are to be used by the Department in its activities related to hydroelectric projects. A schedule of the fees included in SB 387 is as follows:

1. For all applications pending before the Water Resources Department on July 1, 1985, either for a preliminary permit or license for a hydroelectric project under ORS 543.010 to 543.620, or for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.250, an administrative fee of \$350.00 shall be paid to the Department.
2. In addition to the administrative fee listed above, and for applications pending before the Water Resources Department on July 1, 1985, for projects producing more than 100 theoretical horsepower (74.6 Kw), either for a preliminary permit or license for a hydroelectric project under ORS 543.010 to 543.620, or for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.250, an assessment fee, the amount of which shall be the greater of \$1,000 or thirty-five cents for each kilowatt of proposed capacity, shall be paid to the Department.

Accordingly, the Department has determined you owe administrative and assessment fees associated with permits and licenses to appropriate water for hydroelectric purposes totaling \$1,350.00. The Department hereby requests payment for such fees and assessments within 30 days from the postmark of this letter. Please make checks payable to the Oregon Fish and Wildlife Hydroelectric Fund and reference invoice number 1225 with your payment.

If you have any questions regarding this billing please call Dave Nichols at (503) 229-6959. Thank you.

Sincerely,

Ken Russell
Business Manager

dnk
D4-25



Department of Fish and Wildlife

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

why - Young
- Learn

RECEIVED

SEP 17 1987

WATER RESOURCES DEPT.
SALEM, OREGON

September 16, 1987

Mr. Bill Young
Director
Water Resources Department
3850 Portland Road, NE
Salem, OR 97310

RE: WRD 60823 - La Comb Irrigation District
FERC 6648

Dear Mr. Young:

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Because of a lack of a suitable location near the diversion, the Water Resources gauging plan is to install a permanent gauge just upstream of the powerhouse. The Department of Fish and Wildlife concurs, provided temporary gauging is also conducted just below the point of diversion and correlated with flows at the permanent gauge location. The correlation will determine if measurable inflow occurs between the point of diversion and the permanent gauge. If measurable inflow does occur, the correlation will indicate the appropriate adjustments to permanent gauge readings to ensure minimum flow requirements are met throughout the diversion reach. It is my understanding your staff has no objection to establishing this correlation.

Thank you for consulting with us on this matter.

Sincerely,

David W. Nichols

David W. Nichols
Hydropower Coordinator
Habitat Conservation Division

dns

c WRD - Buell
Applicant



1. 1-23-87 Lacombe 60823
Intake to pelton wheel

3. 1-23-87 Lacombe 60823
Diversion structure - Crabtree
Creek in background

7

B. 198

FEB.



4. 1-23-87 Lacombe 60823
Grouted canal

FEB.

2. 1-23-87 Lacombe 60823
Gilkes wheel and generator

1987

1987

Note :

This opinion was superceded by a letter opinion by Mary Dietz dated March 30, 1983 now commonly called the "Winchester Letter". A copy is enclosed in this file.



DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4620

January 17, 1981

James E. Sexson, Director
Water Resources Department
Mill Creek Office Park
555 13th Street, N.E.
Salem, OR 97310

Dear Mr. Sexson:

This is in response to your letter of December 7, 1982, regarding the applications of Lacombe Irrigation District and Winchester Water Control District for water rights permits for hydroelectric projects under ORS chapter 537. You have asked whether, due to the contractual agreements into which each of these districts has recently entered with private developers, application must now be made by such private developers under ORS chapter 543 for water rights. The answer to your question is yes, for the following reasons.

The statutory scheme of ORS chapter 537 contemplates that an applicant for a permit to appropriate water intends to acquire the beneficial use of such water for a project which it (the applicant) will finance and construct in order to put the water to such beneficial use. The following statutory language supports this interpretation.

"Any person intending to acquire the right to the beneficial use of any waters shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with the construction, or proposed appropriation, make an application to the Water Resources Director for a permit to make such appropriation." (Emphasis added) ORS 537.130(1).

"* * * Each application for a permit to appropriate water shall set forth the name and post-office address of the applicant, the source of water supply, the nature and amount of the proposed use, the location and description of the proposed ditch, canal or other work, the time within which

James E. Sexson
January 17, 1983
Page two

it is proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use." ORS 537.140(1).

"All applications shall be accompanied by such maps and drawings, in duplicate, and such other data concerning the proposed project and the applicant's ability and intention to construct such project, as may be prescribed by the director. The accompanying data shall be considered a part of the application." (Emphasis added) ORS 537.140(2).

"Upon receipt of an application the Water Resources Director shall indorse thereon the date of its receipt and keep a record of the same. If, upon examination, the application is found to be defective, or to lack satisfactory proof of the applicant's ability to finance and construct the proposed project or of his intention in good faith to construct it with due diligence, the application shall be returned for correction or completion or for the supplying of such proof." (Emphasis added) ORS 537.150(1).

An examination of the aforementioned contractual agreements reveals that it is no longer the districts, but private developers, which will be financing and constructing the proposed projects. (See Lacomb Agreement: Project Development - paragraph 1(b), Construction Management - paragraph 2, Financing - paragraph 4, Financial Obligations - paragraph 13. See Winchester Agreement: Best Efforts - paragraph 11, Supervisions and Contracting - paragraph 15, Costs of the Project - paragraph 17, Assignment of Rights - paragraph 29).

The remaining roles of the two districts with respect to these projects is very limited. In the case of the Winchester project, the district's role is to "assign all rights necessary" to the private developer for the purpose of the project and to rehabilitate the Winchester Dam which will be used by the private developer in developing this project. The district's role in the Lacomb project consists almost entirely of allowing the private developer to "use" any water rights which it has in connection with the project. Under the foregoing circumstances, the private developers herein must acquire water rights for these hydroelectric projects under ORS chapter 543. ORS 543.110.

James F. Sexson
January 17, 1983
Page three

You have asked for advice on the proper handling of the Lacombe and Winchester applications. The following procedure is recommended.

The two districts should be notified that further proceedings under ORS chapter 537 are inappropriate and that application for water rights should be made by the private developer for the proposed projects. Such notice should be in writing and should also state that any application made by the private developers shall be processed in accordance with the provisions of ORS chapter 543.

It is my understanding that in the case of the Lacombe application, the Water Policy Review Board has already held hearings under ORS 537.170 and determined that the proposed project would not impair or be detrimental to the public interest. However, since such a determination by the Board, Lacombe has amended its application and is now seeking to appropriate a larger amount of water than under its original application. No hearings have been held on the amended application. The question arises whether, under these circumstances, hearings would be necessary under ORS 543.225 upon an application by the private developer. In my opinion, such hearings should be held. Lacombe's amended application calls for the use of approximately one-third more water than the original application. This is a major increase in the volume of water sought to be appropriated and could have a direct bearing on the amount of public objection to the project and ultimately, upon the Board's determination of impairment or detriment to the public interest. Therefore, new hearings should be held under ORS 543.225 if the private developer submits an application requesting the amount of water reflected in the district's amended application or any amount which differs from that in the district's original application.

You have also requested advice regarding proper procedures generally for handling projects which begin as projects of a public entity ("public projects," properly processed under ORS chapter 537) and which subsequently lose their "public character" due to contractual agreements with private developers for the actual development of the project.

Once it is determined that a project is no longer a "public project," the following procedure for handling the matter is recommended. The public entity should be notified in writing by the Water Resources Director that processing

James F. Sexson
January 17, 1983
Page four

its application under ORS chapter 537 is no longer appropriate and that an application for water rights should be made by the private developer under its own name. The notice should state that an application by the private developer will be processed under ORS chapter 543. If no hearings have been held on the project under ORS chapter 537 on the public entity application, then hearings should be held as provided by ORS chapter 543 on the private developer's application. Hearings should also be held under ORS chapter 543, if the application of the private developer differs in any substantive way (other than the identity of the applicant) from the application of the public entity. Examples of such differences would include changes in the amount of water sought to be appropriated, location of the project and project design.

Hearings under ORS chapter 543 need not be held if hearings have already been held under ORS chapter 537 on the public entity's application and no differences, other than the identity of the applicant, exist between that application and the private developer's application. New hearings under these circumstances are not necessary because the determination which the Board is required to make under ORS 543.225 (whether the project would "impair or be detrimental to the public interest so far as the coordinated, integrated, state water resources policy is concerned" (emphasis added)) would have been part of the broader determination of impairment or detriment to the public interest in general previously made by the Board under ORS 537.170. Further, the criteria to be considered by the Board in reaching these determinations is exactly the same under the two sections. See ORS 537.170(3)(a) through (g) and ORS 543.225(3)(a) through (g). Under these circumstances, no one would be prejudiced by not holding further hearings, therefore, further hearings should not be required.

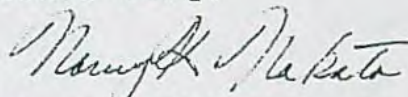
Perhaps the most difficult aspect of dealing with projects of the type with which we are concerned here, is making the initial determination that what began as a public project has become a private one under the control of a private developer. The degrees and ways in which this may occur are seemingly endless. Both the agency and applicants need to know the standards by which this critical factor will be determined. Therefore, I recommend establishing such standards in the form of administrative rules. I realize that this will not be an easy task. I am not suggesting that such rules should attempt to list every imaginable factor or

James E. Sexson
January 17, 1983
Page five

combination of factors which may arise. Rather, such standards should take the form of general guidelines by which any project may be evaluated. For example, rules addressing such factors as project ownership, construction, operation and financing may be helpful.

I hope this will be useful to you. Please feel free to call if I may be of further assistance in this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read "Nancy K. Nakata".

Nancy K. Nakata
Assistant Attorney General

NKN:mlm



DEPARTMENT OF JUSTICE

PORTLAND OFFICE
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

RECEIVED

MAR 31 1983

WATER RESOURCES DEPT.
SALEM, OREGON

March 30, 1983

Mr. James E. Sexson, Director
Water Resources Department
Mill Creek Office Park
555 13th Street N.E.
Salem, OR 97310

Re: Winchester Water Control District

Dear Jim:

You asked that we review the question of whether it is proper for the Water Resources Department to process, under the provisions of ORS chapter 537, the application of the Winchester Water Control District for water rights to be used for the development of a hydroelectric project. In accordance with ORS 543.150, the general requirements of ORS chapter 543 for licensing of a hydroelectric project are not applicable because the application was filed by a water district. Rather, the district need only comply with the applicable provisions of ORS chapter 537. ORS 543.680.

A question has arisen as to the appropriateness of allowing the district to proceed under chapter 537 in light of the fact that the district has executed a contract with a private developer for the construction, financing and management of the hydroelectric project. The contract provides that the private developer will design, construct and finance the hydroelectric project. The project will be adjacent to the existing Winchester Dam structure and will utilize an existing power station. Once the project is complete, the private developer will manage the project for approximately 18 years. During the 18 year period the developer will pay to the water district ten percent of the revenue from the sale of power. The developer presently has a contract with PP&L for the sale of power for a period of 35 years.

Pursuant to the contract, the water district is to convert the existing dam structure to a concrete dam. The district has agreed to lease to the developer for approximately 18 years, the dam,

James E. Sexson
March 30, 1983
Page Two

existing power station and the property on which the dam and power facilities are to be located. The personal property components of the project, such as the turbines, are to be treated as tenants' fixtures during the lease period. The developer may allow liens to be placed against the personal property for purposes of financing of the project. The district also is to assign the water rights to the developer for the lease period.

At the end of the 18 year lease period, all the real and personal property of the project is vested in the district. The property is to be free of all liens at that time. In addition, the district, at that time, is to assume the sole responsibility for the operation and management of the project. Finally, at the termination of the lease period, the developer will assign the contract with PP&L to the district and the district will be entitled to 100 percent of the revenue from the sale of power.

The pertinent legal question is whether, in light of the above contractual arrangement, the processing of the water rights application as that of a municipality is in any manner inconsistent with the provisions of ORS chapters 537 or 543. ORS chapter 543 generally governs applications for the right to appropriate water for use in connection with water power projects for the generation of electricity. The chapter includes procedures for issuance of licenses and of preliminary permits which allow an applicant to study project feasibility and make other necessary preparations for the project if a license is issued. ORS 543.240.

When the application involves a power project in excess of 100 theoretical horsepower, the Water Policy Review Board must conduct a public hearing. If the board determines that the proposed project "would impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned" it shall enter an order denying the application or modifying the application so that the project does conform to the public interest. ORS 543.225(2).

The board and Water Resources Director have considerable discretion in establishing the conditions of a preliminary permit or license. ORS 543.225; 543.250; 543.260; and 543.300. The Water Resources Director must approve the plans and specifications for the project. In addition, he may prescribe the time in which construction must take place, may adopt regulations governing the use, storage and discharge of waters affected by the license and may impose "other and further conditions not inconsistent with ORS 543.010 to 543.620, as the

Mr. James E. Sexson
March 28, 1983
Page Three

Water Resources Director may require in the public interest." ORS 543.300(6). In addition, the Water Resources Director has considerable authority with respect to the financing of the project. The director may establish a set of accounts under which the net investment of the licensee shall be authorized and paid. Pursuant to this authority, the director may establish the licensee's rate of return upon the net investment. ORS 543.510.

The Water Resources Director also has authority to terminate a license for failure to complete the project within the time prescribed in the license. ORS 543.420. Further, the director may compel compliance with the conditions of the license. ORS 543.430. No voluntary transfer of a license or any rights thereunder may take place without the written approval of the Water Resources Director.

The only provision of ORS chapter 543 which might be construed as precluding a municipality from developing a hydroproject in conjunction with a private developer is ORS 543.660, which provides in pertinent part:

"(1) A district, alone or jointly with other districts, electric cooperatives, as defined in ORS 261.010(8), people's utility districts, a cooperative as defined in ORS 62.015(1)(c), municipal corporations authorized to engage in generating and distributing electricity or public utilities, as defined in ORS 757.005, engaged in the business of generating and distributing electricity, may construct, acquire, operate and maintain hydroelectric facilities in connection with its water system, including, but not limited to, dams, canals, generating plants, transmission lines, other power equipment and the necessary property and rights therefor, for the purpose of generating electricity. However, a district may not be created solely or primarily for the purpose of constructing, acquiring, operating or maintaining hydroelectric facilities."

Arguably, the above statute could be construed as prohibiting municipalities from developing hydroelectric projects except in conjunction with other districts, electric cooperatives, people's utility districts, municipal corporations or public utility districts. However, the legisla-

James E. Sexson
March 30, 1983
Page Four

tive history indicates that the purpose of this legislation was not to limit the opportunities of municipalities to develop hydroelectric projects, but to enable them to do so.

Apparently, prior to this legislation, there was some question if water districts had the authority to file for a license for the development of hydroelectric projects. Representative Bellamy, the sponsor of this legislation, testified before the Senate Committee on Energy that the legislation was necessary to clarify the authority of municipalities to develop hydroelectric projects. Representative Bellamy expressed concern about imposing unnecessary hurdles to permitting development of hydroelectric projects by utility districts. He recognized that these boards are run by lay personnel without expertise in electric generation. Senate Committee on Energy, May 21, 1981, Tape 2A, Cue No. 122-278. It would appear to be inconsistent with the purpose of the legislation to prohibit districts from utilizing private developers to carry out portions of the project for which the district lacks the expertise.

In our opinion, the provisions of ORS chapter 543 do not preclude a municipality from developing a hydroelectric project in conjunction with a private developer. Further, we do not believe the provisions of ORS chapter 537 prevent such a joint development. As noted above, ORS 543.680 requires a municipality which seeks to develop a hydroelectric project to comply with the provisions of ORS chapter 537. ORS 537.130 provides that:

"(1) Any person intending to acquire the right to the beneficial use of any waters shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with the construction, or proposed appropriation, make an application to the Water Resources Director for a permit to make such appropriation."

The water rights application must include the name of the applicant, the nature and amount of the proposed use, when construction will begin and when it will be completed and such maps and drawings and other data concerning the proposed project and the applicant's ability to construct the project as may be prescribed by the director. ORS 537.140.

James E. Sexson
March 30, 1983
Page Five

If the proposed use of water is for the development of hydroelectric power in excess of 100 theoretical horsepower the Water Policy Review Board shall hold a public hearing on the application. The board may continue the hearing for up to three years if, in the board's opinion, sufficient information is not available to determine if the proposed use would impair or be detrimental to the public interest. The same standards apply to the board's determination as to whether the application should be granted as are applicable when the board is considering an application under ORS 543.140. If the board determines the proposed use would be detrimental to the public interest it shall deny the application or modify the application so that it does conform to the public interest. ORS 537.170(2).

As with the licenses issued under ORS chapter 543, the director has broad discretion with respect to the terms and conditions he may establish on the proposed use. ORS 537.190 provides:

"(1) An application may be approved for less water than applied for, or may be approved upon terms, limitations and conditions necessary for the protection of the public interest"

In contrast to license applications made under chapter 543, the director is not given authority by chapter 537 to establish standards for the financing of the project. Further, the director is not granted specific authority to instigate legal action to compel the completion of a project or remedy violations of a permit. In fact, ORS 537.410 specifically exempts municipalities from cancellation of a water rights permit for failure to commence or complete work on the project. However, since the director has authority to impose conditions on a municipal application, he would have implicit authority to require a municipality to comply with the conditions of a permit. Further, unlike the license issued under ORS chapter 543, a permit to appropriate water issued under chapter 537 may be assigned subject to the conditions of the permit. As provided in ORS 537.220:

"Any permit or license to appropriate water may be assigned, subject to the conditions of the permit, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the Water Resources Director."

James E. Sexson
March 30, 1983
Page Six

There are no provisions in ORS chapter 537 which preclude a municipality from developing a hydroelectric project in conjunction with a private developer. The provisions of chapter 537 require that an applicant submit construction plans and "all other data concerning the proposed project and the applicants' ability to construct such project as may be prescribed by the director." Presumably, as in this case, it would become readily apparent to the director that the district planned to use a private developer to construct and finance the project. The director could then require such information as necessary to evaluate the proposal.

In our opinion, the statutes allow the director to grant a water rights permit to a municipal water district whose development proposal includes the use of a private developer to construct, finance and maintain a hydroelectric project. However, there is one significant limitation to this conclusion. If the application by the water district is merely a subterfuge for allowing a private developer to obtain a water right through the municipal application process, it is not permissible. In other words, if the water district is not merely using the private developer to facilitate its project, but rather the project is the private developer's and the developer is using the municipal application process to facilitate a private development project, this would be inconsistent with the statutory scheme.

The proposal for the Winchester Dam project presents a very close question. Arguably, the district is not merely using the private developer to facilitate its project, but has delegated so much of the responsibility for the project to the developer that it has become a private development project. However, we conclude that the water district has retained sufficient benefit, interest and control that it cannot be said the proposal is a subterfuge to allow the private developer to use the municipal application process. Under the contractual agreement, the district retains ownership and control of the existing dam, structures and land. The district retains its ability to control and maintain the pool behind the dam. The district will receive full ownership and control of the entire project in 18 years.

The district does maintain significant control over the project pursuant to Section 26 of the conditions. The district has the right to terminate the lease if the private developer fails to perform any terms or conditions of the agreement within 120 days of written notice of the violation of the terms or conditions. If the project is terminated, possession and use of

James Sexson
March 30, 1983
Page Seven

the premises and all improvements will revert to the district and the developer will be obligated to restore the facilities to their initial standard of performance.

The developer does agree to pay the costs of the project and to pay the district an initial payment of \$45,000. However, we do not believe that this fact mandates a conclusion that the project is solely that of the developer. The contractual agreement clearly provides that the district retains its ownership of the existing structures and property and has the right to ownership of all of the project property at the termination of the lease period.

The fact that we have concluded that the proposed project may proceed under chapter 537 does not mean that the board and the director are compelled to approve the application. As discussed above, the board has broad discretion to determine whether the application is in the public interest. The board could conclude that the district's extensive reliance on a private developer is not in the public interest. Further, the board could impose conditions on the permit which would require a water district to retain specified controls over a project which might preclude a joint project such as in the present case.

In summary, unless the application by a water district or other municipality is a subterfuge to allow a private developer to proceed under the municipal application process, the question of whether a particular proposal in which a water district delegates certain project responsibilities to a private developer is in the public interest is a policy decision committed to the Water Policy Review Board.

Very truly yours,

Mary J. Deits

Mary J. Deits
Attorney-in-Charge
Natural Resources Section

MJD:aa



Department of Fish and Wildlife

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED

JUN 15 1987

60823
Don Buell, WRD

June 10, 1987

Mr. Ray Toney
Ray Toney and Associates
P.O. Box 1342
Redding, CA 96099

RE: Inspection of LaComb Hydro Fish Facilities - FERC 6648

Dear Mr. Toney:

This letter will document that on this date I inspected the LaComb Hydropower Project fish protection facilities. The Department of Fish and Wildlife is satisfied that the facilities are completed and can be operated per the plans and specifications that have been previously approved by this Agency.

Sincerely,

David W. Nichols

David W. Nichols
Fish Passage Specialist
Aquatic Habitats Program
Habitat Conservation Division

dno

c FERC - Portland; D.C.
NMFS - Esch
USFWS - Larsen
LaComb Irrigation District

MEMORANDUM

TO: File 60823

DATE: July 29, 1987

FROM: Don Buell

SUBJECT: Call from Gene McGinnis, Watermaster District 2.

Gene called this morning regarding the required measuring device for the Lacombe Hydroelectric Project, Application 60823. He had met with Norm Kamp to look for a site for the gage. I asked if a representative of ODFW had been along. The answer was no so I suggested that he get in touch with Dave Nichols at 229-6959 and arrange to meet him at the site in order to get ODFW approval as conditioned in the permit.

Gene stated that Norm had been very cooperative in complying with any of Gene's requests.

NOTES

GENERAL

(A) ALL WALLS AND SLABS SHALL HAVE #5 BARS AT 1'-0" CENTERS UNLESS NOTED OTHERWISE.

REINFORCED CONCRETE

(A) Concrete

- 1) Concrete design, mixing, and placing will meet the codes and standards set forth by the American Concrete Institute (ACI) and the American Society for Testing and Materials (ASTM).
- 2) All concrete test samples and concrete testing will be in accordance with ASTM C 172, ASTM C 31, and ASTM C 39.
- 3) Compressive field strength will be no less than 3000 psi after 28 days, (unless noted otherwise).
- 4) Concrete slump will be between 2 to 4 inches.
- 5) Horizontal construction joints will be prepared to expose clean, solidly embedded aggregate over the entire joint surface to an amplitude of 1/4 inch. All laitance and standing water will be removed.

(B) Reinforcement

- 1) Reinforcing steel will be deformed bars and conform to ASTM A-615 Grade 40 less than #5; Grade 60 #5 or larger, (unless noted otherwise).
- 2) All detailing fabrication and erection of reinforcing steel, unless noted otherwise will follow the ACI "Manual of Standard Practice for Detailing Reinforced Concrete Structures" (the latest edition).

- 3) All dimensions shown for location of main reinforcing steel and noted "clear" (or clr.) are to the face of the bar and denote clear coverage.
- 4) Walls will be reinforced at tops, bottoms, corners, edges, intersections, and intermediately, so as to form a continuous gridwork tying all parts of the concrete or block structure together.
- 5) Splices in continuous reinforcing will have laps of 40 bar diameters (5 x bar #) minimum in masonry construction and 32 bar diameters (4 x bar #) minimum in concrete construction. Except where shown otherwise, horizontal laps in adjacent bars will be staggered 5'-0" minimum.

- 6) Provide reinforcing steel dowels at construction joints. Dowels will be same size and spacing as reinforcing steel. See concrete note #5.

- 7) Unless specifically noted otherwise, concrete coverage will be:

Concrete cast against ground (except slabs) 3"

Concrete to be in contact with ground, weather or water, but is placed against forms:

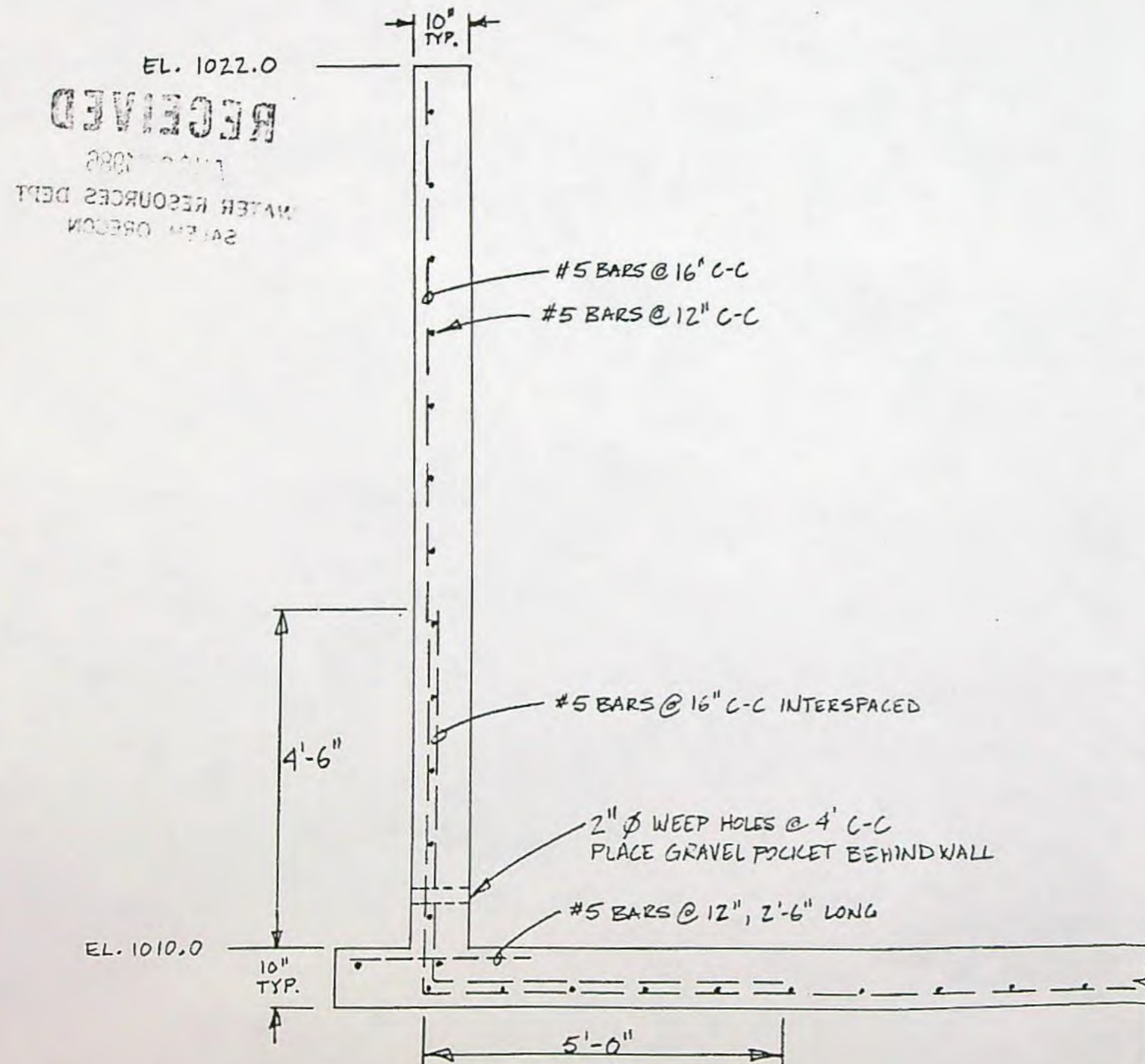
#5 or larger	2"
less than #5	1 1/2"

Concrete not to be exposed to ground, weather or water

Beams and Columns	1 1/2"
Slabs, Joists, Walls	3/4"

(C) Formwork/Falsework

- 1) All formwork will meet the safety requirements set forth by the Division of Occupational Safety and Health (DOSH).
- 2) Formwork will be removed only after the concrete has sufficient strength to support its own weight and the weight of loads placed upon it.




REINFORCING DETAIL FOR 12' WALL AND SLAB

Application No. 60823
Permit No. 49822

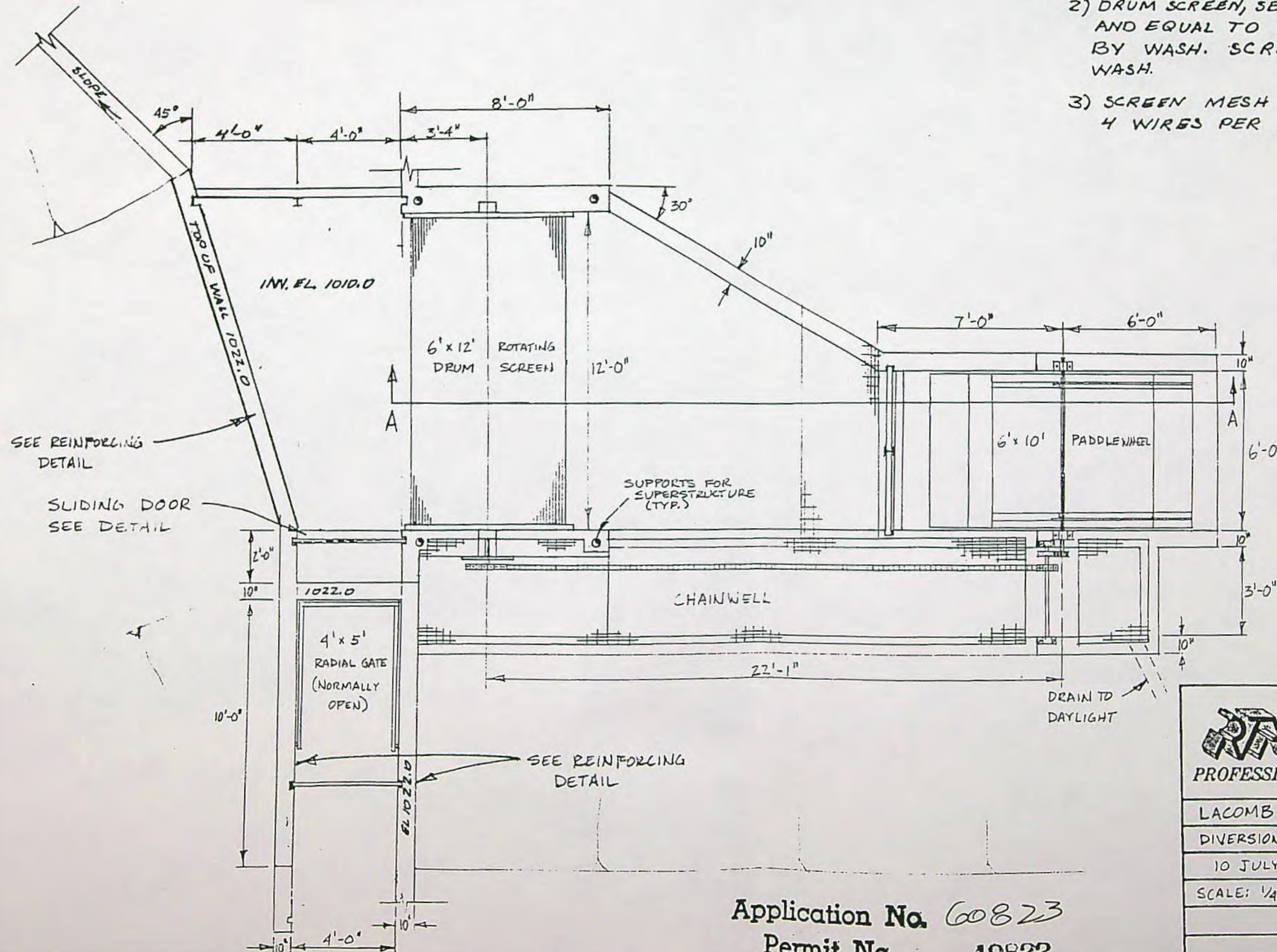


DEPARTMENT OF
WATER RESOURCES
DO NOT SEND OUT

 RAY TONEY AND ASSOCIATES PROFESSIONAL ENGINEERS/CONSTRUCTORS	
LACOMB IRRIGATION DISTRICT	
STRUCTURAL DETAILS OF DIVERSION STRUCTURE	
19 AUGUST 1986	
SCALE: 1/2" = 1'-0"	

NOTES:

- 1) DRUM SCREEN SURFACE ROTATION OF 4 TO 5 FEET PER MINUTE
- 2) DRUM SCREEN, SEALS & DRIVE TO BE SIMILAR AND EQUAL TO SCREENS MANUFACTURED BY WASH. SCREEN SHOP IN YAKIMA + WASH.
- 3) SCREEN MESH TO BE 14 GA WIRE W/ 4 WIRES PER INCH, GALVANIZED



DEPARTMENT OF
WATER RESOURCES
DO NOT SEND OUT



WRD
APPROVED: 9/18/86
DIRECTOR
DAM SAFETY



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS

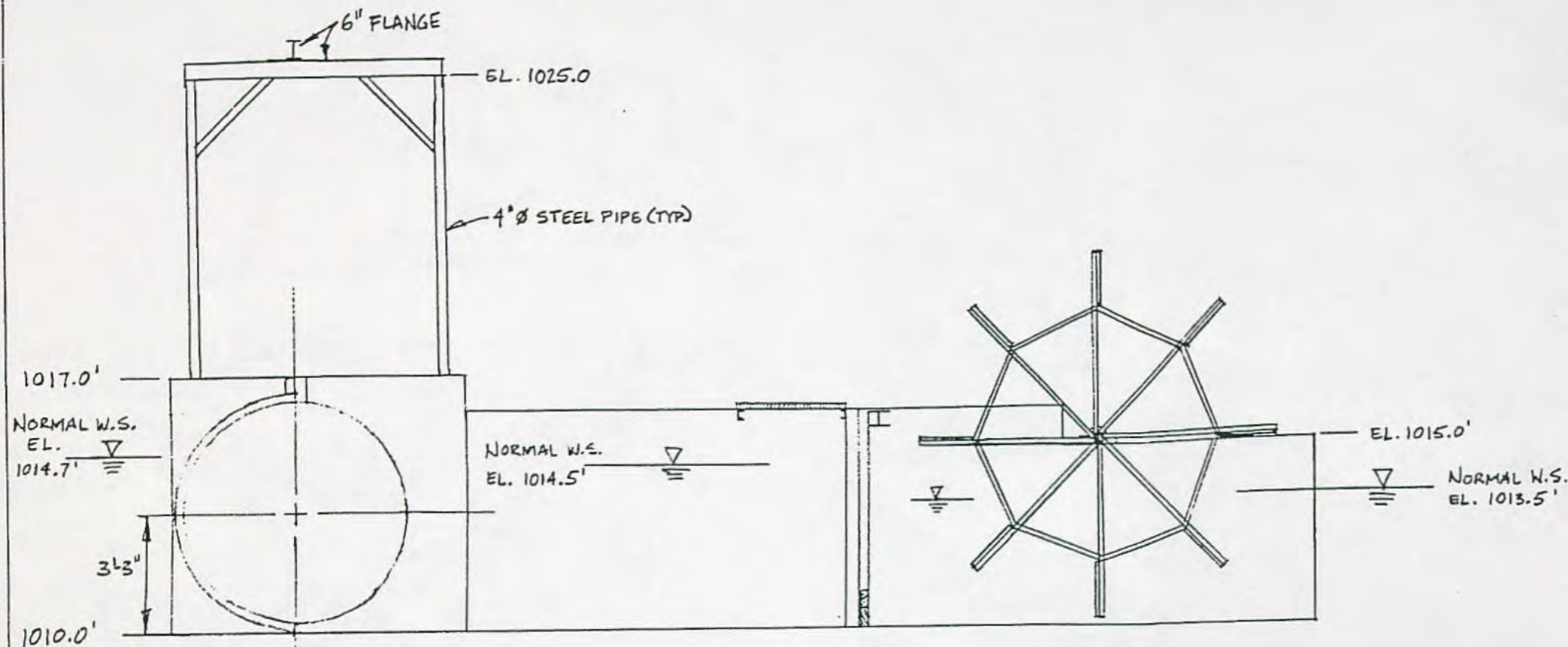
LACOMB IRRIGATION DISTRICT

DIVERSION STRUCTURE PLAN

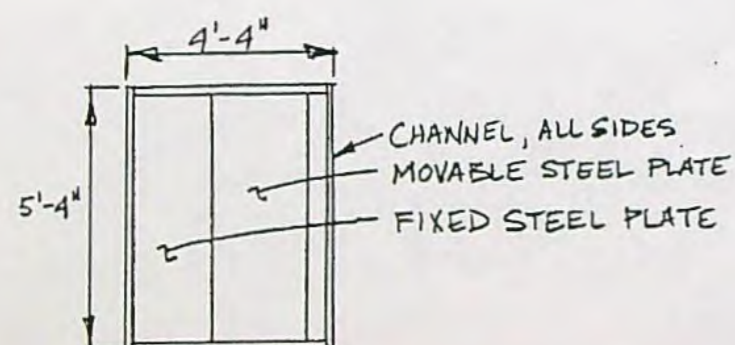
10 JULY 1986

SCALE: 1/4" = 1'-0"

Application No. 60823
Permit No. 49822

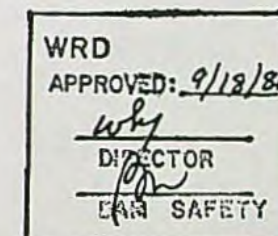


SECTION A-A
SCALE: 1/4" = 1'-0"



SLIDING DOOR
SCALE: 1/4" = 1'-0"

DEPARTMENT OF
WATER RESOURCES
DO NOT SEND OUT



Application No. 60823
Permit No. 49822

RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS

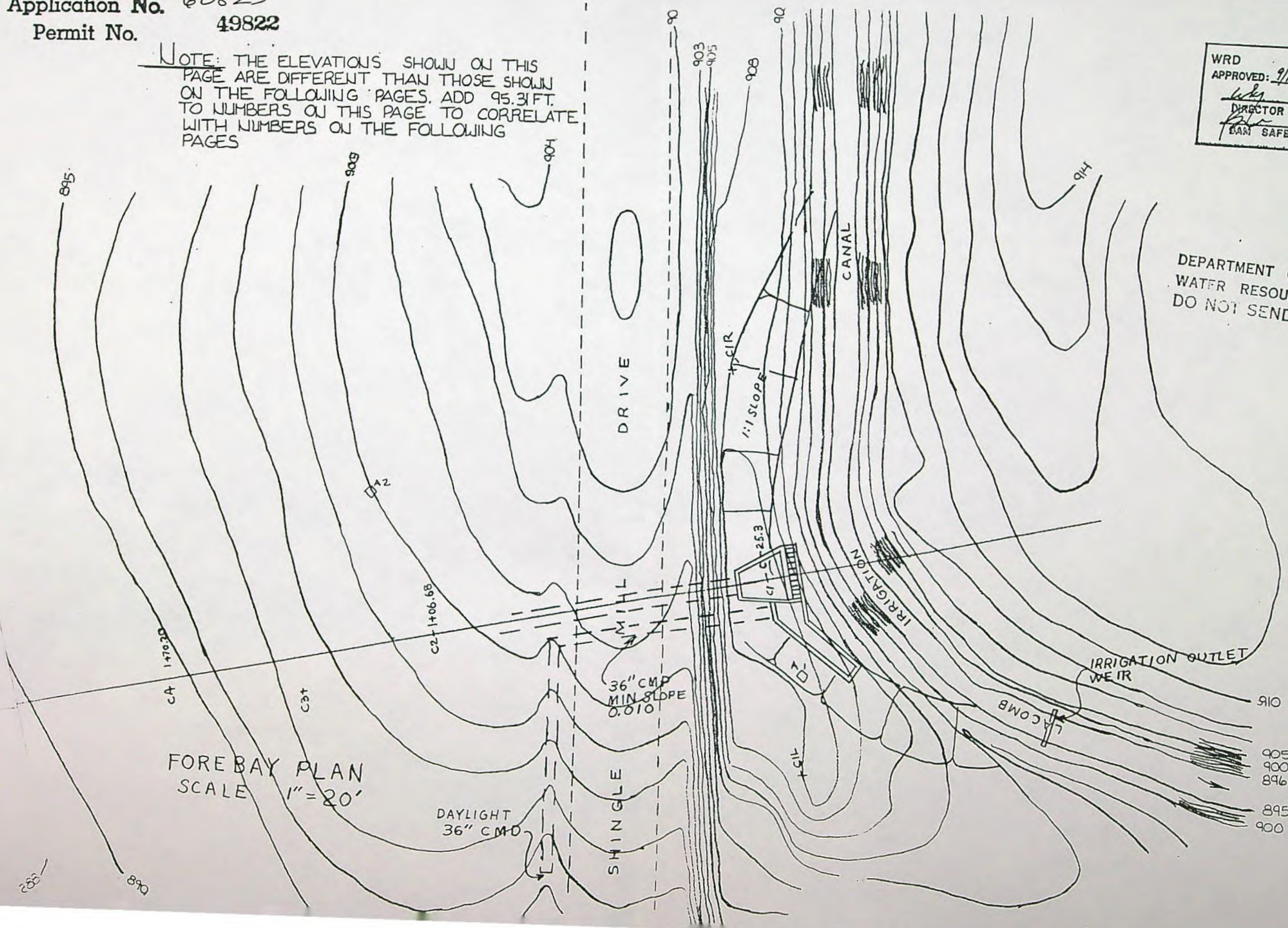
LACOMB IRRIGATION DISTRICT
DIVERSION STRUCTURE SECTION & DETAIL
10 JULY 1986

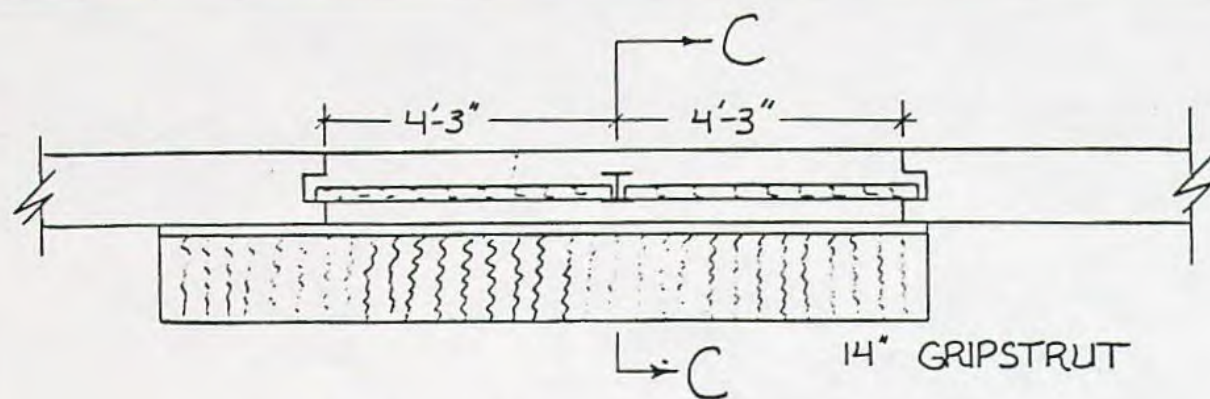
Application No. 60823
Permit No. 49822

NOTE: THE ELEVATIONS SHOWN ON THIS PAGE ARE DIFFERENT THAN THOSE SHOWN ON THE FOLLOWING PAGES. ADD 95.3 FT. TO NUMBERS ON THIS PAGE TO CORRELATE WITH NUMBERS ON THE FOLLOWING PAGES

WRD
APPROVED: 9/19/86
W. J. [Signature]
DIRECTOR
[Signature]
EAM SAFETY

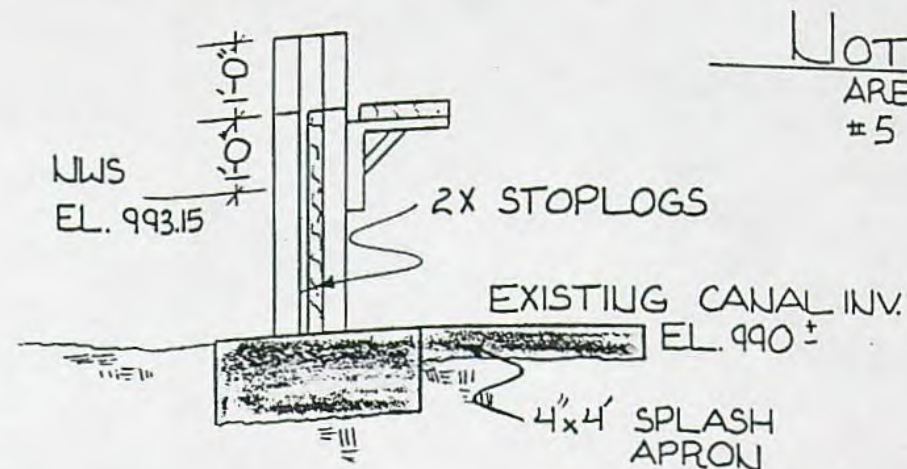
DEPARTMENT OF
WATER RESOURCES
DO NOT SEND OUT





IRRIGATION OUTLET WEIR

3/8" = 1'-0" (PLAN)

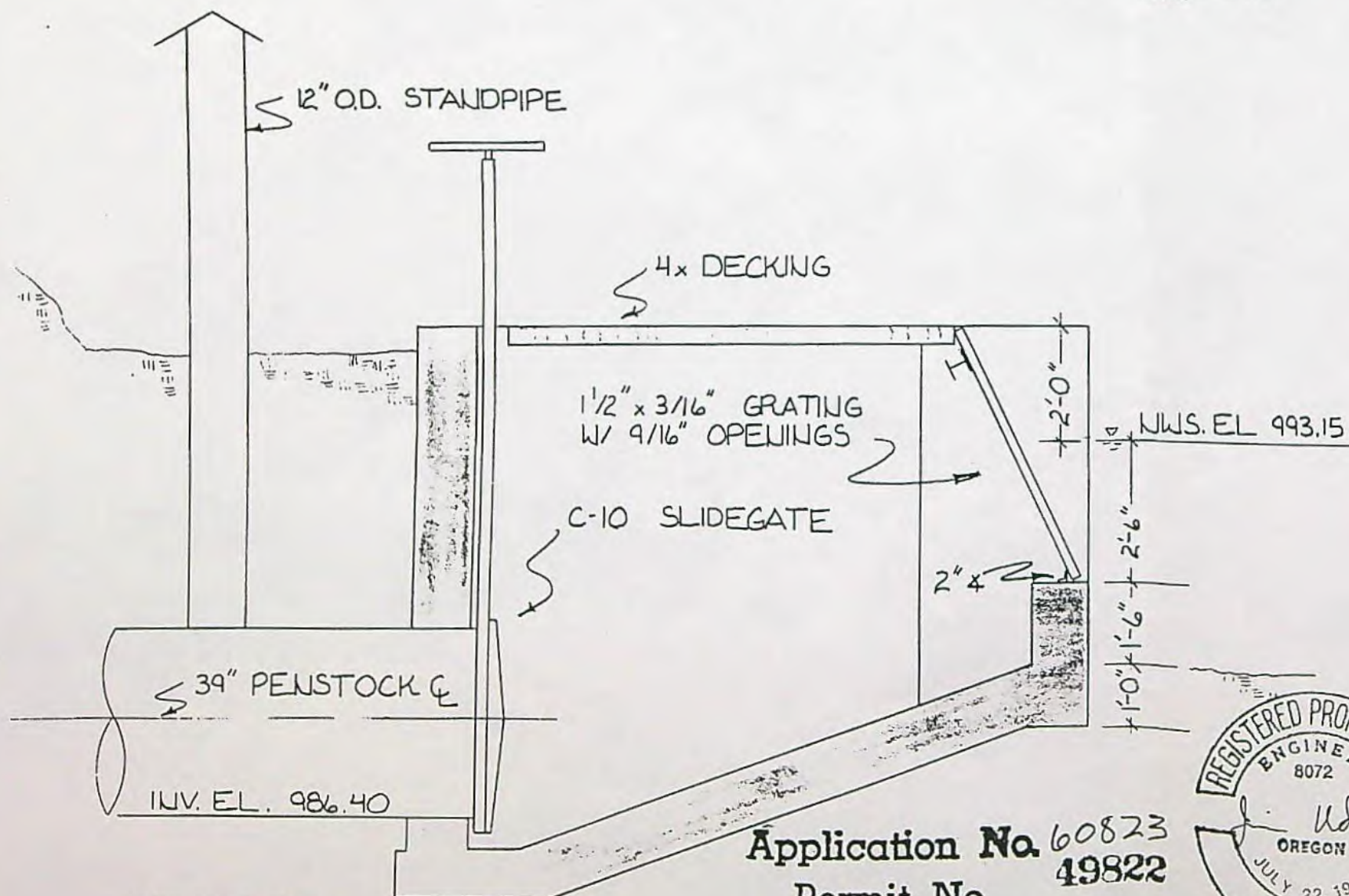


SECTION C-C

3/8" = 1'-0"

NOTE: ALL WALLS AND FLOORS ARE 12" THICK W/ SINGLE MAT OF #5 BAR @ 12" O.C. BOTH WAYS.

DEPARTMENT OF
WATER RESOURCES
DO NOT SEND OUT



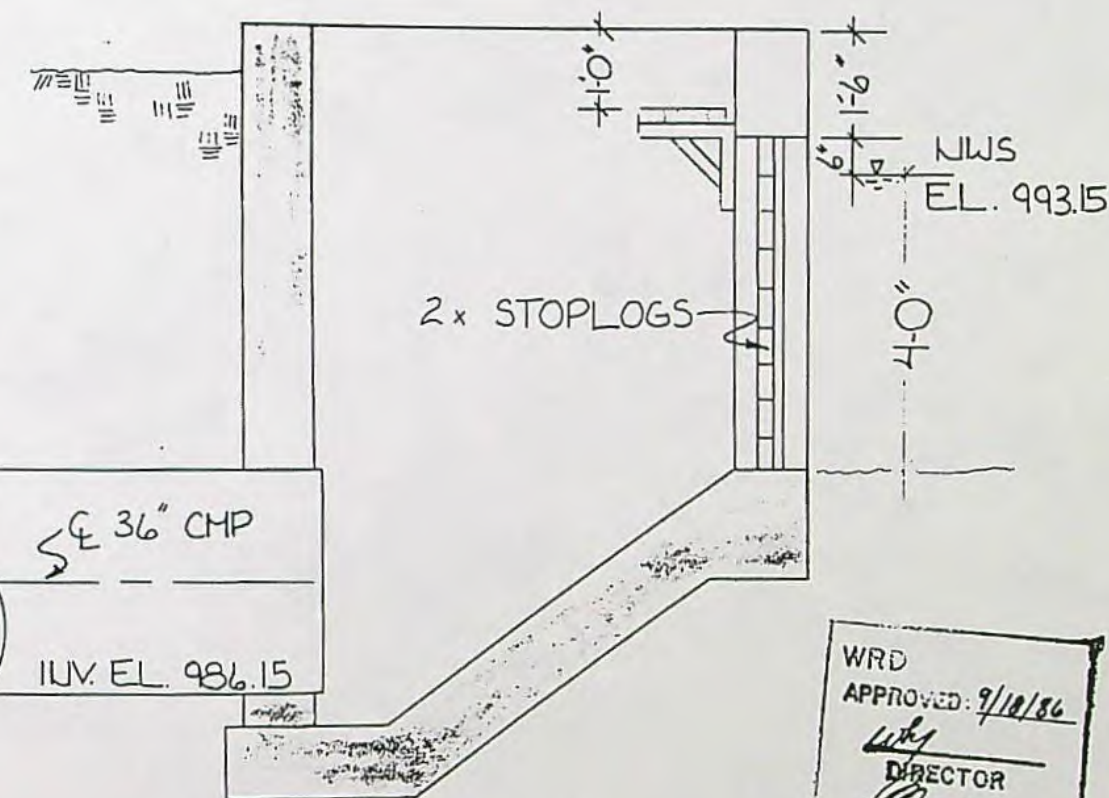
SECTION A-A

3/8" = 1'-0"

Application No. 60823
Permit No. 49822



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS



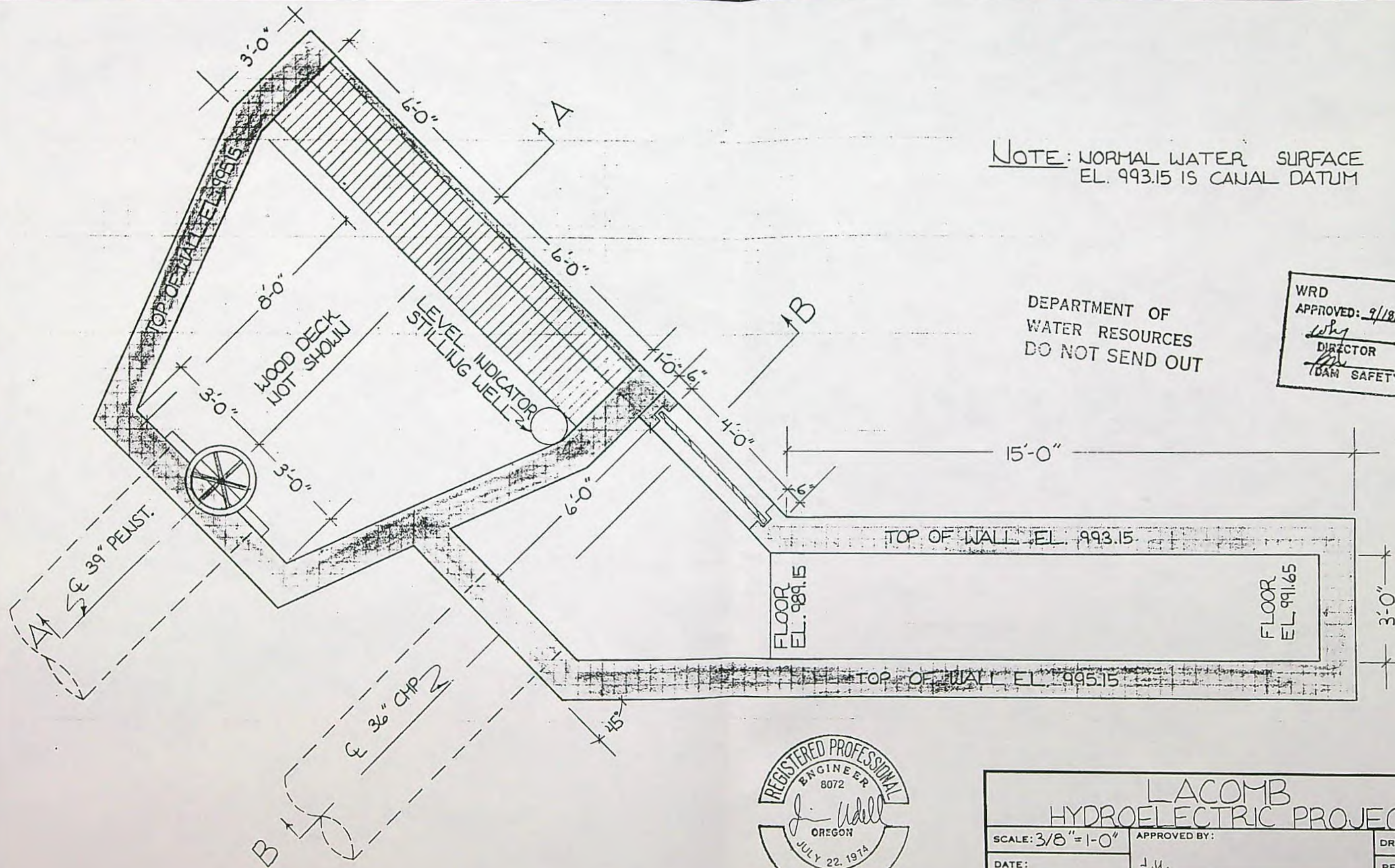
SECTION B-B

3/8" = 1'-0"

WRD
APPROVED: 9/10/86
DIRECTOR
DAM SAFETY

LACOMB HYDROELECTRIC PROJECT

SCALE:	APPROVED BY: J. U.	DRAWN BY: <i>Stewart</i>
DATE: JULY 25-86	REVISED	
PENSTOCK INTAKE FOREBAY OVERFLOW (SECTIONS)		
DRAWING NUMBER		



NOTE: NORMAL WATER SURFACE
EL. 993.15 IS CANAL DATUM

DEPARTMENT OF
WATER RESOURCES
DO NOT SEND OUT

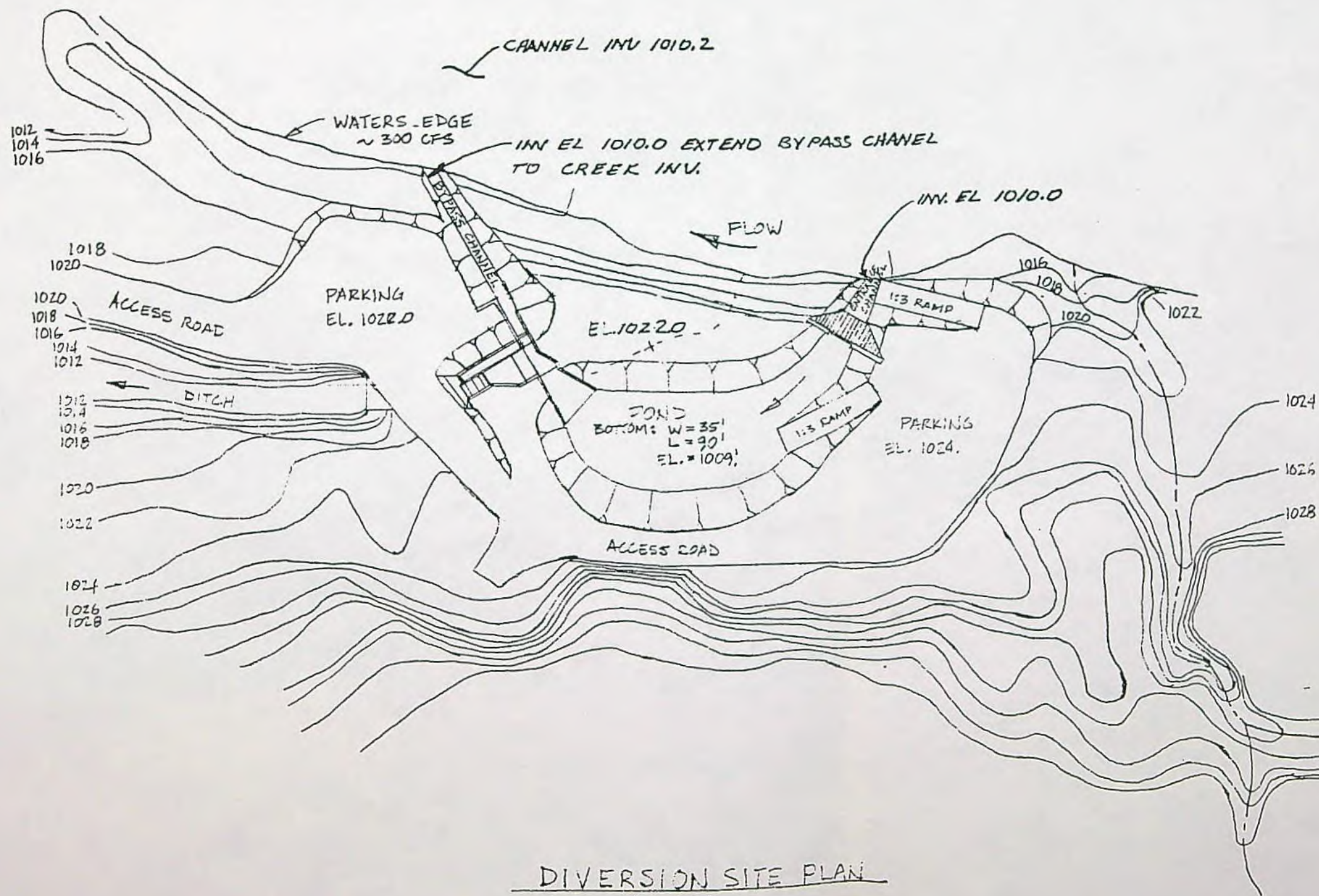


Application No. 60823
Permit No. 49822



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS

LACOMB HYDROELECTRIC PROJECT		
SCALE: 3/8" = 1'-0"	APPROVED BY: J.U.	DRAWN BY: <i>tenet</i>
DATE:		REVISED
PENSTOCK INTAKE FOREBAY OVERFLOW (PLAN)		
CA. LIC. 291426		DRAWING NUMBER



DIVERSION SITE PLAN
1" = 50'

Application No. 60823
Permit No. 49822

DEPARTMENT OF
WATER RESOURCES
DO NOT SEND OUT



WRD
APPROVED: 9/18/86
[Signature]
DIRECTOR
DAM SAFETY



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS

LACOMB IRRIGATION DISTRICT
DIVERSION STRUCTURE, GENERAL PLAN
10 JULY 1986
SCALE: 1" = 50'

November 25, 1986

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, OR 97355

REFERENCE: Application 60823

Attached is a copy of the plans and specifications approved by the Director of the Water Resources Department for construction of the proposed Lacomb Irrigation District Hydroelectric Project under Application 60823.

The construction must be supervised by an engineer licensed to practice in Oregon. We assume the design engineers will provide the required supervision and inspection. If this is incorrect, please advise this office immediately.

Any changes in the approved plans and specifications will require prior approval from this office. In the event that any deviations become necessary during construction due to unforeseen circumstances, engineers are available from this office to work with you.

On completion, a certification that all construction was performed in accordance with the approved plans and specifications, by the engineer and the owner must be furnished to this Department.

ORS 543.685 requires that the board of directors of the district adopt an ordinance, resolution or administrative rule requiring weatherization of district facilities or establish a special weatherization fund from the revenues of your hydroelectric project.

Sincerely,

DONALD R. BUELL
Hydroelectric Licensing Engineer

DRB:wpc
7690D

$$65 \text{ cfs } @ \text{ } 993.15 - 658 = 335.15 \text{ ft head.}$$

$$\begin{array}{r} 898.34 \\ 661.5 \\ \hline 236.84 \end{array} \quad \begin{array}{r} 898 \\ 661.5 \\ \hline 236.5 \end{array}$$

65 cfs @ 236.5

1747 thp

@ 1⁰⁰ per thp for 1st 100 and

20¢ for each additional =

$$429.40^{\text{PRF}} + 20^{\text{EF}} = 449.40$$

32⁰⁰ refund



STATE OF OREGON

INTEROFFICE MEMO

TO Roseanne Wardell, A/P Specialist

DATE 12-1-86

ck. # 6270
mailed 1-25-87
JCB

FROM

Don Buell via JCB
Authorized Examiner

SUBJECT Request for Refund Check

Please refund \$ 32 to Lacomb Irrigation District
file no. 60823, receipt no. 32268. These funds are refunded due
to:

_____	Application rejected
_____	Application withdrawn
<u>X</u> _____	Excess fees collected for application
_____	File closed
_____	Other: _____

December 1, 1986

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, OR 97355

60823

49822

P.S. A refund check in the amount of \$32
will be mailed to you as soon as
our bookkeeper can prepare it.



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-8453

November 25, 1986

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, OR 97355

REFERENCE: Application 60823

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On completion, a certification that all construction was performed in accordance with the approved plans and specifications, by the engineer and the owner must be furnished to this Department.

ORS 543.685 requires that the board of directors of the district adopt an ordinance, resolution or administrative rule requiring weatherization of district facilities or establish a special weatherization fund from the revenues of your hydroelectric project.

Sincerely,

Donald R. Buell
DONALD R. BUELL
Hydroelectric Licensing Engineer

DRB:wpc
7690D

*Plans & specifications
handed to Norm Kamp
on 11-26-86*

Don B

DAVE FROHNMAYER
ATTORNEY GENERAL



WILLIAM F. GARY
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4620

RECEIVED

NOV 19 1986
WATER RESOURCES DEPT
SALEM, OREGON

November 19, 1986

Don Buell
Hydroelectric Licenses
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Re: Lacomb Irrigation District
DOJ File No. 690-001-G0020-86

Dear Mr. Buell:

I have reviewed the November 17, 1986 amendment to Ground Lease Agreement, which Norman Kamp provided to me yesterday. As you know, my review for compliance with OAR 690-51-410 has been limited to the proposed amendments, the Ground Lease Agreement, and the Development Agreement. I have not been provided with any exhibits to those agreements.

With the November 17 amendments, the Ground Lease Agreement clearly meets the Commission's rule as to benefit. For a joint project to proceed under ORS ch 537, the rule requires a minimum of ten percent of the gross or 30 percent of the net project income annually. The November 17 amendment provides that Lacomb Irrigation District will receive ten percent of the gross project income until 2006, and increasing percentages of gross income thereafter.

OAR 690-51-410(1)(b) requires that the district retain the proprietary interest in the project lands. Consistent with the discussions between Bill Young, Mr. Kamp and the representatives of Lacomb Irrigation District, the amendment shortens the term of the lease to 50 years, plus four optional 25 year renewals. At the end of the 50 year lease term, the district could elect to purchase the project equipment at fair market value. See Section 20.1, November 17, 1986 proposed amendments. This appears to reasonably accommodate concern that the 150 year term of lessee's control, proposed in the unamended Ground Lease Agreement, considerably diluted the district's "proprietary interest in the project lands."

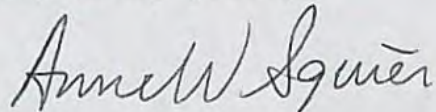
Don Buell
November 19, 1986
Page Two

Finally, the proposed amendment responds to the concerns raised in my letter of November 4, 1986 regarding lessee's commitment to conform to all governmental rules and regulations. Also, new Section 11.2.5 would improve the district's position in the event a leasehold mortgagee elected not to operate the project, although it does not explicitly state that the mortgagee would be responsible for all outstanding assessments. Section 11.2.5 states that equipment could be removed by a mortgagee assuming ownership only

"upon providing reasonable assurance the Property will be restored and repaired to a condition which will enable the District to utilize its irrigation works."

In sum, I believe a decision that the Ground Lease Agreement together with the proposed amendments of November 17, 1986, meets the intent of OAR 690-51-410 is within the director's discretion.

Very truly yours,



Anne W. Squier
Assistant Attorney General

AWS:tla97/lac.1
cc: William H. Young, Director, WRD

RECEIVED

NOV 19 1986

WATER RESOURCES DEPT
SALEM, OREGON

AMENDMENT TO GROUND LEASE AGREEMENT

DATED: November 17, 1986

BETWEEN: LACOMB IRRIGATION DISTRICT,
an Oregon municipal corporation
41358 Lacombe Drive
Lebanon, OR 97355 ("Lessor")

AND: TKO POWER,
a California general partnership
3300 Bechelli Lane, Suite A
Redding, CA 96002 ("Lessee")

Lessor and Lessee entered into that Ground Lease Agreement, dated August 19, 1986, a Memorandum of which, dated September 9, 1986, was recorded at Volume 421, Page 195 (and re-recorded at Volume 423, Page 750), of the records of Linn County, Oregon (collectively, the "Ground Lease"). Lessor and Lessee desire to amend and modify the Ground Lease.

NOW THEREFORE, in consideration of the mutual promises of the parties set forth in this Amendment to Ground Lease, Lessor and Lessee agree as follows:

1. Section 2.1

References to August 31, 2086, shall be replaced with references to August 31, 2036.

2. Section 2.2

The first sentence of Section 2.2 is deleted in its entirety and replaced with the following:

"Lessee shall, subject to the District's buy-out right pursuant to Section 20, have the right to extend the Term of this Lease for 4 renewal terms, each for a period of 25 years."

3. Section 3.3.2

Section 3.3.2 shall be deleted in its entirety and replaced with the following:

"During the course of construction, Lessee shall conform to all governmental rules, regulations, and requirements and act in accordance with all governmental permits issued in connection with the Project."

4. Section 4.2.2

Section 4.2.2 shall be deleted in its entirety and replaced with the following:

"4.2.2 For purposes of this Section 4, an Operating Year shall be the 365 day period commencing with the date after January 1, 1987, when the Project first produces and delivers electricity to a purchasing utility or other entity (the "Commencement Date"); and each 365 day period starting with an anniversary of the Commencement Date. The Rent to be paid to Lessor for each Operating Year shall be equal to the following respective percentages multiplied by the Gross Revenue received by Lessee for electricity (energy and capacity) sold during each Operating Year:

1987 - 2006	10 percent
2007 - 2011	12 percent
2012 - 2020	16 percent
2021 - 2030	20 percent
2031 and thereafter	50 percent

5. Section 7

The word "lawful" is deleted from the first sentence of this Section. The second sentence of Section 7 is deleted in its entirety. In addition, the following additional provision is added to Section 7:

"Lessee agrees, for the benefit of the Lessor, to follow all directives, regulations, and requirements of the Water

Resources Commission or Department of the State of Oregon. Additionally, Lessor acknowledges its responsibility, as the holder of a municipal permit issued by the Water Resources Commission or Department of the State of Oregon, to, at all times, conform to directives, requirements, and regulations issued by the Water Resources Commission or Department of the State of Oregon and to require Lessee to conform to all such directives, regulations, and requirements."

6. Section 8.3

The following shall be added to Section 8.3:

"8.3.4 The Lessee shall not be entitled to make any modifications to the Project unless the plans and specifications for such modification have been approved by the Water Resources Commission or Department of the State of Oregon."

7. Section 11.2

The following shall be added as Section 11.2.5:

"11.2.5 In the event a Leasehold Mortgagee, (or a purchaser at a private sale after default of a leasehold mortgage, or a purchaser at a judicial foreclosure sale of the Project), acquires ownership of the Project and, thereafter, elects not to operate the Project and elects to remove the Project equipment, the Leasehold Mortgagee shall be entitled to do so but only upon providing reasonable assurance that the Property will be restored or repaired to a condition which will enable the District to continue to utilize its irrigation works."

8. Section 20

The following shall be added as Section 20 of the Ground Lease:

"20. Buy-out, Lessor's Interest Upon Termination

20.1 Buy-Out

In the event Lessee gives a notice renewing the Term of the Lease pursuant to Section 2.2 and Lessor desires to not allow the renewal, then Lessor may give written notice to Lessee, within 30 days of the effective date of Lessee's notice of renewal, terminating the Lease at the end of its then Term. In the event Lessor gives such a notice, then Lessor shall in this notice either agree to purchase the Equipment or elect to allow Lessee to remove the Equipment at the end of the then Term of the Lease. The Equipment consists of the Project's turbine, generator, governor system, switch gear, control systems, transformer, oil pumps, motors, and related removable equipment. If Lessor elects to purchase the Equipment the purchase price shall be the then fair market value of the Equipment, in place, and this purchase price shall be paid in cash at the end of the Term of this Lease. If the parties are unable to agree on the purchase price within 30 days after Lessor's notice, then the purchase price shall be determined by an independent qualified equipment appraiser, skilled in appraising such equipment. The appraiser shall be selected by Lessor from a list of 3 such qualified appraisers submitted by Lessee, and the parties shall share the cost if the appraisal equally. If Lessor elects to allow Lessee to remove the Equipment, Lessee shall remove the Equipment within 30 days after the end of the then Term of this Lease.

20.2 Lessor's Interest on Termination

Subject to Lessor's obligation to purchase the Equipment pursuant to Section 20.1, upon any expiration of the Term, but not in the case of a termination due to Lessee's default, Lessee shall have the right to remove the Equipment from the Project. At the end of the Term of this Lease, the Property and the Project (except for the Equipment when Lessee is allowed to remove the Equipment) shall revert to Lessor and shall, thereafter, be owned solely by Lessor

and Lessee shall have no further interest in the Property or the Project."

9. Water Resources Commission

For all purposes, references in the Lease to the Water Resources Department shall be replaced by references to the Water Resources Commission or Water Resources Department of the State of Oregon.

10. No Further Modification

Except as specifically modified above, the Ground Lease remains in full force and effect according to its terms and otherwise unmodified.

IN WITNESS WHEREOF, the parties have executed this Ground Lease Amendment to be effective on the date first set forth above.

LESSOR:

LACOMB IRRIGATION DISTRICT,
an Oregon municipal corporation

By:

[Signature] (Vice Chairman)

ATTEST:

By:

[Signature]
Secretary

LESSEE:

TKO POWER,
a California general partnership

By:

[Signature]
General Partner

AMENDMENT TO GROUND LEASE AGREEMENT

RECEIVED

NOV 12 1986

**WATER RESOURCES DEPT
SALEM, OREGON**

DATED: October 22, 1986

BETWEEN: LACOMB IRRIGATION DISTRICT,
an Oregon municipal corporation
41358 Lacombe Drive
Lebanon, OR 97355

("Lessor")

AND: TKO POWER,
a California general partnership
3300 Bechelli Lane, Suite A
Redding, CA 96002

("Lessee")

Lessor and Lessee entered into that Ground Lease Agreement, dated August 19, 1986, a Memorandum of which, dated September 9, 1986, was recorded at Volume 421, Page 195 (and re-recorded at Volume 423, Page 750), of the records of Linn County, Oregon (collectively, the "Ground Lease"). Lessor and Lessee desire to amend and modify the Ground Lease.

NOW THEREFORE, in consideration of the mutual promises of the parties set forth in this Amendment to Ground Lease, Lessor and Lessee agree as follows:

1. Section 3.3.2

Section 3.3.2 shall be deleted in its entirety and replaced with the following:

"During the course of construction, Lessee shall conform to all governmental rules, regulations, and requirements and act in accordance with all governmental permits issued in connection with the Project."

2. Section 4.2.2

Section 4.2.2 shall be deleted in its entirety and replaced with the following:

"4.2.2 For purposes of this Section 4, an Operating Year shall be the 365 day period commencing with the date after January 1, 1987, when the Project first produces and delivers electricity to a purchasing utility and other entity (the "Commencement Date"); and each 365 day period starting with an anniversary of the Commencement Date. The Rent to be paid to Lessor for each Operating Year prior to January 1, 2000 shall be equal to the greater of: 30 percent of the Net Operating Profit, as defined below, or the following respective percentages, for each Operating Year, multiplied by the Gross Revenue received by Lessee for electricity (energy and capacity) sold during each Operating Year. After January 1, 2000, the Rent shall be the following respective percentage multiplied by Gross Revenue for each Operating Year. The following sets forth the Lessor's rent percentage for each Operating Year:

1987 - 1992	5 percent
1993 - 1999	7 percent
2000 - 2006	10 percent
2007 - 2011	12 percent
2012 - 2020	16 percent
2021 - 2030	20 percent
2031 and thereafter	50 percent

For purposes of this Section 4.2.2, Net Operating Income shall be defined as, and equal to, Gross Revenue (all payments received by Lessee for energy production and energy production capacity from the utility purchasing the electricity generated by the Project), minus the following: all debt service payments, all actual operating expenses, all maintenance costs, all applicable governmental impositions and taxes, all insurance premiums, a reasonable payment into a replacement reserve, any other costs or expenses incurred by Lessee in performing its obligations under this Lease,

a reasonable accounting fee, and a reasonable management fee."

3. Section 20

The following shall be added as Section 20 of the Ground Lease:

"Section 20 Revisionary Interest of Lessor

At the end of the term of this Ground Lease, or upon any earlier termination of this Ground Lease, the Property and the Project shall revert to the Lessor and shall, thereafter, be owned solely by the Lessor, and the Lessee shall have no further interest in the Property or the Project."

4. Section 3.3

The second sentence of Section 3.3.2 shall be deleted in its entirety.

5. Section 7

The word "lawful" is deleted from the first sentence of this Section. The second sentence of Section 7 is deleted in its entirety. In addition, the following additional provision is added to Section 7:

"Lessee agrees, for the benefit of the Lessor, to follow all directives, regulations, and requirements of the Water Resources Commission or Department of the State of Oregon. Additionally, Lessor acknowledges its responsibility, as the holder of a municipal permit issued by the Water Resources Commission or Department of the State of Oregon, to, at all times, conform to directives, requirements, and regulations issued by the Water Resources Commission or Department of the State of Oregon and to require Lessee to conform to all such directives, regulations, and requirements."

6. Section 8.3

The following shall be added to Section 8.3:

"8.3.4 The Lessee shall not be entitled to make any modifications to the Project unless the plans and specifications for such modification have been approved by the Water Resources Commission or Department of the State of Oregon."

7. Section 11.2

The following shall be added as Section 11.2.5:

"11.2.5 In the event a Leasehold Mortgagee, (or a purchaser at a private sale after default of a leasehold mortgage, or a purchaser at a judicial foreclosure sale of the Project), acquires ownership of the Project and, thereafter, elects not to operate the Project and elects to remove the Project equipment, the Leasehold Mortgagee shall be entitled to do so but only upon providing reasonable assurance that the Property will be restored or repaired to a condition which will enable the District to continue to utilize its irrigation works."

8. Water Resources Commission

For all purposes, references in the Lease to the Water Resources Department shall be replaced by references to the Water Resources Commission or Department of the State of Oregon.

9. No Further Modification

Except as specifically modified above, the Ground Lease remains in full force and effect according to its terms and otherwise unmodified.

IN WITNESS WHEREOF, the parties have executed this
Ground Lease Amendment to be effective on the date first set
forth above.

LESSOR:

LACOMB IRRIGATION DISTRICT,
an Oregon municipal corporation

By: _____

ATTEST:

By: _____
Secretary

LESSEE:

TKO POWER,
a California general partnership

By: _____
General Partner



DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4620

November 4, 1986

Don Buell
Hydroelectric Licenses
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Re: Lacombe Irrigation District
DOJ File No. 690-001-G0020-86

Dear Don:

On October 30, 1986 I received from you a packet of documents which included the Development Agreement, Ground Lease Agreement, and proposed amendment to the Ground Lease Agreement, all between Lacombe Irrigation District and TKO Power. You asked by telephone on Friday (October 31) that I review these materials briefly for any obvious deficiencies which would make it inappropriate to find that the agreements satisfy OAR 690-51-410. At my request, you also provided copies of correspondence from Mr. Janik, dated October 2, 1986 and your reply to Mr. Janik on October 21, 1986.

I agree that, with the proposed amendments, the Ground Lease Agreement satisfies OAR 690-51-410(1)(a). The amendments assure that the district will receive a minimum of 30 percent of net project income or 10 percent of the gross each year. The projects lands are leased to TKO for the duration of the agreement. As to OAR 690-51-410(1)(b), the amendments establish that the property and project revert to the district at the expiration of the lease (99 years plus 50 year extension at option of TKO). The district thus does retain a proprietary interest in the project lands, although the range of proprietary choices or management actions which it is entitled to exercise is severely constrained for up to 150 years.

OAR 690-51-410(1)(c) requires that the district retain sufficient control over operation of the project to be able to assure compliance with all regulations, conditions and orders of the commission affecting the project; maintenance of flow, fish

Don Buell
November 4, 1986
Page Two

passage facilities, screening devices and other structural facilities and operational measures required by the commission or the Oregon Department of Fish and Wildlife; and payment of fees and expenses required by ORS chapter 543.

The agreements provide the lessor district with rights to inspect the property and audit lessee's books. The lessee is obligated to pay all taxes and governmental assessments. The proposed amendments clarify the lessee's agreement to conform to all Water Resources directives, regulations and requirements. However, I have identified at least two areas in which the present documents do not appear to provide sufficient control to minimally satisfy the control requirement.

First, sections 3.3.2 and 7 of the Ground Lease Agreement provide that the lessee will conform to all valid (lawful) governmental rules and requirements, but that lessee shall have the right to contest any such requirements, within certain constraints. The proposed amendments would remove the second sentence of each of these sections, thus eliminating reference to the lessee's right to contest governmental requirements. However, sections 3.3.2 and 7 retain the concept that the lessee need only operate in conformance with "lawful" or "valid" governmental requirements. Further, sections 3.3.2 and 7 state that the lessee will so conform, rather than utilizing the shall terminology of most other sections dealing with lessee's obligations. In the absence of any reserve fund or penalty provision available to the district to assure compliance with this obligation, the district's only route in the event of a default is by termination of the entire contract or suit to specifically enforce. Such a termination or forfeiture would not lightly be enforced. To satisfy the rule, I believe that at a minimum the language of obligation should be absolute, so as to optimize the district's likelihood of success in such situations. That is, the language should represent that the lessee shall operate in conformance with all requirements of local, state and federal governmental authorities.

The second area of concern lies in the provisions for mortgagee protection, where it appears that if a mortgagee foreclosed or otherwise gained possession of the project, the mortgagee or other purchaser could elect whether or not to be bound by the lease terms. (Section 11.2) Thus, to paint a gloomy scenario, lessee might fall behind on various governmental

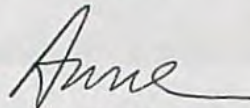
Don Buell
November 4, 1986
Page Three

assessments and in carrying out regulatory orders,¹ as well as on its obligations to the mortgagee. Mortgagee might foreclose lessee's interests, elect not to operate the project, remove and sell the project equipment, and leave the district holding the bag vis-a-vis outstanding assessments and repairs, with no source of income with which to make good those obligations.

Based on these general observations, my initial judgment is that the packet of agreement materials you submitted falls short of providing the amount of control required by a reasonable reading of OAR 690-51-410(1)(c). If in this brief review I have overlooked some important considerations, please feel free to call them to my attention. A careful evaluation is of particular importance in this first application of the rule. The commission and department have considerable latitude to determine what combination of controls, taken together, constitutes enough to carry the day consistent with the intent of the statute and your implementing rule.

One final point -- as I mentioned on Friday, many if not all of the directives and regulations the rule seeks to enforce are those of the commission rather than of the department. Thus, amendments to the agreement should include a general substitution of the term "Water Resources Commission" or "Water Resources Commission or Department" for references to the Water Resources Department.

Sincerely,



Anne W. Squier
Assistant Attorney General

AWS:tla93/lac2.1/.3
cc: William H. Young, Director, WRD

¹ Such an order might require repair of an unsafe penstock or other structure, or restoration of damaged habitat.

RECEIVED

OCT 28 1986

WATER RESOURCES DEPT
SALEM, OREGON

AMENDMENT TO GROUND LEASE AGREEMENT

DATED: October 22, 1986

BETWEEN: LACOMB IRRIGATION DISTRICT,
an Oregon municipal corporation
41358 Lacombe Drive
Lebanon, OR 97355 ("Lessor")

AND: TKO POWER,
a California general partnership
3300 Bechelli Lane, Suite A
Redding, CA 96002 ("Lessee")

Lessor and Lessee entered into that Ground Lease Agreement, dated August 19, 1986, a Memorandum of which, dated September 9, 1986, was recorded at Volume 421, Page 195 (and re-recorded at Volume 423, Page 750), of the records of Linn County, Oregon (collectively, the "Ground Lease"). Lessor and Lessee desire to amend and modify the Ground Lease.

NOW THEREFORE, in consideration of the mutual promises of the parties set forth in this Amendment to Ground Lease, Lessor and Lessee agree as follows:

1. Section 4.2.2

Section 4.2.2 shall be deleted in its entirety and replaced with the following:

"4.2.2 For purposes of this Section 4, an Operating Year shall be the 365 day period commencing with the date after January 1, 1987, when the Project first produces and delivers electricity to a purchasing utility and other entity (the "Commencement Date"); and each 365 day period starting with an anniversary of the Commencement Date. The Rent to be paid to Lessor for each Operating Year prior to January 1, 2000 shall be equal to the greater of: 30 percent of the Net Operating Profit, as defined below, or the following respective percentages, for each

Operating Year, multiplied by the Gross Revenue received by Lessee for electricity (energy and capacity) sold during each Operating Year. After January 1, 2000, the Rent shall be the following respective percentage multiplied by Gross Revenue for each Operating Year. The following sets forth the Lessor's rent percentage for each Operating Year:

1987 - 1992	5 percent
1993 - 1999	7 percent
2000 - 2006	10 percent
2007 - 2011	12 percent
2012 - 2020	16 percent
2021 - 2030	20 percent
2031 and thereafter	50 percent

For purposes of this Section 4.2.2, Net Operating Income shall be defined as, and equal to, Gross Revenue (all payments received by Lessee for energy production and energy production capacity from the utility purchasing the electricity generated by the Project), minus the following: all debt service payments, all actual operating expenses, all maintenance costs, all applicable governmental impositions and taxes, all insurance premiums, a reasonable payment into a replacement reserve, any other costs or expenses incurred by Lessee in performing its obligations under this Lease, a reasonable accounting fee, and a reasonable management fee."

2. Section 20

The following shall be added as Section 20 of the Ground Lease:

"Section 20 Revisionary Interest of Lessor

At the end of the term of this Ground Lease, or upon any earlier termination of this Ground Lease, the Property and the Project shall revert to the Lessor and shall, thereafter, be owned solely by the Lessor, and the Lessee shall have no further interest in the Property or the Project."

3. Section 3.3

The second sentence of Section 3.3.2 shall be deleted in its entirety.

4. Section 7

The second sentence of Section 7 is deleted in its entirety. In addition, the following additional provision is added to Section 7:

"Lessee agrees, for the benefit of the Lessor, to follow all directives, regulations, and requirements of the Water Resources Department of the State of Oregon. Additionally, Lessor acknowledges its responsibility, as the holder of a municipal permit issued by the Water Resources Department of the State of Oregon, to, at all times, conform to directives, requirements, and regulations issued by the Water Resources Department of the State of Oregon and to require Lessee to conform to all such directives, regulations, and requirements."

5. Section 8.3

The following shall be added to Section 8.3:

"8.3.4 The Lessee shall not be entitled to make any modifications to the Project unless the plans and specifications for such modification have been approved by the Water Resources Department of the State of Oregon."

6. No Further Modification

Except as specifically modified above, the Ground Lease remains in full force and effect according to its terms and otherwise unmodified.

IN WITNESS WHEREOF, the parties have executed this
Ground Lease Amendment to be effective on the date first set
forth above.

LESSOR:

LACOMB IRRIGATION DISTRICT,
an Oregon municipal corporation

By: _____

ATTEST:

By: _____
Secretary

LESSEE:

TKO POWER,
a California general partnership

By: _____
General Partner

WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

MEMORANDUM OF PERSONAL OR TELEPHONE CONTACT

TO: File 60823

DATE: 10-21-86

FROM: Don Buell

SUBJECT: 10% gross or 30% net NAME: Telephone w/Anne Sqier, DOJ

I called Anne this morning and posed the question: If an agreement is written up at 5% & 7% of the gross for the first years of the agreement and a developer writes a letter presenting figures that show that this is more than 30% of the net, can this be approved by the Director. Her answer was that, as she read the rule, it had to be part of the agreement unless excepted by the Commission. The choice of the developer and applicant is how the agreement is written. Anne suggested that they may want to include both whichever is greater.



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-8453

October 21, 1986

Stephen T. Janik
Ball, Janik & Novack
101 SW Main Street, Suite 1100
Portland, OR 97204-3274

Dear Mr. Janik:

REFERENCE: File 60823

We have reviewed the Hydroelectric Project Development Agreement and the Ground Lease Agreement between TKO Power and Lacombe Irrigation District. Our review used the opinion expressed in your letter of October 2, 1986, and the information in Norm Kamp's letter of October 14, 1986, to compare them with the requirements set forth in OAR 690-51-410(1). (A copy of the adopted rules is enclosed.) The existing agreements would not allow the project to proceed as a municipal project under ORS Chapter 537 for the following reasons.

Benefit: 690-51-410(1)(a). The applicant is given a choice of 10% of the gross profit or 30% of the net. This amount must be reflected in the agreements. Mr. Kamp's letter shows that 5 and 7% figures used in the early years of the agreement would exceed 30% of the net. To approve the agreement, based on the letter would be considered an exception to the rules and be reserved for the Commission. Counsel has suggested the Ground Lease Agreement be amended to read 5% (7%) of the gross profits or 30% of the net profit, whichever is the greatest."

Proprietary interest: 690-51-410(1)(b). Both agreements would allow the Irrigation District to maintain ownership of the project lands. Mr. Kamp and the Districts, have indicated that at the end of the agreement, the project reverts to the District. I don't find this in the agreements.

Control: 690-51-410(1)(c). This is the point where this department takes the strongest exception to the agreements. The Department must be able to go to the District and expect them to comply with any legal requests as soon as possible. The agreements assign all responsibility for compliance with the law and the terms of the permit to TKO. The permit, if issued under Chapter 537, will be in the name of the District. Only the District or their authorized agent is responsible to this department for the required compliance.

Stephen T. Janik
October 21, 1986
Page 2

You specifically cite Section 3.3.2 of the Ground Lease Agreement which requires the lessee to conform to government regulations, but gives them the right to contest said regulations. Section 7 of the agreement is basically the same. Section 8.3.3 requires the developer to modify the project when required by government regulations, but other parts of Section 8 allows them to change or enlarge the project without Lessor's prior written approval.

We must be able to go to the District and expect compliance under subsection (1)(c) of OAR 690-51-410 within a reasonable time period.

If no changes are made in the existing agreements, a permit cannot be issued to Lacombe Irrigation District under ORS Chapter 537.

Sincerely,



DONALD R. BUELL
Hydroelectric Licensing Engineer

DRB:lgc

cc: Norm Kamp
Lacombe Irrigation District

Enclosure

TKO Power

RECEIVED

OCT 1 1986

WATER RESOURCES DEPT

SALEM, OREGON

POST OFFICE BOX 494310 • REDDING, CALIFORNIA 96049 • (916) 221-1611

October 14, 1986

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OCT 1 1986

WATER RESOURCES DEPT

SALEM, OREGON

Mr. Don Buell
Oregon Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

Dear Don:

Per our meeting in your office October 7, I am providing you with a breakdown of the Lacomb Irrigation District projected revenue over the next 50 years.

This breakdown is based on their share of the revenue beginning at 5% of the gross revenues. I have done a comparison of whether it is more beneficial for the District to receive payment per our schedule or receive 30% of the net revenues.

Using 30% of the net revenues, the District would receive:

1987 - 1990	\$27,613
1991 - 1999	\$237,977

Under the current agreement, LID would receive:

1987 - 1990	\$70,754
1991 - 1999	\$269,244

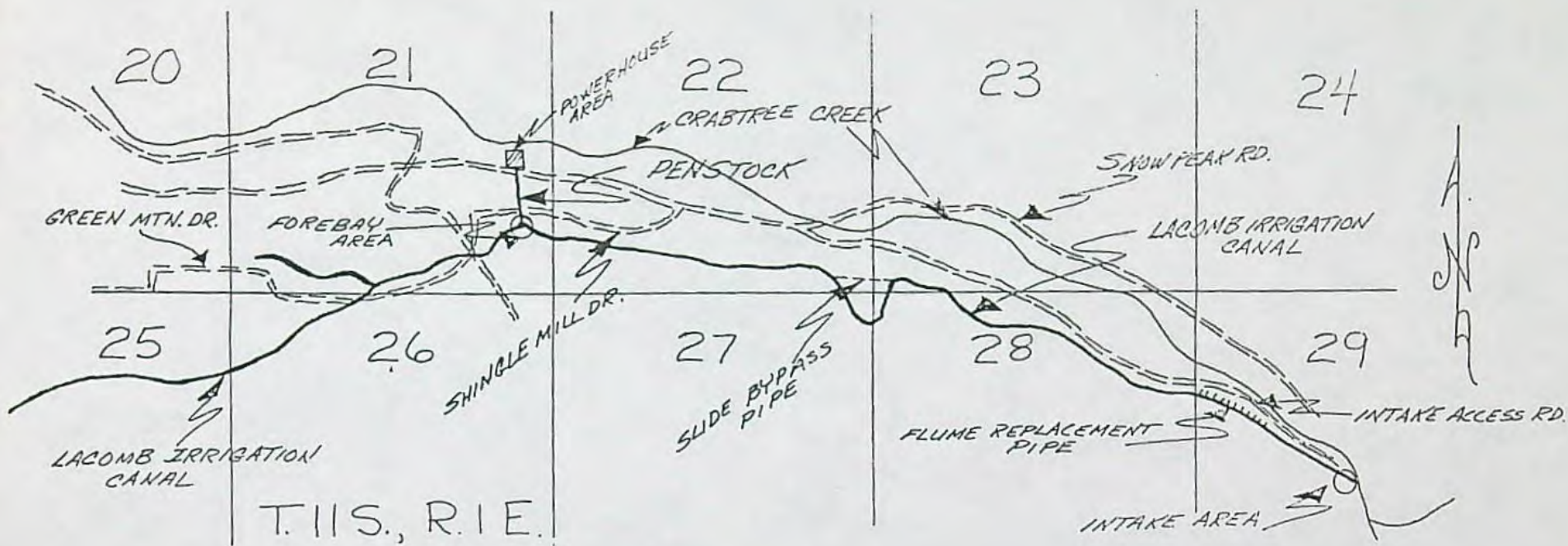
The above information shows that in the thirteen years that Lacomb Irrigation District's share is below the requested 10% of gross revenues per our current payment schedule, the District would receive approximately \$75,000 more than if they received 30% of the net revenues.

We feel that our approach is far more equitable for Lacomb Irrigation District than 30% of net revenues.

Sincerely,

Norman E. Kamp

Norman E. Kamp
Managing General Partner



Legal Description:

Reference is made to the memorandum of Ground Lease, from Lacombe Irrigation District, an Oregon Municipal Corporation, to TKO Power, a California General Partnership, dated September 9, 1986 and recorded as of September 10, 1986 in Microfilm, Volume 471 on page 195 of the Linn County Deed Records.

This certifies I have reviewed the Ground Lease and to the best of my knowledge the improvements proposed are within the area covered by the Ground Lease, and shown hereon.

TKO POWER
T.IIS., R.I.E., W.M.

SEC. 21, 22, 27, 23, 28, 29

LINN COUNTY, OREGON

SCALE: 1" = 1/2 MILE SEPT. 17, 1986

JAMES F. UDELL
ENGINEERING & SURVEYING
32383 BERLIN ROAD
LEBANON, OREGON 97355
PH. (503) 451-5125

REGISTERED
PROFESSIONAL
LAND SURVEYOR

J. Udell

OREGON
SEPT. 23, 1977
JIM UDELL
1366

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OCT 10 1986

WATER RESOURCES DE
SALEM, OREGON

LACOMB HYDRO
CONSTRUCTION CONTRACT

RECEIVED
OCT 10 1986
WATER RESOURCES DEPT
SALEM, OREGON

	Total ~~~~~
Mobilization	70,000
Engineering	125,000
Intake	120,000
Flume/Pipe	160,000
Slide/Pipe	155,000
Penstock	135,000
Canal	271,000
Forebay	92,000
Powerhouse	115,000
Clearing	40,000
Access Roads	45,000
Switchyard/Powerline	63,000
Turb/Gen/Switch Gear	610,000
Equip. Installation	80,000
Bond/Insurance/Permits	44,000
PP&L misc	75,000
Interconnect	100,000
PP&L Study	16,000
Out-Gen Consulting	45,000
Out-Hydrology	5,000
Purchase	82,500
TKO Management	140,000
Legal	25,000
Accounting	15,000
Financing Costs	35,000
Interest	60,690
Contingencies	200,810
TKO Profit	150,000

	3,075,000
	=====

Lacomb Irrigation District

\$37,533,838	\$9,008,121	\$4,177,200	\$8,370,390	\$15,978,126
=====	=====	=====	=====	=====

LID 10% of gross: \$3,753,384

RECEIVED

OCT 10 1986

WATER RESOURCES DEPT

SALEM, OREGON

January 27, 1986

A SPECIAL meeting of the Board of Directors of the Lacombe Irrigation District was held at the Verle Jensen residence with all members of the Board present. Richard Kingsley was also present.

The PURPOSE of the meeting was to consider the "Project Development Agreement" submitted by TKO POWER to build the District's proposed Power Project and to consider Larry Slotta's involvement in the proposal.

The meeting was called to order at 7:30 PM.

Buisness Interruption and Liability Insurance for the "Project" was discussed.

The following changes and additions were proposed for the "Project Development Agreement " subbmited by TKO.

1. Page 8, #4 - change to a \$15,000 fund would be established by the District over a period of 5 years to be used for unseen O&M expense, District's share.
2. If the "Project " is abandoned, it would revert to the District.
3. If the "Project " is abandoned, the \$60,000 advanced to the District would not have to be paid back to TKO.
4. TKO would hire as much local help as possible in the construction of the project.

Tom Tucker moved to authorize Richard Kingsley to submit the above proposed changes and additions to TKO and when a revised agreement document is completed, to resubmit it to the Board for approval or disapproval. Ken Hibner seconded the motion. Motion carried.

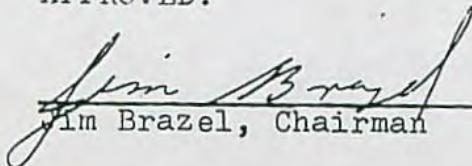
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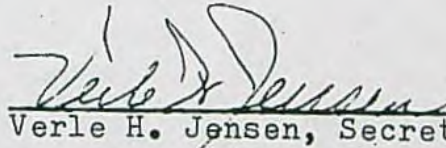
In the matter with Larry Slotta, it was reported that TKO had contacted Larry and that Larry had accepted TKO's offer of \$50,000 in settlement of his bill against the Power Project. However, it was also reported that Larry expected an additional sum of money from the District. It was noted that this additional sum could not be paid from the District's present funds but would have to come from the District's income from the Power Project after it was built and operating.

IT was recommended that Richard Kingsley negotiate with Larry's attorney as soon as possible to arrive at a reasonable amount and terms of such additional funds.

Motion to adjourn, seconded and carried.

APPROVED:


Jim Brazel, Chairman


Verle H. Jensen, Secretary

Date / / /

February 21, 1986

A SPECIAL meeting of the Board of Directors of the Lacombe Irrigation District was held at the Verle Jensen residence with all members of the Board present.

The PURPOSE of the meeting was to discuss a new proposal to settle the Larry Slotta lawsuit and to review TKO's amended project development proposal.

The meeting was called to order at 7:45 PM.

Richard Kingsley had reported that TKO would not develop the Power Project until Larry Slotta's lawsuit against the District was settled and that he (Kingsley), Connell (Larry's attorney) and TKO (Norm Kamp) had negotiated a plan to settle the lawsuit as follows:

1. Larry Slotta would be paid \$72,500.
2. TKO would contribute \$56,500
3. TKO would loan the District \$16,000 at 9% interest to be repaid from the District's share of the revenues from the Power Plant.

Kingsley strongly recommended that the District accept the proposal and that the Board and ~~TKO~~ TKO meet in his Office on Wednesday February 26th at 10:00 AM to finalize the agreement. (Secretary's comment - The Board was not enthused by the proposed settlement and thought that Larry should not be paid until the Power Project was built as was the understanding when Slotta became involved in the Project.)

NO action was taken on the proposal.

A copy of the revised TKO Power Project Development Agreement, reflecting the proposed Slotta settlement, was obtained from Kingsley's Office at 3:30 today and presented to the Board. The Board reviewed the document, comparing it to the previous Development Agreement, and were dismayed and shocked at the changes in Article VI, #3. There was no desire to accept it. The Board took no action.

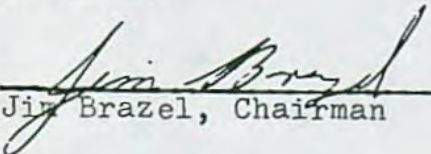
The Board agreed to meet with Kingsley and TKO on Wednesday, February 26th in Kingsley's Office at 10:00 AM.

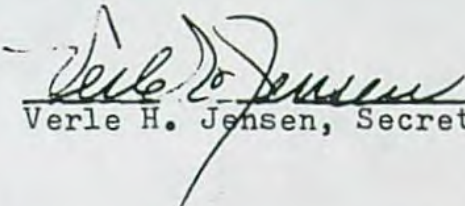
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February 21, 1986 (cont)

Fred Nutt Moved To adjourn. Seconded and carried.

APPROVED:


Jim Brazel, Chairman


Verle H. Jensen, Secretary

F
February 26, 1986

SPECIAL MEETING

Jim Brazel, Tom Tucker, Walter Hoerauf, Fred Nutt and Verle Jensen met with Richard Kingsley and TKO's Norman Kamp, Ray Toney and Keith Stewaet in Kingsley's Office at 11:00 AM.

The purpose of the meeting was to discuss and sign the Contract with TKO to build the proposed Hydro-Power facility..

The following items were discussed and agreed to;

1. Easements - Willamette Industries - no problem
2. Operator of the plant - local persons - 2 required - on call 24 hrs. 7 days , then off 7 days - dependability main requisite
3. Collins property - TKO would lease part of the property for the Power House for \$1.00 per year.
4. Pipe line hookup - could be negotiated later
5. Payment Schedule - TKO would keep the extra 2 years at 7% and the extra 2 years at 10% but would not require the extra 8 years at 20%.
6. Insurance - TKO would carry \$5,000,000 policy to insure the Hydro Facility and the District's interest in the same but would not cover the Irrigation works.

(The District may want to increase its Liability coverage.)

7. Page 12 - The District would not be required the pay back the \$60,000 advanced by TKO to pay the Attorney and Larry Slotta.
8. PP&L Power sales contract - Rickard Kingsley had been in regular contact with PP&L about extending the contract and was assured that there was no problem. Norman Kamp and Kingsley called PP&L and were told that the contract could be extended with some consideration like a 35% reduction in the amount PP&L had agreed to pay for power. (This would kill the Project.)
9. Water Resources Department - There appeared to be no problem

Norman Kamp and Richard Kingsley made an appointment to meet with PP&L's Ron Swan on Friday, March 7th to try to reach a compromise on the Power Sales Agreement.

The meeting adjourned.

March 19, 1986

A SPECIAL meeting of the Board of Directors of the Lacombe Irrigation District was held in Richard Kingsley's Office with Richard Kingsley and TKO's Norman Kamp, Ray Toney and Norm Braithwaite. Four members of the Board were present, Kenneth Hibner could not attend.

The PURPOSE of the meeting was to hear and respond to the results of a meeting this morning of Richard Kingsley, TKO and PP&L.

The meeting was called to order at 2:35 PM.

Kingsley reported the results of the meeting this morning in Albany with TKO and PP&L;

PP&L required up front \$16,000 to make a study of their line capabilities to carry the power from the District's Hydro Plant.

The above study may require upgrading 10 miles of power line at a cost of \$10.00 per foot. (\$528,000)

TKO responded that the Project could not stand such an expenditure.

PP&L wanted a reduction in the amount they agreed to pay in the Power Sales Contract for the electricity produced by the Power Project by "slipping" the rate schedule two years.

TKO responded that the Project may be able to absorb this.

TKO proposed to pay PP&L \$3,000 for a "mini-study" to come up with a "ball Park" of the cost required to comply with PP&L's requirements to purchase the Power Project's electricity. PP&L Agreed.

TKO asked the Board's approval.

Tom Tucker moved that TKO pursue the \$3,000 proposal with the understanding that the results could mean a reduction in the amount of revenue the District may receive from the Power Project. The motion was seconded and carried.

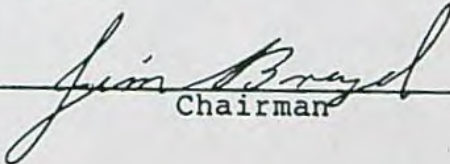
The meeting adjourned.

RESOLUTION

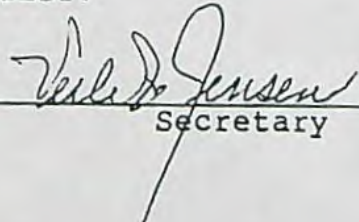
At a special meeting of the Board of Directors of LACOMB IRRIGATION DISTRICT, a Municipal Corporation, held on June 17, 1986, at 8:00 p.m. at the VERLE JENSEN residence, Lebanon, Oregon, all board members being present together with its attorney, and after a discussion and review of the contract for development of the hydroelectric project presented by TKO POWER, a California General Partnership, the following Resolution was duly moved, seconded and passed by unanimous vote:

"BE IT RESOLVED that LACOMB IRRIGATION DISTRICT enter into a contract with TKO POWER, a California General Partnership, for construction by TKO POWER of the hydroelectric project on the district's canal adjacent to Crabtree Creek. The form of contract has been read and is approved by all board members. The chairman and secretary are hereby authorized to sign the contract as presented."

DATED this 17th day of June, 1986.


Chairman

ATTEST:


Secretary

July 24, 1986

A SPECIAL meeting of the Board of Directors of the Lacombe Irrigation District was held at the Verle Jensen residence with all members of the Board present.

The PURPOSE of the meeting was to review and act on the proposed LEASE AGREEMENT with TKO for the COLLINS PROPERTY in regard to the Power Project.

The meeting was called to order at 7:45 PM.

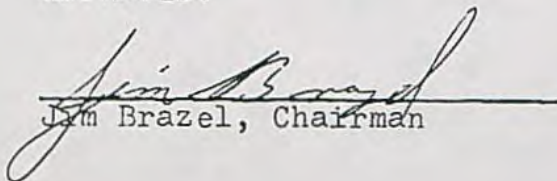
The LEASE AGREEMENT was examined and discussed.

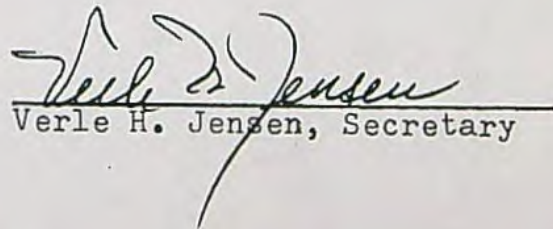
Tom Tucker moved to accept the Lease Agreement with TKO for the portion of the Collins Property needed for the Hydro Project and authorize Jim Brazel and Verle Jensen to sign the Lease for the District. Ken Hibner seconded the motion. Motion carried by a unanimous vote.

An appointment was made with Hiram and Bonnie Hern in regard to an easement for the access road to the Collins property for 8:00 PM, July 25th. (tomorrow)

Motion to adjourn, seconded and carried.

APPROVED:


Jim Brazel, Chairman

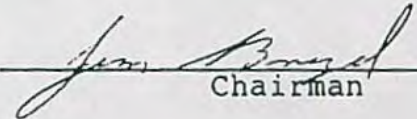

Verle H. Jensen, Secretary

RESOLUTION

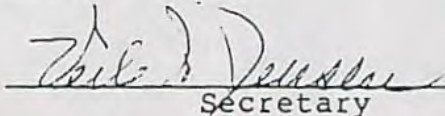
At a special meeting of the Board of Directors of LACOMB IRRIGATION DISTRICT, a Municipal Corporation, held on August 19, 1986, at 8:00 p.m. at the VERLE JENSEN residence, Lebanon, Oregon, all board members being present, and after a discussion and review of the Ground Lease presented by TKO POWER, a California General Partnership, the following Resolution was duly moved, seconded and passed by unanimous vote:

"BE IT RESOLVED that LACOMB IRRIGATION DISTRICT by and through its officers execute the Ground Lease, a copy of which has been reviewed by the District's attorney. The form of contract has been read and is approved by all board members. The chairman and secretary are hereby authorized to sign the contract as presented."

DATED this 19th day of August, 1986.


Chairman

ATTEST:


Secretary

AMENDED AND RESTATED POWER PURCHASE AGREEMENT

BETWEEN

LACOMB HYDRO LIMITED PARTNERSHIP

AND

PACIFIC POWER & LIGHT COMPANY

RECEIVED

OCT 10 1986

WATER RESOURCES DEPT.
SALEM, OREGON

THIS AGREEMENT, entered into on this 10th day of October, 1986, is between Lacombe Hydro Limited Partnership, an Oregon partnership, hereinafter referred to as "Seller," and Pacific Power & Light Company, an electric utility with corporate headquarters in Portland, Oregon, hereinafter referred to as "Pacific."

RECITALS:

Seller will own and operate a 962 kilowatt (kW) hydroelectric facility for the generation of electric power located in the Southeast 1/4, Section 21, Township 11 South, Range 1 East, on Crabtree Creek, near Lacombe, Oregon ("Site"). The average annual energy production of the Facility is estimated to be 5,560,000 kilowatt-hours (kWh), which amount of energy Pacific is including in its resource planning.

Seller wishes to sell, and Pacific wishes to purchase, the Net Metered Output from the Facility.

Pacific and Lacombe Irrigation District ("District") entered into power purchase agreements on October 28, 1982, and October 4, 1985. The District's interest in these agreements were assigned to Seller and all

parties, including the District, now wish to supersede those agreements with this Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

(A) "Commercial Operation Date" is the date agreed to by Seller and Pacific after start-up testing of the Facility is completed and after Pacific receives a written statement from a licensed professional engineer who is acceptable to Pacific, certifying that the Facility is able to generate electric power reliably;

(B) "Contract Year" is a calendar year commencing at 12:01 a.m. on January 1 and ending at 12:00 p.m. on December 31;

(C) "Demonstrated Capacity" is the actual ability of the Facility to generate and deliver electric power, expressed in kW and determined monthly from the Net Metered Output, available to Pacific in meeting its capacity requirements. The Demonstrated Capacity shall be determined at the end of each month of deliveries commencing on the later of January 1, 1988, or the Commercial Operation Date. The Demonstrated Capacity shall be the lesser of:

(1)
$$\frac{\text{kWh of Net Metered Output per month}}{730 \times 0.70}$$

or

(2) the average rate of delivery (kW) during the highest consecutive 24-hour period of kWh deliveries of Net Metered

Output in such month,

or,

(3) 1,200 kW;

(D) "Facility" is the Seller's 962 kW hydroelectric generating station, consisting of a diversion structure from Crabtree Creek, 3.8 miles of irrigation and power canal, intake structure, 1,300 feet of steel penstock, turbine(s) and generator(s), and all Seller's Interconnection Equipment, all located at the Site;

(E) "Net Metered Output" is all energy and capacity produced by the Facility, less Facility use and less transformation and transmission losses, if any, as determined at the Point of Delivery;

(F) "Point of Delivery" is the location where Pacific's and Seller's electric facilities are connected on the high side of Seller's step-up transformer near the generator on Crabtree Creek;

(G) "Scheduled Maintenance Periods" are those times during which the Facility is shut down for routine maintenance with the advance approval of Pacific as provided in Article XV(A) hereof;

(H) "Seller's Interconnection Equipment" is all equipment and facilities not owned by Pacific on Seller's side of the Point of Delivery required to be installed solely to interconnect and deliver power from Seller's Facility to Pacific's system including, but not limited to, connection, transformation, switching, and safety equipment;

(I) "System Emergency" is a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

ARTICLE II: TERM

(A) Subject to the provisions of this Article, Article XVII, and Article XXIII, this Agreement shall become effective when executed by both the parties hereto, and shall end on December 31, 2022.

(B) Time is of the essence in this Agreement, therefore:

- (1) if Seller does not remit within thirty (30) days of Pacific's request the amount deemed necessary by Pacific to conduct a detailed interconnection study, or
 - (2) if Seller does not demonstrate, in Pacific's determination, that Seller has commenced a significant amount of construction on the powerhouse and penstock by November 1, 1986, or
 - (3) if deliveries of Net Metered Output do not commence by January 1, 1988, or
 - (4) if Seller does not present to Pacific all required governmental authorizations and permits as further described in Article XXIII no later than thirty (30) days prior to initial deliveries, or
 - (5) if Commercial Operation, as described in Article I(A) is not established by December 31, 1988,
- this Agreement will terminate immediately without further action by either party.

ARTICLE III: DELIVERY OF POWER

Commencing on January 1, 1988, and for the term of this Agreement, Seller shall make available from the Facility a minimum of 2,200,000 kWh of

Net Metered Output during each Contract Year, provided that such minimum for the Contract Year 1988 shall be reduced pro rata to reflect the Commercial Operation Date. Subject to Article XVI, Seller shall make available and Pacific shall purchase all Net Metered Output from the Facility.

ARTICLE IV: PRICES

(A) The following prices are established for all deliveries of Net Metered Output hereunder; provided, however, that nothing in this Article shall be construed as affecting or limiting the Seller's obligation to make deliveries in each Contract Year as established in Article III hereof.

(1) Nonfirm Energy Prices

For all Net Metered Output delivered prior to the later of January 1, 1988, or the Commercial Operation Date, and for all Net Metered Output delivered in excess of 8,500,000 kWh in any Contract Year, Pacific shall pay Seller Pacific's then-effective price for nonfirm energy, as approved by the Oregon Public Utility Commissioner.

(2) Firm Capacity Prices

Commencing upon the later of January 1, 1988, or the Commercial Operation Date, and ending on December 31, 2022, Pacific shall pay Seller \$6.66 per month for each kW of Demonstrated Capacity; provided, however, in any month during which Seller's deliveries of Net Metered Output are less than 70,000 kWh, Seller shall not receive payment for Demonstrated Capacity.

(3) Firm Energy Prices

Commencing upon the later of January 1, 1988, or the Commercial Operation Date, and ending on December 31, 2022, and except as provided in Subparagraph (1) of this paragraph, Pacific shall pay Seller for each kWh of Net Metered Output the energy prices for the Contract Years set forth below:

<u>Contract Year</u>	<u>Energy Price Cents/kWh</u>
1988	5.92
1989	6.00
1990	6.08
1991	6.17
1992	6.27
1993	6.36
1994	6.47
1995	6.58
1996	6.70
1997	6.82
1998	6.95
1999	7.10
2000	7.24
2001	7.40
2002	7.57
2003	7.74
2004	7.93
2005	8.13
2006	8.34
2007	8.56
2008	8.80
2009	9.05
2010	9.32
2011	9.60
2012	9.90
2013	10.22
2014	10.55
2015	10.91
2016	11.28
2017	11.68
2018	12.11
2019	12.56
2020	13.03
2021	13.54
2022	14.09

(B) Seller expressly acknowledges that in the event that Seller is unable to make deliveries of Net Metered Output as required by this Agreement for any Contract Year, or for the entire term of this Agreement, without limitation of any other damages or remedies, Pacific will be harmed to the extent that Pacific incurs net costs to obtain replacement power for the Net Metered Output promised hereunder but not delivered.

(C) Seller expressly acknowledges that the prices to be paid by Pacific for Net Metered Output, pursuant to Paragraph (A)(2) and (3) above, are at least in part levelized prices and, as such, represent overpayments by Pacific for Net Metered Output in at least some of the Contract Years of this Agreement. Seller further acknowledges that such levelized prices are offered on the basis of Seller's commitment to deliver and Pacific's expectation to receive an amount of Net Metered Output over the entire term of this Agreement. Seller therefore agrees in the event it is unable to deliver such amounts of Net Metered Output in such Contract Year(s) or over the entire term of the Agreement, without limitation of any other damages or remedies, Pacific will have been harmed to the extent of its overpayments to Seller.

ARTICLE V: PAYMENTS AND COMPUTATIONS

(A) On a monthly basis, Pacific shall provide Seller with computation of Net Metered Output and Demonstrated Capacity and shall concurrently therewith make payments therefor in accordance with the terms and conditions of Article IV, at the address specified in Article VI, below.

(B) Seller shall pay Pacific for Pacific's costs incurred under this Agreement at the address specified in Article VI, below, within thirty (30) days of receipt of Pacific's written statement. Should Seller fail to

pay in full statement(s) from Pacific within thirty (30) days, Pacific may offset future payment(s) to Seller hereunder by such amount(s).

ARTICLE VI: NOTICES

All written notices under this Agreement shall be directed as follows, and shall be considered delivered when deposited in the U.S. Mail, return receipt requested:

To Seller:	Norman E. Kamp Lacomb Hydro Limited Partnership P.O. Box 494310 Redding, CA 96049
To Pacific:	Supervisor, Small Purchased Resources Pacific Power & Light Company 920 S.W. Sixth Avenue Portland, OR 97204

The parties may change the persons to whom notices are addressed, or their addresses, by providing notice thereof as specified in this Article.

ARTICLE VII: FACILITY DESIGN AND CONSTRUCTION

(A) Seller shall license, design, construct, install, own, operate, and maintain the Facility. Seller shall provide Pacific with all electrical specifications for the Facility, together with electrical data concerning the Facility sufficient to allow Pacific to make stability and protection studies. All electrical specifications and changes in electrical specifications, including new or additional equipment, shall be subject to Pacific's review and acceptance. Pacific's acceptance of Seller's specifications shall not be construed as confirming nor endorsing the design, nor as a warranty of safety, durability, or reliability of the Facility. Pacific shall not, by reason of

any review, acceptance, or failure to review, be responsible for the Facility, including but not limited to the strength, details of design, adequacy or capacity thereof, nor shall Pacific's acceptance be deemed to be an endorsement of the Facility.

(B) The design and construction of the Facility shall meet the requirements of all applicable federal, state, and local laws. Prior to commencement of generation, and upon completion of any major changes, the Facility shall be inspected and approved by appropriate state and local officials.

(C) At the request of Pacific, Seller shall provide Pacific, at least thirty (30) days prior to initial deliveries, with a statement from a licensed professional engineer acceptable to Pacific, certifying that the Facility can reasonably be expected to generate capacity and energy in the amounts set forth herein for the duration of this Agreement.

ARTICLE VIII: INTERCONNECTION

(A) Seller shall install all Seller's Interconnection Equipment. Seller's Interconnection Equipment shall be of a size to accommodate the delivery of the Net Metered Output under this Agreement. Seller shall allow Pacific to review the adequacy of all protective devices, and to establish requirements for settings and periodic testing; provided, however, that neither such action nor inaction by Pacific shall be construed as warranting the safety or adequacy of Seller's Interconnection Equipment. All such equipment installed hereunder shall conform with the Required Equipment Standards established in Schedule A, attached hereto. Seller shall reimburse Pacific for Pacific's costs associated with initial testing and such periodic testing.

(B) Connection of Seller's Interconnection Equipment to Pacific's system shall be by or under the direction of Pacific.

(C) In the event that it is necessary for Pacific to install any facilities and equipment on Pacific's system to accommodate Seller's deliveries, or to reinforce Pacific's system for purposes of this Agreement, Seller shall reimburse Pacific for all of Pacific's costs associated therewith, in accordance with the rules for repayment established by the Public Utility Commissioner of Oregon, and under the terms and conditions of Pacific's interconnection agreement. Not less often than annually, Seller shall also reimburse Pacific, pursuant to Article V(B) above, for all of Pacific's operation and maintenance costs resulting from Pacific's installation of facilities and equipment under this Paragraph. Such reimbursement shall be paid at the rate of eight percent (8%) annually of the actual installed cost of such facilities and equipment.

(D) From time to time at the request of Seller, Pacific has provided and may provide in the future, suggestions regarding the Facility and the general estimates of interconnection costs. These suggestions and estimates are provided without any warranty by Pacific as to the accuracy of such information. In the event Pacific provides such interconnection facilities, Seller shall pay all costs in connection therewith pursuant to the terms of a separate agreement with Pacific, regardless of any prior estimate provided to Seller. Seller's development of the Facility and any incurrence of costs arising from such development shall not be made in reliance upon Pacific's suggestions regarding the Facility or interconnection cost estimates. Without limitation, Seller acknowledges that it is proceeding at its own risk if it decides to proceed before detailed estimated costs of interconnection are

provided, or if actual interconnection costs are greater than the estimated costs.

ARTICLE IX: SYSTEM EMERGENCY

In the event of a System Emergency, Pacific may require Seller to curtail its consumption of electricity purchased from Pacific in the same manner and to the same degree as other customers within the same customer class who do not own facilities for generating electricity.

ARTICLE X: OPERATION, PROTECTION, AND CONTROL

(A) Seller shall operate and maintain the Facility in a safe manner and in accordance with the requirements of all applicable federal, state, and local laws and the National Electric Safety Code currently in effect.

(B) Seller may operate the Facility in parallel with Pacific's system, but subject at all times to any operating instructions that Pacific may issue and to any and all other conditions established by Pacific in its sole discretion.

(C) Seller shall operate the Facility in such a manner as not to affect adversely Pacific's system and to be compatible with Pacific's system voltage level, fluctuating voltage guidelines (Engineering Bulletin No. 02.14), and voltage regulation at the Point of Delivery during all times that Seller's Facility is connected and operating in parallel with Pacific's system.

(D) Pacific may, upon one hundred eighty (180) days' notice to Seller, change its nominal operating voltage level at the Point of Delivery,

in which case Seller shall modify Seller's Interconnection Equipment as necessary to accommodate the modified nominal operating voltage level.

(E) Seller shall remedy any demonstrated harmonic distortions on Pacific's system attributable to the operation of the Facility which result in objectionable service to Pacific's other customers. Should Seller's actions to remedy such harmonic distortions be inadequate, Pacific may, without liability, disconnect the Facility from Pacific's system. Pacific's obligation to make payments to Seller for Net Metered Output that otherwise would have been delivered during such period of disconnection shall be suspended.

(F) Seller agrees that in the event of and during a period of a shortage of energy or capacity on Pacific's system as declared by Pacific in its sole discretion, Seller shall, at Pacific's request and within the limits of reasonable safety requirements as determined by Seller, use its best efforts to provide requested Net Metered Output, and shall, if necessary, delay any Scheduled Maintenance Periods.

(G) Seller shall furnish and install on the Seller's side of the Point of Delivery a disconnect switch, which shall be capable of disconnecting the Facility from Pacific's system. Such disconnect switch shall be of the visible-break type which can be secured by a padlock, to be provided by Pacific, and shall be accessible to Pacific's personnel at all times. Pacific shall have the right to disconnect the Facility from Pacific's system at the disconnect switch when necessary to maintain safe electrical operating conditions or if, in Pacific's sole judgment, the Facility at any time adversely affects Pacific's operation of its electrical system, or if the quality of Pacific's service to other customers. Pacific's obligation to pay Seller for Net Metered Output that otherwise would have been delivered during any such period of disconnection shall be suspended.

ARTICLE XI: METERING

(A) Flows of electricity to Pacific shall be measured by meters to be equipped with detents so that the record of those flows will not be affected by any flows to Seller. Flows to Seller shall be metered separately and billed monthly in accordance with the terms of the service agreement, if any, existing between the parties, and/or otherwise in accordance with tariffs filed and approved by the Public Utility Commissioner of Oregon.

(B) Pacific shall procure, install, own, inspect, test, and maintain meters to record flows to Pacific. Such meters shall be located at a mutually agreed upon designated location(s) and shall record and indicate the integrated demand for each sixty- (60-) minute period, and shall also measure kWh. Pacific shall also procure, install, own, inspect, test, and maintain meters for measurement of reactive volt-amperes. Pacific may also, in its sole discretion, install additional metering devices, as necessary, at a location agreed upon by both parties within Seller's Facility to enable Seller to telemeter information and data. All costs relating to all metering devices and any necessary telemetering equipment installed to accommodate Seller's generation shall be borne by Seller.

(C) All meters and metering equipment shall be sealed by Pacific. The seal shall be broken only upon occasions when the meters are to be inspected, tested, or adjusted, and representatives of both Pacific and Seller shall be present upon such occasions. The metering equipment shall be inspected and tested periodically by Pacific and at other reasonable times upon request therefor by Seller. Any metering equipment found to be defective or inaccurate by an error in registration of more than plus or minus two percent (2%), at light load or at heavy load, shall be repaired, readjusted, or

replaced. If any of the inspections or tests provided for herein disclose an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the period of three (3) months immediately preceding the removal of such meter from service for test, or from the time the meter was in service since last tested, but not exceeding three (3) months, in the amount the meter shall have been shown to be in error by such test. Any correction in billing resulting from a correction in the meter records shall be made in the next monthly bill rendered, and such correction, when made, shall constitute full adjustment of any claim between Seller and Pacific arising out of such inaccuracy of metering equipment.

ARTICLE XII: LIABILITY AND INSURANCE

(A) Seller agrees to protect, indemnify, and hold harmless Pacific, its directors, officers, employees, agents, and representatives, against and from any and all loss, claims, actions, or suits, including costs and attorneys' fees, both at trial and on appeal for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of property belonging to Pacific or others, resulting from, or arising out of, or in any way connected with the facilities on Seller's side of the Point of Delivery, or Seller's operation and/or maintenance, excepting only such injury or harm as may be caused solely by the fault or negligence of Pacific, its directors, officers, employees, agents, or representatives.

(B) Prior to connection of the Facility to Pacific's system, Seller shall secure and continuously carry for the term hereof, in an insurance company or companies acceptable to Pacific, insurance policies for bodily injury

and property damage liability. Such insurance shall include: provisions or endorsements naming Pacific, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of Pacific, and that any insurance maintained by Pacific is excess and not contributory insurance with the insurance required hereunder; cross-liability or severability of insurance interest clause; and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days' prior written notice to Pacific. Initial limits of liability for all requirements under this Paragraph (B) shall be \$1,000,000 single limit, which limits may be increased as necessary by Pacific's giving Seller two years' notice. Such increase shall not exceed fifteen percent (15%) per year.

(C) Prior to connection of the Facility to Pacific's system, Seller shall obtain and continuously carry for the term hereof, insurance acceptable to Pacific against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller shall promptly notify Pacific of any loss or damage to the Facility. Unless the parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility. Except as provided in Paragraph (A) of this Article XII, Seller shall waive its insurers' rights of subrogation regarding Facility property losses.

(D) Seller shall provide Pacific with a copy of each insurance policy required under this Article, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of Pacific, in lieu thereof, a certificate satisfactory to Pacific certifying the issuance of such insurance. Seller shall submit such documents at the address listed in Article VI prior to connection of the Facility to Pacific's system and at all other times such insurance policies are renewed or changed.

ARTICLE XIII: LAND RIGHTS

Seller hereby grants to Pacific for the term of this Agreement all necessary rights of way and easements to install, operate, maintain, replace, and remove Pacific's metering and other electrical or communications facilities necessary or useful to this Agreement, including adequate and continuing access rights on property of Seller. Seller agrees to execute such other grants, deeds, or documents as Pacific may require to enable it to record such rights of way and easements. If any part of Pacific's facilities is installed on property owned by other than Seller, Seller shall, if Pacific is unable to do so without cost to Pacific, procure from the owners thereof all necessary permanent rights of way and easements for the construction, operation, maintenance, and replacement of Pacific's facilities upon such property in a form satisfactory to Pacific.

ARTICLE XIV: COMMUNICATIONS

Seller shall, at its expense, maintain telephone communication facilities with Pacific's dispatcher.

ARTICLE XV: MAINTENANCE

(A) Seller may shut down the Facility for Scheduled Maintenance Periods, expected to occur in August or September, not to exceed thirty (30) days each Contract Year at such times as are approved in advance by Pacific. Seller shall propose to Pacific, Scheduled Maintenance Periods by February 1 of each Contract Year, but not later than six (6) months prior to beginning

the proposed scheduled maintenance. Within sixty (60) days of Pacific's receipt of such proposal, Pacific shall inform Seller of the acceptability or unacceptability of the proposed periods.

(B) In the event the Facility must be shut down for unscheduled maintenance, Seller shall notify Pacific's dispatcher (telephone number (503) 928-3311) immediately of the necessity of shutdown, the time when such shutdown has occurred, or will occur, and the anticipated duration of such shutdown. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance and to limit the duration of such shutdowns.

ARTICLE XVI: CONTINUITY OF DELIVERIES

Pacific may require Seller to curtail, interrupt, or reduce deliveries of Net Metered Output, in order for Pacific to construct, install, maintain, repair, replace, remove, investigate, or inspect any of Pacific's equipment or any part of its system reasonably related to the Facility, or if Pacific determines that curtailment, interruption, or reduction is necessary because of emergencies, operating conditions on its system, or as otherwise required by prudent utility practices. In such circumstances, Pacific shall not be obligated to accept deliveries of, or pay Seller for, Net Metered Output that otherwise would have been delivered during such period of curtailment, interruption, or reduction. Pacific shall use its best efforts to keep all curtailments, interruptions, or reductions to a minimum.

ARTICLE XVII: QUALIFYING FACILITY STATUS

Seller covenants that the Facility is and shall continue to be a "qualifying facility," as that term is used and defined in 18 CFR, Part 292 (1982), for the term of this Agreement. Pacific may, in its discretion, require certification by the Federal Energy Regulatory Commission of qualifying status under 18 CFR, 292.209(b). In the event the Facility ceases to be a qualifying facility, Pacific may, without waiving any right it may then have, terminate this Agreement.

ARTICLE XVIII: FORCE MAJEURE

As used in this Agreement, "Force Majeure" means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure, but specifically excludes nonavailability of streamflow to operate the Facility, except to the extent that such nonavailability of streamflow is caused by major geologic changes in the Crabtree Creek watershed, such as volcanic eruptions or earthquakes. If either party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

(A) the nonperforming party, within two weeks after the occurrence of the Force Majeure, give the other party written notice describing the particulars of the occurrence;

(B) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure;

(C) no obligation of either party which arose before the occurrence causing the suspension of performance be excused as a result of the occurrence, and

(D) the nonperforming party use its best efforts to remedy its inability to perform.

ARTICLE XIX: LIABILITY; DEDICATION

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one party to the other under any provision of this Agreement shall constitute the dedication of that party's system or any portion thereof to the other party or to the public, nor affect the status of Pacific as an independent public utility corporation, or Seller as an independent individual or entity.

ARTICLE XX: SEVERAL OBLIGATIONS

Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture, or to impose a trust or partnership duty, obligation, or liability on or with regard to either party. Each party shall be individually and severally liable for its own obligations under this Agreement.

ARTICLE XXI: WAIVER

Any waiver at any time by either party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

ARTICLE XXII: CHOICE OF LAWS

This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

ARTICLE XXIII: GOVERNMENTAL JURISDICTION AND AUTHORIZATION

(A) This Agreement is subject to the jurisdiction of those governmental agencies having control over either party or this Agreement. This Agreement shall not become valid until all required authorizations and permits are first obtained and copies thereof are submitted to Pacific.

(B) This Agreement shall not become effective until the Public Utility Commissioner of Oregon has reviewed all terms and provisions hereof and has determined that the prices to be paid for Net Metered Output are in accordance with the appropriate prices approved by such regulatory authority.

(C) Pacific may terminate this Agreement by providing Seller written notice thereof in the event that Seller does not fulfill one of the following two conditions by within thirty (30) days from the execution of the Agreement: (1) Seller has demonstrated to Pacific that the electorate of the

Lacomb Irrigation District has approved at a general or special election Seller's proceeding with the construction of the Facility and Seller's entering into this Agreement, or (2) Seller has presented to Pacific an opinion of counsel for the District from the law firm of Morley, Thomas, Kingsley and Reuter, and for Seller from a law firm acceptable to Pacific stating, without qualification, that this Agreement is binding and enforceable against the District and Seller, respectively, in accordance with its terms and that the District's obligations hereunder shall be binding on the District for the term hereof notwithstanding the absence of voter approval of the District's entering into this Agreement.

ARTICLE XXIV: SUCCESSORS AND ASSIGNS

(A) This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. Excepting assignments by Pacific to Bonneville Power Administration ("BPA"), no assignment hereof by either party hereto shall become effective without the written consent of the other being first obtained, and such consent shall not be unreasonably withheld. Nothing in this Agreement shall be construed as limiting or restricting Pacific's right to enter into arrangements with BPA whereby BPA acquires the output of the Facility or Pacific takes a billing or energy credit therefrom.

ARTICLE XXV: MODIFICATION

No modification of this Agreement shall be effective unless it is in writing and signed by both parties hereto.

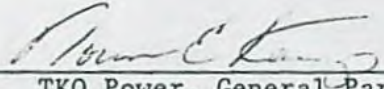
ARTICLE XXVI: INTEGRATION

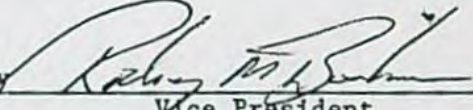
This Agreement constitutes the full agreement of the parties, and all prior agreements, including without limitation the agreement dated October 28, 1982, and the agreement dated October 4, 1985, are hereby superseded.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

LACOMB HYDRO LIMITED PARTNERSHIP

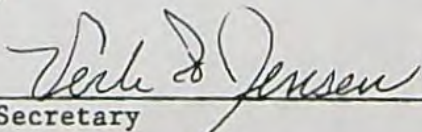
PACIFIC POWER & LIGHT COMPANY

By 
TKO Power, General Partner

By 
Vice President

This Agreement approved by Lacombe Irrigation District pursuant to Resolution, dated Sept 23, 1986. The District hereby agrees that its assignment of its interests in this Agreement shall not terminate or relieve the District of its obligations to Pacific hereunder, and that Pacific and Seller may make further modifications to this Agreement without consent of the District, which modifications shall be binding upon the District.


Chairman


Secretary

SCHEDULE A

REQUIRED EQUIPMENT STANDARDS

In order to protect the Facility, Seller's Interconnection Equipment, and Pacific's system from property damage, to minimize the likelihood of injury to operating personnel and third parties, and to allow Pacific to provide service to its nongenerating customers in the event Seller's Facility or Seller's Interconnection Equipment encounters operating difficulties, Seller shall provide, install, and maintain the following equipment:

1. A lockable main disconnect switch which allows isolation of Seller's generation from Pacific's system;
2. An automatic disconnecting device to be used in conjunction with relaying devices;
3. An overcurrent device to be used in conjunction with the automatic disconnecting device required under Paragraph 2;
4. Underfrequency and overfrequency relays to be used in conjunction with the automatic disconnecting device required under Paragraph 2;
5. A dedicated voltage transformation, with ground source as required by Pacific, for Seller's generation and load; and
6. Undervoltage and overvoltage relays.

In the event that Seller's Facility incorporates a synchronous generator, Seller shall furnish, install, and maintain equipment necessary to establish and maintain synchronism automatically with Pacific's system.

Seller shall not employ anything other than three phase generators without first obtaining express written permission from Pacific.

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OCT 10 1986

WATER RESOURCES DEPT
SALEM, OREGON

LACOMB HYDRO PARTNERS
Analysis of Revenues
Lacomb Irrigation District

YEAR	GROSS REVENUE	O & M EXPENSE	DEBT SERVICE	LID GROSS PROFIT	LID % OF GROSS REVENUE	LIM PTRSHP PROFIT (LOSS)
1986	\$0	\$0	\$0	\$0	0%	\$0
1987	159,100	38,184	205,800	7,955	5%	(\$92,839)
1988	413,853	99,325	255,800	20,693	5%	\$38,036
1989	418,653	100,477	264,800	20,933	5%	\$32,444
1990	423,453	101,629	257,000	21,173	5%	\$43,652
1991	428,853	102,925	259,200	21,443	5%	\$45,286
1992	434,853	104,365	260,200	21,743	5%	\$48,546
1993	440,253	105,661	250,000	30,818	7%	\$53,775
1994	446,853	107,245	254,800	31,280	7%	\$53,529
1995	453,453	108,829	242,800	31,742	7%	\$70,083
1996	460,653	110,557	255,800	32,246	7%	\$62,051
1997	467,853	112,285	240,800	32,750	7%	\$82,019
1998	475,653	114,157	250,800	33,296	7%	\$77,401
1999	484,653	116,317	257,800	33,926	7%	\$76,611
2000	493,053	118,333	211,800	49,305	10%	\$113,615
2001	502,653	120,637	193,800	50,265	10%	\$137,951
2002	512,853	123,085	25,800	51,285	10%	\$312,683
2003	523,053	125,533	25,800	52,305	10%	\$319,415
2004	534,453	128,269	25,800	53,445	10%	\$326,939
2005	546,453	131,149	25,800	54,645	10%	\$334,859
2006	559,053	134,173	25,800	55,905	10%	\$343,175
2007	572,253	137,341	25,800	68,670	12%	\$340,442
2008	586,653	140,797	25,800	70,398	12%	\$349,658
2009	601,653	144,397	25,800	72,198	12%	\$359,258
2010	617,853	148,285	25,800	74,142	12%	\$369,626
2011	634,653	152,317	25,800	76,158	12%	\$380,378
2012	652,653	156,637	25,800	104,424	16%	\$365,792
2013	671,853	161,245	25,800	107,496	16%	\$377,312
2014	691,653	165,997	25,800	110,664	16%	\$389,192
2015	713,253	171,181	25,800	114,120	16%	\$402,152
2016	735,453	176,509	25,800	117,672	16%	\$415,472
2017	759,453	182,269	25,800	121,512	16%	\$429,872
2018	785,253	188,461	25,800	125,640	16%	\$445,352
2019	812,253	194,941	25,800	129,960	16%	\$461,552
2020	840,453	201,709	25,800	134,472	16%	\$478,472
2021	871,053	209,053	25,800	174,211	20%	\$461,990
2022	904,053	216,973		180,811	20%	\$506,270
2023	937,869	225,089		187,574	20%	\$525,207
2024	973,038	233,529		194,608	20%	\$544,901
2025	1,009,613	242,307		201,923	20%	\$565,383
2026	1,047,651	251,436		209,530	20%	\$586,685
2027	1,087,211	260,931		217,442	20%	\$608,838
2028	1,128,354	270,805		225,671	20%	\$631,878
2029	1,171,142	281,074		234,228	20%	\$655,839
2030	1,215,641	291,754		243,128	20%	\$680,759
2031	1,261,921	302,861		630,960	50%	\$328,099
2032	1,310,052	314,412		655,026	50%	\$340,613
2033	1,360,107	326,426		680,054	50%	\$353,628
2034	1,412,166	338,920		706,083	50%	\$367,163
2035	1,466,306	351,913		733,153	50%	\$381,240
2036	1,522,612	365,427		761,306	50%	\$395,879
	\$37,533,838	\$9,008,121	\$4,177,200	\$8,370,390		\$15,978,126
	=====	=====	=====	=====		=====

LAURENCE MORLEY
WM. R. THOMAS
RICHARD E. KINGSLEY
THOMAS J. REUTER
KEVIN J. FREEMAN
THOMAS A. MCHILL

LAW OFFICES
MORLEY, THOMAS, KINGSLEY & REUTER

80 EAST MAPLE STREET
LEBANON, OREGON 97355

TEL. (503) 258-3194
POST OFFICE BOX 98

October 7, 1986

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OCT 7 1986

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Don Buell
Water Resources Department
3850 Portland Road, NE
Salem, OR 97310

Re: Lacombe Irrigation District
and TKO Power

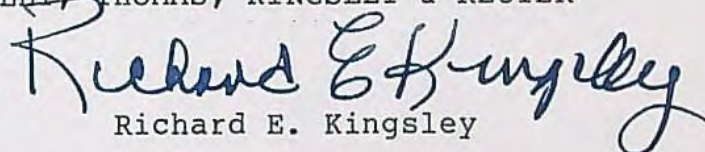
Dear Mr. Buell:

As legal counsel for the District, it is my opinion that the District has all legal rights and authority to enter into the Hydroelectric Project Development Agreement dated June 19, 1986, and the Ground Lease Agreement dated August 19, 1986.

Very truly yours,

MORLEY, THOMAS, KINGSLEY & REUTER

By:


Richard E. Kingsley

REK/mew

cc: Lacombe Irrigation District
cc: TKO Power

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058
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ROBERT S. BALL
STEPHEN T. JANIK
KENNETH M. NOVACK
JACK L. ORCHARD
JACOB TANZER
SUSAN M. QUICK
WILLIAM H. PERKINS
CHRISTOPHER W. ANGIUS
BARBARA W. RADLER
MICHAEL C. WALCH
SARAH J. RYAN
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OCT 2 1986
WATER RESOURCES DEPT
SALEM, OREGON

October 2, 1986

Mr. Don Buell
State of Oregon
Water Resources Department
3850 Portland Road N.E.
Salem, OR 97310

Re: Lacomb Hydroelectric Project

Dear Don:

As you are aware, we are legal counsel to TKO Power, the developer of the Lacomb Hydroelectric project. We have previously provided to you a copy of the Ground Lease Agreement between the Lacomb Irrigation District and TKO Power (the "Lease"). The purpose of this letter is to provide you with our opinion as to why the relationship between TKO Power and Lacomb Irrigation District qualifies as a "municipal" project under the proposed Administrative Rules designated OAR 690-51-195(1). We are not aware of any amendments which may have been made to the draft Rules which, we understand, were passed by the Commission; and, accordingly, this letter addresses the draft form of the Rules.

1. OAR 690-51-195(1)(a) requires that the District receive a minimum of 10 percent of the gross revenue generated by the project. The Lease with the Lacomb Irrigation District (the "District") provides for a staggered royalty, starting with 5 percent and increasing to 50 percent. The Administrative Rule does not deal with the situation where there is a staggered royalty payment. If you take the years from 1987-2030, when the District receives a varying royalty increasing from 5 percent to 20 percent, the average annual royalty during that period of time is 13.05 percent. That does not include the 50 percent royalty which the District receives commencing with the year 2031. If you averaged the royalty for all years, including the years after 2030, the average royalty would be well in excess of 13 percent. For example, if you assume that the 50 percent royalty continued for 50 years, which is not an unreasonable assumption given the nature of these projects, then the District would receive an average royalty over the life of the Lease of 33.8 percent. If

Mr. Don Buell
State of Oregon
Water Resources Department
October 2, 1986
Page 2

you analyze the effective royalty in terms of a discounted present value, the discounted present value for an average year throughout the life of the Lease exceeds 10 percent.

2. OAR 690-51-195(1)(b) requires that the District retain the proprietary interest in the project land. As you can see from the Ground Lease, the District has not divested itself of any ownership in the project land at all and, throughout the term of the Lease, is simply leasing the project land to the developer. Section 1.2 of the Lease provides that:

"Throughout the term of this Lease, the property shall be owned by Lessor (the District) and, the project, and all improvements upon the property and all related equipment and fixtures, shall be the property of Lessee."

The effect of this provision is that the District retains ownership of the ground throughout the term of the Lease and that, at the end of the term of the Lease, the District has the right to not only the land but the project itself. In the event of a default of the Lease, then the District, pursuant to Section 13.2.3, can terminate the Lease and retake possession of the property and, in the same process, acquire ownership of the project.

3. OAR 690-51-195(1)(c) requires that the District have certain controls over the operation of the project. There are several provisions in the Lease which allow the District to compel the project developer to comply with all applicable governmental rules and regulations. First, under Section 3.3.2, the developer is required, during the course of construction, to conform to all applicable governmental rules and regulations. In the event the developer does not do so, the District can enforce this legal obligation and require the developer to conform to all applicable governmental rules and regulations. Second, during the entirety of the term of the Lease, the developer is required to comply with all applicable governmental regulations, pursuant to Section 7 of the Lease. Again, if the developer does not comply with the Commission's regulations or any regulations referred to in subsection (1)(c)(B) or (C) of the regulations, the District can enforce the developer's obligation to comply. The Lease provides a very broad obligation on the part of the developer to comply with each and every governmental regulation and this may be enforced by the District. We believe this is

BALL, JANIK & NOVACK

Mr. Don Buell
State of Oregon
Water Resources Department
October 2, 1986
Page 3

precisely the intent and the explicit requirement of the above-quoted Administrative Rules. This is further emphasized by Section 8.3.3 of the Lease which requires that the developer will make modifications to the hydroelectric project, even if they reduce energy production, where those requirements are imposed by any governmental jurisdiction.

We hope that the above opinion is responsive to your questions. Please do not hesitate to call us if you would like to discuss this matter.

Very truly yours,

Stephen T. Janik
by *lsy*

Stephen T. Janik

STJ/lsty
20

cc: Mr. Norman E. Kamp



STATE OF OREGON

INTEROFFICE MEMO

TO: *File 60823*DATE: *10-1-86*FROM: *Don Buell*SUBJECT: *Discussion of Hydro rules with Anne Squier.*

I called Anne Squier this date to ask whether the agreement between TKO & Lacombe had to be approved by the Commission. She stated that it could be treated as a change in Lacombe's agreement and could be approved by the Director if it complied with the OAR. She also added that review of any new agreement could be considered part of reviewing an application and also be approved by the Director. Any exception must go before the Commission.

September 12, 1986

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, OR 97355

REFERENCE: File 60823

On August 15, 1986, Water Resources staff visited the site of your proposed hydroelectric project under Application 60823 and found construction to be under way.

The Water Policy Review Board approved your project on May 8, 1981, and returned the application to the Director for further proceedings consistent with the order. At that time, final plans and specifications were requested before a permit could be issued. ORS 540.350(1) states that "no person, firm or private or municipal corporation shall construct any dam, dike or other hydraulic structure or works, the failure of which the Water Resources Commission finds would result in damage to life or property, unless the Commission has made an examination of the site and of the plans and specifications and other features involved in the construction of such works, and has approved them in writing." The plans and specifications for the project were received in this office on August 27, 1986, and are presently under review.

Also of concern are the Hydroelectric Project Development Agreement between the district and TKO Power received in this office on August 20, 1986 and the Ground Lease Agreement between the same parties received on September 4, 1986. We have reviewed both agreements and are unable to conclude that it is a municipal project and meets the standards of benefit, control and proprietary interest. Chapters 392 and 561, Oregon Laws, 1985, both require the Commission to establish rules which shall include the amount of control and interest in a joint project as necessary for the project to be considered a municipal project under ORS Chapter 537. The Commission cannot make that determination until the rules are adopted. Those rules will come before the Commission at its September 26 meeting and may or may not be adopted at that time.

Considering that plans and specifications have not been approved and there is some doubt whether a permit can be issued under ORS Chapter 537, I strongly recommend that all construction on the project stop immediately and that the District comply with all appropriate statutes.

Sincerely,

WILLIAM H. YOUNG
Director

WHY:wpc
cc: TKO Power
Stephen T. Janik
Richard E. Kinsley

Protection generally their

Under g.l. agreement

Benefit - 4.1 rent \$100/mo til 12-31-87
4.2 5% first 6, 7% next 7.
of gross = r
only takeover is uncured event of default.

Interest - 1.1 Lease ~~to~~ 1.2 prop. owned by lessor
~~throughout lease, property owned by the~~
2.1 3-100 yrs with 50 years of extensions available
2.2

Control - 1.2 not partners
3.1 Lessee constr.
3.2 agreement says when
3.6 no liability
3.7 has right to inspect but not interfere with
construction or operation.
4.5.2 10 days notice to audit
5. Must give written consent for other usage
6.1.3 allows Dist. to check taxes once per year
6.3 allows for 10 days notice to allow dist. time
to post notice of non-responsibility.
8.3 Allows TPO to increase power production without
District's written approval.
? section 10 canal maint, no control over what
maint.
? 14.1 allows Lessee to sell or assign or sublease w/o consent
etc. 11.1 right to encumber adapts terms of development
agreement.

19 — Amends Development Agreement but does
not cancel it

HPDA Dist allowed to review P&S
review construction
Inspect but don't interfere

GROUND LEASE AGREEMENT

RECEIVED

8-19-86
WATER RESOURCES DEPT
SALEM, OREGON

DATED: August 19, 1986

BETWEEN: LACOMB IRRIGATION DISTRICT,
an Oregon municipal corporation
41358 Lacombe Drive
Lebanon, OR 97355 ("Lessor")

AND: TKO POWER,
a California general partnership
3300 Bechelli Lane, Suite A
Redding, CA 96002 ("Lessee")

Lessor owns certain real property (together with easements and other rights appurtenant thereto) and irrigation facilities which are located upon such property in Linn County, Oregon. The real property and appurtenant easements and other rights owned by Lessor are described in attached Exhibit A (the "Real Property"). A portion of the facilities are described in attached Exhibit B (the "Irrigation Works"). The Real Property and the Irrigation Works are collectively the "Property."

Lessee desires to lease the Property from Lessor and Lessor is willing to lease the Property to Lessee, all on the terms of this Ground Lease Agreement (the "Lease").

Lessee desires to lease the Property for purposes of developing, constructing, owning, and operating on the Property the hydroelectric project described in attached Exhibit C (the "Project"). Lessor and Lessee have entered into the Hydroelectric Project Development Agreement dated June 19, 1986 (the "Development Agreement") pursuant to which Lessee has agreed to build the Project.

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Lease, Lessor and Lessee agree as follows:

SECTION 1 LEASE OF PROPERTY

1.1 Agreement to Lease

Lessor hereby leases the Property to Lessee for the consideration and on the terms and conditions set forth in this Lease, and Lessee hereby leases the Property from Lessor for the consideration and on the terms and conditions set forth in this Lease except there shall be no assignment of or interference with the Lessee's water rights of 30 CSF or the basis irrigations/ easements.

1.2 Relationship of Parties

Throughout the term of this Lease, the relationship of the parties shall only be that of landlord and tenant, and not one of joint venture, partnership, association, corporation, or any other entity. Throughout the term of this Lease the Property shall be owned by Lessor and, the Project, all improvements upon the Property and all related equipment and fixtures shall be the property of Lessee. Any interpretation of this Lease or any interpretation of the relationship of the parties, which is contrary to that set forth above, shall be contrary to the intent and agreement of the parties.

SECTION 2 TERM, EXTENSIONS

2.1 Initial Term

The initial term of this Lease shall commence on September 1, 1986 and shall continue thereafter until August 31, 2086 (the "Term").

2.2 Extensions of Term

Lessee shall have the right to extend the Term of this Lease in 10 year increments for a total maximum extension of 50 years. In the event Lessee desires to extend the Term of this Lease, Lessee may do so by giving Lessor written notice of its election to extend, which notice shall be given not less than 180 days prior to the then last day of the then Term of this Lease. No further action shall be required to extend the Term of this Lease. Except as otherwise expressly herein provided, all terms, conditions, covenants, agreements and other provisions herein contained shall remain in full force and effect during any and all extended terms.

2.3 Termination

Until Lessee obtains bank financing for the Project and grants a mortgage on its leasehold interest, Lessee shall have the right, in the event (i) Lessee fails to complete the Project, to commence generation of electricity from the Project, and otherwise to place the Project in service (within the meaning of the Internal Revenue Code of 1954, as amended, and the regulations promulgated thereunder) before December 31, 1986 (subject to Section 16.14 hereof) or such extended date as Lessor may allow in writing, or (ii) if Lessee notifies Lessor of Lessee's intention to abandon the Project on or before December 31, 1986, to terminate this Lease and Lessee shall thereupon be excused from further performance of its obligations, and shall be relieved of all liability for non-performance arising in any way under this Lease but in either event, Lessee will have no claim against Lessor for any sums expended or which it has obligated itself to

pay or for which claims have been made, including those sums paid by Lessee in accordance with Paragraph 5(2)(a) of the Hydroelectric Project Development Agreement dated June 19, 1986.

SECTION 3 CONSTRUCTION OF THE PROJECT

3.1 Obligation to Construct

Lessee shall construct the Project on the Property, pursuant to the terms of this Lease and those provisions of the Development Agreement which pertain to the construction of the Project. Lessee shall construct the Project at its own cost and expense.

3.2 Commencement of Construction

Lessee will commence the construction of the Project, not later than September 1, 1986, subject to the provisions of Section 16.14 of this Lease. Commencement of construction shall consist of actual excavation, concrete forming, or the pouring of concrete.

3.3 Performance of Construction

3.3.1 After the commencement of construction, Lessee will diligently cause the Project to be constructed according to the Agreement. Subject to Section 16.14 of this Lease, Lessee will cause the Project to be substantially completed not later than December 31, 1987, but such construction shall not interfere with and shall safeguard the irrigation system.

3.3.2 During the course of construction, Lessee will conform to all valid governmental rules, regulations, and requirements and act in accordance with all governmental permits issued in connection with the Project. Lessee shall have the right to contest a governmental rule, requirement or regulation,

so long as such contest does not delay the construction of the Project or subject Lessor to any potential penalty or financial liability to such governmental authority imposing the contested regulation or requirement.

3.4 Quality of Construction

Lessee will complete all construction of the Project in a sound and workmanlike manner. All such construction work shall be completed free of liens for labor or materials. In the event such a lien is filed affecting any property interest of Lessor, Lessee shall, within 20 days after the lien is filed, cause this lien to be removed by bonding over the lien, and thereafter Lessee shall be free to contest the lien and the claim which gave rise to the lien.

3.5 Completion, Production of Electricity

Lessee will substantially complete the Project and commence the generation of electricity from the Project on or before December 31, 1987, subject to the provisions of Section 16.14 of this Lease.

3.6 No Liability for Lessor

Lessor shall have no responsibility to perform, be responsible for, incur any liability for, or incur any expense for the design or construction of the Project. Lessee shall defend, indemnify and hold Lessor harmless from any claim, loss, or liability arising out of Lessee's construction and operation of the Project, except for liabilities caused by Lessor's voluntary or negligent acts and those specifically assumed or agreed to by Lessee pursuant to this Lease.

3.7 Right of Inspection

Lessor shall have the right, at all reasonable times during construction and during the term of this Lease, to inspect the Project, but Lessor will exercise these rights so as not to interfere with Lessee's construction work and the operation of the Project.

SECTION 4 RENT

4.1 Construction Period Rent

For the period of time from the commencement of the Term until rent is first owed to Lessor pursuant to Section 4.2, Lessee shall pay Lessor total rent of \$100 which shall be paid in advance on or before the first day of the Term.

4.2 Computation of Rent

4.2.1 Subject to the limitation in Section 4.4, Lessee shall pay rent to Lessor based on the gross cash revenue paid to Lessee by the public utility (or other entity) purchasing electricity (energy and capacity) generated by the Project which is the "total customer payment" (the "Gross Revenue"). Gross Revenues shall not include reimbursements to Lessee for costs expended or incurred for power transmission facilities, substation, transformers, or similar equipment, regardless of whether these payments are made by a purchasing utility or others.

4.2.2 For purposes of this Section 4, an Operating Year shall be the 365 day period commencing with the date after January 1, 1987, when the Project first produces and delivers electricity to a purchasing utility or other entity (the "Commencement Date"); and each 365 day period starting with an anniversary of the Commencement Date. The Rent to be paid to

Lessor shall be equal to the following respective percentages, for each Operating Year, multiplied by the Gross Revenue received by Lessee for electricity (energy and capacity) sold during each such Operating Year. The following sets forth the Lessor's rent percentage for each Operating Year:

1987 through 1992	5%
1993 through 1999	7%
2000 through 2006	10%
2007 through 2011	12%
2012 through 2020	16%
2021 through 2030	20%
2031 and thereafter	50%

4.3 Payment of Rent

Lessee shall be obligated to pay Rent to Lessor within 10 days of the receipt of Gross Revenue by Lessee each time Lessee receives a payment of Gross Revenue. Each such periodic payment shall be equal to the amount of Gross Revenue received by Lessee, which forms the basis for the Rent payment to Lessor, multiplied by the applicable percentage set forth in Section 4.2.2. The payment to Lessor shall be by means of a check drawn on Lessee's account. Payment of rent in accordance herewith shall satisfy all corresponding payment obligations of Lessee under Article IV, Section 3 of the Development Agreement.

4.4 Subordination to Debt Service

4.4.1 In the event that Lessee encumbers the Project with a Leasehold Mortgage as defined in Section 11, then the following provisions shall apply. Payments of Rent owed to Lessor shall be subordinated, on the terms of this Section 4.4, to Lessee's obligation to make periodic payments of principal and interest required under the Leasehold Mortgage; however, the

Property and Lessor's interest in the Project including its basic water rights of 30 CSF and the basic irrigation easements shall not be subordinate to the Leasehold Mortgage. At the end of each calendar month during the Term of this Lease, Rent shall be calculated pursuant to Section 4.2. If for any calendar month during an Operating Year the sum of the monthly principal and interest payment due on the Leasehold Mortgage plus the Rent due for that same calendar month exceeds the Gross Revenue for that same calendar month, then the excess shall be the Deferred Rent.

4.4.2 For any calendar month for which there is Deferred Rent, the actual rent payable for that month shall be the Rent calculated in accordance with Section 4.2 minus the Deferred Rent for that calendar month. All Deferred Rent shall bear interest at the rate specified in Section 4.6 and all amounts of Deferred Rent and interest, for calendar months within an Operating Year, shall be due and payable at the end of that Operating Year.

4.5 Reporting, Audit

4.5.1 Each month Lessee shall provide Lessor with a copy of the check (together with a copy of the statement of power purchased) from the public utility or other purchasing entity establishing the amount of Gross Revenue for that month. Within 30 days of the end of each Operating Year, Lessee will provide Lessor with a written statement accurately setting forth all Gross Revenues received for such Operating Year and the total Rent paid to Lessor for such Operating Year.

4.5.2 Lessor may at any time and upon advance written notice given at least 10 days in advance, audit Lessee's books and

records with respect to Gross Revenue and the Rent. If the audit reveals a variance of 3% or less of the total Rent payments for the period being audited, then Lessor shall pay the cost and expense of the audit; and if the variance is greater, then Lessee shall pay the cost of the audit. Any variance caused by an error in the determination of the Gross Revenues by the utility (or other purchasing entity) purchasing the electricity generated by the Project shall be excluded for purposes of determining which party pays the cost of the audit referred to in this Section 4.5.2.

4.6 Late Charge

With respect to any Rent payment not made by Lessee in the period referred to in Section 4.3 or any Deferred Rent, such sums shall bear interest from the date such sum was payable to Lessor until such sum is actually paid at the rate 2% over the then most recent "Prime Lending Rate" or comparable rate (which may not be the most favorable rate of interest then available) published and charged by the United States National Bank of Oregon on unsecured short-term loans to its most creditworthy commercial customers.

4.7 Net Rent

The Rent to be received by Lessor pursuant to this Section 4 is to be net rent; that is, except for the obligations of the Lessor set forth in Section 10, Lessor shall not be obligated or required to make any payments or incur any expenses under the terms of this Lease.

SECTION 5 PERMITTED USES

Throughout the Term of this Lease, Lessee shall use the Property only for the purpose of developing, constructing, operating and maintaining the Project and all other reasonably necessary or reasonably related activities. Lessee shall not be entitled to use the Property for any other use, activity or purpose without the prior written consent of Lessor which may or may not be given by Lessor in the exercise of its reasonable judgment.

SECTION 6 TAXES, UTILITIES, LIENS

6.1 Taxes

6.1.1 Lessor will use its best efforts to cause Linn County to treat the Property as a separate tax lot and tax account. In the event that Linn County has not done so by the date that Lessee is first required to pay ad valorem real estate taxes pursuant to this Section 6.1.1, then the parties shall fairly and reasonably prorate any ad valorem taxes which are levied against the Property and the additional property included in such assessment, so that Lessee is only obligated to pay those taxes allocable to the Property and Lessor shall pay ad valorem taxes allocable to such other property taxed under the same account(s) as the Property. Throughout the Term of this Lease, Lessee shall pay when due all ad valorem real estate taxes, all personal property taxes, and any comparable governmental charge or assessment levied upon the Property and the Project. If permitted by law, Lessee and Lessor may pay any such taxes, assessments or levies under any available installment method and may apply for

and obtain any tax relief, abatement, or reduction available under law to Lessee or Lessor.

6.1.2 Lessee shall have the right to contest the imposition of or the amount of any tax or governmental assessment referred to in Section 6.1.1, so long as such contest does not result in a foreclosure of the lien securing such taxes or assessments. Lessor shall cooperate with Lessee in any such contest and in that regard, shall execute any documents which are necessary to initiate or pursue such contest under applicable governmental regulations.

6.1.3 Upon Lessor's written request, made not more frequently than once a calendar year, Lessee shall provide Lessor with written evidence of the performance by Lessee of its obligations under Section 6.1.1.

6.2 Utilities

Lessee shall pay when due all charges for sewer, water, gas, electricity, trash removal or any other utility service provided to the Project.

6.3 Liens

Lessee shall keep the Property and the Project free and clear of any liens, encumbrance, or charge, except for currently due governmental charges referred to in Section 6.1.1 and the matters referred to in attached Exhibit D, and except as provided in Section 11. In the event any lien is imposed upon the Property or the Project arising from Lessee's activities or conduct or granted by Lessee, Lessee shall cause such lien to be removed, bonded over, waived, settled or released prior to the initiation of foreclosure of such lien by the lien holder. Lessee, subject

to the immediately preceding obligation, shall be free to contest, adjudicate, or litigate such lien and the claim underlying such lien. Prior to commencing any work on the Project which might give rise to a lien, Lessee shall give Lessor advance written notice of such work, at least 10 days in advance (except in the case of an emergency when oral notice, given as soon as is reasonably possible, shall be sufficient so that Lessor may post a notice of nonresponsibility).

SECTION 7 GOVERNMENTAL REGULATIONS

Throughout the term of the Lease, Lessee will operate the Project in conformance with all lawful requirements of all local, state, and federal governmental authorities with jurisdiction over the Project. However, Lessee shall have the right to contest any such requirement so long as such contest does not expose Lessor to any financial penalty or liability to any such governmental authority, or risk the forfeiture or cancellation of any of the Permits necessary for the operation of the Project.

SECTION 8 OPERATIONS OF THE PROJECT, MAINTENANCE

8.1 Operations of the Project

Lessee agrees to operate the Project in a first class manner and to operate the Project as efficiently as is reasonably possible so as to maximize the amount of electricity produced by the Project. Lessee shall operate the Project at its own cost and expense subject to Lessor's obligations pursuant to Section 10. Lessee shall continuously operate the Project throughout the Term of this Lease, except for periods of time when the Project must be shut down for testing, repairs, maintenance, alterations,

governmental requirements or when irrigation is required, or other causes not within Lessee's control.

8.2 Maintenance Obligations

8.2.1 Throughout the Term of the Lease, Lessee shall be responsible, at its own cost and expense (but subject to the Lessor's obligations under Section 10), for maintaining the Project in a first class operating condition. In the event of any damage to the Project, Lessee shall, at its own cost and expense, repair the damage as soon as is reasonably possible and restore the damaged portions of the Project to a sound operating condition as soon as is reasonably possible.

8.2.2 If Lessee fails to perform its obligations under this Section 8.2, then Lessor may do so after written notice to Lessee (given at least three days before the repair work is commenced unless such repair work is required by an emergency in which event no advance notice shall be required) and Lessor may thereafter charge Lessee for the actual cost of such repair work, plus interest thereon at the rate set forth in Section 4.6.

8.3 Alterations

Lessee shall be entitled, without Lessor's prior written approval to:

8.3.1 Make alterations in or additions to the Project which increase the amount of electricity produced from the Project, so long as such alterations or additions do not involve an expansion of the powerhouse or the construction of an additional powerhouse or intake structure or similar enlargement of the present physical dimensions of the Project or interfere with irrigation rights or duties;

8.3.2 Make alterations in or additions to the Project which will not materially (with materially meaning a reduction of 5% or more) reduce the amount of electricity to be generated by the Project; and

8.3.3 Make alterations in or additions to the Project which will materially reduce the amount of electricity to be produced by the Project, so long as such alterations or additions are ordered by a governmental jurisdiction of competent authority and Lessee has vigorously attempted to cause such governmental jurisdiction to order additions or alterations which have the least impact on the amount of electric power produced by the Project. All other additions to or alterations in the Project shall require the prior written approval of the Lessor which will not be unreasonably withheld.

SECTION 9 INSURANCE, INDEMNITY

9.1 Required Insurance

Lessee shall, at its own cost and expense, provide and keep in full force and effect throughout the Term the following policies of insurance:

9.1.1 A policy of property damage insurance, with an extended coverage endorsement, in the amount of the replacement cost of the Project. Such policy will provide that it will not be canceled without at least 30 days advance written notice to the Lessor. Lessor will be named as an additional insured on such policy to the extent of its insurable interest; and

9.1.2 A policy of public liability insurance, insuring Lessee and Lessor and the grantees of those easements comprising the Property (but if and only to the extent such insurance is

required by the terms of such easements), with coverage in the amount of \$1,000,000. Such policy will provide that it will not be cancelled without at least 30 days advance written notice to Lessor. Lessee will promptly provide Lessor with a copy of all policies referred to in this Section 9 and renewals of such policies.

9.2 Indemnity

Lessee shall defend, indemnify, and hold the Lessor harmless from any claim, loss or liability asserted by a party not a party to this Lease and arising out of the development, construction, or operation of the Project, and not due to Lessor's conduct or omission.

SECTION 10 LESSOR'S OBLIGATION FOR CANAL REPAIRS

10.1 Repair of Canal

Lessee agrees to periodically inspect, clean and when necessary repair the supply canal described in attached Exhibit B which is part of the Irrigation Works. Because such work will benefit both Lessor and Lessee, Lessor agrees to reimburse Lessee for a portion of the cost of performing the work referred to in this Section 10.1.

10.2 Reimbursement

Whenever Lessee performs any of the work described in Section 10.1, Lessee shall provide Lessor with all accounting of the actual cost incurred by Lessee in performing such work (the "Cost"). Lessor shall have the right to reasonably inspect Lessee's records to verify the amount of the Cost, within 10 days after Lessor receives a statement of the Cost for Lessee. Lessor shall reimburse Lessee for one-third of the Cost within 20 days of

Lessee's statement of the Cost. However, in no event shall Lessor be obligated to pay more than \$5,000 per Operating Year pursuant to this Section 10.2.

10.3 Reserve Fund

In order to establish a reserve fund for the payment of Lessor's obligations pursuant to Section 10.2, Lessor shall establish a reserve fund at a Linn County bank acceptable to Lessor and Lessee. Lessor will deposit \$5,000 per year in this account, with the deposit due on each anniversary of the Commencement Date until the balance in this account is \$15,000. If the account balance is less than \$15,000, Lessor will annually deposit sufficient funds to restore the account balance to \$15,000. This account shall be owned by Lessor and all interest earned on the account shall be the property of Lessor. Checks drawn against this account shall require the signature of both Lessor and Lessee.

SECTION 11 PROJECT FINANCING

11.1 Right To Encumber

Lessee shall have the right to encumber the Project and its leasehold estate in the Property created by this Lease on the terms and conditions set forth in this Section 11. Lessee may encumber the Project and its leasehold estate with a mortgage, deed of trust, or other security instrument; may encumber the Project and its leasehold estate with more than one such security instrument; and may encumber its leasehold estate with successive security interests, but at no time shall the total principal balance secured by this leasehold estate exceed \$2,500,000. Any and all such mortgages, deeds of trust, or other security

instruments shall be a Leasehold Mortgage. Except to the extent allowed in the Development Agreement, no irrigation rights or easements are to be affected or encumbered.

11.2 Mortgagee's Protection

With respect to any Leasehold Mortgage (and as the context requires any Leasehold Mortgagee), Lessor agrees as follows:

11.2.1 Lessor will not declare a default of this Lease without first giving the Mortgagee a written notice of the claimed default and allowing the Mortgagee 60 days to cure any such claimed default, and Lessor will accept the Mortgagee's performance as the performance of the Lessee of this Lease;

11.2.2 Lessor will not allow, unless required by law, make, or suffer any modification of this Lease, unless the Mortgagee has in writing given consent to such modification in advance;

11.2.3 In the event the Mortgagee declares a default of the Leasehold Mortgage and through a judicial foreclosure, private sale, or deed in lieu of foreclosure, acquires ownership of the Project and the leasehold estate in the Property, Lessor will accept the Mortgagee as a substituted Lessee and this Lease shall remain in full force and effect; the Mortgagee shall be subject to all terms and conditions of this Lease, including the obligation to pay rent, but the Mortgagee shall not be deemed to have assumed the obligations of the Lessee under this Lease unless the Mortgagee shall have specifically assumed Lessee's obligations under this Lease in writing; and

11.2.4 With respect to any purchaser which has purchased the Project and the leasehold estate at a judicial foreclosure sale, at a private sale under a trust deed, or from Mortgagee, Lessor shall allow such purchaser to be substituted for Lessee and this Lease shall, after such purchase, remain in full force and effect so long as such purchaser assumes the Lessee's obligations under this Lease in writing, including the obligation to pay rent.

SECTION 12 CONDEMNATION

In the event of a condemnation of the entire Project and the Property, the parties agree that the total award shall be allocated first to pay off any Leasehold Mortgage encumbering the Project and the balance of the award shall be allocated between Lessor and Lessee as determined by the judge in the condemnation proceeding. In the event of a partial condemnation, the award shall be used first to restore the Project to a first class working condition and the balance of the award shall be allocated between the parties as provided above.

SECTION 13 DEFAULT, REMEDIES

13.1 Event of Default

An Event of Default shall exist upon a failure by Lessee to perform an obligation owed under this Lease, written notice from Lessor to Lessee setting forth the basis for the default with reasonable particularity, and the failure by Lessee to cure the default within 30 days of the effective date of this notice, or if the default cannot by its nature be cured within 30 days, then the failure by Lessee to commence to cure the default within the period of time and to thereafter diligently effect the cure.

13.2 Remedies

In the case of an uncured Event of Default, Lessor shall have the following remedies, subject to the Lessor's obligations to any Leasehold Mortgagee pursuant to Section 11, which remedies shall be Lessor's exclusive remedies:

13.2.1 Sue to specifically enforce the terms of this Lease;

13.2.2 Sue periodically to recover unpaid rent and not terminate this Lease; or

13.2.3 Terminate this Lease and retake possession of the Property and the Project, in which event Lessee shall owe no further liability to Lessor but shall be responsible for any then accrued liability to Lessor.

SECTION 14 ASSIGNMENT, SUBLEASE

14.1 Transfer to Affiliates

So long as Lessee is not then in default of this Lease, Lessee shall have the right, without Lessor's prior consent, to assign or sublease this Lease to any entity or person (transferee) which meets the following requirements: the transferee owns at least the majority of all of the issued and outstanding capital stock of Lessee; a majority of the transferee's issued and outstanding capital stock (or in the case of a partnership, capital interest) is owned by Lessee; a majority of the capital stock (or in the case of a partnership, capital interest) of the transferee is owned by an entity that owns a majority of the capital stock of Lessee; or, the transferee is a limited partnership of which Lessee, any other permitted transferee under this Section 14.1, or any combination thereof are the sole general

partners. In the case of such a transfer, Lessee shall give Lessor written notice of the identity of the transferee and the effective date of transfer reasonably promptly, and thereafter lessee shall be released from liability under this Lease. In the case of any such assignment or sublease, the transferee shall specifically assume this Lease in writing.

14.2 Transfers to Third Parties

Lessee may not assign or sublease this Lease without Lessor's prior written consent, which will not be unreasonably withheld and Lessor shall base its consent or lack thereof on the creditworthiness of the transferee and the transferee's demonstrated ability to manage and operate projects comparable to the Project. Upon any assignment or sublease approved by Lessor, Lessee shall be released from liability under this Lease, but the assignee or sublessee shall specifically assume this Lease in writing.

SECTION 15 QUIET ENJOYMENT

So long as Lessee performs all of its obligations under this Lease, Lessee shall be entitled to the quiet, peaceful and undisturbed exclusive possession of the Property. In connection therewith, Lessor agrees to continue to be responsible for all obligations under the mortgage on the Property described in Exhibit A.

SECTION 16 GENERAL PROVISIONS

16.1 Notices

All notices required, permitted, or otherwise given pursuant to this Lease shall be given by hand delivery, courier, telecopy or by certified mail, addressed to a party at its address

set forth above. A notice shall be effective, if given by hand delivery, telecopy or courier upon delivery to a party's address shown above. A notice shall be effective, if given by mail, on the third day following the day when the notice, properly addressed and postage prepaid as certified mail was deposited in the U.S. mails.

16.2 Computation of Time

In computing any period of time under this Lease, the day of the act or event from which the designated period of time begins to run shall not be included. If the last day of a designated period of time falls on a Saturday, Sunday, or legal holiday, then the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

16.3 Entire Agreement

This Lease contains the entire agreement among the parties pertaining to the matters contained herein, and supersedes and replaces all prior written and oral agreements between the parties or their representatives.

16.4 Governing Law

This Lease shall be construed in accordance with, and governed by, the laws of the State of Oregon.

16.5 Successors

Subject to Section 14, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

16.6 Counterparts

This Lease may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together shall constitute a single instrument.

16.7 Gender

Whenever the context so indicates, the masculine gender includes the feminine and/or the neuter and the singular includes the plural.

16.8 Validity

In the event that any provision of this Lease is held to be invalid, such event shall not affect in any respect whatsoever the validity of the remainder of this Lease, and the remainder shall be reasonably construed without the invalid provision so as to carry out the intent of the parties.

16.9 Captions

All captions used are intended solely for convenience of reference and shall in no way define, limit, extend or restrict the rights and obligations of the parties or the terms of this Lease.

16.10 Costs and Attorneys' Fees

In the event a party initiates litigation to enforce or interpret any of the terms of this Lease, the prevailing party shall be entitled to recover from the other party its reasonable attorney fees as determined by the judge(s) at trial or upon any appeal, in addition to all other damages or costs awarded.

16.11 Exhibits

All exhibits attached to this Lease and referred to in this Lease are incorporated in this Lease as if they were fully

set forth in the text of this Lease.

16.12 Defined Terms

All words capitalized, which are not capitalized as the first word of a sentence, are defined words with the meaning given to them when they first appear with an initial capital letter and shall have that defined meaning and no other meaning throughout this Lease.

16.13 Waiver

In order for a claimed waiver of a term or provision of this Lease to be an enforceable waiver, the waiver shall be in writing and be signed by the party to be bound by the waiver. A waiver for one event shall be a waiver for that event only and not a general waiver of a term or provision of this Lease.

16.14 Force Majeure

In the event that a party's performance of an obligation under this Lease, which obligation specifically references this Section 16.14, is delayed by a cause not within such party's control such as weather, acts of God, natural forces, rebellion, labor strikes, material shortages, unforeseen and unanticipated delays in obtaining all necessary licenses and permits, or legislative changes or changes in rules or regulations causing delays in obtaining all necessary licenses and permits, then the period of time within which such performance is due under this Lease shall be extended for the period of the cause of the delay.

16.15 Memorandum of Lease

Promptly after the execution of this Lease, the parties agree to execute and record a memorandum of this Lease.

SECTION 17 WARRANTIES AND REPRESENTATIONS

Lessor hereby warrants, represents, covenants and agrees as follows:

17.1 Lessor owns the Property free and clear of all liens, covenants, conditions, encumbrances and restrictions (except the encumbrance described in Exhibit D attached hereto); and those easements comprising the Property included herein and intended hereby for Lessee's use run with the land and are and shall remain valid and binding covenants on the part of their respective grantors and are and shall be enforceable by Lessee in accordance with their respective terms. Lessor shall not, unless required by law, during the term of this Lease or the Development Agreement, amend, modify, or otherwise in any way affect the terms of said easements, nor shall it cause or do any act which may result in the amendment, modification or affecting of said easements, without the prior written consent of Lessee.

17.2 Lessor has all requisite right, power, and authority to enter into this Lease, to perform and observe all obligations and terms on its part to be performed and observed hereunder, and neither this Lease nor Lessor's required performance hereunder shall in any way violate Lessor's charter, bylaws, rules, or regulations, or the laws, statutes, rules, regulations, ordinances, orders, judgments or decrees of any local, state, or federal government agency, court or authority. This Lease and Lessor's required performance hereunder will not violate the terms of any agreement, instrument, judgment, decree or order to which Lessor is a party or may be bound. The individual(s) executing this Lease on behalf of Lessor have full right, power and

authority to do same, and to bind Lessor to the terms, conditions, obligations, covenants, agreements and all other provisions herein contained.

SECTION 18 ESTOPPEL CERTIFICATES

Within twenty (20) days after written request by the other party, the party of whom the request was made shall execute and deliver a certificate prepared by the requesting party stating whether or not this Lease has been modified and is in full force and effect and specifying any modification or alleged breaches by the other party. The certificate shall also state any other relevant information that the requesting party may reasonably require. Failure to deliver the certificate within the specified time shall be conclusive upon the party of whom the certificate was requested that the Lease is in the status specified in the certificate and has not been modified except as may be represented by the party requesting the certificate.

SECTION 19 EFFECT OF LEASE ON DEVELOPMENT AGREEMENT

The parties acknowledge that certain terms and conditions herein contained are also covered by the Development Agreement, which was entered into prior to the execution hereof. The parties further acknowledge that certain terms and conditions herein contained differ from and may be inconsistent with the terms and conditions of the Development agreement, expressly including, without limitation, the subordination of the rental payments, the term of the Lease (or Development Agreement), and provisions for extensions thereof. Accordingly, the parties agree that, with respect to all such inconsistent and different terms

and conditions, the terms and conditions of this Lease shall govern and control, and the Development Agreement is hereby amended accordingly.

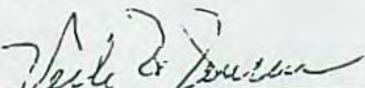
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

LESSOR:

LACOMB IRRIGATION DISTRICT,
an Oregon municipal
corporation

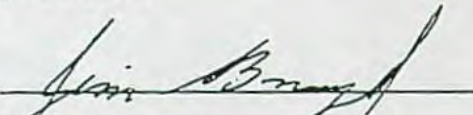
ATTEST:

By:

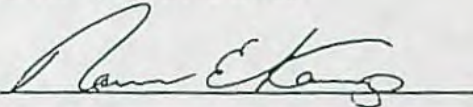

Secretary

LESSEE:

By:


TKO POWER, a California
general partnership

By:



BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058
TELEX 910-380-5470

ROBERT S. BALL
STEPHEN T. JANIK
KENNETH M. NOVACK
JACK L. ORCHARD
JACOB TANZER
SUSAN M. QUICK
WILLIAM H. PERKINS
CHRISTOPHER W. ANGIUS
BARBARA W. RADLER
MICHAEL C. WALCH
SARAH J. RYAN
DAVID A. URMAN
SUSAN NELSON HOWARD
BRENDA M. FITZGERALD
LAURIE A. BENNETT

RECEIVED
OCT 7 1986
WATER RESOURCES DEPT
SALEM, OREGON

October 2, 1986

Mr. Don Buell
State of Oregon
Water Resources Department
3850 Portland Road N.E.
Salem, OR 97310

Re: Lacomb Hydroelectric Project

Dear Don:

As you are aware, we are legal counsel to TKO Power, the developer of the Lacomb Hydroelectric project. We have previously provided to you a copy of the Ground Lease Agreement between the Lacomb Irrigation District and TKO Power (the "Lease"). The purpose of this letter is to provide you with our opinion as to why the relationship between TKO Power and Lacomb Irrigation District qualifies as a "municipal" project under the proposed Administrative Rules designated OAR 690-51-195(1). We are not aware of any amendments which may have been made to the draft Rules which, we understand, were passed by the Commission; and, accordingly, this letter addresses the draft form of the Rules.

1. OAR 690-51-195(1)(a) requires that the District receive a minimum of 10 percent of the gross revenue generated by the project. The Lease with the Lacomb Irrigation District (the "District") provides for a staggered royalty, starting with 5 percent and increasing to 50 percent. The Administrative Rule does not deal with the situation where there is a staggered royalty payment. If you take the years from 1987-2030, when the District receives a varying royalty increasing from 5 percent to 20 percent, the average annual royalty during that period of time is 13.05 percent. That does not include the 50 percent royalty which the District receives commencing with the year 2031. If you averaged the royalty for all years, including the years after 2030, the average royalty would be well in excess of 13 percent. For example, if you assume that the 50 percent royalty continued for 50 years, which is not an unreasonable assumption given the nature of these projects, then the District would receive an average royalty over the life of the Lease of 33.8 percent. If

Mr. Don Buell
State of Oregon
Water Resources Department
October 2, 1986
Page 2

you analyze the effective royalty in terms of a discounted present value, the discounted present value for an average year throughout the life of the Lease exceeds 10 percent.

2. OAR 690-51-195(1)(b) requires that the District retain the proprietary interest in the project land. As you can see from the Ground Lease, the District has not divested itself of any ownership in the project land at all and, throughout the term of the Lease, is simply leasing the project land to the developer. Section 1.2 of the Lease provides that:

"Throughout the term of this Lease, the property shall be owned by Lessor (the District) and, the project, and all improvements upon the property and all related equipment and fixtures, shall be the property of Lessee."

The effect of this provision is that the District retains ownership of the ground throughout the term of the Lease and that, at the end of the term of the Lease, the District has the right to not only the land but the project itself. In the event of a default of the Lease, then the District, pursuant to Section 13.2.3, can terminate the Lease and retake possession of the property and, in the same process, acquire ownership of the project.

3. OAR 690-51-195(1)(c) requires that the District have certain controls over the operation of the project. There are several provisions in the Lease which allow the District to compel the project developer to comply with all applicable governmental rules and regulations. First, under Section 3.3.2, the developer is required, during the course of construction, to conform to all applicable governmental rules and regulations. In the event the developer does not do so, the District can enforce this legal obligation and require the developer to conform to all applicable governmental rules and regulations. Second, during the entirety of the term of the Lease, the developer is required to comply with all applicable governmental regulations, pursuant to Section 7 of the Lease. Again, if the developer does not comply with the Commission's regulations or any regulations referred to in subsection (1)(c)(B) or (C) of the regulations, the District can enforce the developer's obligation to comply. The Lease provides a very broad obligation on the part of the developer to comply with each and every governmental regulation and this may be enforced by the District. We believe this is

BALL, JANIK & NOVACK

Mr. Don Buell
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Page 3

precisely the intent and the explicit requirement of the above-quoted Administrative Rules. This is further emphasized by Section 8.3.3 of the Lease which requires that the developer will make modifications to the hydroelectric project, even if they reduce energy production, where those requirements are imposed by any governmental jurisdiction.

We hope that the above opinion is responsive to your questions. Please do not hesitate to call us if you would like to discuss this matter.

Very truly yours,

Stephen T. Janik
by *lsy*
Stephen T. Janik

STJ/lsy
20

cc: Mr. Norman E. Kamp

EXHIBIT A



MARION COUNTY-MAIN OFFICE
260 Liberty St. S.E. Suite 100
P.O. Box 825
Salem, Oregon 97308
Phone 581-0555

EAST SALEM BRANCH
1800 Hawthorne Ave. N.E.
Salem, Oregon 97303
Phone 384-4400

BENTON COUNTY
582 N.W. Vanburien
P.O. Box 951
Corvallis, Oregon 97331
Phone 757-1144

LINN COUNTY
307 South Broadway
P.O. Box 541
Albany, Oregon 97321
Phone 925-8808

LINCOLN COUNTY
126 W. Olive
P.O. Box 1177
Newport, Oregon 97158
Phone 265-5551

STAYTON BRANCH
220 East Virginia
P.O. Box 533
Stayton, Oregon 97383
Phone 769-3431

POLK COUNTY
166 S.W. Court St.
P.O. Box 451
Dallas, Oregon 97338
Phone 623-5513

COOS COUNTY
404 Commercial St.
Coos Bay, Oregon 97420
Phone 269-0119

LINCOLN CITY BRANCH
4427 W. Lewis Lane Boulevard
Lincoln City, Oregon 97367
Phone 994-7145

LINN COUNTY

August 12, 1986

BayBank Boston
175 Federal Street
Boston, Mass 02110

Attn: Jake Fiechter

PRELIMINARY REPORT ONLY

No liability is assumed hereunder until the policy is issued and the full policy premium has been paid.

Order No. 106951-L
AMENDED

We are prepared to issue a title insurance policy in the form requested, insuring the title to the land described herein.

See Exhibit "A" attached

Veslee:

LACOMB IRRIGATION DISTRICT

Dated as of August 4,

19 86 at 5:00 P.M.

Subject to the usual printed exceptions and stipulations, and the following:

1. Taxes, including current year, not assessed because of Exemption. If the exempt status is terminated under the statute prior to the date on which the assessment roll becomes the tax roll in the year in which said taxes were assessed, an additional tax may be levied.

Exemption : Water Control District
Account No. : 52544
Tax Lot No. : 11-1E-21-3300

2. Mortgage, including the terms and provisions thereof, with interest thereon and such future advances as may be provided therein, given to secure the payment of \$31,500.00

Dated : June 21, 1977
Recorded : June 22, 1977
Mortgagor : Donald R. Collins and Gwen Collins
Mortgagee : Home Federal Savings and Loan Association

MF Vol: 169

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Issuing Policies of First American Title Insurance Company

3. Proof that there are no parties in possession, or claiming to be in possession, other than above vetees.
4. Any statutory liens for labor or material, including liens for contributions due to the State of Oregon for unemployment compensation and for workmen's compensation, which have now gained or hereafter may gain priority over the lien of the insured mortgage, which liens do not now appear of record.

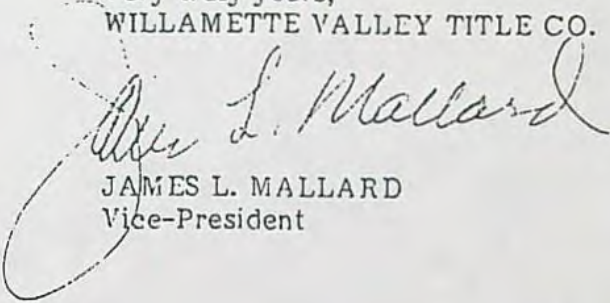
NOTE: We find the following appurtenant easements of record in favor of the Lacomb Irrigation District:

<u>Date Recorded</u>	<u>Reception No.</u>	<u>Grantor</u>
April 19, 1940	18163	Mattie Williams
April 19, 1940	18164	J. W. Cox
April 19, 1940	18165	Roy Harden
April 19, 1940	18166	L. N. Harrison
April 19, 1940	18167	W. H. Scherer
April 19, 1940	18168	L. A. Henson
April 19, 1940	18169	Bertha Weeks
May 2, 1940	18378	R. W. Downing
May 2, 1940	18378	Nettie Downing
May 2, 1940	18378	Wayne E. Downing
May 2, 1940	18378	Rachel Downing
May 2, 1940	18378	A. A. Ayers
May 2, 1940	18378	Geo. S. Childs
May 2, 1940	18378	Flora Childs
May 2, 1940	18378	Dorothy Halverson
May 2, 1940	18378	J. C. Edwards
May 2, 1940	18378	J. E. Johnson
May 2, 1940	18378	Freda Johnson
May 2, 1940	18379	Fennie Cooper
May 2, 1940	18380	Gertrude McLeod
June 7, 1940	18962	R. L. Patterson
June 7, 1940	18963	Travelers Ins. Co.
June 7, 1940	18964	Edward Jungwirth
June 7, 1940	18965	Gertrude Wirt
June 7, 1940	18966	Federal Farm Mortgage Corp.
August 30, 1940	20188	Henry W. Eagle
August 30, 1940	20189	E. C. Ayers
August 30, 1940	20190	Hilma Peoples
August 30, 1940	20190	E. W. Bartruff
August 30, 1940	20190	First National Bank
August 30, 1940	20190	J. N. Sylvester
August 30, 1940	20190	Oliver Powell
August 30, 1940	20190	H. C. Pyle
August 30, 1940	20190	Rebecca Pyle

<u>Date Recorded</u>	<u>Reception No.</u>	<u>Grantor</u>
August 30, 1940	20190	Ruth Downing
August 30, 1940	20190	M. B. Sanders
August 30, 1940	20190	J. W. Edwards
September 13, 1940	20388	H. C. Phipps
September 13, 1940	20388	C. B. Spencer
October 25, 1982	MF 302/211	Willamette Industries
October 25, 1982	MF 322/214	Champion International Corporation

NOTE: We find no judgments or United States Internal Revenue Liens against Lacomb Irrigation District.

Very truly yours,
WILLAMETTE VALLEY TITLE CO.


JAMES L. MALLARD
Vice-President

JLM/ccm/31

cc: 3)

- 1) TKO Power
P.O. Box 494310
Redding, CA 96049
Attn: Norman E. Kamp

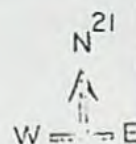
EXHIBIT "A"

PARCEL I:

All of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 21, Township 11 South, Range 1 East of the Willamette Meridian, lying South of the center of Crabtree Creek and North of Snow Peak Logging Road as conveyed by deed recorded May 12, 1939 in Book 149, Page 526, Deed records.

PARCEL II:

Beginning at a 34" pipe which is on the West line of the Northeast 1/4 of the Southeast 1/4 of Section 21, Township 11 South, Range 1 East of the Willamette Meridian, Linn County, Oregon and North 0° 46' East 849 feet from the Southwest corner of said Northeast 1/4 of said Southeast 1/4 of said Section 21; thence North 0° 46' East along said West line 23.45 feet to the true point of beginning; thence North 9° 03' West 364.55 feet; thence Northeasterly 98 feet more or less to a point on the West line of said Northeast 1/4 of said Southeast 1/4 of said Section 21 which is 21 feet South of the North line of said Southeast 1/4 of said Section 21; thence South 0° 46' West along the West line of said Northeast 1/4 of said Southeast 1/4 of said Section 21, 449 feet more or less to the true point of beginning.



This plat is made solely for the purpose of existing
locating the same and no other purposes and
no other claims or interests are shown or intended.

WILLIAM W. HILL CO.
1917

300
S. 77° 12' E

200
38.72A

ABTREE

CREEK

12.11 ch.

North 80.00 ch. GLO

S. 89° 12' E

East

S. 89° 45' E

ISLAND INN DRIVE

CO. RD. 843

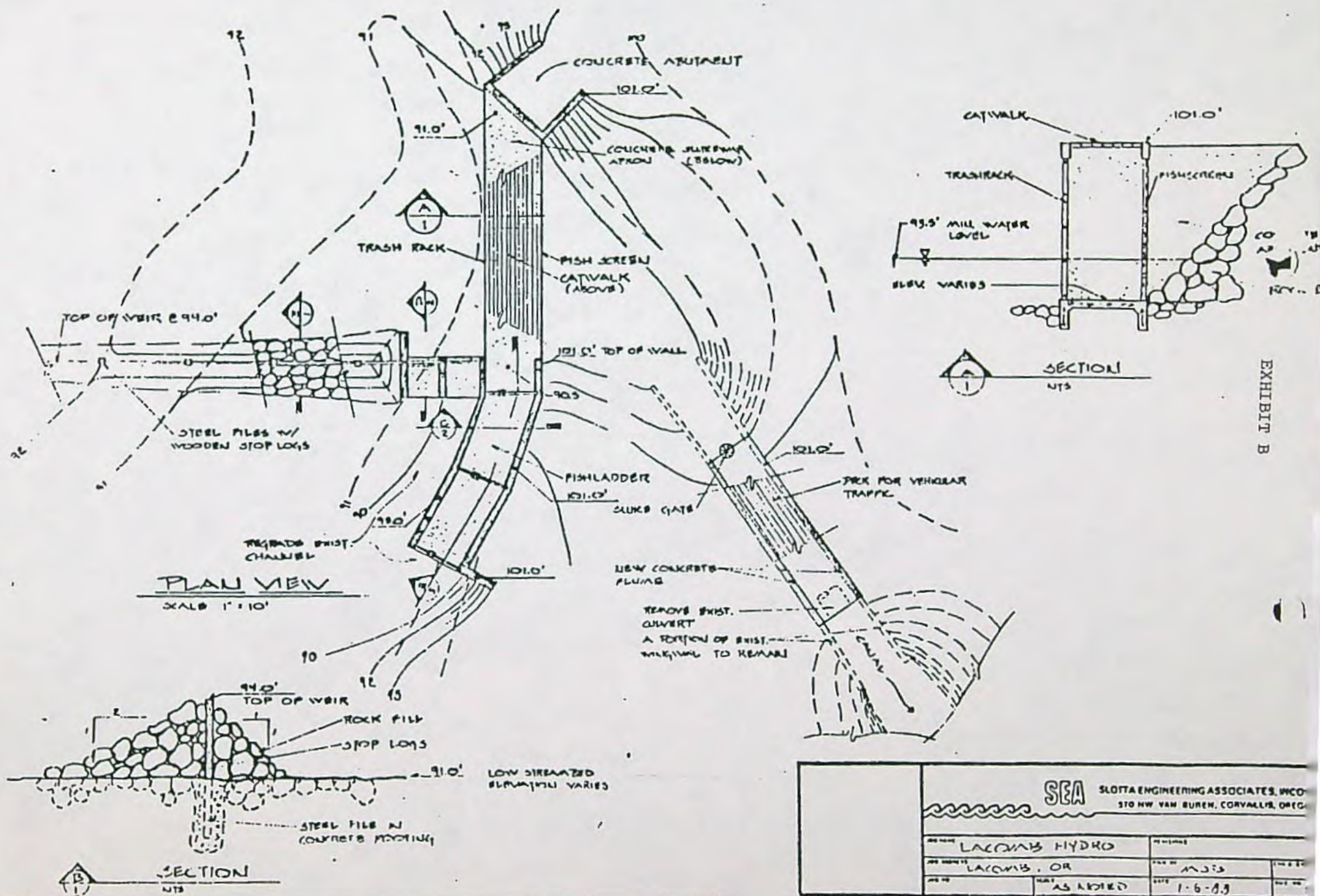
1/4 Cor

3200
E. 62A

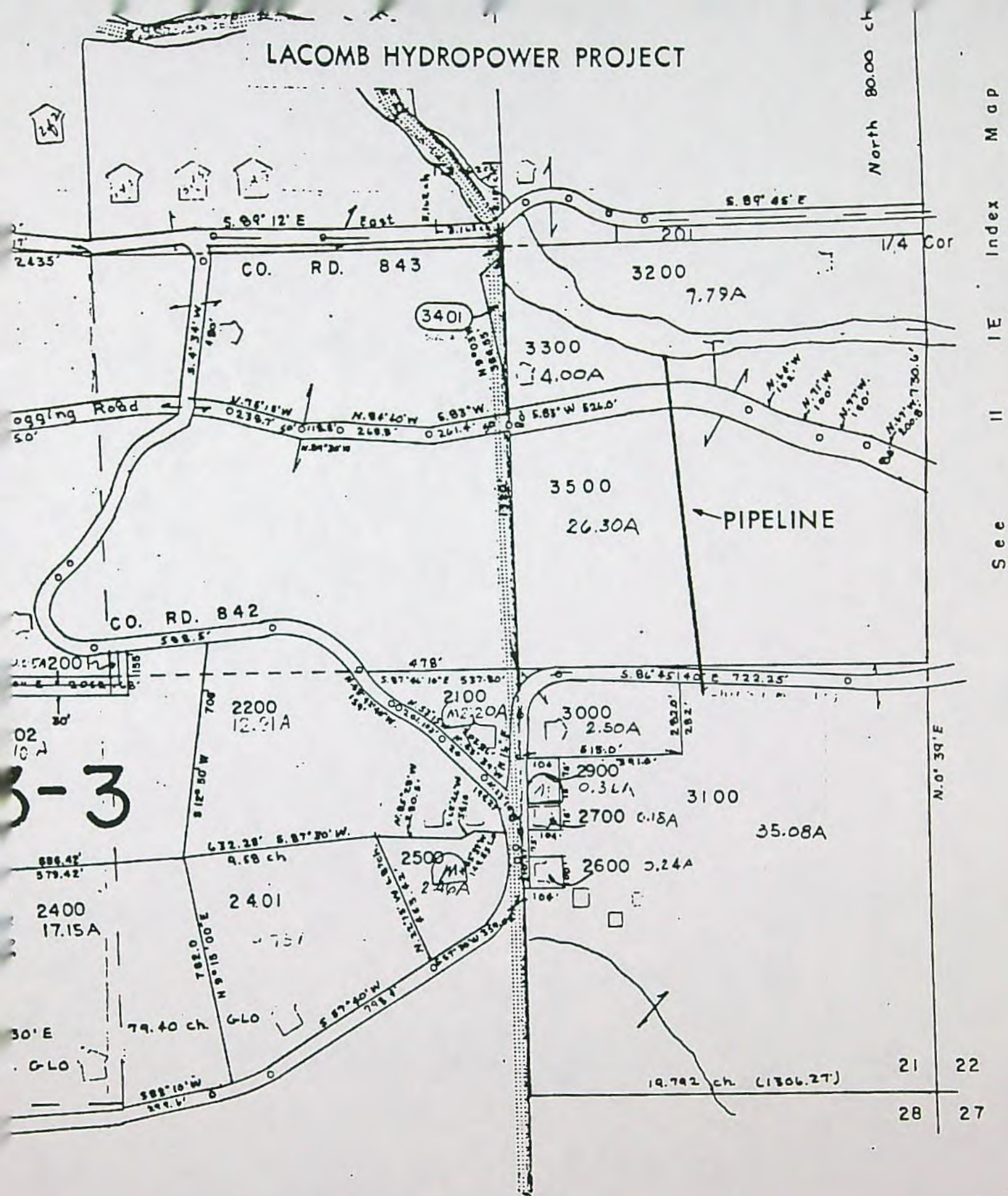
3300
4.66A

3500
26.30A

See Index Map



LACOMB HYDROPOWER PROJECT



SEA

SLOTTA ENGINEERING ASSOCIATES, INCORPORATED
CORVALLIS, OREGON 97330

MAP no. 2

LACOMB HYDROPOWER PROJECT

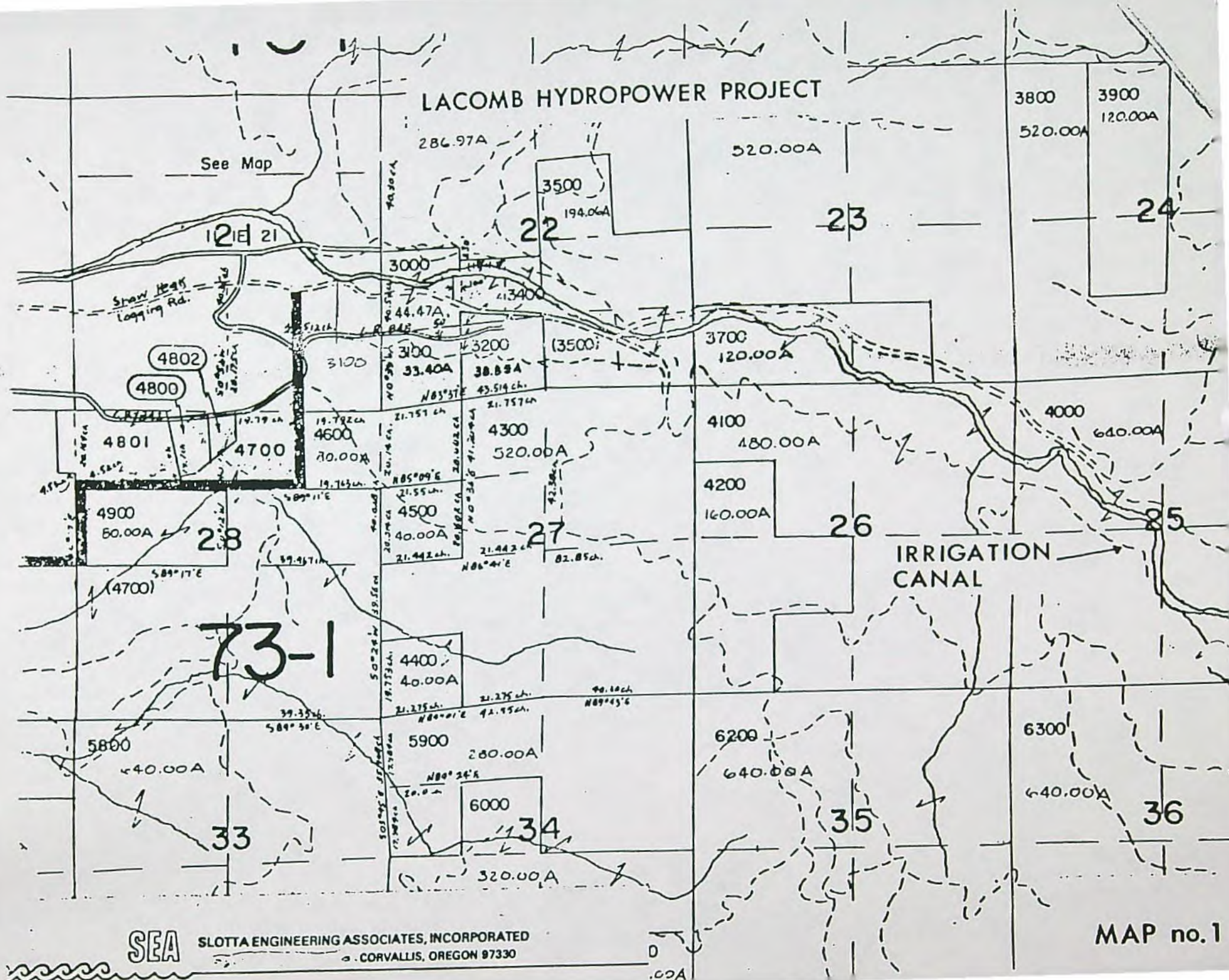


EXHIBIT C

LACOMB HYDRO PROJECT PROJECT DESCRIPTION

The Lacombe Irrigation District (LID) owns and operates the Lacombe Irrigation Ditch on Crabtree Creek. LID diverts water from Crabtree Creek and transports the water to the small community of Lacombe, Oregon, located approximately 15 miles east of Albany and 60 miles south of Salem.

The area has a mean temperature of 55 to 60 degrees Fahrenheit, and an average annual rainfall of eighty inches. Seasonal flows range from a low average in excess of 250 cfs in the months of November through May with a high of nearly 400 cfs in December, January and February.

This project will capture only a small portion of the stream flows during the high flow season which as shown on the hydrograph attached is a minor portion of the available water in Crabtree Creek. During the irrigation season, the project will operate with available water not utilized by LID. Hydrology for the basin was developed by Ott Water Engineers using USGS stream gages in the vicinity of the project.

The Federal Energy Regulatory Commission issued an exemption from licensing on October 18, 1982. That exemption is currently in good standing with FERC. All the permits from governmental agencies have been acquired, and are in good standing, including a county use permit for the construction and operation of the powerplant facility.

The annual production is projected to be 6,000,000 kilowatt-hours. The power produced will be sold to Pacific Power and Light (PP&L) as per the enclosed Power Purchase Agreement dated October 4, 1985. The on-line date in this agreement has been extended by PP&L until January 1988. The guaranteed energy rates have been moved from the 1986 schedule to the 1988 schedule causing a reduction of less than 5% in rates previously proposed in the contract.

The project consists of constructing a diversion structure with fish screens, refurbishing an existing canal, installing the penstock, and constructing a forebay, and the powerhouse.

The existing canal is approximately 3.8 miles long from the proposed diversion site to the proposed forebay area. The ditch will require some cleaning and reshaping and in areas flumes will be replaced with pipes or other conveyances necessary to transport the canal water.

The forebay will be constructed approximately 3.8 miles downstream from the diversion and approximately 1100 feet above the powerhouse. The forebay will consist of an overflow with a bypass wier to meet LID's downstream water needs along with an entrance structure for the penstock.

The penstock will travel 1100 feet to the powerhouse located at Snowpeak Road and Crabtree Creek. The powerhouse will house a 962 kw generator and a Francis turbine along with the appropriate switch gear and systems typical to the Scotts Flat facility.

The contractor for the project is Ray Toney and Associates with a proposed turn-key contract with a fixed price of \$1,950,000. The project consulting engineer is Ott Water Engineers with a proposed contract of \$50,000. The proposed turbine manufacturer is Gilkes of Kendall, England. The generator will be manufactured by KATO of Mankato, Minnesota. All electrical switch gear and control systems will be supplied by Ray Toney and Associates, similar to that found in the Bear Creek facility.

The facility will be operated by a full time plant manager employed by TKO Power. He will maintain the inlet structure ditch and the powerhouse. This operator will be on call 24 hours a day 365 days a year.

In summary, it is TKO's opinion that the Lacombe project is the best overall project to date that we have had the opportunity to develop, primarily because of the uniqueness of the water availability. The district has been very cooperative in providing us with the revenue from the project in the early years. This is a 99 year contract with the district.

LACOMB HYDROELECTRIC PROJECT DESCRIPTION

I DIVERSION

A. Crabtree Creek at the diversion is approximately 175 feet wide, gravel bottom with no apparent parent foundation material. The existing irrigation diversion is a head gate with a gravel diversion dam that is replaced each spring.

B. The preliminary idea of constructing a gravel dam similar to the operation of the irrigation district is less reliable than we previously thought. The dam would most likely wash out with the first high water and not be replaceable until the water recedes in the spring.

C. The other option, we believe, is to build a gravity structure and float it on the gravel stream bed. The structure would be approximately 5 feet above the stream bed and 250 feet in length. The preliminary screen design is based on a self cleaning type similar to Bear Creek. A large bypass to sluice gravel and a fish ladder is required.

Oregon Department of Fish & Wildlife may not approve the self cleaning screen, which would require three miles of powerline to provide power to the screen sweeper.

II LACOMB IRRIGATION DISTRICT CANAL

A. The existing canal is approximately 3.8 miles long from the proposed diversion site to the proposed forebay area. The canal is currently large enough to pass approximately 30 cfs, although, there are some areas where the canal transforms into underground pipe, which will not pass 30 cfs. To make the canal of a sufficient quality which will be long lasting and have a passable flow of 65 cfs the following alterations are necessary:

1. Cleaning and Reshaping for 65 cfs:

- a. The canal will require hand crews to brush and clear the sides of the canal banks where flow may be restricted.
- b. The canal will need to be dug out with an approximate cross section of a 6 feet wide bottom and a 2:1 side slope ratio, approximately 3 feet high.

2. Flume Ammendment:

- a. The flume is neither large enough to pass 65 cfs, nor structurally sound in terms of the existing foundation. The foundation is weak and is subject to sliding off the benched-in hillside.
- b. There are three options for altering these problems:
 - 1) Upgrading and increasing the volume of the flume. This would require placing more lumber on the flume sidewalls, increasing the number of timber supports and driving some type of piling to strengthen a number of the existing supports. This option will solve the capacity problem, but does not ensure the stability problem, nor flume deterioration.

Estimated Cost \$127,000

2) Replace the flume with 1000 feet of 48 inch pipe. The existing flume will be burned and the pipe (spiral rib, asphalt dipped and wrapped) will utilize the same route as the flume. The pipe will be partially buried and tucked against the hillside. Headworks will need to be constructed at both the entrance and the exit ends of the pipe. This option solves the capacity problem and partially solves the stability problem. As the pipe will not be resting on the outer edge of the benched-in hillside, it will not be as susceptible to slides that may occur below it. However, sliding that may occur above the pipe might affect it.

Estimated Cost \$160,000

3) Replace the flume with 1500 feet of 48 inch pipe. The existing flume would be abandoned. The pipe would go down on the floor below the hillside, then come back up to meet the canal creating a siphon effect. The pipe (spiral rib, asphalt dipped and wrapped) will require headworks at both the entrance and exit ends, a trash rack and an 18 inch drain valve at the lowest elevation. The option solves both the capacity problem and the stability problem.

Estimated Cost \$192,000

3. Silt Collection and Ejection Basins

- a. The canal will require two such structures to help prevent future capacity losses.
- b. The structures will be made of concrete and will be at lower levels than the canal invert, with ejection drains to aide in sluicing the silt.

4. Slide Siphon

- a. Approximately 1200 feet of 48" lined and coated steel pipe is required to bypass an existing slide area.
- b. The pipe will be buried with the exception of the draw that it crosses, at that point the pipe will be placed on concrete saddles.
- c. The pipe also requires headworks at both the entrance and exit ends, a trash rack and a 24 inch drain valve for flushing.

III PENSTOCK FOREBAY

- A. A forebay will need to be constructed approximately 3.8 miles downstream from the diversion and approximately 1100 feet above the powerhouse. The forebay will consist of the following components:

1. Settling Pond

A settling pond and forebay are required to settle silt and regulate flow to the penstock and irrigation ditch.

2. Lacombe Irrigation District Stoplog Outlet

The outlet will be constructed of a concrete wall with removable stop logs that will enable the Lacombe Irrigation District to increase or decrease flow to their irrigation canal.

3. Overflow and Bypass Weir

The weir will also incorporate a drain to flush silt.

4. 250' of 30" Galvanized Corrugated Pipe

The pipe will provide an outlet for water flowing past the overflow weir to natural drainage.

5. Penstock Entrance Structure

The structure will consist of a concrete intake, a Criter trash rack with motorized cleaner and electrical service provisions for the cleaner.

IV PENSTOCK

A. The penstock will be buried for the full length between the forebay and the powerhouse. The penstock will have a total head of approximately 235 feet and will consist of the following:

1. Approximately 1100 feet of 39 inch steel pipe, lined and coated is required.
2. The penstock will make two road crossings.
3. The penstock will include conduit and signal cable from the powerhouse to the forebay.

V POWERHOUSE

- A. The proposed powerhouse site is between Snow Peak Road and Crabtree Creek.
- B. The powerhouse will be constructed similar to Scotts Flat Powerhouse.

VI PIONEERING AND CLEARING

- A. The pioneering and clearing process will encompass the areas of access roads, penstock, siphon, and the Lcomb Irrigation District canal, before the beginning of construction. Any timber that needs to be moved will be purchased from Willamette Industries.

VII ACCESS ROADS

- A. There is approximately 2.5 miles of access road to the diversion and 1100 feet to the powerhouse. The roads will be graded and surfaced with gravel. The roads will be approximately 12 feet wide, with the gravel layer 4 inches thick.

VIII SWITCHYARD AND POWERLINE

- A. The closest three phase powerline is on Shingle Mill Drive near the forebay. The powerline will run along the penstock access and tie into the existing three phase powerline at the forebay area. The powerline will be approximately 1100 feet long with air switches at both ends.
- B. The switchyard will be complete with an air switch, station transformer and power transformer.

IX EQUIPMENT

- A. The turbine will be either a Turgo Impulse or a Francis type.
- B. The generator will be either synchronous or induction type, capable of producing one megawatt of power.
- C. Switchgear will be complete to meet all utility requirements including a main breaker and protective relays.
- D. Controls and monitoring will be completely engineered and installed so that the powerplant may run as efficiently as possible.

X EQUIPMENT INSTALLATION

- A. Includes installing all powerhouse equipment, start-up, normal RTA testing, commissioning, Operation and Maintenance Manuals and operator training.

LACOMB HYDROELECTRIC PROJECT
COST ESTIMATE SUMMARY

Mobilization	\$34,000
Engineering	100,000
Diversion and Intake	205,000
Flume (Alternate B)	160,000
Two Silt Collection Structures	30,000
Slide Siphon	196,000
Clean & Reshape Ditch	216,000
Forebay	92,000
Penstock	135,000
Powerhouse	115,000
Pioneering & Clearing	35,000
Access Roads	42,000
Switchyard & Powerline	48,000
Penstock Transition & Valves	12,000
Equipment (Turgo) (Francis \$615,000)	- 585,000
Equipment Installation	55,000
Bonds, Builders All-Risk Ins. and Building Permits	<u>38,000</u>
Total	\$2,098,000

EXHIBIT D

The Property as defined in the Ground Lease is subject to the following encumbrance:

A mortgage in the amount of \$31,500 held by Home Federal Savings and Loan Association recorded on June 22, 1977 MF Vol: 169, Page: 555.

WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

MEMORANDUM OF PERSONAL OR TELEPHONE CONTACT

TO: File 60823

DATE: 9-3-86, 11:35 am,

FROM: Don Buell

SUBJECT: Office visit

NAME: Norm Camp, TKO

Norm Camp of TKO stopped in to see
what progress was being made towards issuance
of a permit to the Lacombe Irr District for
development of their hydroelectric project

I told him of our opinions of the
agreement between TKO and Lacombe ID for
construction of the project, that it would
not allow the project to continue as a Municipal
project and let him read a draft copy of
a letter that we were considering sending
recommending that construction cease.

I had previously contacted Dick Kingsley,
atty. for Lacombe ID, who stated he would get
to Steve Janik, atty for TKO. Mr Camp
stated he had not been informed.

He asked for time to contact Steve Janik
and get back to us on the agreement.
I told him it would be tomorrow P.M before
we could possibly get the letter out.

WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

MEMORANDUM OF PERSONAL OR TELEPHONE CONTACTTO: File 60823DATE: 9-3-86FROM: Don BuellSUBJECT: Ph. Call 2:20 pm NAME: Steve Janik & Norm Camp
Atty TKO

Steve Janik called to discuss the construction agreement between TKO and Lacomb ID, basically asking what the problem was. I informed him that the agreement lacked control and proprietary interest ~~from~~ ^{for} the District. He stated that in addition to the constr. agreement there was also a ground lease agreement which closely followed the Winchester agreement which he had written.

He stated he ~~that~~ would send me a copy and wanted to be kept up to date on everything as he represented the party that was taking all the risks.

WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

MEMORANDUM OF PERSONAL OR TELEPHONE CONTACT

TO: File #0823

DATE: 9-3-86

FROM: Don Buell

SUBJECT: Ph. Call 11:55 am NAME: Take Fiechter
Bay Bank Boston

Take Fiechter of Bay Bank Boston called to check on compliance with Oregon State Regulations for Lacombe I.D. Hydro Project. They have been approached by TKO for financing.

I filled him in as to the current status of the project including the agreement and Oregon laws under HB 2990 should the agreement not change.



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS CA. LIC. 391436

RECEIVED

AUG 27 1986
WATER RESOURCES DEPT
SALEM, OREGON

hand delivered by
Steve Nelson - 3:30 PM
DRB

August 26, 1986

Mr. Don Buel
Oregon Water Resources Dept.
Mill Creek Office Park
555 13th Street, N.E.
Salem, OR 97310

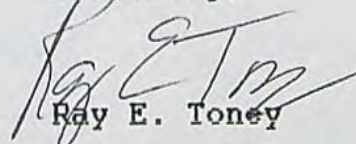
Subject: Lacombe Hydroelectric Project

Gentlemen:

Enclosed are the final plans and specifications you requested for the project. We have made the modifications on the plans you requested.

If you need any further information, or have any questions, please contact me.

Sincerely,



Ray E. Toney

RT:cw
enclosure
cc: TKO Power

File
RECEIVED

AUG 20 1986

WATER RESOURCES DEPT
SALEM, OREGON

HYDROELECTRIC PROJECT DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into as of the 19 day of June, 1986, between LACOMB IRRIGATION DISTRICT, a municipal irrigation district ("District") and TKO POWER, a California General Partnership ("TKO").

W I T N E S S E T H:

District owns certain irrigation facilities consisting, in part, of a diversion structure on Crabtree Creek, Linn County, Oregon, gate, irrigation ditch and flume, all located on real property over which the District has either easements or ownership, including land upon which a penstock can be built and property upon which a proposed structure to house a turbine and generator, and associated facilities, can be located; all as described in Exhibit A, attached hereto and incorporated herein by reference. (Such facilities, property and easements thereon collectively hereinafter referred to as the "irrigation system".)

District desires that a hydroelectric power project be built in connection with its irrigation system. The District currently holds certain governmental permits and approvals necessary for such hydroelectric project.

TKO desires to construct, own, maintain and operate a hydroelectric project on real property owned by District or over which District has easements ("Project"). TKO intends to utilize existing irrigation canals, diversion and easements for both irrigation and hydroelectric purposes as a part of Project. District

will provide TKO with such easements and canals and diversion as is necessary for TKO to develop Project.

District believes that the necessary water rights and hydroelectric permits, or exemptions, for the project have been or can be obtained. In this connection the District has obtained water flow to 65 CFS (exclusive of 30 CFS for irrigation) through the Oregon Water Resources Department.

TKO has made a proposal to the District under which TKO will construct and own the hydroelectric facility associated with the project and necessary property rights, and will have the use of power water rights for operation of the hydroelectric power generating facility. There shall be no assignment of or interference with the water rights (30 CFS) or the basic irrigation easements.

District has an agreement with Pacific Power and Light Company ("Pacific") to purchase the power to be generated by the hydroelectric project, a copy of which agreement, marked Exhibit B is attached hereto and incorporated herein by reference.

TKO desires to acquire property rights in the project and the existing waterflow, to acquire or obtain an interest in the permits obtained by the District in preparation for construction and operation of the project and to develop, construct, own and operate the project, all according to the terms of this Agreement, and District is willing to convey to TKO the necessary rights, including property rights and permits, to allow TKO to

develop and construct the Project, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and as set forth in this Agreement, District and TKO agree as follows:

I. PROJECT DEVELOPMENT

1. District shall transfer to TKO such rights with respect to the Lacombe site (including, without limitation, fee interests, leaseholds, easements, but excluding the basic irrigation rights and water rights) as it has which are, in the determination of TKO, helpful for the development of such site into a power facility. TKO shall take steps to acquire such further rights as may be necessary for the Project. It is understood, however, that no commercial commitment for construction of the Project shall be commenced without TKO or the District first securing the necessary water rights, all other necessary state, federal and county permits, licenses, entitlements and approvals, and an acceptable power sales contract. The District shall support TKO's efforts to obtain all such items. In the event such support would cause the District any additional charge, such proposed additional charges should be submitted to TKO. Upon TKO's prior written approval, which shall not be unreasonably withheld, District may incur such additional charges, and TKO will reimburse District from construction funding.

2. District will assign to TKO the Pacific Contract (Exhibit B) including all revenues to be derived therefrom, and all

other contracts, licenses, permits, water rights and other rights necessary to allow TKO to construct and operate a facility under applicable federal, state and local laws, ordinances and administrative requirements.

3. District will assign all studies, reports and other materials and data necessary or helpful to enable TKO to conduct and complete construction of the project; save and except TKO will provide its own engineering services, plans and specifications.

4. TKO, at its sole cost and expense, shall have responsibility for the orderly development of the site into a power facility, including, but not limited to, determination of (a) the prices to be paid, (b) the engineers to prepare the construction documents and supervise construction on any development site, and (c) the contractors or subcontractors to be used to perform any construction, installation or other services required to develop the site into a power facility. TKO shall submit preliminary and final designs for the project to the District for review and consultation. Such designs shall be adequate to provide for the projection of power throughout the term of the Agreement and shall safeguard the irrigation system.

5. TKO shall engage Ott Water Engineers as consultants to review all plans and specifications.

6. When conditions to the parties' obligations have been met or waived, TKO shall be obligated to proceed promptly to

develop and construct the hydro project. Such construction shall commence not later than July 1, 1986, and be completed not later than October 15, 1987.

II. CONSTRUCTION MANAGEMENT

TKO, at its sole cost and expense, will be responsible for the performance of all work as TKO may deem appropriate for the completion of the power project in accordance with the construction documents, including the securing of bids or quotations for materials, prices and subcontracts for the project work, establishing a work project schedule on which the power facility will be expedited consistent with reasonable cost, good workmanship and safety; arranging for an engineer or engineers to provide the necessary inspections as required including the checking and approval of shop drawings, samples, schedules and other submittals for compliance with the design concept of the construction documents; reviewing all laboratory tests and preparing change orders and issuing certificates of substantial compliance. The District shall have the right to review and inspect the facility construction to assure that the designs are compatible with the District's Irrigation System and operations.

III. OPERATION AND MAINTENANCE

TKO shall operate and maintain the power facility developed under this Agreement in accordance with such practices and methods as are commonly used in the hydroelectric generating industry, and shall operate and maintain electrical equipment and other project works with safety, dependability, efficiency, and

economy in accordance with all applicable laws and regulations. All property shall be under TKO's control; all operations, maintenance, repairs and improvements related to the project shall be under TKO's control, including repairs and capital improvements which are to be made to the District's Irrigation System as a part of the construction access roads, wires and related facilities that make up the project to be maintained in a good and workmanlike manner for the term of the Agreement. TKO shall maintain the power facility and that portion of the canal up to the diversion structure at no cost to the District, except as specified in Article VI.

IV. FINANCING

TKO shall negotiate and obtain all funds necessary to develop the site into a power facility. TKO shall have the right to transfer any portion or portions of the gross revenues from the Power Purchase Agreement (save and except the portions sold and/or assigned to District pursuant to the terms of this Agreement) to financing sources, lenders, investors and others. TKO and/or its investors and financing sources shall be entitled to all tax benefits that may be derived hereunder.

V. SALE OF ELECTRICAL POWER

It shall be a condition of this Agreement that the power purchase contract between the District and Pacific dated October 4, 1985, shall be assigned to TKO. This Power Purchase Agreement shall be in good standing.

VI. POWER PRODUCTION AND GROSS REVENUE

1. TKO shall cause power production and gross revenue statements, in a form satisfactory to the District, for the power facilities, to be prepared at least quarterly, copies of which shall be provided to the District within 30 working days following the end of the quarter. The District reserves, at its expense, the right to review or audit all statements and accounts relating to the power facility.

2. TKO will make the following payments upon execution of this agreement:

a. A payment of \$72,500 to Slotta Engineering Associates, Inc. (SEA) with the following conditions:

- (i) Of the \$72,500, the District agrees to repay TKO \$15,000. This shall be in the form of an unsecured note, bearing interest at nine percent (9%) a.p.r. The note shall be paid quarterly, with payments coming from the District's share of the revenues according to Section 3 of Article VI. Such payment shall be subordinated to the District's reimbursement of ditch maintenance per Section 4 of Article VI. Any payment received from the District shall first be applied to interest and the remainder to principal. These payments shall continue until the note is paid in full.
- (ii) The District shall execute a mutual release agreement between the District and SEA. The mutual release agreement shall cause SEA to file a motion to

dismiss without prejudice the lawsuit now pending.

(iii) Pay District's legal counsel for fees associated with the project and the dispute with SEA.

b. This escrow shall not close until items (i), (ii) and (iii) have been settled.

3. TKO shall pay to District as consideration for the right to construct, own and operate the Projects on the District's facilities a percentage of the Gross Revenue from the operation of the Project as follows:

Percent of Gross Revenues	Period
5%	1987 thru 1992
7%	1993 thru 1999
10%	2000 thru 2006
12%	2007 thru 2011
16%	2012 thru 2020
20%	2021 thru 2030
50%	2031 thru 2086

4. District agrees to reimburse TKO for one-third (1/3) of TKO's documented costs of ongoing expenses for repairing and clearing the existing supply canal for the benefit of District and its customers. District's share shall not exceed \$5,000.00 per year. District shall deposit \$5,000.00 per year into a trust fund, with the first deposit due one year from the date of operation. Monies in this account may be drawn for purposes of repaying funds advanced by TKO for District's portion of canal maintenance and repairs. This account shall be owned by District, but withdrawals from the account shall require joint

signature by TKO. Interest earned on the account will belong to District.

If the balance in the account reaches the sum of \$15,000.00, District may discontinue the yearly contribution until the balance drops below that amount.

Upon expiration or earlier termination of this agreement, the balance in the account is to be paid to District.

Re-evaluation of the amount to be deposited and maximum account balance shall be done every ten (10) years.

VII. INSURANCE

TKO will cause to be acquired and maintained with respect to the power facility and its operations, insurance of such types and in such amounts as are usual in the industry. The District shall be named as an additional insured to the extent of its insurable interest in the project on each and every such policy of insurance, as shall Pacific. District will obtain appropriate insurance, which may include business interruption and physical damage insurance, involving the irrigation ditch. The insurance to be obtained by TKO will insure the hydro project, but not the existing irrigation system, and will insure against casualty loss and will obtain appropriate policies of property damage insurance, with extended coverage endorsement, in the amount of the replacement cost of the hydro project. Such policies will provide that such will not be cancelled without at least thirty days advance written notice to TKO and District. The insurance

requirements of Pacific, as set forth in the Amended Power Purchase Contract, shall be complied with by TKO.

VIII. INDEMNITY

TKO shall, at its sole cost, expense and responsibility, defend, indemnify and hold the District harmless from any damage, claims or construction liens arising from TKO's construction activities and/or future operations pursuant to this Agreement, except to the extent due to the negligence, willful acts or omissions by the District.

IX. TREATMENT OF PROPRIETARY INFORMATION

To the extent legally possible, all books, records, reports, accounts, data and other information relating to the business of the project shall be treated as confidential by the District, and the District shall take or cause to be taken such reasonable precautions as may be necessary to prevent the disclosure thereof, except with the written consent of TKO or as otherwise required by applicable laws or regulations.

X. TAXES

TKO agrees to pay, after this Agreement is accepted and in effect, when due, all ad valorem taxes or comparable governmental charges levied upon the power house site, the property interests of TKO in the property rights and hydro project, and its income from the Project, in the year when due, and provide the District with evidence of such payments.

XI. TAXES AND LIENS

In addition to all other payments to be made by TKO hereunder, TKO will pay and discharge promptly all taxes, assessments and other governmental charges or levies imposed upon the project property. The District warrants, covenants and represents that the project property is not subject to various types of encumbrances, including but not limited to, statutory construction liens, mortgage liens and interests defined in leases and certain other interests created for the purpose of construction and long term financing. The powerhouse site is subject to a mortgage. The District will execute and deliver all documents reasonably requested by TKO for the purposes of enabling it to perfect and secure mortgage loans, if any, and other security interests, if any, which would enable such lenders to acquire all interest in the project property necessary to enable such lenders to sell the project as an operating project at a foreclosure sale subject to the District's rights within this agreement. In addition, the District acknowledges that TKO's interest in the power sales contract, particularly the revenues to be received thereunder, may be assigned in whole or in part on a long term basis to investors or as collateral to secure debt financing. District agrees that any such assigned interest in TKO's interest in the Power Sales Contract will be superior to any interest of the District, TKO or any other investor in the project. TKO shall not permit any assignment or encumbrances to impair the ability of the District to deliver irrigation water or to impair the

District's participation in the proceeds of the Pacific contract set forth in Article VI herein.

In addition to all other payments herein provided to be made by TKO, it will pay and discharge promptly all taxes, assessments and other governmental charges or levies imposed upon it or upon its income or upon any of its property, real, personal or mixed, upon any other property thereof including the premises and facilities attached as part of the development of the hydro power project pursuant to this Agreement, as well as all claims of any kind which, if unpaid, might by law become a lien or charge upon the property. In the event a lien is filed affecting any property interest of the District, with respect to the hydroelectric power project for any obligation incurred after the date of this Agreement, TKO shall, within thirty days after the lien is filed, cause the lien to be removed by bonding over the lien.

XII. BINDING ON SUCCESSORS

The covenants and conditions herein contained shall apply to and bind the successors, executors, administrators and assigns of the parties hereto.

XIII. FINANCIAL OBLIGATIONS

Any and all fees, costs and expenses incurred by TKO pursuant to this Agreement shall be the sole responsibility of TKO. The District shall have no obligation or responsibility to assume any of such costs associated with this Agreement, including

repayment of the initial payment of \$72,500.00 except as set forth in Article VI above.

XIV. TERMINATION

This Agreement shall remain in force for a term of ninety-nine years; provided however, that after thirty-five years, it may be terminated at any time during the balance of the ninety-nine year term by the mutual written consent of all parties hereto.

Should a power purchase agreement be cancelled or the available power not be salable the lease shall be terminated.

If the Agreement is not renewed or is cancelled by the District or by any of the other conditions of this Agreement then TKO shall have in its sole discretion, the right to abandon the project or to remove the project. If the project is removed, the facilities shall be restored to the satisfaction of the District to a condition as near original as is possible.

XV. NOTICE

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or mailed, postage prepaid, certified mail, return receipt requested, to the parties at the following addresses:

a. If to District:

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, Oregon 97355

b. If to TKO

TKO Power
P. O. Box 494310
Redding, CA 96049

or at such other address as either party may specify or by written notice given to the other.

XVI. ASSIGNMENT

Save and except for the purpose of obtaining financing, neither party may assign its interest in the Agreement without the written consent of the other party. Such consent shall not be unreasonably withheld. However, TKO may assign its interest to an entity that it has an ownership interest in.

XVII. OWNERSHIP

Ownership of the hydroelectric facilities which are the subject of this Agreement, shall be in the name of TKO, and the District hereby consents to the assignment at any time of any or all of TKO's rights and obligations under this Agreement to any partnerships or limited partners therein for whom TKO serves as a general partner for the term of this Agreement.

The District shall grant, convey or provide (a) such real estate, property interests (including power generation, water rights, easements and leases) and (b) support services (including access to utilities) as are necessary to TKO for the purpose of construction and operation of the Project under the terms stated herein; provided, however, that said grant, conveyance or provision of said property interests and support services shall not interfere with or encumber the 30 CFS of irrigation water at any

time such flow is used in operation of the District's irrigation system. Any and all such assignments, grants or conveyances shall be accomplished in a manner designed to protect and preserve the tax exempt status of the District; to comply with the regulations set forth by the Federal Energy Regulatory Commission (FERC) and to comply with those condition established by the Water Policy Review Board of the State of Oregon, and with any and all other federal, state or local regulations or statutes governing the District and the Project.

XVIII. MISCELLANEOUS

Conditions may be satisfied or waived individually, but may only be satisfied or waived by written notice executed by both parties, only to the specific matter set forth therein.

1. Except as otherwise specifically provided herein, no party hereto shall have the right to obligate any other party for any liabilities arising from any transactions contemplated by this Agreement.

2. This Agreement constitutes the entire agreement of the parties.

3. The failure of any party to this Agreement to insist upon the strict performance of any provisions hereof or to exercise any right, power or remedy consequent upon a breach thereof in one or more instances shall not constitute a waiver by said party of any such provision or other provision or breach in any subsequent instance.

4. If any provision of this Agreement or any application thereof shall be determined to be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected, and shall remain in full force and effect.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

6. District shall provide TKO with notarized copies of all resolutions of the District Board of Directors necessary to authorize the execution of this Agreement, and other actions contemplated hereunder.

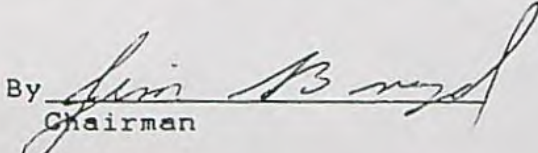
7. This Agreement may only be modified by a document in writing executed by both parties.

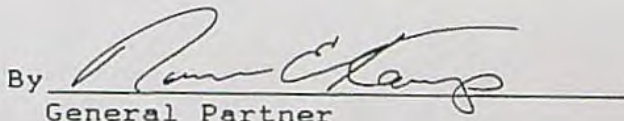
8. This Agreement may be executed in counterparts, each of which shall be identical and shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first hereinabove written.

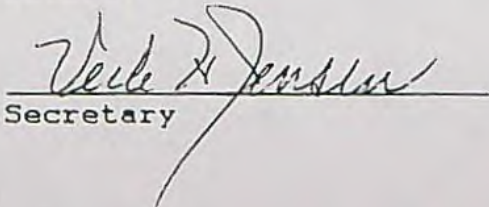
LACOMB IRRIGATION DISTRICT

TKO POWER

By 
Chairman

By 
General Partner

Attest:


Secretary

TO: File 60823

DATE: August 15, 1986

FROM: Don Buell *DB*

SUBJECT: Site inspection Lacombe Hydroelectric Project

On this date, I departed Salem at 10:10 A.M. and met Gene McGinnis, Watermaster, District 2, at Lacombe at exactly 11:00 A.M. We parked the staff car and proceeded to the area where the hydroelectric project was to be built. The main purpose of the visit was to locate an acceptable site to have them install a gaging station, so we went directly to the bridge where the Snow Peak Logging Road crosses Crabtree Creek.

This is the location mentioned by Ray Toney, the construction engineer. This location would be unacceptable due to poor control and probable vandalism with the station easily accessible from the bridge.

The only location we found to be marginally acceptable was about 0.4 miles upstream from the bridge. Anywhere downstream from the diversion the question has to be, will this allow for the required minimum flow throughout the diversion reach?

Flow at the bridge was estimated at 8 to 10 cfs. As we drove up to the diversion on a new road, we saw several small streams flowing to the creek, possibly a total of 1 or 2 cfs. Approximately 10 cfs was being diverted. Flow below the diversion was estimated at less than half that at the bridge. While the flow difference at this time would probably not make much difference for gage location, the run-off from the hillside and streams would be significantly higher from September to May when flows required are 90 cfs and above.

On the way back, we followed the canal for some distance. A good share of the downstream bank has been built up to allow for the larger flow in the canal and the right of way for the pipeline past the slide area had been surveyed and partially cleared.

As we returned to the staff car, we were on a stretch of detour around construction on the logging road when I noticed that the penstock right of way had been cleared. We drove back up the logging road and found that the construction was the laying of the penstock across the road.

Jim Peterson, PE of OTT Water Engineers was on site inspecting the construction. He explained that the logging crew was on strike and this was the ideal time to do the construction. He also stated they wanted to get it done before the rains started.

I pointed out that the permit had not been issued and that it may be some time before it was.

The power house site was being excavated and the work on the penstock appeared good. Welds were smooth, the bedding was devoid of large material and a good quality fine aggregate was being used as fill over the penstock at the road crossing.

Departed the area around 1:30, had lunch and returned to the office at 3:30 P.M.



STATE OF OREGON

INTEROFFICE MEMO

TO: Anne Squier

DATE: August 14, 1986

FROM: Don Buell

SUBJECT: Amendment to Lacombe I.D. Hydroelectric Application 60823

In October of 1982, the department went through a brief procedure of approving an amendment to Application 60823 without further referral to the WPRB. At this time, we need advice as to where we stand legally. A brief history of the application follows and copies of all reference correspondence are attached.

The application was originally filed on September 29, 1980. Hearings were held and the WPRB issued an order approving the project for use of 45 cfs on May 8, 1981. Included in the Order were specific minimum stream flows. No party status was granted in the hearing process.

On August 5, 1982, the district, through their engineer Larry Slotta, requested an additional 20 cfs through an amendment to their application.

On October 1, 1982, Tom Kline wrote a memo to the Director with copies to the WPRB with a staff recommendation that the district be allowed to amend their application with no further hearing. An ok was received from ODFW by telephone. No negative comment was returned and apparently the district was informed verbally that 65 cfs was approved.

In the process of gathering the additional information required to issue a permit, the district's agreement with Gregory Hydro Resources was received and became part of the question asked of Nancy Nakata which was answered by her January 17, 1983, letter to Jim Sexson. That letter included advice that if the project were pursued under Chapter 543, a new hearing would have to be held due to the increased amount of water. Jim wrote a letter on January 19 stating this.

On February 14, 1983, Dallas Marckx, attorney for Gregory wrote a letter which, among other things, debated the need for a new hearing. Another letter from Jim Sexson dated February 22, 1983, concurred with Mr. Marckx that another hearing would not be warranted. A copy of that letter was sent to Nancy Nakata.

On March 2, 1983, Gregory and Lacombe filed a joint license application. This was later withdrawn due to Mary Diets' "Winchester Letter".

On March 30, 1983, Mary Diets sent the "Winchester Letter" to Jim Sexson. Both Winchester and Lacombe were immediately notified by telephone. Copies were sent on April 14.

On April 8, 1983, we received a letter from Larry Slotta wanting to proceed with 65 cfs under Chapter 537. This was a result of my telephone conversation with him.

On April 12, 1983, I reviewed the Gregory-Lacomb agreement and in a memo to Jim Sexson stated that I saw no problem with proceeding under Chapter 537. As a result, I prepared a letter listing their alternatives. This was sent on May 6, 1986. It included comments on 65 cfs.

Lacomb I.D.'s agreement with Gregory was terminated shortly after this and they have gone through several tentative agreements and engineers since then.

At this time, they are working with an organization called TKO which is associated with OTT Water Engineers and are ready to mobilize into construction. The district's attorney, Richard Kingsley of Lebanon, has requested confirmation that, all other things being ok, a permit can be issued for the project at 65 cfs.

Our question is, having granted approval of 65 cfs without further hearing, do we have any legal problems?

DRB:lgc

Attachments

WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

MEMORANDUM OF PERSONAL OR TELEPHONE CONTACT

TO: File 60823

DATE: 8-13-86

FROM: Don Buell

SUBJECT: 65 cfs

NAME: Lou Fredd ODFW

Talked to Lou, by phone, this morning. They are aware that the application was amended to 65 cfs in 1982 and have no problem with it as long as the minimum flows set by the Board's order in 1981 are maintained. He would like to see a measuring device with a continuous flow recorder be required as part of any permit that may be issued under the application.

Permit No. 1-121-28

Date: 2-4-5

LINN COUNTY
Planning & Building Department
Building Division
Room 114, Courthouse
P.O. Box 100, Albany, OR 97321
Phone 967-3816

Appl. Recd: _____

By: _____

Twp	4 N	Range	1 E
Sec	24	TL #	320

RECEIVED

AUG 7 1986

WATER RESOURCES DEPT
SALEM, OREGON

Type of Permit: 1. Single - Private - Non-Commercial

Job Address: 40111 1st St. N. Minneapolis, MN 55412 Plans By: DT, M. L. F. Phone: 916-244-117

Owner: THOMAS ED Phone: _____ Address: _____

Bldr. & No. 7-1-1980 Phone: 4-6-241-6291 Address: 20-13-198 Lebanon Dr

Zone 215	Zone Change #	Part #	Cond. Use # 1-2152	Variance # 3-1-1-2	Min. Req. Setbacks:	Front	Sides	Rear 10'	Riparian
Flood Zone	Other	Lot Size 4 1/4 - 4	Use of Bldg:	No. Bdrms or Occ. Ld:	Occupancy B4	Type of Const. 1-1-1-2			

Area of Bldg. _____
Main Floor: 721 2nd Floor: _____ Garage _____ Basement 21 Valuation: \$37,000

Roof Type: Asph/Flt Truss/Stick: Stick Frame Fee: 3795

Heating System: Oil Wood Stove: Oil Water Supply: Oil Elect. Fee: Oil

Mech. Fee: _____

Plumb. Fee:

State Surchage: 1.12

Plans Chk. Fee: 24.00 38

TOTAL FEE: 394.62

RECEIPT NO.: _____

I agree to build according to the submitted plans and specifications, the laws of the State of Oregon and the Ordinances of Linn County. Permit expires if work not commenced within 180 days. I further expressly warrant that I comply with the provisions of ORS 701.005 to 701.125 because:

- () I am performing work on a property I own or occupy
() I am a registered builder OR () the authorized
representative of a registered builder
() The work will be performed by a registered builder
() Registration is not required to erect this structure

I have read this application in its entirety and certify that the stated information is true and correct to the best of my knowledge.

SIGNATURE OF APPLICANT

[illegible]

DATE _____

BY

DATE _____

EY

DATE _____



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS CA. LIC. 391436

August 5, 1986

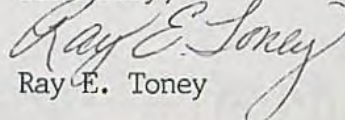
Donald Buell
Hydroelectric Licensing Engineer
Water Resources Department
Mill Creek Office Park
555 13th Street, N.E.
Salem, OR 97310

Subject: Lacombe Hydroelectric Project

Dear Donald:

Enclosed you will find for your review the following; two complete sets of drawings, a letter of approval from O.D.F.W. and National Marine Fisheries, a building permit from Linn County, and a Scope of Work for the Lacombe Hydroelectric Project.

Sincerely,


Ray E. Toney

RET:cw
enclosures

RECEIVED

AUG 7 1986

WATER RESOURCES DEPT
SALEM, OREGON



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS

CA. LIC. 321438

MEMO

To: Louis Fredd, Oregon Department of Fish and Wildlife
From: Ray E. Toney
Date: June 16, 1986
Subject: Lacombe Hydroelectric Project. Preliminary design review meeting.

Attendance: Louis Fredd, ODFW
Dave Nichols, ODFW
Kathie Larson, USFWS
Jim Esch, NMFS
Norm Kamp, TKO (Developer)
Norman Braithwaite, TKO
Keith Stewart, RTA (Engineer/Contractor)
Ray E. Toney, RTA

TKO has a development agreement with the Lacombe Irrigation District to build the project and they plan to have the project substantially constructed this year.

Two areas of the project were discussed, the power house tail race fish barrier and canal intake from Crabtree Creek.

Power House Fish Barrier

The terms and conditions of the FERC exemption will be complied with, and two alternative locations of the powerhouse were discussed.

- 1) Powerhouse located immediately adjacent to the normal stream bank.
- 2) Powerhouse located in the flood plain approximately 40 feet from the normal stream bank.

The second location was preferred by the agencies with the fish barrier (a 1" trash rack) located as close as possible to the normal stream bank as shown on the attached sketches. The fish barrier should be parallel to the flow of Crabtree Creek. Uniform flow and maximum velocity of 1 fps were stressed by the agency.

The channel will be unlined between the powerhouse and the fish barrier. The corners of the channel entrance need to be protected with riprap. We discussed the powerhouse flow and decided it was relatively small (60 CFS) compared to the 150 CFS stream flow during the potential irrigation season.

Intake

The proposed intake will be a side channel type without any dam across the creek and no fish ladder as shown on the attached sketches. The fish screen will be rotating drums parallel to the bypass flow (angle rotating drums). The agencies agreed the proposal was better because it significantly reduced any restriction to fish passage. The developer pursued the concept because it is similar to the existing irrigation intake and is at the same location which has historically worked.

Memo: Louis Fredd, ODFW
Page Three

Anticipated maintenance of the intake was discussed. Dredging of the entrance and settling pond are anticipated.

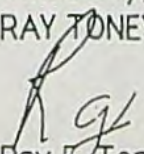
The rotating drum screen was discussed. Having close clearances was urged by the agencies. Brushes in lieu of rubber seals were suggested by the agencies. The agencies suggested discussing our final design details with the Washington Fish Screen people in Yakima, Washington. The screen would be powered by a down stream water wheel. The screen approach velocity of 1 fps was discussed and approved by the agencies which is the standard for smelt. The minimum instream flows would have to bypass the intake. The screen cleaning flow would be in addition to stream flows.

General

RTA would send a memo to all participants on the discussion of the meeting for their review.

Detailed drawings will be sent to the agencies in 2 to 3 weeks for review prior to a review meeting. The detail drawings will be based on approvals discussed in this meeting.

Sincerely,
RAY TONEY & ASSOCIATES


Ray E. Toney



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

ENVIRONMENTAL & TECHNICAL SERVICES DIVISION
847 NE 19th AVENUE SUITE 350
PORTLAND OREGON 97232-2279
15031 230 5400

RECEIVED JUL 31 1986

JUL 29 1986

F/NWR5-326

Mr. Ray Toney
Ray Toney and Associates
P.O. Box 1342
Redding, CA 96099

RECEIVED

AUG 7 1986
WATER RESOURCES DEPT
SALEM, OREGON

Dear Mr. Toney:

We wish to summarize our comments on your design discussed at the July 18, 1986 meeting in regard to fish facilities for the LaComb Hydroelectric Project, Crabtree Creek, Oregon.

Powerhouse Diffuser Rack

The rack should be designed to provide a one foot per second water velocity. A discharge of 60 cubic feet per second and water depth of approximately 2.5 feet, results in a rack length of approximately 24 feet. Additionally, the elevation of the top of the rack should accommodate the 100 year flood event. Provisions for flow distribution baffling should also be included in this plan. Uniform flow through the rack minimizes the possibility of false attraction of adult fish.

Fish Screen

We are pleased to see the proposed use of a rotating drum screen for diverting juvenile fish away from the powerhouse intake. The training wall opposite the fish screen should be of a constant angle rather than including the change in angle shown. Doing so should minimize the possibility of eddy formation ahead of the screen. At our meeting you expressed interest in obtaining examples of engineering drawings for a rotating drum screen. Our office has example drawings and can provide them to you upon your request.

Pond Between the Headgate and Screen Structure

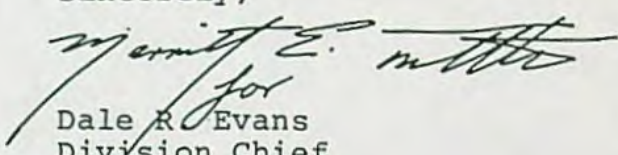
We are concerned about the possibility of adult fish utilizing the juvenile fishway. Although we feel these fish can negotiate the fishway, delay may result in the pond above the fish screen because of apparent low water velocities. In place of a pond, we suggest an open channel be constructed between the headgates and screen with velocities suitable for adult transportation. Designed correctly, an open channel is favorable because uniform



approach flows can be developed. Uniform approach flows are desirable for maximum screen efficiency. Problems with sediment accumulation at the screen could be minimized if the water velocity component parallel to the screen face (sweeping velocity) is great enough to provide a self sluicing action. This may require the screen face be angled to the flow. However, for proper sediment transport past the structure, the channel water velocity and sweeping velocity should be equal. Additionally, sediment quantities from the channel may be reduced if it is lined with concrete.

Thank you for the opportunity to comment on this project. Further information or questions may be directed to Randy Lee at (503) 230-5411.

Sincerely,


for
Dale R. Evans
Division Chief

cc: Kathi Larson - USFWS ES
Dave Nichols - ODFW
FERC - Portland, OR
FERC - San Francisco, CA



United States
Department of
Agriculture

Soil
Conservation
Service

1220 S. W. Third Avenue
Room 1640
Portland, Oregon 97204

AUG

4

Subject: ENG - Lacombe Irrigation Canal
Delivery System Stability

Date: July 31, 1986

RECEIVED

To: Billie G. Forrest, DC, SCS, Tangent

File code: 210-7

AUG 4 1986

WATER RESOURCES DEPT
SALEM, OREGON

I have reviewed the trip report I wrote on the above subject dated June 26, 1984; the geologic hazard map of the area; as well as the provisional 7½-minute quadrangle map and the profiles and schematic of the proposed works of improvement for the canal.

My conclusion is that this proposal would substantially reduce the element of risk from slide failure, which has been a problem in this area.

Leonard L. Myers
LEONARD L. MYERS
State Geologist

Enclosure

cc: (w/enc.)
Roy E. Bright, STCE, SCS, Portland
Gary R. Gross, AC, SCS, Albany AO
William J. Perry, AE, SCS, Albany AO



The Soil Conservation Service
is an agency of the
United States Department of Agriculture



☆ U.S. Government Printing Office: 1985-529-568/30577



United States
Department of
Agriculture

Soil
Conservation
Service

1220 S.W. Third Avenue
16th Floor
Portland, Oregon 97204

Handwritten signature/initials

Subject: ENG - Trip Report - Irrigation Canal Failure,
Landslide Problem Area, Linn County, Oregon

Date: June 26, 1984

To: William J. Perry, Area Engineer, SCS,
Albany, Oregon

File code: 210-7-5

Purpose: To provide assistance in evaluating the geologic history and setting of the problem area.

Participants: Jim Brazel, Chairman, Lacombe Irrigation District
William J. Perry, Area Engineer, Albany
Billie Forrest, District Conservationist, Tangent
Earl D. James, Civil Engineering Technician, Albany
Leonard Myers, State Geologist, Portland

All of the participants met at the site and conducted a field review of the problems on June 21, 1984. The area in question is located in the NE $\frac{1}{4}$ of Section 27, T. 11 S., R. 1 E. in Linn County, Oregon.

Background: The irrigation canal crosses an area of old slides. It was constructed in the early 1940's and reportedly had not encountered any problems with slide failure until the past two years. The area immediately upslope of the problem area was harvested for timber (clear cut) about two years ago. This area has also received above normal precipitation for the last two years. Some repairs were required on the canal due to slide failure last year. The canal failed again on June 14, 1984, again due to slide failure of the supporting slope.

The area of failure extends approximately from the siphon to about 750 feet down the canal. There is about a 200 foot section (550 to 750 feet down canal of the siphon) that is extremely unstable and has developed several failure planes. It would be prudent to abandon this segment of the canal. Seepage losses from the canal into these failure planes could set up conditions to trigger further sliding in this area.

This segment of 750 feet is thought to be the most critical area, however the canal is located on materials mapped as unstable geologic conditions for several hundreds of feet going down canal and should be thoroughly studied and evaluated before attempting enlargement or repairs of the canal system.



The Soil Conservation Service
is an agency of the
United States Department of Agriculture



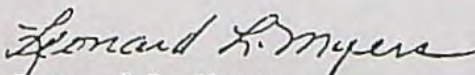
Geologic Setting: The area in which the canal is located is an unstable area as evidenced by the hummocky terrain, old slip faces, bowed and jack-strawed trees, all classic examples of an unstable area. A geologic map has been prepared for this area by the Department of Geology and Mineral Industries, State of Oregon (Bulletin No. 84). The area in question is located in the Snow Peak Quadrangle. Both a geologic stratigraphic map and a geologic hazards map are included as a part of the report.

The area of failure is situated on the Little Butte Formation. Pyroclastic rocks and basalt flows make up most of this formation. These rocks tend to weather deeply and rather rapidly under the region climatic conditions. The soils developed from this process are generally high in clay content. They also are formed on moderate to steep slopes.

Needs: The irrigation canal serve some 150 plus users. This service has been disrupted by the failure. Also, the irrigation district is interested in combining this canal into a delivery system for the development of a hydro-electric plant. The present system was designed to carry about 30 second-feet of water while the proposed combination system would require about 60 second-feet of water. Water delivery would be required the year around for the hydro-electric plant.

Conclusions: The area is geologically unstable.
Redistribution of loads on the slopes could be critical in triggering new slides.
The developed failure planes, both old and new, are susceptible to water infiltration.
The hummocky topography traps water causing saturation of the soil and rock mass.
There is a limited amount of vegetation in the immediate area that uses water.
This area will remain a high risk area even with the best principles of technology applied to solving the problem.
There is no apparent easy and simple solution for the problems encountered.

Recommendations: Determine the ground elevation of any proposed new alignment for relocation cost evaluation. Do a detailed investigation of surface and subsurface conditions to determine the specific geologic properties and problems at the site. Provide for positive surface and subsurface drainage. The excess water should be carried down off the hillside into the creek. Obtain engineering assistance in investigation, planning and design of the repaired problem.


Leonard L. Myers
State Geologist

cc: Roy Bright, SCS, Portland, Oregon



RAY TONEY AND ASSOCIATES
PROFESSIONAL ENGINEERS/CONSTRUCTORS CA. LIC. 391436

July 21, 1986

RECEIVED
AUG 7 1986
WATER RESOURCES DEPT
SALEM, OREGON

Mr. Louis Fredd
Water Resource Coordinator
Oregon Dept. of Fish and Wildlife
P.O. Box 3503
Portland, OR 97208

Subject: Lacombe Hydroelectric Project

Re: Meeting in United States Fish and Wildlife Office in Portland
on July 18, 1986.

Attendance: ODFW Louis Fredd
Dave Nichlos
NMFS Jim Esch
Randy Lee
USF&W Kathie Larson

We appreciate the opportunity to review the plans for the powerhouse and canal intake with you. We understand we have your approval of the plans based on the modifications you requested which are:

Powerhouse:

- 1) The tail race fish barrier and channel banks must be raised to elevation 665 to protect fish from entering the tail race during the high water of a 100 year flood event.
- 2) The length of the fish barrier bar rack must be increased to approximately 27 feet to provide flow rate through the rack of 1 fps.
- 3) The flow through the rack must be reasonably evenly distributed. After construction, if local velocities through the rack exceed 1.25 fps, baffling or other facilities will be installed to provide for uniform flow through the rack.

Subject: Lacombe Hydroelectric Project
Page two

Canal Intake:

- 1) The wall opposite the drum screen will be straightened to minimize potential for eddys.
- 2) The drum rotation will be 4 to 5 feet per minute.
- 3) The screen will be manufactured similar to those made by the Washington Fisheries Screen Shop in Yakima Screen Shop.
- 4) Final approval will be based on the presented criteria and demonstration that it works.
- 5) The return flow channel will be constructed as shown but may need to be modified by widening or installation of a pipe at the direction of ODFW after the project is in operation.

The plans with these revisions are attached. We are proceeding with other agencies' approval of plans and construction based on your approval with the above conditions.

If I have omitted any items, please advise.

Sincerely,

RAY TONEY & ASSOCIATES

Ray E. Toney

RET:cw

cc: NMFS Jim Esch
USF&W Kathie Larson
TKO Power Norman Kamp



STATE OF OREGON

INTEROFFICE MEMO

TO: William H. Young

FROM: Tom Kline

SUBJECT: Lacombe Hydro Project

DATE: March 10, 1986

In response to the discussion last week, we have reviewed the files on the Lacombe hydroelectric project. Our records reflect that the memo dated October 1, 1982, concerning the change in the application from 45 to 65 cfs was mailed to the Water Policy Review Board in a packet dated 10-1-82.

The opinion of Nancy Nakata dated 1-17-83, concerning the Lacombe and Winchester Applications was included in a packet of 1-21-83.

There is no record that the subsequent letter (January 19, 1983) about an additional hearing under Chapter 543 was transmitted to the Board. The minutes during the corresponding period do not reflect any Board discussion of the proposed change in the Lacombe appropriation.

cc: Don Buell
Larry Jebousek

3416D

- Has Ann looked at any of this
- on these anadromous fish involved
- Has f + W commented on this proposed modification
- what is status of project
- what is status of WRC delegation or such matters



STATE OF OREGON

INTEROFFICE MEMO

TO: Bill Young, Tom Kline, Larry Tebousek DATE: 3-4-86

FROM: Don Buell

SUBJECT: Lacombe I.D. hydroelectric Application 60823

Richard Kingsley, attorney for the Lacombe I.D., has called me wanting written confirmation that the district's application has been approved for 65 cfs without the need for further public hearing. Apparently they are nearing a financing agreement with a private developer.

The Water Policy Review Board approved the project for 45 cfs on May 8, 1981. Included in the order were specific minimum flows.

On August 5, 1982, the district, through their engineer, Larry Slotka requested, by amended application, an additional 20 cfs.

On September 13, 1982, I submitted a memo to Tom Kline inquiring as to what action should be taken.

On October 1, 1982, Tom wrote a memo to Jim Sexson with a copy to WPRB with a staff recommendation that the district be allowed to amend the application with no further referral. No negative comment was returned.

On January 17, 1983, a letter opinion was received from Nancy Nakata with the AG's office stating that due to their financing agreement they did not qualify as a municipal corporation under chapter 537,

would have to apply for a license under chapter 543 and because of the amendment would have to be referred to the WPRB for public hearing under ORS 543.225

Jim Sexson wrote a follow-up letter to the district on Jan. 19, 1983.

That Letter opinion was at least partially overturned by the "Winchester Letter"

Further correspondence regarding 65 cfs was exchanged,

Copies of all but the Winchester Letter are attached

Question: Can a permit be issued to Lacombe ID under chapter 537 without referral to the Commission assuming everything else is in order?

Division of State Lands
1445 State Street
Salem, OR 97310
Phone: 378-3059
378-3805

RECEIVED

NOV 15 1985

WATER RESOURCES DEPT
SALEM, OREGON

Permit No. 3872 *Water Res.* Renewal
Permit Type Removal/Fill
Waterway Crabtree Creek
County Linn County
Expiration Date November 14, 1986
PN 004707

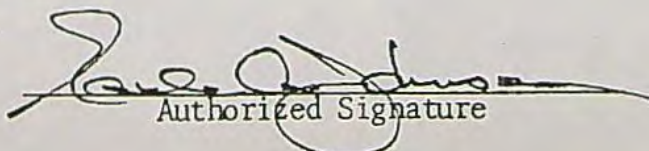
LACOMB IRRIGATION DISTRICT

IS AUTHORIZED IN ACCORDANCE WITH ORS 541.605 TO 541.695 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. A copy of the permit shall be available at the work site whenever operations authorized by the permit are being conducted.
6. Employees of the Division of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
7. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within 10 days of the date this permit was issued.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 - 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Division of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Division of State Lands, Waterway Leasing Office, 378-3805.

Ed Zajonc, Director
Oregon Division of State Lands


Authorized Signature

November 14, 1985
Date Issued

ATTACHMENT A

Special Conditions for Material Removal/Fill Permit No. 3872

1. This permit authorizes the removal of up to 1,750 cubic yards of material and the placement of up to 2,087 cubic yards of rock fill and rock riprap in Sections 21 & 25, T11S, R1E (Crabtree Creek, mile 17.0) to construct a diversion and powerhouse as outlined in the attached permit application, map and drawings.
2. The operation shall be conducted in a manner that will minimize any turbidity increase.
3. Waste materials and spoils shall be placed above the bankline.
4. Turbid waste waters from the project shall be provided adequate settling time.
5. There shall be no removal or filling in the permit area between September 15 and July 1.
6. Only clean, erosion resistant rock from an upland source shall be used as riprap. No broken concrete or asphalt shall be used as riprap.
7. Riprap shall be placed in a manner that does not appreciably increase the upland surface area.
8. Areas of streambank disturbance not covered by riprap shall be seeded or planted with grass and/or legumes and trees.
9. Removal of existing woody vegetation shall be minimal.
10. No fresh concrete shall come in contact with the active flowing stream.
11. All design changes and modifications for the diversion, weir, and powerhouse to facilitate fish passage shall be constructed according to the design criteria set by Oregon Department of Fish and Wildlife and by National Marine Fisheries Service.
12. The Division of State Lands retains the authority to temporarily halt or modify the project in case of excessive turbidity or damage to natural resources.

November 14, 1985

May 15, 1985

Richard E. Kingsley
Morley, Thomas, Kingsley and Reuter
80 East Maple Street
Lebanon, OR 97355

Dear Mr. Kingsley:

REFERENCE: File 60823

Thank you for your letter of April 8, 1985 in which you requested that Lacombe Irrigation District's Application 60823 be amended to increase the quantity of water and that the application be processed without further Water Policy Review Board action. Enclosed with that letter was a copy of the districts agreement with Lacombe Electric Power Company, Inc. (Power).

Application 60823 is amended to request a 85 cubic foot per second with the additional 20 cfs having a priority date of April 10, 1985, the date the request was received in this office.

A review of your agreement with Power by this department with advice from counsel causes us to delay action on your request to process the amended application without further action by the Water Policy Review Board.

The agreement between the district and Power, may be of sufficient benefit to the district to qualify as a municipal project, but does not give the district the required control. The only control retained by the district is over irrigation water and facilities. The agreement gives complete ownership and control of the project facilities and lends to Power.

Under such an agreement, Power would have to obtain a hydroelectric license under ORS Chapter 543. This would require a new application in Powers name, public hearing and consideration by the Water Policy Review Board and determination by the Board based on their standards adopted in December, 1983.

The District would have to petition the Water Resources Director for approval of disposition by contract, lease or sale of undeveloped hydroelectric power under ORS 545.144.

The alternative would be to renegotiate the agreement so that it becomes a joint project between the district and Power and thus qualifies as a municipal project which can be processed under the districts Chapter 537 Application 60823.

Sincerely,

DONALD R. BUELL
Hydroelectric Licensing Engineer

RECEIVED

APR 10 1985

WATER RESOURCES DEPT
SALEM, OREGON

HYDROELECTRIC PROJECT DEVELOPMENT AGREEMENT

between

LACOMB IRRIGATION DISTRICT

("District")

and

LACOMB ELECTRIC POWER CO., INC.

("Power")

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The Table of Contents and headings used throughout this Agreement are included for convenience, and are not a part of this Agreement.

SCHEDULES

- Schedule A. Description of Properties
- Schedule B. Pacific Power and Light Company Agreement
- Schedule C. Preconstruction Costs of District

HYDROELECTRIC PROJECT DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into as of the ____ day of _____, 1984, between LACOMB IRRIGATION DISTRICT, a municipal irrigation district ("District") and LACOMB ELECTRIC POWER CO., INC., a newly formed Oregon corporation ("Power"),

W I T N E S S E T H :

District owns certain irrigation facilities consisting, in part, of a diversion structure on Crabtree Creek, Linn County, Oregon, gate, irrigation ditch and flume, all located on real property over which the District has either easements or ownership, including land upon which a penstock can be built and property upon which a proposed structure to house a turbine and generator, and associated facilities, can be located; all as described in Schedule A, attached hereto and incorporated herein by reference. (Such facilities, property and easements thereon collectively hereinafter referred to as the "irrigation system").

District desires that a hydroelectric power project be built in connection with its irrigation system. The District currently holds certain governmental permits and approvals necessary for such hydroelectric project. It does not yet have a permit from the Water Resources Department, but application has been made for it.

Power desires to construct, own, maintain and operate a hydroelectric project on real property owned by District or

over which District has easements ("Project"). Power intends to construct a new infeed canal for both irrigation and hydroelectric purposes as a part of Project, which canal will be completed before June 15, 1985. Power does not intend to use the present canal and flume because of landslide hazards, and also the desirability of providing greater water head to support a pressurized irrigation system desired by District and more efficient utilization of hydroelectric generating equipment by Power.

The District intends to improve its irrigation system with pressurized distribution, and to apply for federal assistance in the construction of it. Power intends to assist District in the obtainment of the pressurized system to the extent set forth more fully in the balance of this Agreement.

District believes that the necessary water rights and hydroelectric permits, or exemptions, for the project have been or can be obtained. In this connection, the District has applied for an additional water flow to 65 CFS (exclusive of 30 CFS for irrigation) through the Oregon Water Resources Department and the within contract is conditioned upon the completion and the granting of that additional water flow permit. Power will assume responsibility for obtaining permits for additional flow.

Power has made a proposal to the District under which Power will construct and own the hydroelectric facility associated with the project and necessary property rights, and will have the use of power water rights for operation of the

hydroelectric power generating facility. There shall be no assignment of or interference with the water rights (30 CFS) or the basic irrigation easements.

District has an agreement with Pacific Power and Light Company ("Pacific") to purchase the power to be generated by the hydroelectric project, a copy of which agreement, marked Schedule B, is attached hereto and incorporated herein by reference. Power has had direct discussions with Pacific in regard to this contract, and is negotiating an amendment thereto to encompass the changes resulting from the new infeed canal and hydroelectric facility.

Water flow in the present canal has been impacted by landslides, and District has an immediate need for repairs in order to provide water for its members. In accordance with the Memorandum of Agreement between the parties, Power has taken steps to clear the existing supply canal to permit flow of irrigation water to District's customers. Power will be reimbursed by District for its documented costs therefor (not to exceed \$30,000) as provided in Article VI hereof. District will receive credit for any reuse of pipe.

Power desires to acquire property rights in the project and the existing and applied for waterflow, to acquire or obtain an interest in the permits obtained by the District in preparation for construction and operation of the project and to develop, construct, own and operate the project, all according to the terms of this Agreement, and District is willing to convey to Power the necessary rights, including property rights and

permits, to allow Power to develop and construct the Project, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and as set forth in this Agreement, District and Power agree as follows:

I. PROJECT DEVELOPMENT

1. District shall transfer to Power such rights with respect to the Lacombe site (including, without limitation, fee interests, leaseholds, easements, but excluding the basic irrigation rights and water rights) as it has which are, in the determination of Power, helpful for the development of such site into a power facility. Power shall take steps to acquire such further rights as may be necessary for the Project. It is understood, however, that no commercial commitment for construction of the Project shall be commenced without Power or the District first securing the necessary water rights, all other necessary state, federal and county permits, licenses, entitlements and approvals, and an acceptable power sales contract. The District shall support Power's efforts to obtain all such items. In the event such support would cause the District any additional charge, such proposed additional charges should be submitted to Power. Upon Power's prior written approval, which shall not be unreasonably withheld, District shall incur such additional charges, and Power will reimburse District from construction funding.

2. District will assign to Power the Pacific Contract

(Schedule B) including all revenues to be derived therefrom, and all other contracts, licenses, permits, water rights and other rights necessary to allow Power to construct and operate a facility under applicable federal, state and local laws, ordinances and administrative requirements.

3. District will assign all studies, reports and other materials and data necessary or helpful to enable Power to conduct and complete construction of the project; save and except Power will provide its own engineering services, plans and specifications.

4. Power, at its sole cost and expense, shall have responsibility for the orderly development of the site into a power facility, including, but not limited to, determination of (a) the prices to be paid, (b) the engineers to prepare the construction documents and supervise construction on any development site, and (c) the contractors or subcontractors to be used to perform any construction, installation or other services required to develop the site into a power facility. Power shall submit preliminary and final designs for the project to the District for review and consultation. Such designs shall be adequate to provide for the projection of power throughout the term of the Agreement and shall safeguard the irrigation system.

5. Power shall engage independent professional engineers as consultants to review all plans and specifications. Power shall have final authority as to any dispute between the engineers.

6. When conditions to the parties' obligations have been met or waived, Power shall be obligated to proceed promptly to develop and construct the hydro project. Such construction shall commence not later than January 1, 1985, and be completed not later than December 15, 1985.

II. CONSTRUCTION MANAGEMENT

Power, at its sole cost and expense, will be responsible for the performance of all work as Power may deem appropriate for the completion of the power project in accordance with the construction documents, including the securing of bids or quotations for materials, prices and subcontracts for the project work, establishing a work project schedule on which the power facility will be expedited consistent with reasonable cost, good workmanship and safety; arranging for an engineer or engineers to provide the necessary inspections as required including the checking and approval of shop drawings, samples, schedules and other submittals for compliance with the design concept of the construction documents; reviewing all laboratory tests and preparing change orders and issuing certificates of substantial compliance. The District shall have the right to review and inspect the facility constructions to assure that the designs are compatible with the District's Irrigation System and operations.

III. OPERATION AND MAINTENANCE

Power shall operate and maintain the power facility developed under this Agreement in accordance with such practices and methods as are commonly used in the hydroelectric

generating industry, and shall operate and maintain electrical equipment and other project works with safety, dependability, efficiency, and economy in accordance with all applicable laws and regulations. All property shall be under Power's control; all operations, maintenance, repairs and improvements related to the project shall be under Power's control, including repairs and capital improvements which are to be made to the District's Irrigation System as a part of the construction costs. Power shall further cause the power facility and all access roads, wires and related facilities that make up the project to be maintained in a good and workmanlike manner for the term of the Agreement. Power shall maintain the power facility and that portion of the canal up to the diversion structure at no cost to the District.

IV. FINANCING

Power shall negotiate and obtain all funds necessary to develop the site into a power facility. Power shall have the right to transfer any portion or portions of the net revenues from the Power Sales Agreement (save and except the portions sold and/or assigned to District pursuant to the terms of this Agreement) to financing sources, lenders, investors and others. Power and/or its investors and financing sources shall be entitled to all tax benefits that may be derived hereunder.

V. SALE OF ELECTRICAL POWER

It shall be a condition of this Agreement that the power purchase contract between the District and Pacific dated October 28, 1982, shall be amended to revise the earliest date

on which delivery of power is provided for, to January 1, 1985, with energy prices not less than those scheduled in said agreement. It is understood that Pacific has offered an amended contract to the District which provides for the same payment schedule, but contains some other amendments which, in the opinion of the District, do not directly effect either the construction of the project or the income to be derived therefrom. A copy of the proposed amended contract has been provided to Power for its review. Consultation will be made between the District and Power (and/or its agents) regarding revisions in the Pacific contract.

VI. POWER PRODUCTION AND GROSS REVENUE

1. Power shall cause power production and gross revenue statements, in a form satisfactory to the District, for the power facilities, to be prepared at least quarterly, copies of which shall be provided to the District within 30 working days following the end of the quarter. The District reserves, at its expense, the right to review or audit all statements and accounts relating to the power facility.

2. Power will make the following payments to District:

a. An initial payment of \$105,000 upon execution of this Agreement.

b. A payment of \$25,000 for the calendar year 1985.

c. Payment of increased sums annually for the next thirty-five years based upon the sum of \$25,000 per year, multiplied by a fraction in which the numerator is the price being paid by Pacific for firm power during the year of

payment, and the denominator is the initial price being paid by Pacific for firm power during the first year of operation under the Pacific contract.

3. The payments set forth in paragraph 2 hereof shall terminate with the year 2019. Commencing January 1, 2020, District shall be entitled to share in the net proceeds from operation of the facility to the additional extent set forth in Article VII.

4. District agrees to reimburse Power at the rate of \$5,000 per year out of annual payments payable to District pursuant to this Article VI hereof for Power's documented costs (not to exceed \$30,000) in repairing and clearing the existing supply canal for the benefit of District and its customers. District shall receive credit for any reuse of the pipe.

VII. PARTICIPATION IN NET REVENUES OF THE FACILITY

1. The term "net revenues" as used in this Agreement means gross revenues from sales of electricity from the project, minus (a) operating expenses, insurance, repairs, maintenance and other reasonable nonadministrative expenses (estimated at but not necessarily limited to 5% of gross revenues). (b) payments to District pursuant to Article VI, paragraph 2, and (c) administrative expenses (including salaries) incurred or paid by Power not to exceed five percent of said gross proceeds.

2. For financing purposes, Power is organizing Crabtree Creek Limited Partnership ("Partnership") with Power serving as General Partner. The Partnership Agreement provides for division of the net revenues from the project into twelve

Participations, which will share in equal twelfths, save and except that the first such Participation is entitled to an annual income preference between its proportionate income share and \$100,000, which differential, if any, will be charged ratably to the proportionate shares of holders of the other Participations. (The first Participation is being placed before completion of engineering estimates).

3. Power is selling 100,000 shares of its common stock to District in exchange for \$300,000 of District's noninterest bearing notes. Upon completion of formation of Crabtree Creek Limited Partnership, District desires to exchange the said 100,000 shares for one such one-twelfth Partnership Participation. Power agrees to transfer one such Partnership Participation to District in exchange for District's 100,000 shares of Power, and District agrees to sell the said 100,000 shares to Power and accept the said one Participation.

4. In addition to the one-twelfth Participation in Partnership's net revenues which Partnership will be entitled to pursuant to subparagraph 3 hereof, District shall further be entitled, commencing January 1, 2020, to receive an additional ^{16%}~~15%~~ of the net revenues of the Partnership in lieu of the cash payments to District provided for in Article VI hereof through the year 2019.

ARTICLE VIII. PRESSURIZED IRRIGATION SYSTEM

District desires to obtain a pressurized irrigation system in order to better serve its members, improve the environmental quality of the irrigation system and in order to increase the

useable acreage of contiguous properties for agricultural and other purposes. Power agrees to assist District as follows:

1. Power will construct a new canal as part of a revised hydro facility being developed by Power, which canal will provide additional head to sustain a more efficient pressurized system; provided, however, that the final engineering estimates for construction of such canal do not exceed \$500,000.

2. Power will assist District in efforts to obtain federal funding for one-half of the aggregate cost of the pressurized system. If such funding is obtained, Power will further assist District as set forth in subparagraphs 3 and 4 hereof.

3. Power will assist District in working out a suitable funding program to cover the entire cost of the pressurized system, including a provision that approximately one-fourth of the cost of the pressurized system will be borne by the land owners, users and others deriving the greatest benefit therefrom. Power will also assist District in obtaining suitable financing arrangements for such persons.

4. Power will assist District in obtaining funding of the remaining one-fourth cost of the pressurized system, including some advances of funds against future revenues to be realized by the District from the hydroelectric project.

IX. INSURANCE

Power will cause to be acquired and maintained with respect to the power facility and its operations, insurance of such types and in such amounts as are usual in the industry. The District shall be named as an additional insured to the extent

of its insurable interest in the project on each and every such policy of insurance, as shall Pacific. District will obtain appropriate insurance, which may include business interruption and physical damage insurance, involving the irrigation ditch. The insurance to be obtained by Power will insure the hydro project, but not the existing irrigation system, and will insure against casualty loss and will obtain appropriate policies of property damage insurance, with extended coverage endorsement, in the amount of the replacement cost of the hydro project. Such policies will provide that such will not be cancelled without at least thirty days advance written notice to Power and District. The insurance requirements of Pacific, as set forth in the Amended Power Purchase Contract, shall be complied with by Power.

X. INDEMNITY

Power shall, at its sole cost, expense and responsibility, defend, indemnify and hold the District harmless from any damage, claims or construction liens arising from Power's construction activities and/or future operations pursuant to this Agreement, except to the extent due to the negligence, willful acts or omissions by the District.

XI. TREATMENT OF PROPRIETARY INFORMATION

To the extent legally possible, all books, records, reports, accounts, data and other information relating to the business of the project shall be treated as confidential by the District, and the District shall take or cause to be taken such reasonable precautions as may be necessary to prevent the

disclosure thereof, except with the written consent of Power or as otherwise required by applicable laws or regulations.

XII. TAXES

Power agrees to pay, after this Agreement is accepted and in effect, when due, all ad valorem taxes or comparable governmental charges levied upon the power house site, the property interests of Power in the property rights and hydro project, and its income from the Project, in the year when due, and provide the District with evidence of such payments.

XIII. TAXES AND LIENS

In addition to all other payments to be made by Power hereunder, Power will pay and discharge promptly all taxes, assessments and other governmental charges or levies imposed upon the project property. The District warrants, covenants and represents that the project property is not subject to various types of encumbrances, including but not limited to, statutory construction liens, mortgage liens and interests defined in leases and certain other interests created for the purpose of construction and long term financing. The power house site is subject to three mortgages. The District will execute and deliver all documents reasonably requested by Power for the purposes of enabling it to perfect and secure mortgage loans, if any, and other security interests, if any, which would enable such lenders to acquire all interest in the project property necessary to enable such lenders to sell the project as an operating project at a foreclosure sale. In addition, the District acknowledges that Power's interest in

the power sales contract, particularly the revenues to be received thereunder, may be assigned in whole or in part on a long term basis to investors or as collateral to secure debt financing. District agrees that any such assigned interest in Power's interest in the Power Sales Contract will be superior to any interest of the District, Power or any other investor in the project. Power shall not permit any assignment or encumbrances to impair the ability of the District to deliver irrigation water or to impair the District's participation in the proceeds of the Pacific contract set forth in Article VI herein.

In addition to all other payments herein provided to be made by Power, it will pay and discharge promptly all taxes, assessments and other governmental charges or levies imposed upon it or upon its income or upon any of its property, real, personal or mixed, upon any other property thereof including the premises and facilities attached as part of the development of the hydro power project pursuant to this Agreement, as well as all claims of any kind which, if unpaid, might by law become a lien or charge upon the property. In the event a lien is filed affecting any property interest of the District, with respect to the hydroelectric power project for any obligation incurred after the date of this Agreement, Power shall, within thirty days after the lien is filed, cause the lien to be removed by bonding over the lien.

XIV. BINDING ON SUCCESSORS

The covenants and conditions herein contained shall apply

to and bind the successors, executors, administrators and assigns of the parties hereto.

XV. FINANCIAL OBLIGATIONS

Any and all fees, costs and expenses incurred by Power pursuant to this Agreement shall be the sole responsibility of Power. The District shall have no obligation or responsibility to assume any of such costs associated with this Agreement. The \$105,000 of preconstruction costs incurred by District and identified on Schedule C, which is attached hereto and made a part of this Agreement, shall be paid to the District.

XVI. TERMINATION

This Agreement shall remain in force for a term of ninety-nine years; provided however, that after thirty-five years, it may be terminated at any time during the balance of the ninety-nine year term by the mutual written consent of all parties hereto.

XVII. NOTICE

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or mailed, postage prepaid, certified mail, return receipt requested, to the parties at the following addresses:

a. If to District:

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, OR 97355

b. If to Power:

Lacomb Electric Power Co., Inc.
2045 S. E. Washington
Milwaukie, OR 97222,

or at such other address as either party may specify or by written notice given to the other.

XVIII. ASSIGNMENT

Save and except for the purpose of obtaining financing, neither party may assign its interest in this Agreement without the written consent of the other party. Such consent shall not be unreasonably withheld.

XIX. OWNERSHIP

Ownership of the hydroelectric facilities which are the subject of this Agreement, shall be in the name of Power, and the District hereby consents to the assignment at any time of any or all of Power's rights and obligations under this Agreement to any partnerships or limited partners therein for whom Power serves as a general partner for the term of this Agreement.

The District shall grant, convey or provide (a) such real estate, property interests (including power generation, water rights, easements and leases) and (b) support services (including access to utilities) as are necessary to Power for the purpose of construction and operation of the Project under the terms stated herein; provided, however, that said grant, conveyance or provision of said property interests and support services shall not interfere with or encumber the 30 CFS of irrigation water at any time such flow is used in operation of the District's irrigation system. Any and all such assignments, grants or conveyances shall be accomplished in a manner designed to protect and preserve the tax exempt status

of the District; to comply with the regulations set forth by the Federal Energy Regulatory Commission (FERC) and to comply with those conditions established by the Water Policy Review Board of the State of Oregon, and with any and all other federal, state or local regulations or statutes governing the District and the Project.

XX. MISCELLANEOUS

Conditions may be satisfied or waived individually, but may only be satisfied or waived by written notice executed by both parties, only to the specific matter set forth therein.

1. Except as otherwise specifically provided herein, no party hereto shall have the right to obligate any other party for any liabilities arising from any transactions contemplated by this Agreement.

2. This Agreement constitutes the entire agreement of the parties.

3. The failure of any party to this Agreement to insist upon the strict performance of any provisions hereof or to exercise any right, power or remedy consequent upon a breach thereof in one or more instances shall not constitute a waiver by said party of any such provision or other provision or breach in any subsequent instance.

4. If any provision of this Agreement or any application thereof shall be determined to be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected, and shall remain in full force and effect.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

6. District shall provide Power with notarized copies of all resolutions of the District Board of Directors necessary to authorize the execution of this Agreement, and other actions contemplated hereunder.

7. Power shall provide District with notarized copies of all resolutions of Power's Board of Directors necessary to authorize the execution of this Agreement, and other actions contemplated hereunder.

8. This Agreement may only be modified by a document in writing executed by both parties.

9. This Agreement may be executed in counterparts, each of which shall be identical and shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first hereinabove written.

LACOMB IRRIGATION DISTRICT

By [Signature]
Chairman

Attest:
[Signature]
Secretary

LACOMB ELECTRIC POWER CO.,
INC.

By [Signature]
President

Attest:
[Signature]
Secretary

LAURENCE MORLEY
WM. R. THOMAS
RICHARD E. KINGSLEY
THOMAS J. REUTER
KEVIN J. FREEMAN
THOMAS A. McHILL

LAW OFFICES
MORLEY, THOMAS, KINGSLEY & REUTER

80 EAST MAPLE STREET
LEBANON, OREGON 97355

TEL. (503) 258-3194
Post Office Box 98

April 8, 1985

RECEIVED

APR 10 1985

**WATER RESOURCES DEPT
SALEM, OREGON**

Atten: Donald R. Buell
Water Resources Department
State of Oregon
Mill Creek Office Park
555 13th Street N.E.
Salem, OR 97310

Re: Your File No: 60823

Dear Mr. Buell:

This letter is to confirm our recent telephone conversation regarding the request of Lacombe Electric Power Company, Inc. to amend the prior application of Lacombe Irrigation District to increase water flow to 85 cubic feet per second.

Would you please accept this letter as a request from the irrigation district, in which the request for increased flow should be applied.

We would further ask that you process this request and advise us if it is necessary for any action by the water board other than this correction in the name of the applicant to Lacombe Irrigation District.

Mr. Eric R. Haessler, Attorney at Law, 2525 First Interstate Tower, Portland, Oregon 97201, has authorized me to make this request for amendment, and for processing without further water board action, and the withdrawal of the application by Lacombe Electric Power Company, Inc.

As you requested, I am enclosing a copy of our agreement with Lacombe Electric Power Company, Inc.

Very truly yours,

MORLEY, THOMAS, KINGSLEY & REUTER

By:

Richard E. Kingsley
Richard E. Kingsley

REK/mew
Enclosure

cc: Eric R. Haessler
cc: Verle Jensen

RECEIVED

AUG 5 - 1982
WATER RESOURCES DEPT.
SALEM, OREGON

LACOMB HYDROLOGY
CRABTREE CREEK FLOWS

CALCULATED BY USING AREA-REDUCTION ANALYSIS ON FLOWS MEASURED AT:
GAGING STATION # 14187000 AT CRABTREE, OREGON

AVERAGE MONTHLY FLOWS (CFS) FOR 1964-1970

CRABTREE CREEK AT DIVERSION

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
HIGH	2909	890	783	536	426	318	140	136	115	510	1464	2052
LOW	280	366	185	185	135	64	25	27	25	43	108	229
MEAN	825	436	355	294	229	138	57	40	51	141	380	605

CRABTREE CREEK AT POWERHOUSE

HIGH	3287.17	1005.7	884.79	605.68	481.38	359.34	158.2	153.68	129.95	576.3	1654.32	2318.76
LOW	316.4	413.58	209.05	209.05	152.55	72.32	28.25	30.51	28.25	48.59	122.04	258.77
MEAN	932.25	492.68	401.15	332.22	258.77	155.94	64.41	45.2	57.63	159.33	429.4	683.65

OREGON WATER RESOURCES DEPARTMENT ORDER:

ORDER

It is hereby ordered that application 60823 is approved subject to the following conditions:

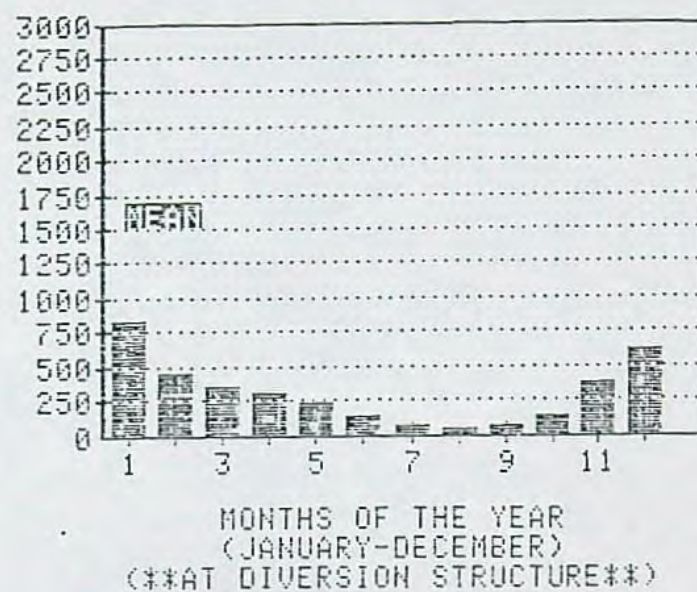
1. Use of water for hydroelectric purposes will be subject to passing the following specified flows in Crabtree Creek past the point of diversion in Section 25, Township 11S., Range 1E.

Oct.	110 cfs
Nov.-May.	90 cfs
Jun. 1-15	40 cfs
Jun. 16-30	30 cfs
Jul. 1-15	25 cfs
Jul. 16-31	15 cfs
Aug.	12 cfs
Sep. 1-15	12 cfs
Sep. 16-30	110 cfs

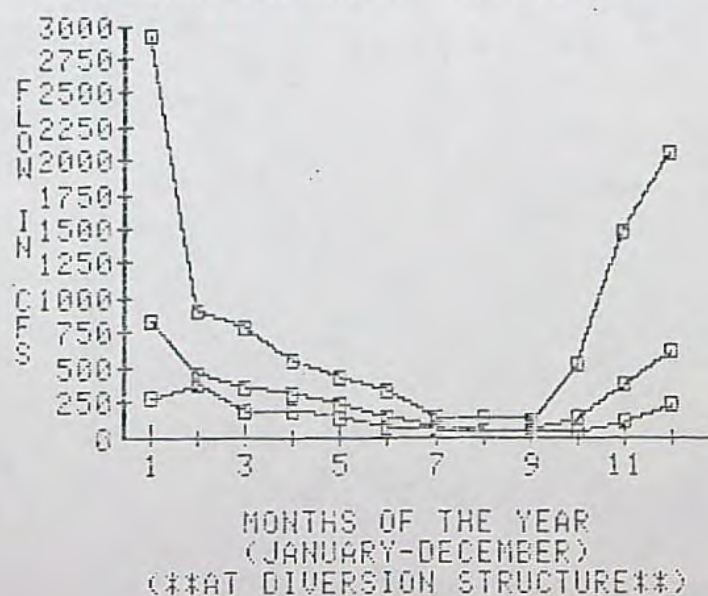
As determined by the Director of the Water Resources Department, the applicant may be required to install and maintain such facilities as may be required to insure compliance with this condition.

2. The applicant shall provide for fish passage at the point of diversion.

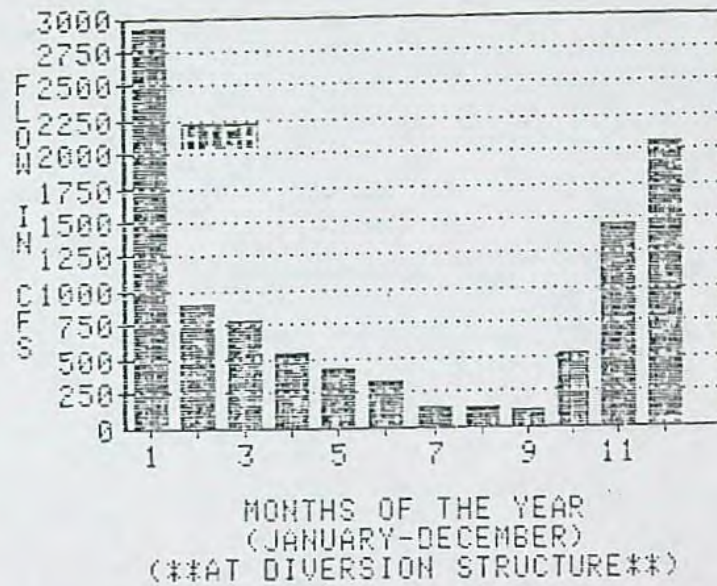
CRABTREE CREEK AVERAGE FLOWS



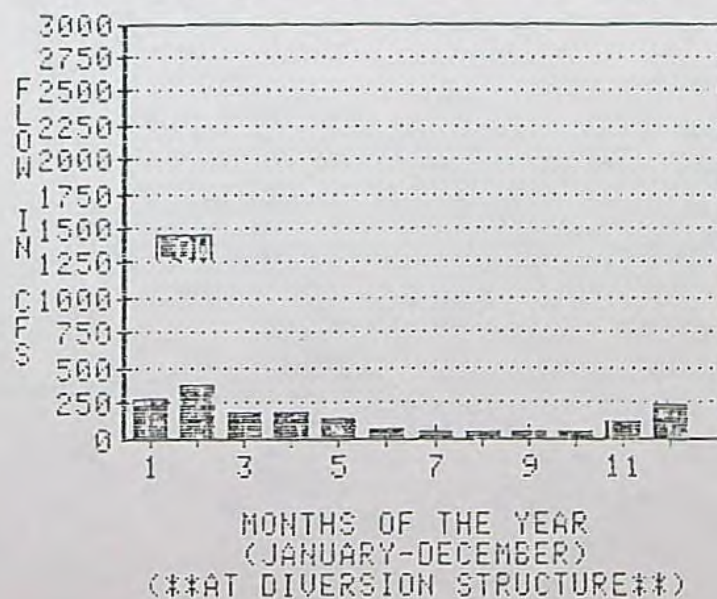
CRABTREE CREEK AVERAGE FLOWS



CRABTREE CREEK AVERAGE FLOWS



CRABTREE CREEK AVERAGE FLOWS





5 may, 1981

Water Resources Department
555 13th Street, NE
Salem, Oregon 97310

ATTENTION: Water Policy Review Board

SUBJECT: Permit Application 60823
For A Hydroelectric Project
On Crabtree Creek, Near Lacombe, Oregon

Dear Friends:

This letter amends the letter presented earlier to the Water Policy Review Board regarding the Lacombe Irrigation District's application for a hydroelectric permit and to respond to the interim order adopted by the Board as part of the 4 April, 1981 proceedings of the Water Policy Review Board meeting held in Grants Pass.

From the enclosed information and consideration of the proper use of the Crabtree Creek waters for power generation, it is hoped that the Board will award a permit to the Lacombe Irrigation District for diverting 45 CFS from Crabtree Creek for power production. The following points are to be considered:

PROJECT FEASIBILITY:

The preliminary feasibility studies show this project to have good promise for early payback. The Lacombe Irrigation District proposes to divert up to 45 CFS of water from Crabtree Creek with 235 Ft of head to create over 1200 kWe theoretical and 750 kWe realistically.

If the plant were to operate only during the non-irrigation season (e.g. 9 months) then some 5 million kilo-watt hours of electricity would be produced annually. Considering a nominal return of \$0.05/kWH then an annual income of \$250,000 for only the nine (non irrigation) months could be derived. It is expected the turbine-generator system selected for this site would continue to be operated even during the irrigation season but, at reduced output because of the quantity of water available for power would be reduced by the amount needed for irrigation in the District. The District has appropriated rights for 30 CFS.

An engineering estimate of the costs for this project's construction follows on the next page; The estimated construction costs for the Crabtree Creek hydro-power project total \$1,192,000.

The project appears to have remarkable potential in view of

COST ESTIMATE:	MAY 5, 1981	
SITE PREPARATION		
	LAND PURCHASE	95000
	ACCESS ROADS	5000
	EROSION CONTROL	2000
	SLOPE PROTECTION	5000
	ENVIRONMENTAL	5000
CANAL PROTECTION	GUNITE	200000
FISH SCREENS		20000
INTAKE SCREENING		5000
PIPELINE		91000
VALVES		
	SLIDE GATES	2500
	BIFURCATION	2500
TURBINE:	FRANCIS TYPE	110000
GENERATOR:	INDUCTION TYPE	50000
STATION ELECTRICAL EQUIPMENT		
	TRANSFORMER, LIGHTNING ARRES	20000
	MICROCOMPUTER/CONTROLLER	20000
	STATION SWITCHING GEAR	50000
MISC POWER PLANT EQUIPMENT:		
	VENTILATION EQUIP	4000
	FIRE PROTECTION	2000
TRANSMISSION LINE		2000
POWERHOUSE		40000
	STRUCTURAL	5000
	EXCAVATION	2000
	FOUNDATION	4000
	SWITCH YARD	8000
TAILRACE	CONCRETE	20000
	RIP RAP	10000
CONTINGENCIES	25%	195000
SUBTOTAL		975000
ENGINEERING, CONSTRUCTION		
	FEASIBILITY	2%
	POWER MARKETING	1%
	LICENSE & PERMIT APPLICA	2%
	PRELIMINARY DESIGN	3%
	FINAL DESIGN	6.5%
	ECONOMIC AND FINANCIAL C	1%
	CONSTRUCTION MANAGEMENT	5.5%
SUB TOTAL		1179750

projected annual returns, in excess of \$250,000, based on only the dependable (non irrigation season) flow, and an estimated maximum capital outlay of \$1,192,000. Annual maintenance costs are expected to be less than \$0.01/KW-Hr or \$50,000/yr. A full-time operator will be employed and will be provided housing on site. Payout on the project should be less than 10 years.

An application requesting funds from the U.S. Department of Energy for conducting a feasibility-design study has been evaluated and approved; however the funds have been frozen. The Lacombe Irrigation District Board feels it is prudent to commence directly with the needed design effort, but the Lacombe Irrigation District is without sufficient financial backing to carry off such a study without obtaining a loan. Realizing that local banks and even the State of Oregon are generally unwilling to make such loans without the District having the requisite water rights for generating hydroelectric power it places a great need for having the permit application approved and in hand. Having an approved permit for hydroelectric power is needed for negotiating for power sales contracts which also will affect the requested feasibility study outcome.

It would be beneficial to the Lacombe Irrigation District to receive its hydroelectric permit at an early date to facilitate power sales and loan negotiations.

A loan application for construction of the Crabtree Creek hydro-power project is being made to the State of Oregon under the Small Electric Loan Program. The earliest that bonds could be sold and funds for the Crabtree Creek hydro project construction could be gained is optimistically estimated as September, 1981. Delivery of the turbine is estimated to take 12 months after placing an order according to recent reports regarding delivery schedules. Initial construction, including repair of the canal banks would be initiated on award of the construction loan being sought.

LOCATION OF POWERHOUSE AND PIPELINE:

The proposed location of the canal headgate-pipeline transition is as stated in the application request: N1294.8 W718.8 ft in Section 21, Township 11S, Range 1E, W.M. The proposed location of the powerhouse site and point of flow return to Crabtree Creek continues to be at N2323.7 W837.3 ft in Section 21, Township 11S, Range 1E, W.M. A detailed survey was completed since the Water Policy Review Board hearing on the application on 16 February, 1981 in Lacombe. A topographic map is appended showing the path of the pipeline and the properties in consideration.

There are no foreseeable obstacles regarding land acquisition or easements for the project. Easement for the pipeline to cross Champion Timberlands has been accorded in writing by Mr. Thomas D. Lackey, Real Property Manager of Champion International Corporation on 12 January, 1981. Easement for the pipeline to cross the Snow Peak Logging Road and the Shingle Mill Road has been approved by Willamette Industries (Mr. Bergman).

Negotiations for purchase of the Collins' property, north of the Snow Peak Logging Road and south of Crabtree Creek are progressing well. The Collins' property is the powerhouse-tailrace site. A meeting with the Collins was held on 14 April, 1981 to discuss purchase of lands requisite for completing the Lacombe hydroelectric project; see the attached copies of related correspondence.

Assurance of notice and coordination of the anticipated construction across the above mentioned properties has been given to the respective parties involved.

Preliminary discussions with the Linn County staff indicate no problems with the siting of the proposed facilities; Copy of their correspondence is enclosed which gives indication that the land under consideration may be considered for conditional (hydro-power development) use. It is realized that additional clearances and permits will need to be obtained from Linn County before construction will be approved. In discussions on the 13th of April, the Linn County Planning staff thought there would be need for a conditional use permit for the hydroelectric project and that it fits within the present zoning requirements for the area; Accordingly applications are being prepared for the Linn County Planning Commission's consideration.

Also enclosed is copy of correspondence from the Benton-Linn Council of Governments indicating support for the feasibility aspects of the Crabtree Creek hydro-project.

Before land purchase and feasibility studies can be successfully completed it will require having an approved hydroelectric power permit. The Water Policy Review Board's consideration on this matter will be sincerely appreciated.

REDUCTION OF WATER LOSSES IN CONVEYANCE BETWEEN THE POINT OF DIVERSION AND POWERHOUSE:

Reported measurements between the point of diversion and points along the Lacombe Irrigation Canal indicate a significant loss of water during the canal's operation. This is recognized and it has been proposed that steps be taken to reduce such losses following the installation of the hydroelectric plant.

The means for reducing canal water losses from the diversion point to the hydro-power pipeline junction will be to seal the canal along its course by guniting the ditch bank. A second measure for reducing the subordinate distributed canal losses, by installing a pressurized piping system, will be the subject for a detailed engineering economics study. The pressurized piping irrigation system concept may make it possible to reduce the irrigation demand by perhaps 50% of the presently appropriated 30 CFS, which would accordingly allow more flow to pass through the turbine and return earlier to Crabtree Creek and above the Roaring River junction.

EFFECTS OF MINIMUM FLOW REQUESTED BY THE DEPARTMENT OF FISH AND WILDLIFE ON THE PROPOSED PROJECT:

As mentioned above, by permitting the Lacombe Irrigation District to develop a power site along its canal, it will be possible to return additional flows to Crabtree Creek that would normally be lost through evapotranspiration and leakage during irrigation periods for which the Lacombe Irrigation is entitled to take up to 30 CFS. This return would be facilitated by the proposed pressurized irrigation pipeline which would be constructed following the hydroelectric turbine installation. Some speculation has been given that approximately only 15 CFS would be needed to irrigate the present lands if ditch and evapo-transpiration losses were properly reduced. Accordingly up to 15 CFS would be returned to Crabtree Creek above Roaring River of the 30 CFS appropriated by the Lacombe Irrigation District. Thus of the 45 CFS requested for power development, then up to 30 CFS would be returned to Crabtree Creek above Roaring River, provided there would be sufficient flows at the point of diversion.

The Lacombe Irrigation District would plan to install fish screens at the intake of the diversion point to prevent downstream migrants from entering the power canal. Approval for the design of the fish screen will be coordinated with Oregon Fish and Wildlife staff (Mr. Bert Carnegie of Portland).

AVAILABILITY OF WATER FOR USE:

Hydrologic analyses show that less than five percent of the time do the flows on Crabtree Creek fall below 40 CFS near the point of diversion of the irrigation-power canal. In discussions with Mr. Thomas Kline of the Water Resources Department and Mr. Lou Fredd, Head of the Environmental Section of the Oregon Fish & Wildlife Department on 14th of April, 1981 there was question regarding stream flow data sources and correspondingly the runoff coefficients used with precipitation data to predict runoff. The flow duration data used in review of the Lacombe Irrigation hydro-power project was selected from Oregon State University's Water Resources Research Institute publication "A Resource Survey Of River Energy And Low-Head Hydroelectric Power Potential In Oregon, Appendix 2-B Middle Willamette Basin, Appendix to WRI-61, April 1979." On questioning Dr. P.C. Klingeman, Director of OSU's WRI, regarding the runoff coefficients used to predict the stream flows, he said that rainfall-runoff relations were first determined for gaged areas and subsequently these coefficients were used for smaller reaches of individual streams and tributaries. Without review of his files he suggested that a runoff coefficient near 0.50 would be close to that used in the 1979 WRI studies.

It is concluded that the project will not result in a significant

the Lacombe Irrigation District's water rights of 30 CFS. Accordingly one would not expect to take 45 CFS from the stream if the quantity of flow were not available.

The Department of Fish and Wildlife have requested in Mr. Kline's 26 March memo that a minimum flow of 12 CFS be provided Crabtree Creek just above Roaring River during August through 15 September. From the proposed plan of diversion and return of flow, this minimum flow requirement would seem reasonable considering the power project's operation, providing that the Lacombe Irrigation District's pressurized piping system were functional for irrigation and that 27 CFS were available to satisfy the 15 CFS irrigation needs and the 12 CFS Crabtree Creek-Roaring River minimum flows. It is expected that since the intake at the point of diversion doesn't have a dam or significant structure that at least 12 CFS would continue past the point of diversion even during periods of extremely low flows and that the fisheries minimum flow requirement will be met without difficulty.

The Lacombe Irrigation District does share a strong concern for maintaining a viable stream system along Crabtree Creek and with its tributaries. On the other hand, the Lacombe Irrigation District is unwilling to relinquish its rights to its present 30 CFS in order to meet minimum flow requirements along Crabtree Creek's course, from the point of diversion to the point of possible return flow at the power site. As pointed out in Governor McCall's letter (18 June, 1973): "All water rights existing as of the date the Board enters its order take priority, under Oregon laws, over the Board's order." In other words, the Lacombe Irrigation District would not generate power if there were not 30 CFS available for irrigation with its proposed facilities.

NECESSARY EASEMENTS OR RIGHT-OF-WAY FOR THE PROJECT.

As mentioned above regarding the location of the powerhouse and pipeline that requisite negotiations have commenced for obtaining the right-of-ways across the Champion Timberlands, Willamette Industries' roads, and for obtaining Mrs. Collins' property on which the powerhouse and tailrace will be located. Coordinated planning will be carried out with Linn County to meet with the land use plan for the area.

It is understood that legally the Lacombe Irrigation District has the right to easement across lands within the Irrigation District. It is planned however to work cooperatively with the property owners to develop a means for crossing their property with the least significant impact possible.

It is planned for example that several sections of the pipeline will be buried so as to not hinder timber operations in the area. Also it is planned that the powerline for the hydroelectric system will be placed underground paralleling the penstock to the south of the stream and the location of Shindle Mill Road. Thus

acceptable.

CONSISTENCY WITH LAND USE PLANS:

Copies of correspondence from the Linn County Planning Department are attached which give indication that no policy or statement exists that would preclude application or consideration of the lands in question for hydro-power development. Applications for the Crabtree Creek hydro-power development will be completed and coordinated with the Linn County Planners to give assurance that the project is consistent with the land use plans for the area.

This area is designated "Forest/Farm and Forest Conservation and Management." Accordingly the hydroelectric development would fit into these categories without need for zone changes, i.e. the areas would be retained as F/F and FCM. Linn County's Zone Designation F/F Section 7.040 permits "energy generating facilities producing power for public sale which utilize resources obtained on-site" and its FCM Section 5.040 permits "dams, reservoirs, water storage facilities, hydroelectric power stations, and similar such facilities and uses" and "energy generating facilities producing power for public sale which obtain the energy resource on site." The only variance that appears to be necessary within Linn County's zoning requirements for this project seems to be for minimum setback standards for Riparian conditions; The tailrace and outflow from the powerhouse will need to be within the 50 foot minimum setback from the stream. Seemingly, the only stringent criteria needed to be satisfied for approval are those found in Linn County's Article 20, Section 20.035 which state:

That the location, size, design, and operating characteristics of the propose development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

That the location, design, and site planning of the proposed development will be as attractive as the nature of the use and its location and setting warrants.

That the propose development will provide a basic service to the community or region.

The Lacombe Irrigation District will obtain all necessary permits and licenses for construction and operation of its proposed hydroelectric site as required by law. The District will be in compliance with the Linn County Planning criteria. Information on the progress of its development will be shared with the public in general.

Discharge from the turbine's tailrace will be released parallel

to the present stream bank. This will have the smallest impact regarding moving existing stream bank rip-rap protection and the stream's path.

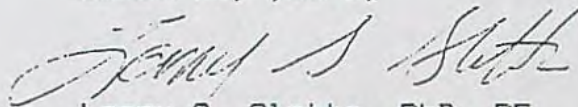
It is recognized that Crabtree Creek sometimes floods and does significant destruction along its stream banks. Engineering efforts will be made to provide adequate protection to the powerhouse and tailrace structure which will be sited on the South Bank of Crabtree Creek. Assurance of the structural integrity of the present rip-rap of the South bank is given regarding the construction of the Lacombe Irrigation Hydroelectric facilities on the Crabtree Creek.

CLOSURE:

As Lacombe Irrigation District's representative, it is my privilege to say thank you to the Oregon Water Resources Department's Water Policy Review Board for this opportunity to provide information at this time relative to approval of the requested permit application for a hydroelectric project on Crabtree Creek.

It is hoped that the Board will give a positive response for approving the requested hydroelectric permit in order to facilitate the progress on applications for feasibility, design and construction loans and in order to advance the dates for construction and purchase commitments.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Larry S. Slotta", is written over the typed name.

Larry S. Slotta, PhD, PE
CONSULTING ENGINEER



Department of Energy
Idaho Operations Office
550 Second Street
Idaho Falls, Idaho 83401

APR 28 1981

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, OR 97355

ATTENTION: Larry Slotta

SUBJECT: HYDROELECTRIC FEASIBILITY STUDY AND LICENSING LOAN PROGRAM
APPLICATION NO. F10-058 - CRABTREE CREEK, LACOMB IRRIGATION CANAL,
LINN CTY, OR

Dear Mr. Slotta:

Your application for a hydroelectric loan has been evaluated and has been approved. The Department of Energy's Hydroelectric Feasibility Study and Licensing Loan Program is one of many federal loan programs presently under review by the Reagan Administration and Congress. Applications for DOE loans are still being accepted and processed; however, DOE staff are advising applicants and potential applicants that they cannot be assured that any additional loans will be made even if this office approves the loan application, because funds may not be available.

At such time as a final determination is made regarding funding for the loan program, you will be informed as quickly as possible. In the meantime, your application will remain in our files pending future disposition.

Sincerely,

A handwritten signature in cursive script, reading "Preston B. Brimhall", is written over the typed name.

Preston B. Brimhall
Contracting Officer

43083 Snow Peak Drive
Lebanon, Oregon 97355
23 April, 1981

Lacomb Irrigation District
41358 Lacomb Drive
Lebanon, Oregon 97355

Dear Friends:

This letter is written in response to inquiries regarding my property located at the above address and described as: Tax Lot #3300 of Section 21, Township 11S., Range 1E. of W.M. in Linn, County.

It is my understanding that the Lacomb Irrigation District is hoping to develop a hydroelectric system that would have its turbine-generator facility located on my property, where return flows would subsequently be made into Crabtree Creek. It is my understanding that the District is interested in purchasing enough land to site the facility properly.

I have followed the recent hearings and corresponding news discussion regarding your hydro-electric development with interest. I am in favor of seeing a project such as this completed for benefit of the public and for reducing our nation's dependence on fossil fuels for energy supplies.

I am willing to sell all four acres of this property, including my house and associated improvements for the site of the Lacomb Irrigation District's hydroelectric operations. I am presently asking \$95,000 for the total property. Alternatively, I am willing to sell the eastern-most parcel of property as a generator site (involving some 400 ft. of Snow Peak Road frontage) for \$15,000. With this smaller parcel I am willing to provide a limited easement for construction and operational purposes through my entry way and then across the north side of my property parallel to Crabtree Creek to the hydroelectric generator site.

After having visited with your representative and engineer, Dr. Larry Slotta, I have given considerable thought to the options I am offering the Lacomb Irrigation District regarding this property. My preference would be to sell all of the land at an early date rather than to consider other alternatives at this time. I would appreciate receiving earnest money and a commitment from your organization at your earliest possible convenience so that my husband, Don and I can start to establish firm plans for our future. Your consideration in this matter

I wish you the best of success with your hydroelectric project. Call on me at any time if you wish to discuss arrangements regarding this property; I can be reached by calling (503) 451-2878.

Sincerely yours,

Gwen Collins

Gwen Collins

LOGGING ROAD - (PRIVATE)

WARRANTY DEED VOL 169 PAGE 374

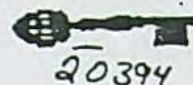
GRANTOR:

DON A. WILSON, JR. and JEANNE WILSON, husband and wife

CONVEYS TO

GRANTEE:

DONALD R. COLLINS and GWEN COLLINS, husband and wife


20394

All that real property situated in

Linn

County, State of Oregon described as: as per attached:

PARCEL I:

All of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 21, Township 11 South, Range 1 East of the Willamette Meridian, lying South of the center of Crabtree Creek and North of Snow Peak Logging Road as conveyed by deed recorded May 12, 1939 in Book 149, Page 526, deed records. Subject to easements of record.

PARCEL II:

Beginning at a 34" pipe which is on the West line of the Northeast 1/4 of the Southeast 1/4 of Section 21, Township 11 South, Range 1 East of the Willamette Meridian in Linn County, Oregon and North 0° 46' East 849 feet from the Southwest corner of said Northeast 1/4 of said Southeast 1/4 of said Section 21; thence North 0° 46' East along said West line 23.45 feet to the true point of beginning; thence North 9° 03' West 364.55 feet; thence Northeasterly 98 feet more or less to a point on the West line of said Northeast 1/4 of said Southeast 1/4 of said Section 21 which is 21 feet South of the North line of said Southeast 1/4 of said Section 21; thence South 0° 46' West along the West line of said Northeast 1/4 of said Southeast 1/4 of said Southeast 1/4 of said Section 21, 449 feet more or less to the true point of beginning.

ALSO an easement for a roadway 30 feet in width along the top of the Westerly embankment of Crabtree Creek, with the center line of said roadway being the center line of the existing roadway, and said roadway extending Northwesterly from the North line of the above described tract to Linn County Road #843, said easement to run with the land.

Lacomb Irrigation & Hydro
P.O. Box 2485
Lebanon, OR 97355

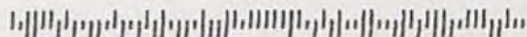
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PORTLAND OR 970
10 SEP 2014 PM 6 L



Water Resources Dept.
725 Summer St. NE, Suite A
Salem, OR 97301-1271

97301126673



Lacomb Irrigation & Hydro

P.O. Box 2485

Lebanon, Or 97355

Office: 34070 East Lacomb Rd.

Phone (541)-451-1588 Fax (541)-451-2779

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Reference used ID: 5024

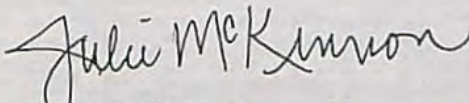
Dear Water Resources Department;

Please update your records to reflect the a change in the Secretary/Treasurer name of Howard Gabel, to Julie McKinnon. Howard Gabel is no longer employed by the District. The address is correct at PO Box 2485, Lebanon, OR 97355.

We have received your letter of the annual reporting being due, and will submit as soon as possible.

Thank You.

Sincerely,



Julie McKinnon

Secretary/Office Manager

541-451-1588

RECEIVED BY OWRD

SEP 11 2014

SALEM, OR

March 6, 1985

Lacomb Electric Power Company, Inc.
2045 SE Washington
Milwaukie, OR 97222

REFERENCE: File 60823

Application 60823 was filed by the Lacomb Irrigation District on September 29, 1980 and approved by the Water Policy Review Board for the use of 45 cubic feet per second of water from Crabtree Creek on May 8, 1981. On October 1, 1982, it was determined that the District's request for an additional 20 cfs would not require further Board action.

Any agreement between a municipal corporation and a private developer must be reviewed by this office to determine if, under the agreement, the project still qualifies as a municipal project and the application can be processed under ORS chapter 537. Application 60823 is a chapter 537 application. Previous agreements were reviewed by the Department of Justice in March of 1983 and January of 1984. The agreement dated August 16, 1984 between the District and you must be reviewed by this office before any further determination can be made on your request for additional water.

Application 60823 was filed by the District and any amendment to the application must be requested by the District or someone authorized to act for them. Unless the agreement specifically authorizes your organization to act in their behalf, we would need an excerpt from the minutes of one of the District's board meetings granting that authorization. Also required is evidence that the District's board authorized entering into the August 16 agreement.

If the district does not maintain sufficient control of the project to qualify as a municipal project under Application 60823, the alternative is to file a license application under ORS chapter 543.

Please submit a copy of the August 16, 1984 agreement so that it can be reviewed and we can continue processing the application.

Sincerely,

DONALD R. BUELL
Hydroelectric Licensing Engineer

DRB:wpc

DON BUELL

Lacomb Electric Power Co., Inc.
2045 S.E. Washington
Milwaukie, Oregon 97222

February 26, 1985

The Water Policy Board
Mill Creek Office Park
555 13th Street N.E.
Salem, Oregon 97310

RECEIVED

MAR 1 1985

**WATER RESOURCES DEPT
SALEM, OREGON**

Subject : Crabtree Creek Hydro Project
FERC Project No. 6648

Lacomb Electric Power Company is working with Lacomb Irrigation District under an Agreement dated August 16, 1984. Under that Agreement certain rights have been transferred to Lacomb Electric Power Co., Inc. by the Lacomb Irrigation District. (see attached true copy of page 4 of the Agreement)

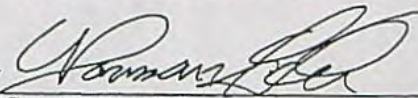
In accordance with that agreement Lacomb Electric Power Co., Inc. request that your board grant to the Irrigation District a total of 80 CFS from the Crabtree Creek to be diverted thru the existing headgate. It is the belief of the engineers we have had to examine our preliminary plans that this will be sufficient water flow to meet our contractual obligations under the existing P.P. & L. Power Purchase Contract.

We understand that Mr. Bjorn O. Lehto of Lehto Partners, Inc. has met the other requests of The Water Policy Board and that you will act officially on this matter on receipt of this request. If there are further requirements please advise so we may respond promptly to them.

Very Truly Yours,

Lacomb Electric Power Co., Inc.

by


VICE PRESIDENT

permits, to allow Power to develop and construct the Project, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and as set forth in this Agreement, District and Power agree as follows:

I. PROJECT DEVELOPMENT

1. District shall transfer to Power such rights with respect to the Lacomb site (including, without limitation, fee interests, leaseholds, easements, but excluding the basic irrigation rights and water rights) as it has which are, in the determination of Power, helpful for the development of such site into a power facility. Power shall take steps to acquire such further rights as may be necessary for the Project. It is understood, however, that no commercial commitment for construction of the Project shall be commenced without Power or the District first securing the necessary water rights, all other necessary state, federal and county permits, licenses, entitlements and approvals, and an acceptable power sales contract. The District shall support Power's efforts to obtain all such items. In the event such support would cause the District any additional charge, such proposed additional charges should be submitted to Power. Upon Power's prior written approval, which shall not be unreasonably withheld, District shall incur such additional charges, and Power will reimburse District from construction funding.

2. District will assign to Power the Pacific Contract

RK



STATE OF OREGON

INTEROFFICE MEMO

TO: Bill Young

DATE: February 11, 1985

FROM: Staff

SUBJECT: Permit Application 60823, Lacombe Irrigation District

On May 8, 1981, the Water Policy Review Board approved Permit Application 60823 submitted by Lacombe Irrigation District to utilize up to 45 cfs of water from Crabtree Creek for hydroelectric power purposes. The Order issued by the Board was conditioned to provide for minimum streamflows and fish passage at the point of diversion.

On August 5, 1982, the district amended the application to reflect the use of an additional 20 cfs for a total of 65 cfs. The additional water increased the theoretical horsepower from 1,200 to 1,600. The permit still has not been issued.

The district is now requesting to amend its application again by increase the proposed diversion an additional 15 cfs for a total of 80 cfs. The additional water would increase the theoretical horsepower from 1,600 to 2,136 THP.

The proposed increased use will not significantly alter other elements of the proposed project. Flow data presented by the districts consultant indicates that there is sufficient water in Crabtree Creek to operate the project during a substantial portion of the year. The district will still be required to comply with the minimum flows and fish passage measures set forth in the Board's Order of May 8, 1981.

As the proposed amendment does not appear to alter or adversely affect the elements or concerns in the Board's Order, the staff recommends that the district be allowed to amend their application as proposed without additional referral to the Board for hearing.

As a condition of approving the amendment, the staff also recommends that the district be advised, in writing, that any additional amendments will represent substantive enough changes in the original application that another public hearing, based on the current standards, will be required.

cc: Water Policy Review Board
Don Buell

6615C

LEHTO PARTNERS, INC.
2045 S.E. WASHINGTON ST.
MILWAUKIE, OR 97222
(503) 653-0053

February 4, 1985

The Water Policy Board
Mill Creek Office Park
555 13th St. N.E.
Salem, Oregon 97310

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FEB 6 - 1985
WATER RESOURCES DEPT
SALEM, OREGON

Subject: Crabtree Creek Hydro Project
FERC Project No. 6648

Lacomb Electric Power Company is working with Lacomb Irrigation District in the financing and construction of the facilities. I perform project management services to Lacomb Electric Power Company.

I understand that a question has been raised by the Board whether there will be a difference in the hydraulic head from the previous request, that is, will using a pipe instead of the ditch increase the head.

The difference in elevation between the water inlet area and the point at the ditch where the line will turn to go downhill and where the irrigation water connection will be - approximately 3 miles from the inlet - is approximately 20 feet according to the topographic map. This difference will be consumed almost exactly by the friction losses in the pipeline up to that point. Therefore the "net head" will not change to any appreciable amount.

The pipeline will be expensive, so why is it necessary? A hydrology study will be conducted and will determine the amount of water that would flow in either

- the ditch after cleaning it of debris
- a pipe laying in the ditch

I do not at this point believe that the ditch would carry a sufficient volume due to the low head and expected seepage losses. A pipeline full of water should carry the required volume without these losses. The hydrology study is needed to determine what kind of water conduit will be needed to do the job in the most cost effective way.

I hope this explanation is satisfactory. I will be glad to keep Mr. Don Buell informed of our progress if the Board would so desire.

Sincerely,

BJorn O. Lehto
BJORN O. LEHTO

Copy: Mr. Don Buell ✓
Licensing Engineer

LEHTO PARTNERS, INC.

BJORN O. LEHTO
PRESIDENT

**2045 S.E. WASHINGTON ST.
MILWAUKIE, OR 97222**

(503) 653-0053

LEHTO PARTNERS, INC.
2045 S.E. WASHINGTON ST.
MILWAUKIE, OR 97222
(503) 653-0053

left message
1-23-85 0905

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WATER RESOURCES DEPT.
SALEM, OREGON

CRABTREE CREEK HYDRO PROJECT

DESCRIPTION OF PROPOSED HYDRO ELECTRIC FACILITY

THE PROPOSED FACILITY WILL INCLUDE THE FOLLOWING MAIN COMPONENTS.

- RE-USING THE EXISTING DIVERSION AND INLET
- A WATER SCREENING STRUCTURE
- A PIPELINE TO CARRY WATER
- A POWER HOUSE TO PRODUCE ELECTRIC POWER
- POWER TRANSMISSION EQUIPMENT
- A PIPELINE CONNECTION TO SUPPLY WATER TO LACOMB IRRIGATION DISTRICT

Talked to Bjorn 1-23-84
requested action by Lacombe
I.D. Board authorizing Dr Hayes
or himself to act for them
and more specific request to
be considered by P & P signed
by Board or authorized agent
DRB

LEHTO PARTNERS, INC.
2045 S.E. WASHINGTON ST.
MILWAUKIE, OR 97222
(503) 653-0053

WATER INLET AND SCREENING

No dam will be constructed nor will the existing river channel be obstructed in any way. The existing diversion structure and inlet will be used.

A new water screening structure in the canal will be constructed in the general area downstream of the existing diversion and inlet gate.

Natural resource agencies, foremost the Oregon Department of Fish and Wildlife will be consulted for design requirements in order to insure fish passage in Crabtree Creek in Linn County, Oregon.

The inlet includes a channel to receive the flow from the creek and leads to vertical screens that operate automatically. The screen structure will include sand traps and sluice ways to flush sand and gravel out of the channel, and a fish by-pass back to the creek. The channel will be equipped with coarse trash screening and the inlet is protected from floating logs and large debris.

The screened water flows to a water channel leading to the water pipeline. The water level will be maintained at the inlet so that the flow can be accurately controlled. This will enable Lacombe Irrigation District to comply with minimum stream flow requirements set forth by the Oregon Water Resources Department.

LEHTO PARTNERS, INC.
2045 S.E. WASHINGTON ST.
MILWAUKIE, OR 97222
(503) 653-0053

PIPELINE

The existing canal will not be used except as a bed for the pipeline. The canal will supply irrigation water to the District during the irrigation season in 1985, thereafter water is supplied to the District thru the pipeline.

The pipeline will be metal pipe, approximately 4 feet in diameter. It will carry water from the inlet to the generating station - see enclosed enlarged topographic map - for a distance of approximately 3 miles. The pipeline will follow the existing canal and maintenance road for about three miles to a point near Hammond Camp. At that point there will be valves and piping connections to supply irrigation water to the existing ditch and water for power generation to the power house.

The water going to the power house will enter an approximate 4' diameter steel pipe going downhill to a power generating station and return to Crabtree Creek at the power house location.

80 CFS of water will be used for power generation during 8-10 months of the year when the flow in the Crabtree Creek is sufficient. The flow in the Creek has reached a 600 CFS level in the winter months, and has been very low - barely supporting irrigation requirements during dry summers in the past. The Lacombe Irrigation District has the first right to water after which minimum stream flow requirements must be satisfied. Water in excess of these restrictions may be used for power generation.

The pipeline will insure the supply of irrigation water from Crabtree Creek to the Lacombe Irrigation District farmers. There are presently approximately 1900 acres under irrigation and the supply of water has been insufficient due to losses and leaks in the canal, and has been totally disrupted in the past. The new water supply system will enable the 150 farmers to double the irrigated acreage and avoid crop losses due to lack of water during the dry months.

LEHTO PARTNERS, INC.
2045 S.E. WASHINGTON ST.
MILWAUKIE, OR 97222
(503) 653-0053

POWER HOUSE

The power house will be approximately 20 X 20 feet in area housing turbine generators, operating controls, auxiliary equipment, maintenance materials etc.

A tailrace will be designed in accordance with recommendations made by fish and wildlife agencies in order to blend the plant flow with the flow of Crabtree Creek. Care will be taken to design the exterior of the structure to complement the environment.

Power will be generated with approximately 5 Turbine-Generator units, each one capable of approximately 250 kW while passing about 15-20 cubic feet of water per second. The units will be of the "reverse-pump" type and the number of units in operation will be automatically controlled.

POWER TRANSMISSION

An existing Pacific Power & Light transmission line will be used. This line will be upgraded as deemed necessary by PP&L.

A new transmission line will be constructed from the power house to the existing line, a distance of about 1200 feet. This line and all elements pertinent to power transmission will be constructed as directed by PP&L.

→

✓ Division of State Lands
1445 State Street
Salem, OR 97310
Phone: 378-3059
378-3805

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NOV 12 1984

WATER RESOURCES DEPT.
SALEM, OREGON

Water Resources

Permit No. 3872 - Renewal
Permit Type Removal/Fill
Waterway Crabtree Creek
County Linn County
Expiration Date November 9, 1985
PN 004707

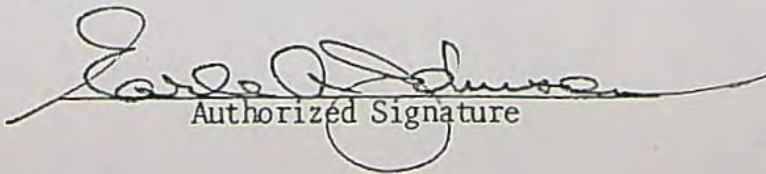
LACOMB IRRIGATION DISTRICT

IS AUTHORIZED IN ACCORDANCE WITH ORS 541.605 TO 541.695 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. A copy of the permit shall be available at the work site whenever operations authorized by the permit are being conducted.
6. Employees of the Division of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
7. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within 10 days of the date this permit was issued.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 - 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Division of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Division of State Lands, Waterway Leasing Office, 378-3805.

Ed Zajonc, Director
Oregon Division of State Lands


Authorized Signature

November 9, 1984
Date Issued

ATTACHMENT A

Special Conditions for Material Removal/Fill Permit No. 3872

1. This permit authorizes the removal of up to 1,750 cubic yards of material and the placement of up to 2,087 cubic yards of rock fill and rock riprap in Sections 21 & 25, T11S, R1E (Crabtree Creek, mile 17.0) to construct a diversion and powerhouse as outlined in the attached permit application, map and drawings.
2. The operation shall be conducted in a manner that will minimize any turbidity increase.
3. Waste materials and spoils shall be placed above the bankline.
4. Turbid waste waters from the project shall be provided adequate settling time.
5. There shall be no removal or filling in the permit area between September 15 and July 1.
6. Only clean, erosion resistant rock from an upland source shall be used as riprap. No broken concrete or asphalt shall be used as riprap.
7. Riprap shall be placed in a manner that does not appreciably increase the upland surface area.
8. Areas of streambank disturbance not covered by riprap shall be seeded or planted with grass and/or legumes and trees.
9. Removal of existing woody vegetation shall be minimal.
10. No fresh concrete shall come in contact with the active flowing stream.
11. All design changes and modifications for the diversion, weir, and powerhouse to facilitate fish passage shall be constructed according to the design criteria set by Oregon Department of Fish and Wildlife and by National Marine Fisheries Service.
12. The Division of State Lands retains the authority to temporarily halt or modify the project in case of excessive turbidity or damage to natural resources.

November 9, 1984



DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4620

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JAN 18 1984

WATER RESOURCES DEPT.
SALEM, OREGON

January 17, 1984

Mr. Don Buell
Water Resources Department
555 13th Street, N. E.
Salem, Oregon 97310

Re: Proposed Agreement Between Lacombe Irrigation
District and Renwick Organization, Inc.

Dear Mr. Buell:

I have reviewed the draft hydroelectric project development agreement between the parties named above transmitted to me by your January 12, 1984, memorandum. This confirms our telephone conversation of January 13, 1984, that I see no reason to treat this proposed arrangement any differently than the Winchester matter, more particularly set forth in our department's letter of March 30, 1983.

After our discussion, I did look at the proposed agreement again in regard to what would happen at the end of 20 years. It appears to me that the agreement does provide for extensions if the option is not exercised. I am not sure whether the agreement is fully clear on whether the district has the sole option to cancel it in its entirety after 21 years, but I do not think that need concern us at this time and, should the agreement be canceled, it would be necessary to see what the law at that time might require in regard to the State of Oregon requirements.

The agreement could also be terminated on mutual agreement at any time and, if this occurred after construction of the facility, again we would have to see what Oregon law might require on those facts at that time.

Very truly yours,

Larry D. Thomson
Assistant Chief Counsel
General Counsel Division

LDT:vp