

ORIGINAL

**Chester Diversion Hydroelectric Project No. 11879
Settlement Agreement**

1. Parties to the Agreement

- 1.1 This Settlement Agreement (“Agreement”) is entered into by and between the following organizations, which shall be referred to collectively as “the Parties”: Symbiotics, LLC (“Symbiotics”); Idaho Department of Fish and Game (“IDFG”); Idaho Department of Parks and Recreation (“IDPR”); United States Department of Interior Fish and Wildlife Service (“USFWS”); United States Department of Agriculture Forest Service (“USFS”); Trout Unlimited (“TU”); Henry’s Fork Foundation (“HFF”); and Greater Yellowstone Coalition (“GYC”).
- 1.2 For purposes of this agreement IDFG, IDPR, USFWS, and USFS shall be referred to collectively as “the Agencies.” For purposes of this agreement, TU, HFF, and GYC shall be referred to collectively as “the Conservation Groups.”
- 1.3 This Agreement shall apply to and be binding on the Parties and their successors and assigns. Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Agreement, but shall remain secondarily liable for the performance of the successor or assignee. No change in ownership of the Project or transfer of the existing or amended Project License by Symbiotics shall in any way modify or otherwise affect any other Party’s interests, rights, responsibilities, or obligations under this Agreement. Unless prohibited by applicable law, Symbiotics shall provide, in any transaction for a change in ownership of the Project or transfer of the existing or amended Project License, that such new owner or owners shall be bound by and shall assume the rights and obligations of this Agreement upon completion of the change of ownership and approval by the Federal Energy Regulatory Commission (“FERC”) of the License transfer or transfers. A transferring or assigning Party shall provide notice to the other Parties at least sixty (60) days prior to completing such transfer or assignment.

2. Definitions

- 2.1 “Project” means the proposed Chester Diversion Hydroelectric Project, for which an Application for Original Major License (“Application”) was filed by Symbiotics with the FERC as Project No. 11879-002.

- 2.2 “License” means the regulatory authorization that would be issued for construction, maintenance and operation of the Project subject to the jurisdiction of FERC pursuant to the Federal Power Act (“FPA”).
- 2.3 “License articles” means the terms and conditions included in the License for the operation of the Project.
- 2.4 “Agreement” means the entirety of this agreement, including the Memoranda of Understanding concerning the screening of the Last Chance and Cross Cut irrigation canals between Symbiotics and the Fremont-Madison Irrigation District and Egin Bench Canal Company, Inc., in Appendix A.
- 2.5 “Final Terms and Conditions” refers, individually and collectively, to any terms, conditions, recommendations, and prescriptions filed with FERC by the Parties in final or modified form after the effective date of this Agreement. Final Terms and Conditions are distinct from any previous terms and conditions which may have been filed by the Parties prior to the effective date of this Agreement.
- 2.6 “PM&E Measures” refers to the measures set forth in Section 6 of this Agreement for the protection and enhancement of fish, wildlife, recreation, and aesthetic resources associated with the Project and to mitigate for any adverse effects of the Project.

3. Recitals

- 3.1 According to John Randolph, Editor, Fly Fishing Magazine, “The Henry’s Fork is the premier dry fly fishing stream in the entire world.” The Henry’s Fork is one of the most diverse fly fishing rivers in the world, offering opportunities for the advanced fly fisherman, as well as the beginner. Accordingly, Trout Unlimited named the Henry’s Fork the number one trout stream in the country. The Henry’s Fork is an outstanding and valuable local, regional, and national fisheries and economic resource.
- 3.2 The Parties believe it to be in their mutual interest to protect this remarkable resource and agree that the PM&E Measures set forth in this Agreement will fully protect and mitigate for the impacts of the Project on fish, wildlife, recreation and aesthetic resources on the Henry’s Fork.
- 3.3 The Application describes Chester Dam as a 17-foot tall irrigation diversion dam located on the Henry’s Fork between Ashton and St. Anthony, Idaho. Under current

conditions, Chester Dam impounds water for a distance of approximately 4,000 feet upstream beginning around the first of April and continuing through July. During low flow conditions (from August through March), the reservoir extends only 3,200 feet (approximately) upstream of the dam.

- 3.4 The headworks of two irrigation canals are associated with Chester Dam. The Cross Cut Canal is located on the south end of the dam and the Last Chance Canal is located on the north side. Currently, all of the water not diverted through the canals flows over the crest of the dam throughout the year. Neither the Cross Cut Canal nor the Last Chance Canal is screened to prevent fish entrainment. The Project, as originally proposed, would likely increase entrainment into the canals and therefore, the Parties conclude that the Cross Cut Canal and Last Chance Canal should be screened.
- 3.5 Currently, water flows over the dam throughout the year and in each month of the year. Fish of all sizes can pass over the dam crest year-round across the entire length of the dam. The proposed Project would reduce the amount and duration of spill over the crest of the dam from 12 months of the year to less than 2 months of the year and, therefore, significantly reduce downstream fish passage. Accordingly, the Parties conclude that downstream fish passage facilities should provide for year-round passage of fish.
- 3.6 To protect against turbine mortality, the Parties believe that turbine screens that protect migrating fish should be designed and constructed for the Project. The Parties also conclude that the Project may be modified to install a 38-inch rather than a 36-inch rubber dam to address the loss of head resulting from the installation and operation of the turbine screen.
- 3.7 The Project will inundate an additional 875 - 1,200 feet (approximately) of riverine habitat by raising the level of the pool by 38 inches throughout the year. The area that will be inundated is productive riffle habitat that supports a popular recreational fishing location. The Parties conclude that the PM&E Measures set forth in this Agreement will improve fish survival and thus mitigate for the loss of valuable riverine habitat above the dam.
- 3.8 Approximately 1¹/₃ miles of new power transmission line will be constructed for the project. One mile of the power line will run parallel and in close proximity to the river downstream of the dam on the south side of the river. Power line strikes are a significant source of mortality for Trumpeter Swans throughout their range.

Accordingly, the Parties conclude that the new power transmission lines should be fitted with reflective devices to protect Trumpeter Swans from power line strikes.

- 3.9 Hydroelectric projects that receive a “Green Power” certification from the Low Impact Hydropower Institute provide the project owner with the ability to charge more for the energy produced. The Parties conclude that implementation of the PM&E Measures and non-license commitments set forth in this Agreement support the issuance of a Green Power certification for the Project. When evaluating the Project’s economic viability and the importance of the PM&E Measures agreed to in Section 6, and the non-license agreements set forth in Section 7, FERC should consider the importance of the entire Agreement in obtaining “Green Power” certification for the Project.

4. Purpose of the Agreement

- 4.1 The Parties have entered into this Agreement to resolve all issues regarding fish, wildlife, recreational, and aesthetic resources associated with issuance of a new License for the Project. For this purpose, the Parties agree that this Agreement is fair and reasonable and in the public interest within the meaning of FERC Rule 602 governing offers of settlement. 18 C.F.R. § 385.602(g)(3).
- 4.2 By entering into this Agreement, the Agencies represent that they believe their statutory and other legal obligations are, or can be, met through implementation of this Agreement. Nothing in the Agreement shall be construed to limit any government agency with jurisdiction directly related to the new License from complying with its obligations under applicable laws and regulations or from considering public comments received in any environmental review or regulatory process related to the Project in accordance with this Agreement. This Agreement shall not be interpreted to predetermine the outcome of any National Environmental Policy Act (“NEPA”) environmental review or administrative appeal process.
- 4.3 This Agreement establishes no principle or precedent with regard to any issue addressed in this Agreement or with regard to any Party’s participation in any other pending or future licensing Agreement. Further, no Party to this Agreement shall be deemed to have approved, accepted, agreed to, or otherwise consented to any operation, management, valuation, or other principle underlying any of the matters covered by this Agreement, except as expressly provided in this Agreement. This Agreement shall not be offered in evidence or cited as precedent by any Party to this

Agreement in any administrative or judicial proceeding, except in a proceeding to establish the existence of or to enforce or implement this Agreement.

5. Effective Date, Duration of the Agreement, and Actions Upon Execution of the Agreement

- 5.1 This Agreement shall take effect upon signature of all Parties and shall remain in effect for the term of the new License and for any annual licenses issued subsequent thereto.
- 5.2 Symbiotics agrees to: a) within 30 days of the effective date of this Agreement, file an offer of settlement with FERC pursuant to Rule 602 (18 CFR § 385.602) requesting that FERC accept and incorporate without material modification as License articles in the new License all of the PM&E Measures set forth in Section 6; b) request that FERC refrain from including in the new License inconsistent articles, except as may be necessary to enable FERC to ascertain and monitor Symbiotics' compliance with the new License and its rules and regulations under the FPA and other federal and state laws; c) submit a statement in support of the Agreement to FERC as part of its response to comments on the Environmental Assessment and Application; d) ensure that any supplemental information, comments or responses to comments filed by it with FERC in the context of the licensing process are consistent with this Agreement; and e) actively support, in all relevant regulatory proceedings, incorporation of the PM&E Measures into the FERC License and incorporation of consistent terms into other applicable permits, as appropriate.
- 5.3 The Agencies, individually and collectively, agree to: a) submit a statement in support of the Agreement to FERC as part of the offer of settlement requesting that FERC accept and incorporate without material modification as License articles in the new License the PM&E Measures set forth in Section 6; b) request that FERC refrain from including in the new License inconsistent articles, except as may be necessary to enable FERC to ascertain and monitor Symbiotics' compliance with the new License and its rules and regulations under the FPA and other federal and state laws; c) submit statements in support of the Agreement to FERC as part of their comments on the Environmental Assessment and Application; d) ensure that the individual agency's complete and final recommendations, terms, conditions, and/or prescriptions pursuant to Sections 4(e), 10(a), 10(j), and 18 of the FPA, to the extent those sections are applicable to each individual agency, shall be consistent with the

Agreement and shall supersede any inconsistent prior filings in this proceeding; e) ensure that any supplemental information, comments or responses to comments filed by them with FERC in the context of the licensing process are consistent with this Agreement; and f) actively support, in all relevant regulatory proceedings, incorporation of the PM&E Measures into the FERC License and incorporation of consistent terms into other applicable permits, as appropriate.

- 5.4 The Conservation Groups, individually and collectively, agree to: a) submit a statement in support of the Agreement to FERC as part of the offer of settlement requesting that FERC accept and incorporate without material modification as License articles in the new License the PM&E Measures set forth in Section 6; b) request that FERC refrain from including in the new License inconsistent articles, except as may be necessary to enable FERC to ascertain and monitor Symbiotics' compliance with the new License and its rules and regulations under the FPA and other federal and state laws; c) submit statements in support of the Agreement to FERC as part of their comments on the Environmental Assessment and Application; d) ensure that any supplemental information, comments or responses to comments filed with FERC in the context of the licensing process are consistent with this Agreement; and e) actively support, in all relevant regulatory proceedings, incorporation of the PM&E Measures into the FERC License and incorporation of consistent terms into other applicable permits, as appropriate.

6. Obligations of Symbiotics: Protection, Mitigation and Enhancement Measures

- 6.1 The Parties agree that the PM&Es set forth in this Section 6 fully describe Symbiotics' obligations for the protection, mitigation, and enhancement of fish, wildlife, recreation and aesthetic resources affected by the Project and should be included in the new License.
- 6.2 Upon issuance of a new License, Symbiotics agrees to implement the following PM&E Measures:
- 6.2.1 Provide for reduced entrainment and year-round downstream fish migration. Symbiotics will: 1) screen the Crosscut and Last Chance Canals according to the National Oceanic and Atmospheric Administration's fingerling criteria, which includes ¼-inch screen openings and construct a downstream bypass facility that returns screened fish to the river; 2) construct the Project in such a manner as to

provide a pathway for downstream fish migration; and 3) operate the Project to provide continuous and sufficient bypass flows for downstream fish migration.

- 6.2.2 Reduce turbine mortality. Symbiotics will construct a 1½ inch turbine screen on the hydroelectric project, with a maximum 4-feet-per-second approach velocity.
- 6.2.3 Reduce Trumpeter Swan injury and mortality. Symbiotics will construct above-ground power lines fitted with reflective devices that protect Trumpeter Swans from strike mortality.
- 6.2.4 Implement PM&Es that address recreation and aesthetic resources. Symbiotics, in consultation with the Parties, will:
 - 6.2.4.1 Construct boat ramps with concrete logs upstream and downstream of the dam in approximately their current location and construct gravel parking areas.
 - 6.2.4.2 Provide improved access to the project area to ensure safe use by passenger vehicles and vehicles with trailers at the upper bridge across the Cross Cut Canal.
 - 6.2.4.3 Use aesthetically pleasing design for buildings, constructed of a material and design to blend with the natural environment, including vegetative screening.
 - 6.2.4.4 Build ADA restrooms with hardened surface to ADA parking and a fishing platform.
 - 6.2.4.5 Develop an Information and Education Plan that identifies locations for maps, signs, information boards, brochures, and other materials informing the public about opportunities for recreation and aesthetic use in and adjacent to the Project area.
 - 6.2.4.6 Provide public access during construction and develop a temporary recreation access management plan.

7. Non-License Terms and Obligations

- 7.1 In addition to the PM&E Measures, which the Parties are requesting that FERC include in the new License, Symbiotics agrees to design and construct an upstream fish passage facility (fishway or upstream fishway) at the Project, paid for with

funding provided or obtained by the Conservation Groups as set forth in Section 7.2 below.

7.2 The Conservation Groups agree to obtain the necessary funds for the design and construction of an upstream fishway at the Project and the Parties agree that IDFG will assume ownership of the fish ladder during the first 5 years of operation, as provided in Section 7.2.3. below.

7.2.1 The Conservation Groups agree to provide all of the funds necessary for Symbiotics to design, engineer, and construct the upstream fishway as provided in Section 7.1 above. Symbiotics will provide to the Conservation Groups a design, engineering, and construction schedule and implementation plan for the upstream fishway that describes 1) the design and engineering phase and associated costs, and 2) the construction phase and associated costs, as soon as reasonably available. Upon the placement by the Conservation Groups in an escrow account mutually established by Symbiotics and the Conservation Groups of sufficient funds to fully pay for the design and engineering phase, Symbiotics will commence the design and engineering of the fishway; upon the placement in escrow by the Conservation Groups of sufficient funds to fully pay for the construction of the fishway, Symbiotics shall commence and complete construction of the fishway. Funding for each stage will be provided in a timely manner, so that construction of the upstream fishway will be completed no later than 2 years after the Project is operational. Funds will be dispersed from the escrow account to Symbiotics to pay for the phase of implementation for which they were deposited, only with the approval of both Symbiotics and the Conservation Groups, which approval shall not be unreasonably withheld. Alternatively, the Conservation Groups may establish, with sufficient funds for each phase described herein, an irrevocable letter of credit in Symbiotics' favor granting Symbiotics authority to draw upon the irrevocable letter of credit for the purpose of designing, engineering, and constructing the fishway. In no event will modifications in the timing of construction of the fishway delay construction of the Project in its entirety or increase the cost of construction of the Project. In no event will Symbiotics or the Agencies be obligated to fund the design, engineering, or construction of an upstream fishway at the Project.

7.2.2 The Parties agree that, in the event the Conservation Groups do not provide the funds for the construction of an upstream fishway by no later than 2 years after the Project is operational, Symbiotics may, at its discretion, replace the 1½ inch

screen required by Section 6.6 of this Agreement with a 4-inch trash rack. The Parties agree that replacement of the 1½ inch screen with a 4-inch trash rack will serve as Symbiotics' and the Agencies' sole and exclusive remedy in the event the Conservation Groups are unable to secure adequate funding for the construction of the fishway as provided in Sections 7.2 and 7.2.1. In no event will the Conservation Groups be liable to Symbiotics or the Agencies to provide the funds described in Sections 7.2 and 7.2.1.

- 7.2.3 The Parties agree that IDFG will own the upstream fishway for the initial 5 years of its operation. IDFG agrees to evaluate the effectiveness and impact of the upstream fishway during the 5-year period of ownership, in consultation with the Parties. At the end of the 5-year period of operation, IDFG, in consultation with the Parties, will determine whether the upstream fishway is structurally sound, effective, and beneficial for fish resources in the Henry's Fork; if so, Symbiotics agrees to assume ownership of the fishway. If it is determined that the upstream fishway is not structurally sound, effective, or beneficial for fish resources in the Henry's Fork, the Parties will meet to determine how to proceed. In no event will Symbiotics be required to implement measures other than those set forth in this Agreement. The Parties also agree that any measures taken in response to a determination that the fishway is not effective or beneficial to fish resources will not adversely impact the Project or Project operations.
- 7.2.4 The fishway will be designed and constructed to standards acceptable to engineers employed by the Agencies, Conservation Groups, and Symbiotics.
- 7.2.5 Symbiotics, the Agencies, and Conservation Groups must unanimously agree that design, engineering and construction costs proposed to be funded under this Section 7 are required solely for the design and construction of the upstream fishway. IDFG agrees to apply for and acquire any governmental permits and approvals necessary for the construction, operation, and maintenance of the fishway.
- 7.2.6 Symbiotics will use its best efforts to reduce the costs of the fishway by integrating its construction into the construction of the downstream fish bypass associated with the screening of the Cross Cut Canal.
- 7.2.7 When the Project and upstream fishway have been constructed and are operational, Symbiotics agrees to inspect the fishway on a daily basis and

perform day-to-day maintenance, including removing debris and clearing blockages, and, if any operational problems or defects in the fishway are observed, will notify IDFG within a 24-hour period. Symbiotics agrees to provide IDFG with reasonable access to the Project for inspection and evaluation of the fishway.

7.2.8 During the 5-year period of IDFG ownership, IDFG agrees to maintain, repair and/or replace any portion of the fishway as necessary to ensure the fishway's continued operation. Upon assuming ownership of the fishway, Symbiotics agrees to maintain, repair, and/or replace any portion of the fishway as necessary to ensure the fishway's continued operation during the term of the License, and for any annual licenses subsequent thereto, in addition to performing day-to-day maintenance.

8. Obligations of Agencies and Conservation Groups

- 8.1 The Agencies agree to provide technical assistance to Symbiotics and the other Parties for the implementation of the terms of this Agreement.
- 8.2 The Agencies and Conservation Groups agree to support designation of the Project as a "Green Power" Project in accordance with the Low Impact Hydropower Institute standards.
- 8.3 The Agencies and Conservation Groups agree to support the installation of a 38-inch rubber dam instead of a 36-inch rubber dam to offset head losses through the turbine screen created by increased approach velocities in their final recommendations, terms, conditions, and prescriptions and comments on the Environmental Assessment and Application.

9. Obligations of the Parties: Actions in Support of License Issuance

- 9.1 The Parties have entered into this Agreement with the express intent that FERC approve the Agreement as an offer of settlement and issues a License that incorporates the PM&E Measures set forth in this Agreement. The Parties agree that if FERC incorporates into the License the PM&E Measures set forth in this Agreement without modification, except as may be necessary to enable FERC to ascertain and monitor compliance with the new License and its rules and regulations under the FPA and other federal and state laws, they will not seek rehearing of the

FERC order or support, in any way, a request for rehearing by any non-Party to this Agreement.

- 9.2 If the new License issued by FERC, either initially or following conclusion of appeals, incorporates fewer than all of the PM&E Measures included in this Agreement, or modifies them in such manner that they are less protective of the fish, wildlife, recreation, and aesthetic resources associated with the Project, the Parties agree that they shall be bound by the entire Agreement including the PM&E Measures set forth in Section 6 and the upstream fishway facility commitments set forth in Section 7, and that the Parties shall be entitled to enforce the entire Agreement in any state or federal court with jurisdiction.
- 9.3 In the event that FERC issues a License that modifies, conditions, or adds to any of the PM&E Measures set forth in this Agreement in a manner that substantially increases the cost of License compliance, except as may be necessary to enable FERC to ascertain and monitor compliance with the new License and its rules and regulations under the FPA and other federal and state laws, the Parties agree to convene a conference call or meeting within 30 days of receiving FERC's order to discuss the objectionable modifications and seek consensus on a course of action. At the request of Symbiotics, the Parties will participate with Symbiotics in a request for rehearing to advocate that FERC modify the License so that it is consistent with this Agreement.
- 9.4 The USFWS reserves its authority pursuant to Section 18 of the FPA. This agreement shall not limit the ability of the USFWS to assert its authority under any statute other than the FPA. In the event that the USFWS includes a reservation of authority in any conditions, recommendations or prescriptions that it may submit to FERC, the inclusion of such reservation shall not be considered materially inconsistent with this Agreement, provided that in exercising such reserved authority, the USFWS shall comply with applicable requirements of Section 33 of the FPA.

10. Modification of License or Permit Terms and Amendment of Agreement

- 10.1 The Parties agree that this Agreement may be amended by unanimous written consent of the Parties. Any Party may request all other Parties to commence negotiations for a period of up to 90 days to amend the terms and conditions of this Agreement in whole or in part. Any such amendment that renders the Agreement

inconsistent with terms and conditions of the new License or other regulatory approvals then in effect shall be subject to approval by FERC or other permitting agency, except that the Parties may agree to implement on an interim basis, pending approval, any amendment not requiring prior regulatory approval.

- 10.2 The Parties agree not to invoke any re-opener clause or reservation of authority in the new License or in any other regulatory approval or permit required for the Project in order to request the imposition by FERC or any other agency of additional or modified PM&E Measures unless and until the amendment process described above has been undertaken.
- 10.3 In the event that FERC or other regulatory agency having jurisdiction over the Project initiates any proceeding, other than the licensing proceeding itself, either on its own motion or at the request of a non-Party, that may have the effect of changing, conditioning, or modifying any provision contained herein or of imposing additional measures for fish passage, fish survival, fish habitat, wildlife, or recreational and aesthetic resources, the Parties shall meet and confer on the need to participate jointly in the proceeding in support of the Agreement or to amend the Agreement.

11. Resolving Disputes Among the Parties

- 11.1 In the event that any dispute arises among the Parties as to the interpretation of and/or compliance by any Party with the obligations of this Agreement and the License, the Parties agree to engage in good faith negotiations for a period of at least 90 days in an effort to resolve the dispute. During the 90-day period, any Party may request the services of a professional mediator to assist in resolving the dispute, with such mediator to be selected by the disputing Parties. The Party requesting such services shall cover the costs, unless there is an agreement among the disputing parties to share costs. In the event that resolution cannot be reached within the 90-day negotiating period, the dispute may be referred to FERC pursuant to FERC's then-applicable Rules of Practice and Procedure (18 CFR Part 385). If a dispute is referred to FERC, the Parties shall make use of such resources for alternative dispute resolution as may be available at FERC.
- 11.2 No Party shall seek relief in any other forum for noncompliance with this Agreement unless and until the requirements of the above-described dispute resolution process shall have been met. If dispute resolution is not successful, any Party may seek judicial, administrative or other enforcement of the terms of this Agreement, which

terms shall be specifically enforceable under all applicable federal or state laws governing agreements of this type.

- 11.3 This Section 11 shall not apply to disputes regarding FERC's incorporation of the PM&E Measures described in Section 9 of this Agreement.

12. Notice and Communication

- 12.1 All written notices to be given pursuant to this Agreement shall be mailed by first class mail, or overnight express service, postage prepaid, to each Party at the addresses listed below or such subsequent address as a Party shall identify. Notices shall be deemed to be given 5 business days after the date of mailing or on date of receipt if overnight express or other receipt-notification service is used.
- 12.2 For purposes of implementing this Agreement, the Parties agree that the following individuals shall be designated to be the primary contact persons and all written notices shall be posted to these individuals at the addresses listed below. Notification of changes in the contact persons must be made in writing and delivered to all other contact persons:

For Symbiotics: Brent L. Smith, Chief Operating Officer, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442; e-mail: bsmith@nwpwrservices.com; phone 208-745-0834.

For IDFG: Cindy Robertson, Program Coordinator, Natural Resources Policy Bureau, Idaho Department of Fish and Game, P.O. Box 25, Boise, Idaho 83707; e-mail crobertson@idfg.idaho.gov; phone: 208-287-2714; facsimile: 208-334-2114.

For IDPR: Mary Lucachick, Water Recreation Analyst, Idaho Department of Parks and Recreation, 5657 Warm Springs Avenue, Boise, Idaho 83716; e-mail: mlucachick@idpr.idaho.gov; phone: 208-514-2482; facsimile: 208-334-5232.

For USFWS: Damien Miller, Field Office Supervisor, 4425 Burley Dr., Suite A, Chubbuck, ID 83202; e-mail: damien_miller@fws.gov; phone: 208-237-6975 ext 31; facsimile: 208-237-8213

For USFS: Lee W. Mabey, Ashton-Island Park and Teton Basin Ranger Districts, Fisheries Biologist C-T NF, 1405 Hollipark Dr., Idaho Falls, Idaho 83401; e-mail: lmabey@fs.fed.us; phone: 208-557-5784; cell: 208-313-7808.

For Trout Unlimited: Kimberley T. Goodman, Director, Idaho Water Project, Trout Unlimited, 151 North Ridge, Suite 120, Idaho Falls, Idaho 83402; phone: 208-552-0891 ext. 712; e-mail kgoodman@tu.org, www.tu.org/wwp_id.

For Henry's Fork Foundation: Jim De Rito, Conservation Director, Henry's Fork Foundation, P.O. Box 550, Ashton, ID 83420; e-mail jderito@henrysfork.org; phone 208-652-3567; fax 208-652-3568.

For Greater Yellowstone Coalition: Scott Christensen, Private Lands Stewardship Director, Greater Yellowstone Coalition, P.O. Box 1874, Bozeman, MT 59771; e-mail schristensen@greateryellowstone.org; phone: 406-586-1593; facsimile: 406-556-2839.

- 12.3 Notices and other communications not required to be made to all Parties or not required to be made in a specific manner under the terms of this Agreement need not be in writing and may be made by telephone, electronic mail or facsimile.

13. Miscellaneous Provisions

- 13.1 Availability of Funds. Implementation of this Agreement for a Party that is a federal agency is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, and the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Agencies that are federal agencies shall not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures, as evidenced in writing. Implementation of this Agreement by Agencies that are state agencies is subject to the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of Idaho. The Parties acknowledge that the Agencies that are state agencies shall not be required under this Agreement to expend any

appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures, as evidenced in writing.

- 13.2 No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.
- 13.3 Failure to Perform Due to Force Majeure. No Party shall be liable to any other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by force majeure. The term “force majeure” means any cause reasonably beyond the affected Party’s control, whether unforeseen, foreseen, foreseeable, or unforeseeable, and without the fault or negligence of the affected Party. Force majeure may include, but is not limited to, natural events, labor or civil disruption, breakdown or failure of Project works resulting from events beyond Symbiotics’ control, orders of any court or agency having jurisdiction of the Party’s actions, or delay in issuance of any required permit. Increased cost for the performance of any PM&E Measures or change in market conditions for the sale of electricity shall not be deemed to constitute force majeure, provided that Symbiotics shall not be obligated to perform measures in excess of the commitments specified in this Agreement. The Party whose performance is affected by force majeure shall notify the other Parties in writing within seven days after becoming aware of any event that such affected Party contends constitutes force majeure. Such notice shall identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Parties written notice to that effect.
- 13.4 Governing Law. The License and any other terms of this Agreement over which a federal or state agency has jurisdiction shall be governed, construed, and enforced in accordance with the statutory and regulatory authorities of such agency. This Agreement shall otherwise be governed and construed under the laws of the state of Idaho (“the State”). By executing this Agreement, no federal agency is consenting to

the jurisdiction of a state court unless such jurisdiction otherwise exists. By executing this Agreement, no state agency or officer is consenting to the jurisdiction of a federal court unless such jurisdiction otherwise exists nor shall this Agreement be construed as a waiver of the State's immunity to suit under the Eleventh Amendment of the United States Constitution. All activities undertaken pursuant to this Agreement shall be in compliance with all applicable law.

- 13.5 Attorneys Fees. If any action is brought by any Party to enforce the provisions of this Agreement, the prevailing Party, in such action, shall be entitled to reasonable attorney fees and court costs as determined by the court.
- 13.6 Costs of Participation. Except as provided above, all Parties are to bear their own costs of participating in the Agreement.
- 13.7 Elected Officials Not To Benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
- 13.8 No Partnership. Except as otherwise expressly set forth herein, this Agreement does not, and shall not be deemed to, make any Party the agent for, or partner of, any other Party.
- 13.9 Reference to Statutes and Regulations. Any reference in this Agreement to any federal or state statute or regulation shall be deemed to be a reference to such statute or regulation as amended or succeeded subsequent to this Agreement.
- 13.10 Paragraph Titles for Convenience Only. The titles for the paragraphs of this Agreement are used only for convenience of reference and organization and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of the Parties. Reference to a given section of this Agreement shall be deemed to include all subsections of that section.

14. Execution of the Agreement

- 14.1 Signatory Authority. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such party.

14.2 Signing in Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original document as if all the signatory Parties to all of the counterparts had signed the same document. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

This Agreement is effective as of the day that the last Party executes the Agreement.

SYMBIOTICS, LLC

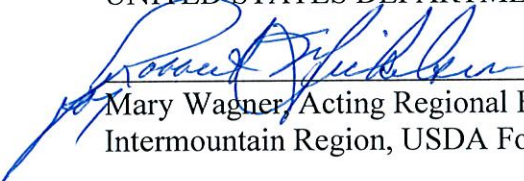


Brent L. Smith, Chief Operating Officer

10-25-07

Date Signed

UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE

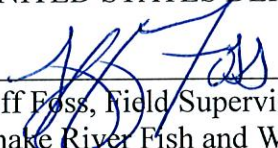


Mary Wagner, Acting Regional Forester
Intermountain Region, USDA Forest Service

10/23/07

Date Signed

UNITED STATES DEPARTMENT OF INTERIOR FISH AND WILDLIFE SERVICE

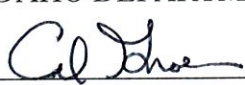


Jeff Foss, Field Supervisor
Snake River Fish and Wildlife Office

10/23/07

Date Signed

IDAHO DEPARTMENT OF FISH AND GAME

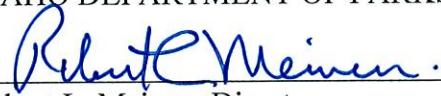


Cal Groen, Director

10/23/07

Date Signed

IDAHO DEPARTMENT OF PARKS AND RECREATION




Robert L. Meinen, Director

10/23/07

Date Signed

TROUT UNLIMITED




Kimberley T. Goodman, Director
Idaho Water Project

10/24/07

Date Signed

HENRY'S FORK FOUNDATION



Stephen D. Trafton, Executive Director

24 OCT 07

Date Signed

GREATER YELLOWSTONE COALITION



Michael Scott, Executive Director

10/25/07

Date Signed