

LOW-IMPACT RECERTIFICATION APPLICATION

Island Park Hydroelectric Project, LIHI # 2 (FERC NO. 2973)



October 2021

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1. FACILITY DESCRIPTION

The Island Park Hydroelectric Project is located at the U.S. Bureau of Reclamation (USBR) Island Park Dam on the Henry's Fork, or North Fork, of the Snake River just upstream of the confluence with the Buffalo River, which enters from the east. It is in Fremont County, Idaho about 39 miles north of Ashton in Fremont County, Idaho. The project is located in the northeast corner of Fremont County near the border with Montana and Wyoming (Figure 1). The project is owned by the Fall River Rural Electric Cooperative, Inc. (FRREC) and is located within the Caribou-Targhee National Forest and operates under a Special Use Permit with USFS (Appendix A).

USBR completed the Island Park dam in 1939 as part of the Minidoka Project, which provides water to irrigate farmland in Idaho's Snake River Plain. The dam is located at river mile 91 and about 0.4 miles upstream of the Buffalo River confluence (Figure 2). The headwaters of the Henry's Fork begin 31 miles upstream of the dam, at Henry's Lake.

FRREC also owns a hydroelectric facility at the Buffalo River Dam, LIHI #21; that facility was built in 1936 to generate hydroelectric power in support of the construction of Island Park Dam and Reservoir.

The project was first certified by LIHI in 2001 for a 5-year period. Shortly after certification, we notified LIHI of flow deviations due to drought conditions and USBR's reservoir management priorities for storage rather than discharge during that period. The certification was reinstated in 2005 and subsequent recertifications were granted in 2006, 2011, and 2017. The current certification was effective December 30, 2016 through December 30, 2021. The current certification included the following condition:

Condition 1. In its annual compliance report, the Owner shall report on any FERC Order or FERC correspondence in response to the Owner Agent's notice to FERC dated December 13, 2017 regarding the status of license article 401 and dissolved oxygen measurements. The Owner shall provide a status update on progress in rectifying differences between state water quality standards and FERC license requirements with the annual compliance statement submitted to LIHI. LIHI reserves the right to review or cancel certification and/or modify or add conditions based on the outcome of these matters.

This condition is still active. As a licensed project (FERC No. 2973), license article 401 requires dissolved oxygen (DO) to be no less than 7.0 mg/l or as measured at the dam outlet if higher. This requirement is stricter than the USFS standard embodied in license article 107 of 6.0 mg/l or as measured at the dam outlet if higher. We requested a temporary amendment to article 401 in 2019 due to operational challenges in meeting the higher standard, even with aeration. The request was for five years in order to conduct trial modifications of DO levels that vary seasonally – 8 mg/l in April and May to optimize DO for rainbow trout spawning during the critical period, 7 mg/l in March and June, and 6 mg/l from July – February to otherwise protect the trout fishery. USFS, US Fish and Wildlife Service (FWS), Idaho Department of Fish and Game (IDFG), Idaho Department of Environmental Quality (IDEQ), and the Henry's Fork Foundation (HFF) all concurred with the request, and FERC approved the temporary amendment on August 13, 2019. The amendment allows for the modifications from November 1, 2019 to October 31, 2024.

There have been no other material changes at the project since it was last certified by LIHI.



Figure 1. Project location.



Figure 2. Island Park Layout.

The USBR Island Park dam is a 9,448-foot-long earth fill structure with a maximum height of 91 feet, and a concrete spillway that joins the outlet tunnel at the bottom of the dam. The dam forms the Island Park Reservoir with a surface area of about 7,794 acres. The dam outlet structure includes an intake structure with trashracks and screens, a 12-foot-diameter, concrete circular intake tunnel 238 feet long, a gate chamber, 75 feet long, at the confluence of the spillway, and a 13-foot-diameter, concrete circular tunnel, 500 feet long, with a 3,400 cfs capacity that discharges into the river southwest of the dam and opposite the powerhouse.

The hydroelectric project is a non-federal power plant that was constructed between September 1992 and July 1994. It consists of the screened intake structure with 3/8-inch openings, approximately 720 feet of 10-foot-diameter penstock, a concrete masonry powerhouse with two vertical Francis turbine/generators with a combined capacity of 4.8 MW, one 500 horsepower centrifugal blower, one 250 horsepower positive displacement blower, one 200 horsepower variable speed blower with associated controls, a 60' x 100' aeration basin, and a concrete masonry valve house located on top of the dam. The aeration basin, powerhouse, and a small section of the buried penstock are located at the base of the dam.

The dam creates an impoundment of about 7,794 acres. The project uses waters diverted from the Island Park Reservoir under the direction of the Fremont-Madison Irrigation District and the USBR (Appendix B). Project features are shown in Figures 3-6 below.



Figure 3. USBR Spillway.



Figure 4. USBR Outlet Tunnel.



Figure 5. Island Park Powerhouse.



Figure 6. Island Park Tailrace.

Table 1. Facility Information Table.

<i>Item</i>	<i>Information Requested</i>	<i>Response (include references to further details)</i>
Name of the Facility	Facility name (use FERC project name or other legal name)	Island Park
Reason for applying for LIHI Certification	<ul style="list-style-type: none"> • To participate in state RPS program and specify the state and the total MW/MWh associated with that participation (value and % of facility total Mw/MWh). • To participate in voluntary REC market (e.g., Green-e) • To satisfy a direct energy buyer's purchasing requirement • To satisfy the facility's own corporate sustainability goals • For the facility's corporate marketing purposes • Other (describe) 	To participate in voluntary REC market and satisfy company's sustainability goals.
	If applicable, amount of annual generation (MWh and % of total generation) for which RECs are currently received or are expected to be received upon LIHI Certification	100%
Location	River name (USGS proper name)	Henry's Fork, Snake River
	Watershed name - Select region, click on the area of interest until the 8-digit HUC number appears. Then identify watershed name and HUC-8 number from the map at: https://water.usgs.gov/wsc/map_index.html	Upper Henry's HUC 8: 17040202
	Nearest town(s), county(ies), and state(s) to dam	Island Park, Fremont County, Idaho
	River mile of dam above mouth	91.0
	Geographic latitude of dam	44.418806
	Geographic longitude of dam	-111.396524
Facility Owner	Application contact names (Complete the Contact Form in Section B-4 also):	Dave Peterson Fall River Rural Electric Cooperative
	Facility owner company and authorized owner representative name. For recertifications: If ownership has changed since last certification, provide the effective date of the change.	Bryan Case, General Manager Fall River Rural Electric Cooperative No change
	FERC licensee company name (if different from owner)	n/a
Regulatory Status	FERC Project Number (e.g., P-xxxxx), issuance and expiration dates, or date of	P-2973 issued October 19, 1988 expires September 30, 2038

Item	Information Requested	Response (include references to further details)
	exemption	
	FERC license type (major, minor, exemption) or special classification (e.g., "qualified conduit", "non-jurisdictional")	major
	Water Quality Certificate identifier, issuance date, and issuing agency name. Include information on amendments.	Idaho WQC issued February 18, 1986 https://elibrary.ferc.gov/eLibrary/filed/download?fileid=01CAFFE6-66E2-5005-8110-C31FAFC91712
	Hyperlinks to key electronic records on FERC e-library website or other publicly accessible data repositories	<p>1988 FERC license https://elibrary.ferc.gov/eLibrary/filed/download?fileid=01C4F807-66E2-5005-8110-C31FAFC91712</p> <p>1994 FERC order modifying article 407 https://elibrary.ferc.gov/eLibrary/filed/download?fileid=0014881C-66E2-5005-8110-C31FAFC91712</p> <p>1997 FERC order amending ramping rate plan https://elibrary.ferc.gov/eLibrary/filed/download?fileid=0014EDE5-66E2-5005-8110-C31FAFC91712</p> <p>2003 FERC order amending article 107 https://elibrary.ferc.gov/eLibrary/filed/download?fileid=002FA7F1-66E2-5005-8110-C31FAFC91712</p> <p>2017 FERC order amending ramping rate plan https://elibrary.ferc.gov/eLibrary/filed/download?fileid=01F030C6-66E2-5005-8110-C31FAFC91712</p> <p>2017 FERC order modifying water quality and project operations plan https://elibrary.ferc.gov/eLibrary/filed/download?fileid=01EA931E-66E2-5005-8110-C31FAFC91712</p> <p>2019 FERC order temporarily amending article 401 https://elibrary.ferc.gov/eLibrary/filed/download?fileid=0202B8B9-66E2-5005-8110-C31FAFC91712</p>

<i>Item</i>	<i>Information Requested</i>	<i>Response (include references to further details)</i>
Powerhouse	Date of initial operation (past or future for pre-operational applications)	1992-1994
	Total installed capacity (MW) For recertifications: Indicate if installed capacity has changed since last certification	4.8 No change
	Average annual generation (MWh) and period of record used For recertifications: Indicate if average annual generation has changed since last certification	18,537 Mwhts 1994-2020
	<u>Mode of operation</u> (run-of-river, peaking, pulsing, seasonal storage, diversion, etc.) For recertifications: Indicate if mode of operation has changed since last certification	Run of release No change
	Number, type, and size of turbine/generators, including maximum and minimum hydraulic capacity and maximum and minimum output of each turbine and generator unit	Two vertical Francis units, 2.4 MW each.
	Trashrack clear spacing (inches) for each trashrack	3/8-inch
	Approach water velocity (ft/s) at each intake if known	Not known
	Dates and types of major equipment upgrades For recertifications: Indicate only those since last certification	N/A
	Dates, purpose, and type of any recent operational changes For recertifications: Indicate only those since last certification	N/A
	Plans, authorization, and regulatory activities for any facility upgrades or license or exemption amendments	N/A
Dam or Diversion	Date of original dam or diversion construction and description and dates of subsequent dam or diversion structure modifications	1939
	Dam or diversion structure length, height including separately the height of any flashboards, inflatable dams, etc. and describe seasonal operation of flashboards and the like	9,448-foot-long earthfill dam, maximum height 91 ft. There is a one-foot adjustable bladder dam atop the spillway.
	Spillway maximum hydraulic capacity	3,400 cfs
	Length and type of each penstock and water conveyance structure between the impoundment and powerhouse	720-foot-long penstock
	Designated facility purposes (e.g., power, navigation, flood control, water supply, etc.)	Flood control, irrigation, hydroelectric power

<i>Item</i>	<i>Information Requested</i>	<i>Response (include references to further details)</i>
Conduit Facilities Only	Date of conduit construction and primary purpose of conduit	n/a
	Source water	n/a
	Receiving water and location of discharge	n/a
Impoundment and Watershed	Authorized maximum and minimum impoundment water surface elevations For recertifications: Indicate if these values have changed since last certification	n/a Run of river No change
	Normal operating elevations and normal fluctuation range For recertifications: Indicate if these values have changed since last certification	n/a Run of river No change
	Gross storage volume and surface area at full pool For recertifications: Indicate if these values have changed since last certification	Surface area: 7,794 acres Gross Storage: 135,500 acre-feet No change
	Usable storage volume and surface area For recertifications: Indicate if these values have changed since last certification	n/a run of release operation based on USBR reservoir management
	Describe requirements related to impoundment inflow and outflow, elevation restrictions (e.g., fluctuation limits, seasonality) up/down ramping and refill rate restrictions.	Discharge ramping restrictions, see section 3.a below
	Upstream dams by name, ownership and river mile. If FERC licensed or exempt, please provide FERC Project number of these dams. Indicate which upstream dams have downstream fish passage.	Henry's Lake, North Fork Reservoir Company. RM 122 Non-hydro No fish passage
	Downstream dams by name, ownership, river mile and FERC number if FERC licensed or exempt. Indicate which downstream dams have upstream fish passage	Ashton, Pacificorp RM 45 FERC No. 2381 licensed No fish passage Chester Diversion, Fall River Rural Electric Cooperative RM 38.5 FERC No. 11879 licensed Has upstream and downstream fish passage
	Operating agreements with upstream or downstream facilities that affect water availability and facility operation	None, project operates under USBR and USFS agreements
	Area of land (acres) and area of water (acres) inside FERC project boundary or under facility control. Indicate locations and acres of flowage rights versus fee-owned property.	1.2 acres of land

<i>Item</i>	<i>Information Requested</i>	<i>Response (include references to further details)</i>
<i>Hydrologic Setting</i>	Average annual flow at the dam, and period of record used	567 cfs, 2010 - 2020
	Average monthly flows and period of record used	2010-2020: Month cfs Jan 369 Feb 374 Mar 374 Apr 523 May 814 Jun 869 Jul 1,110 Aug 867 Sep 545 Oct 308 Nov 249 Dec 362
	Location and name of closest stream gaging stations above and below the facility	Upstream (1995 – 2017): USGS #13041010 HENRY’S FORK BLW COFFEE POT RAPIDS NR MACKS INN ID Downstream: USGS #13042500 HENRY’S FORK NR ISLAND PARK ID
	Watershed area at the dam (in square miles). Identify if this value is prorated from gage locations and provide the basis for proration calculation.	About 501 sq. miles
	Other facility specific hydrologic information	n/a
<i>Designated Zones of Effect</i>	Number of zones of effect	2
	Type of waterbody (river, impoundment, bypassed reach, etc.)	Zone 1: impoundment Zone 2: tailrace/downstream reach
	Upstream and downstream locations by river miles	Zone 1: RM 91 – RM 91.1 (immediate dam area) Zone 2: Rm 91 – RM 90.5
	Delimiting structures or features	The dam delimits zones 1 and 2

2. STANDARDS MATRICES

Table 2. Standards Selections.

		Zone:	1: Impoundment	2: Tailrace/ Downstream
River Mile Extent:			RM 91-91.1	RM 91-90.5
Criterion			Standards Selected	
A	Ecological Flows		1	2
B	Water Quality		3	3, PLUS
C	Upstream Fish Passage		1	1
D	Downstream Fish Passage		1	1
E	Shoreline and Watershed Protection		1	1
F	Threatened and Endangered Species		1	1
G	Cultural and Historic Resources		1	1
H	Recreational Resources		2	2

Figure 7 shows the Zones of Effect.



Figure 7. Zones of Effect.

3. SUPPORTING INFORMATION

a. Ecological Flow Regimes

Criterion	Standard	Instructions
A	2	<p><u>Agency Recommendation:</u></p> <ul style="list-style-type: none"> Identify the proceeding and source, date, and specifics of the agency recommendation applied (NOTE: there may be more than one; identify and explain which is most environmentally protective). Explain the scientific or technical basis for the agency recommendation, including methods and data used. This is required regardless of whether the recommendation is or is not part of a Settlement Agreement. Explain how the recommendation relates to formal agency management goals and objectives for fish and wildlife. Explain how the recommendation provides fish and wildlife protection, mitigation and enhancement (including in-stream flows, ramping and peaking rate conditions, and seasonal and episodic instream flow variations). Explain how flows are monitored for compliance.

Zone 1, the impoundment qualifies for Standard A-1. There is no bypassed reach, and the project operates in a run-of-release mode based on discharges from Island Park Reservoir that are managed by USBR for flood control, downstream irrigation needs, and fishery habitat. Releases are made through the powerhouse when operating or through the spillway or typically through the outlet tunnel when the powerhouse is offline or when USBR needs to release water in excess of the powerhouse discharge capacity. There is a one-foot tall adjustable bladder dam on the spillway crest that allows a one-foot surcharge of the reservoir pool elevation in order to maximize power generation and allow mixing of water released from the reservoir to optimize water temperature for downstream fish habitat. Water is stored at a higher rate during the fall and early winter (less water released) so that more water can be released during the late winter, when it has the greatest benefit per unit of discharge to the fish population.¹

Water allocation and releases during drought conditions are planned for and addressed through the *Henry's Fork Drought Management Plan*, a collaborative plan developed in 2005 by representatives from the Fremont-Madison Irrigation District, HFF, the North Fork Reservoir Company, Trout Unlimited, The Nature Conservancy, and USBR. The plan was most recently revised in 2018.² The plan's purpose is to maintain or enhance watershed health and ecology, even in years of below-average precipitation, in balance with agricultural needs through flexible and adaptive water management within the context of Idaho water law. Water discharged from Island Park Reservoir is managed to optimize irrigation, fish and wildlife populations, aquatic processes, hydropower production, and long-term dam maintenance. Water needs are determined and planned via quarterly meetings of the drought management planning committee that consider irrigation needs, precipitation and snow pack, and forecasted precipitation to adaptively manage summer and winter flows into the river.

Zone 2, the tailrace/downstream reach qualifies for Standard A-2. The natural hydrology of the upper

¹ http://www2.humboldt.edu/Henry'sfork/Documents_Presentations/HF%20Eco%20Flow_final.pdf

² https://a45c4b10-c4e8-47c9-b523-9eff9b2f5952.filesusr.com/ugd/650d73_c5fbc4dafd6647c2981237b72284e29d.pdf

Henry's Fork is dominated by groundwater inputs from springs at the base of the Yellowstone Plateau. The river's natural hydrology therefore has lower peak flows and higher base flows than are typical of the region. The stream channel in the three river miles downstream of the dam is highly confined in a narrow canyon with substrate consisting of bedrock, large boulders and cobble resulting in habitat conditions that remain static with depth based on only on flow levels. Flow in the Henry's Fork immediately downstream of Island Park Dam is controlled exclusively by operation of the dam, although the effects of dam operations are mediated less than one-half mile downstream at the confluence of the Buffalo River. The Buffalo is a spring-fed tributary that provides year-round flow that ranges from about 200 to 600 cfs. For comparison, median natural flows in the Henry's Fork at the location of the dam range from about 550 cfs during the winter to about 1200 cfs during runoff.³

Operation of dam releases has evolved over time under the Henry's Fork Drought Management Plan to lower outflow from the dam as early as possible in the fall to store water prior to the onset of cold weather, usually in late November or early December. Outflow is then increased as much as possible over the coldest part of the winter while still meeting reservoir fill objectives to support the overwintering fishery. Actual outflow is often adjusted slightly to accommodate power generation at the Island Park hydroelectric plant. Since 2014, greater attention has been paid to spring and summer operations, and small adjustments have been made when possible to ensure that the reservoir is 100% full when storage delivery is first needed and to provide flows sufficient for float fishing early and late in the fishing season.

Figure 8 shows the 2020 hydrograph which reflects the irrigation-driven management with low flows from October – April when water is stored and high flows from May – September when water is released for irrigation.

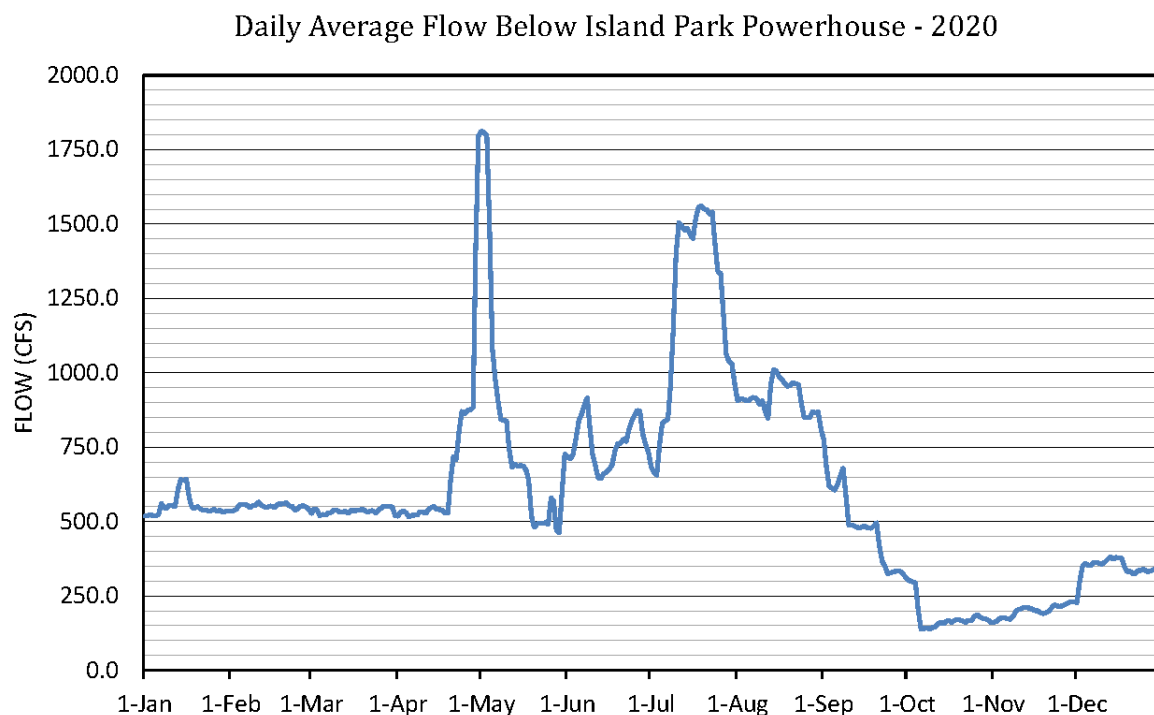


Figure 8. Typical Average Daily Flow.

³ http://www2.humboldt.edu/Henry'sfork/Documents/Presentations/HF%20Eco%20Flow_final.pdf

Specific to the hydroelectric project, there is no minimum flow requirement as flows are controlled by USBR. At the time of FERC licensing, habitat studies were conducted and IDFG initially requested a minimum flow of 300 cfs but later withdrew the request. In 2017⁴, IDFG reported that “hydropower use of the Island Park Dam does not, by generating electricity, impact streamflow”. And, in a letter to LIHI at the time of the last recertification, IDFG reported that “flows from Island Park Dam currently allow for a healthy trout population downstream of the dam”.⁵

License article 117 specifies that the Project construction, operation, and maintenance is not to damage the dam structural integrity or interfere with the operation of the USBR federal reservation. “Operation of the powerplant shall be secondary to the operation and maintenance of the federal reservation. No water will be released solely for hydroelectric generation”. Article 126 states “Operation not to interfere with use, storage, or release of water from the reservoir and shall be subordinate to USBR operating standards”.

Article 127 requires cooperation with agencies on special flow releases made by USBR for trumpeter swans, if needed, to maintain their wintering and feeding grounds located downstream near Harriman State Park. The species is not a protected species but there is a management plan developed by the Pacific Flyway Council⁶ to maintain the population and its habitat in the Rocky Mountain region. At the time of licensing, Harriman State Park notified USBR when additional flow releases were needed to open up feeding areas during adverse weather conditions. The need to make special flow releases has not occurred in many years.

Article 403 (amended in 1997) requires a ramping rate plan that limits the rate of changes in river flow from the powerhouse to 50 cfs every half-hour during up-ramping and 50 cfs every half hour (with a +/- 0.3 foot fluctuation at the downstream water level transducer) during down-ramping from 7 pm to 5 am. The rates can be temporarily modified under emergency conditions or for short periods with agreement from USBR, USFS, and IDFG. A flow gage downstream of the dam is used to monitor operations and flow changes. Monthly ramping rate reports are filed with the resource agencies and annual reports are filed with FERC identifying any instances of deviations. The plan was modified to use the existing USGS gage rather than another installed gage near the same location below the dam. FERC approved that modification in 2017.⁷ The most recent annual report was filed in January 2021.⁸

Installation of a new plant operating system at the end of 2016 significantly reduced the number of ramping rate deviations prior to that time. The plant upgrade included tying the project’s PLC into the USBR discharge gates so that any turbine unit trip would trigger the gate(s) to open. A total of 5 reportable deviations occurred from 2017 – present and none were considered by FERC to be license violations. Additional short term deviations not subject to FERC reporting are detailed in the annual reports and have been primarily due to USBR gate malfunctions.

⁴ See Appendix D in https://lowimpachydro.org/wp-content/uploads/2021/10/001-Island-Park-Application-Long-Form_FINAL_-12_23_2016.pdf

⁵ https://lowimpachydro.org/wp-content/uploads/2021/10/IDFG-letter_20171025_071217.pdf

⁶ http://www.pacificflyway.gov/Documents/Rmts_plan.pdf

⁷ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=01F030C6-66E2-5005-8110-C31FAFC91712>

⁸ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=020B6313-66E2-5005-8110-C31FAFC91712>

b. Water Quality

<i>Criterion</i>	<i>Standard</i>	<i>Instructions</i>
B	3	<u>Site-Specific Studies:</u> <ul style="list-style-type: none"> Document consultation with appropriate water quality agency to determine what water quality parameters and sampling methods are required. Present recent water quality data from the facility or from other sources in the vicinity of the facility (e.g., data collected from the state, watershed associations, or others who collected data under generally accepted sampling protocols and quality assurance procedures) and explain and demonstrate how it satisfies current applicable water quality standards including designated uses, or provide a letter from the appropriate state or other regulatory agency accepting the data.
B	PLUS	<u>Bonus Activities:</u> <ul style="list-style-type: none"> Describe any advanced technologies or methods that have been deployed at the facility to enhance ambient water quality and how its performance is being monitored. If adaptive management is being applied, describe the management objectives, the monitoring program in place to evaluate performance against those objectives, and the management actions that will be taken in response to monitoring results.

Both zones qualify for Standard B-3 and the tailrace/downstream reach also qualifies for the PLUS standard.

Idaho's designated uses for Henry's Fork from the reservoir downstream to Thurman Creek are aquatic life: cold water communities – salmonid spawning; primary contact recreation; and domestic water supply. A salmonid spawning designation generally invokes more stringent temperature and dissolved oxygen criteria (DO) compared to other aquatic life designations. The Idaho 2018/2020 Integrated Report identifies the reach encompassing the project (assessment unit ID ID17040202SK015) has insufficient data and information to determine if beneficial uses are being attained and is listed as Category 3, not assessed.⁹ The project was issued a water quality certification in 1986 from the state of Idaho. The certification contains no conditions.

Water quality is maintained during project operations according to the standards for DO, temperature, and total gas pressure (TGP) as described in license articles 106, 107, 130, 401, and 402. Annual data summaries for DO and temperature are required under article 130 (modified in a FERC letter dated February 7, 1995). If the criteria for any of the water quality parameters are exceeded FERC must also be notified. Article 401 sets a standard for DO of 7 mg/l or the concentration at the dam outlet structure, whichever is higher than the current state standard of 6 mg/l. In 2017¹⁰, FERC approved discontinuation of TGP monitoring with concurrence of resource agencies since TGP was shown to be maintained over a range of operational conditions and that gas bubble disease is not a concern downstream of the project. DO and temperature are monitoring continuously, and annual reports are filed with FERC.

An adjustable rubber dam on the spillway, while not part of the FERC-licensed Project, was built for the purposes of maximizing power generation at the project. Additionally, the rubber dam allows for mixing of water released from the bottom of the reservoir with water from the surface of the reservoir. This allows overall releases from the reservoir to be mixed in an effort to optimize water temperatures for

⁹ <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/14890>

¹⁰ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=020ba153-66e2-5005-8110-c31fafc91712>

downstream fish habitat requirements. The project uses an aeration basin (Figure 9) below the dam to oxygenate water as it comes over the dam's large drop, in accordance with license article 129. The aeration basin promotes fish survival below the dam and a fish screen on the turbine intake keeps fish from becoming entrained in the hydropower facility.

In 2019 FRREC and fishery stakeholders requested a temporary modification to license article 401¹¹ due to operational challenges in meeting the 7 mg/l DO requirement even with the aeration system in operation during late summer and early fall. If DO levels cannot be met, project operations are shut down resulting in significant loss of generation. FERC approved modifying the water quality monitoring plan and project operations plan for a period of five years, from November 2019 – October 2024.¹² The modification is intended to sustain or improve the health of the fishery while allowing for increased generation during some periods of the year. The plan requires 8 mg/l DO in April and May during the critical fish spawning period for optimal survival and development of rainbow trout eggs and fry, 7 mg/l in March and June on either end of the critical period, and 6 mg/l (the state standard) during the rest of the year to fully protect the trout fishery.

The modified plan continues to use the aeration system as needed to meet DO levels, and if/when the DO level cannot be met, project operations would cease, and flows would be transferred to the dam's outlet gates.



Figure 9. Aeration Basin.

IDFG conducts annual trout population surveys in the reach of Henry's Fork immediately downstream of the dam during the trial period in order to assess the fishery's response to the trial DO levels. Annual stakeholder meetings are held to assess the trout fishery's response to the trial.

¹¹ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=01FEE27A-66E2-5005-8110-C31FAFC91712>

¹² <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=01EA931E-66E2-5005-8110-C31FAFC91712>

The most recent 2020 water quality report was filed in early 2021.¹³ It showed that DO levels were met with the aeration system on all but four days, at which time operations were shut down, significantly less often than in previous years. Since the project enhances DO and temperature in water discharged into the river and uses an adaptive management approach to monitor and adjust operations to protect water quality and the fishery, the project it should qualify for the PLUS standard.

c. Upstream Fish Passage

<i>Criterion</i>	<i>Standard</i>	<i>Instructions</i>
C	1	<p>Not Applicable / De Minimis Effect:</p> <ul style="list-style-type: none"> • Explain why the facility does not impose a barrier to upstream fish passage in the designated zone. Typically, impoundment zones will qualify for this standard since once above a dam and in an impoundment, there is no facility barrier to further upstream movement. • Document available fish distribution data and the lack of migratory fish species in the vicinity. • If migratory fish species have been extirpated from the area, explain why the facility is not or was not the cause of the extirpation.

Both zones qualify for Standard C-1.

Henrys Fork supports rainbow trout, brook trout, mountain whitefish, and several non-game species. In the 1930s, construction of the nearby Buffalo River Dam blocked upstream fish passage to the Buffalo River, the only large tributary to the Henrys Fork between Island Park Dam and Mesa Falls located about 26 miles downstream (Figure 10), two barriers that isolate this reach of Henrys Fork.

The IDFG Fisheries Management Plan 2019-2024¹⁴ identifies the river as a coldwater fishery managed for wild rainbow and brook trout. The reach above the dam supports a world famous wild Rainbow Trout fishery. Since the Project is in the Snake River headwaters with natural barriers downstream, diadromous fish did not use the Project area historically and there is no program to introduce them. There are also no formal passage prescriptions for riverine fish at Island Park Dam although authority is reserved under license article 404.

This is fish passage at the adjacent Buffalo River dam While there is access to this tributary, Henrys Fork is also considered important for spawning and overwintering of trout.

¹³ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=020BA153-66E2-5005-8110-C31FAFC91712>

¹⁴ <https://idfg.idaho.gov/sites/default/files/2019-2024-idaho-fisheries-management-plan-original.pdf>



Figure 10. Upper Mesa Falls, Targhee National Forest, on Henry's Fork 26 miles downstream of the Project.

d. Downstream Fish Passage and Protection

<i>Criterion</i>	<i>Standard</i>	<i>Instructions</i>
D	1	<p><u>Not Applicable / De Minimis Effect:</u></p> <ul style="list-style-type: none"> • Explain why the facility does not impose a barrier to downstream fish passage in the designated zone, considering both physical obstruction and increased mortality relative to natural downstream movement (e.g., entrainment into hydropower turbines). Typically, tailwater/downstream zones will qualify for this standard since below a dam and powerhouse there is no facility barrier to further downstream movement. Bypassed reach zones must demonstrate that flows in the reach are adequate to support safe, effective and timely downstream migration. • For riverine fish populations that are known to move downstream, explain why the facility does not contribute adversely to the species populations or to their access to habitat necessary for successful completion of their life cycles. • Document available fish distribution data and the lack of fish species requiring passage in the vicinity. • If migratory fish species have been extirpated from the area, explain why the facility is not or was not the cause of the extirpation.

Both zones qualify for Standard D-1.

As noted above there are no migratory species in this section of the Henry's Fork due to the downstream natural barrier, and there are no agency prescriptions or requirements for downstream fish passage.

Resident species include rainbow trout, brook trout, mountain whitefish, and several non-game species, none of which require passage to complete their life cycles. Some of these species are stocked in Island Park Reservoir.

The IDFG fishery management plan reports that densities of trout downstream of the project in Box Canyon have increased since 2008, with improvements by USBR in winter flow management from Island Park Dam. Higher flows through the winter result in higher overwinter survival of juvenile trout and subsequent recruitment to the fishery below Island Park Reservoir. In addition, the drought management plan described in Section 3.a above has improved communication and coordination among water managers and users that now serves to enhance downstream fishery conditions.

Specific to the hydro facility, the aeration basin below the dam oxygenates discharged water and promotes fish survival and supports habitat below the dam. A 3/8-inch fish screen on the intake keeps fish from becoming entrained, in accordance with license article 128. While small fish could become entrained, the intake is located at the bottom of the reservoir, and area not occupied by small fish. The risk of entrainment is negligible.

e. Shoreland and Watershed Protection

<i>Criterion</i>	<i>Standard</i>	<i>Instructions</i>
E	1	<p><u>Not Applicable / De Minimis Effect:</u></p> <ul style="list-style-type: none"> If there are no lands with significant ecological value associated with the facility, document and justify this (e.g., describe the land use and land cover within the FERC project or facility boundary). Document that there have been no Shoreline Management Plans or similar protection requirements for the facility.

Both zones qualify for Standard E-1.

The lands at the project site (1.2 acres) and the impoundment and contributing watershed are primarily in federal ownership or control as part of the Caribou-Targhee National Forest. There are no requirements for a shoreline management or similar protection plan. There are no lands of significant ecological value and there are no designated critical habitats for threatened or endangered species (see below).

The project area is located on the rim of an inactive collapsed volcano called the Island Park caldera. The project area varies from forested mountains to rolling hills and some areas vegetated with low shrubs. Land use adjacent to the project is rural with timber production, rangeland, and irrigated crop land. The reach downstream of the dam is comprised of a deep ravine.

At the time of licensing and construction, license articles 108, 131 and standard article 19 required an erosion control plan and control measures. Articles 109 and 110 required a solid waste and wastewater disposal plan, and a hazardous materials storage and spill prevention plan, respectively.

Article 112 required a USFW approved plan for project design in a manner to preserve/enhance site aesthetics. This was accomplished by burying the penstock and transmission line and using building materials and colors that blend in with the surrounding area.

f. Threatened and Endangered Species

<i>Criterion</i>	<i>Standard</i>	<i>Instructions</i>
F	1	<p>Not Applicable / De Minimis Effect:</p> <ul style="list-style-type: none">• Document that there are no listed species in the facility area or affected riverine zones downstream of the facility.• If listed species are known to have existed in the facility area in the past but are not currently present, explain why the facility was not the cause of the extirpation of such species.• If the facility is making significant efforts to reintroduce an extirpated species, describe the actions that are being taken.

Both Zones qualify for Standard F-1.

An online data check was conducted in October 2021 for federally listed species in the immediate project area. The report identifies the following species as possibly present: the threatened Canada lynx and grizzly bear along with the monarch butterfly which is a candidate for listing (Appendix C). Several species of migratory birds may also be present on a periodic basis, including bald eagle. Idaho does not have an endangered species act law but maintains a list of sensitive species for classification purposes, including Canada lynx which is classified as threatened. The project lands occupy only about 1.2 acres on federal lands which do not include significant habitat for the listed species. No project operations or maintenance activities would impact the listed species even if they were present.

g. Cultural and Historic Resources

<i>Criterion</i>	<i>Standard</i>	<i>Instructions</i>
G	1	<p>Not Applicable / De Minimis Effect:</p> <ul style="list-style-type: none">• Document that there are no cultural or historic resources located on facility lands that can be affected by construction or operations of the facility; or• Document that the facility construction and operation have not in the past, nor currently adversely affect any cultural or historic resources that are present on facility lands.

Both Zones qualify for Standard G-1.

Surveys were conducted at the time of licensing and no identified cultural or historic resources within the project footprint were found. Project facilities are not eligible for listing on the National Register of Historic Places. The State Historic Preservation Office (SHPO) had made a no-effect finding on December 9, 1985 during the licensing process¹⁵. However, license article 405 requires consultation and development of a cultural resources management plan with USFS or USBR approval for any land clearing or earth disturbance.

FERC also recommended in the relicensing environmental assessment that prior to land-clearing or land-disturbing activities, consultation should occur with the State Historic Preservation Office (SHPO), USFS, and USBR about the need to conduct surveys and develop avoidance and mitigation plans with approval of USFS prior to any disturbance.

¹⁵ See Appendix I https://lowimpacthydro.org/wp-content/uploads/2021/10/001-Island-Park-Application-Long-Form_FINAL_-12_23_2016.pdf

h. Recreational Resources

<i>Criterion</i>	<i>Standard</i>	<i>Instructions</i>
H	2	<u>Agency Recommendation:</u> <ul style="list-style-type: none">• Document any comprehensive resource agency recommendations and enforceable recreation plan that is in place for recreational access or accommodations.• Document that the facility is in compliance with all such recommendations and plans.

Both Zones qualify for Standard H-2.

The primary recreation activity on the river and around the project is fishing and boating, including in the reservoir. License articles 105 and 133 required consultation with the National Park Service, USFS, USBR, and the Idaho Department of Parks and Recreation and filing of a Report on Recreational Resources which was completed at the time of licensing¹⁶. Recreation enhancements included making improvements and additions to the Project's Box Canyon boat launch site (Figure 11). Specifically, FRREC reconstructed the existing parking area, improved the existing access road and boat launch, and installed restroom facilities, a fishing platform, informative/interpretive signs, and a trail at the site (also associated with the Buffalo River project). As-built drawings were approved by FERC order dated November 3, 1994.



Figure 11. Parking Area at Boat Launch and Fishing Platform.

¹⁶ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=0009DA1F-66E2-5005-8110-C31FAFC91712>

Article 407 required replacing and maintaining portions of the USFS-owned Brimstone cross country ski trail that would cross the project and would be disturbed by project construction and operation. Since construction was completed the Brimstone trail has been open to skiers through the season and is part of the cross country ski trail system that is maintained by the USFS. Standard license articles 17 and 18 required construction and maintenance of recreation facilities, and allowing free access to project lands and waters, respectively.

FERC conducted an environmental inspection in 2017¹⁷ that confirmed recreation facilities were maintained and required installation of new warning signs, Part 8 signs, and filing of a public safety plan. The plan was filed in 2018¹⁸ and the warning and Part 8 signs were installed in the spring of 2018.

¹⁷ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=01EE28E4-66E2-5005-8110-C31FAFC91712>

¹⁸ <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=01FAB0D0-66E2-5005-8110-C31FAFC91712>

4. FACILITY AND STAKEHOLDER CONTACTS FORMS

Project Owner:	
Name and Title	Bryan Case, General Manager
Company	Fall River Rural Electric Cooperative, Inc.
Phone	208-652-7051
Email Address	bryan.case@fallriverelectric.com
Mailing Address	1150 North 3400 East, Ashton, Idaho 83420
Project Operator (if different from Owner):	
Name and Title	
Company	
Phone	
Email Address	
Mailing Address	
Consulting Firm / Agent for LIHI Program (if applicable):	
Name and Title	
Company	
Phone	
Email Address	
Mailing Address	
Compliance Contact (responsible for LIHI Program requirements):	
Name and Title	Dave Peterson
Company	Fall River Rural Electric Cooperative, Inc.
Phone	208-652-7431
Email Address	Dave.Peterson@fallriverelectric.com
Mailing Address	
Party responsible for accounts payable:	
Name and Title	Roz Preston, Accounting Specialist
Company	Fall River Rural Electric Cooperative, Inc.
Phone	208-652-7035
E mail Address	roz.preston@fallriverelectric.com
Mailing Address	1150 North 3400 East, Ashton, Idaho 83420

Current and relevant state, federal, and tribal resource agency contacts with knowledge of the facility (copy and repeat the following table as needed).

Agency Contact		Area of Responsibility
Agency Name	United States Forest Service	<input type="checkbox"/> Flows
Name and Title	Liz Davy District Ranger	<input checked="" type="checkbox"/> Water Quality
Phone	208 652-1203	<input checked="" type="checkbox"/> Fish/Wildlife
Email address	Elizabeth.davy@usda.gov	<input checked="" type="checkbox"/> Watershed
Mailing Address	46 highway 20 P.O. Box 858 Ashton, ID 83420	<input checked="" type="checkbox"/> T&E Species
		<input checked="" type="checkbox"/> Cultural/Historic
		<input checked="" type="checkbox"/> Recreation
Agency Contact		Area of Responsibility
Agency Name	Idaho Fish and Game	<input checked="" type="checkbox"/> Flows
Name and Title	Brett High Regional Fisheries Manager	<input checked="" type="checkbox"/> Water Quality
Phone	(208) 525-7290	<input checked="" type="checkbox"/> Fish/Wildlife
Email address	brett.high@idfg.idaho.gov	<input type="checkbox"/> Watershed
Mailing Address	4279 Commerce Circle Idaho Falls, ID 83402	<input checked="" type="checkbox"/> T&E Species
		<input type="checkbox"/> Cultural/Historic
		<input checked="" type="checkbox"/> Recreation
Agency Contact		Area of Responsibility
Agency Name	US Fish and Wildlife Service	<input type="checkbox"/> Flows
Name and Title		<input type="checkbox"/> Water Quality
Phone	208-237-6615	<input checked="" type="checkbox"/> Fish/Wildlife
Email address		<input type="checkbox"/> Watershed
Mailing Address	4425 Burley Dr., Suite A, Chubbuck, ID 83202	<input checked="" type="checkbox"/> T&E Species
		<input type="checkbox"/> Cultural/Historic
		<input type="checkbox"/> Recreation
Agency Contact		Area of Responsibility
Agency Name	Idaho Department of Environmental Quality	<input type="checkbox"/> Flows
Name and Title	Troy Saffle	<input checked="" type="checkbox"/> Water Quality
Phone	208-528-2650	<input type="checkbox"/> Fish/Wildlife
Email address	troy.saffle@deq.idaho.gov	<input type="checkbox"/> Watershed
Mailing Address	900 N. Skyline Drive, Suite B Idaho Falls, ID 83402	<input type="checkbox"/> T&E Species
		<input type="checkbox"/> Cultural/Historic
		<input type="checkbox"/> Recreation

Current stakeholder contacts that are actively engaged with the facility (copy and repeat the following table as needed).

<i>Stakeholder Contact</i>		<i>Area of Responsibility</i>
Organization Name	Henry's Fork Foundation	<input checked="" type="checkbox"/> Flows <input checked="" type="checkbox"/> Water Quality <input checked="" type="checkbox"/> Fish/Wildlife <input checked="" type="checkbox"/> Watershed <input type="checkbox"/> T&E Species <input type="checkbox"/> Cultural/Historic <input checked="" type="checkbox"/> Recreation
Name and Title	Rob VanKirk Ph.D. Senior Scientist	
Phone	208 652-3567	
Email address	rob@henrysfork.org	
Mailing Address	P.O. Box 550 Ashton, ID 83420	

5. SWORN STATEMENTN AND WAIVER FORM

All applications for LIHI Certification must include the following sworn statement before they can be reviewed by LIHI:

SWORN STATEMENT

As an Authorized Representative of FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.,
the Undersigned attests that the material presented in the application is true and complete.

The Undersigned acknowledges that the primary goal of the Low Impact Hydropower Institute's certification program is public benefit, and that the LIHI Governing Board and its agents are not responsible for financial or other private consequences of its certification decisions.

The Undersigned further acknowledges that if LIHI Certification of the applying facility is granted, the LIHI Certification Mark License Agreement must be executed prior to marketing the electricity product as LIHI Certified®.

The Undersigned further agrees to hold the Low Impact Hydropower Institute, the Governing Board and its agents harmless for any decision rendered on this or other applications, from any consequences of disclosing or publishing any submitted certification application materials to the public, or on any other action pursuant to the Low Impact Hydropower Institute's certification program.

FOR PRE-OPERATIONAL CERTIFICATIONS:

Not applicable

Company Name: FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

Authorized Representative:

Name: DAVE PETERSON

Title: MANAGER OF ENGINEERING

Authorized Signature: 

Date: 10/29/2021

APPENDIX A – USFS SPECIAL USE PERMIT

Authorization ID: CT28 Contact Name: FALL RIVER RURAL ELECTRIC, COOPERATIVE, INC. Expiration Date: 12/31/2050 Use Code: 641	FS-2700-4 (VER. 03/17) OMB 0596-0082
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**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

SPECIAL USE PERMIT

Authority: FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976

FALL RIVER RURAL ELECTRIC, COOPERATIVE, INC. of 1150 N. 3400 E. ASHTON, ID 83420 UNITED STATES (hereinafter "the holder") is authorized to use or occupy National Forest System lands on the **Ashton/Island Park and Teton Basin Ranger Districts in the CARIBOU-TARGHEE NATIONAL FOREST** of the National Forest System, subject to the terms and conditions of this special use permit (the permit).

This permit covers approximately 2,110 acres or 250 miles ("the permit area"), as shown on the map attached as Appendix A. A table describing the physical location of distribution and transmission lines be attached as Appendix B. This and any other appendices to this permit are hereby incorporated into this permit.

This permit is issued for the purpose of:

Operating and maintaining overhead / underground power lines and substations for transmission and distribution of electrical energy on the Ashton - Island Park and Teton Basin Ranger Districts within the Caribou-Targhee National Forest.

Footage and acreage for the Teton Basin Ranger District is as follows:

Overhead footage - 224,228 feet covering 514.76 acres (BPA 115kV line)

Underground footage - 153,332 feet covering 351.75 acres

There are no substations on Forest Service land in Teton Basin

Footage and acreage for the Ashton/Island Park Ranger District is as follows:

Overhead footage - 622,642 feet covering 1,128.50 acres

Underground footage - 314,961 feet covering 108.46 acres

Substations - Sawtelle, Island Park, Macks Inn, Ponds, Ponds Propane Tank, Last Chance, and Pinehaven covering 6.12 acres

Total footage and acreage of existing infrastructure is as follows:

Overhead footage - 846,870 feet covering 1,643.26 acres

Underground footage - 468,293 feet covering 460.21 acres

Substations - 6.12 acres

TERMS AND CONDITIONS

I. GENERAL TERMS

A. AUTHORITY. This permit is issued pursuant to the FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976 and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

B. AUTHORIZED OFFICER. The authorized officer is the Forest or Grassland Supervisor or a subordinate officer with delegated authority.

C. TERM. This permit shall expire at midnight on **12/31/2050, 30 years** from the date of issuance.

D. CONTINUATION OF USE AND OCCUPANCY. This permit is not renewable. Prior to expiration of this permit, the holder may apply for a new permit for the use and occupancy authorized by this permit. Applications for a new permit must be submitted at least 6 months prior to expiration of this permit. Issuance of a new permit is at the sole discretion of the authorized officer. At a minimum, before issuing a new permit, the authorized officer shall ensure that (1) the use and occupancy to be authorized by the new permit is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new permit is the same as the type of use and occupancy authorized by this permit; and (3) the holder is in compliance with all the terms of this permit. The authorized officer may prescribe new terms and conditions when a new permit is issued.

E. AMENDMENT. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable forest land and resource management plan, or projects and activities implementing a land management plan pursuant to 36 CFR Part 215.

F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS. In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

G. NON-EXCLUSIVE USE. The use or occupancy authorized by this permit is not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the authorized officer agree are necessary to protect the installation and operation

of authorized temporary improvements, the lands and waters covered by this permit shall remain open to the public for all lawful purposes.

H. ASSIGNABILITY. This permit is not assignable or transferable.

II.IMPROVEMENTS

A. LIMITATIONS ON USE. Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity, unless specifically authorized by this permit. Any use not specifically authorized by this permit must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.

B. PLANS. All plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans must be prepared by a professional engineer, architect, landscape architect, or other qualified professional based on federal employment standards acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

C. CONSTRUCTION. Any construction authorized by this permit shall commence by N/A and shall be completed by N/A.

III. OPERATIONS.

A. PERIOD OF USE. Use or occupancy of the permit area shall be exercised at least **90** days each year.

B. CONDITION OF OPERATIONS. The holder shall maintain the authorized improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this permit. Standards are subject to periodic change by the authorized officer when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest resources. The holder shall comply with inspection requirements deemed appropriate by the authorized officer.

C. OPERATING PLAN. The holder shall prepare and revise an operating plan as needed. The operating plan shall be prepared in consultation with the authorized officer or the authorized officer's designated representative and shall cover all operations authorized by this permit. The operating plan shall outline steps the holder will take to protect public health and safety and the environment and shall include sufficient detail and standards to enable the Forest Service to monitor the holder's operations for compliance with the terms and conditions of this permit. The operating plan shall be submitted by the holder and approved by the authorized officer or the authorized officer's designated representative prior to commencement of operations and shall be attached to this permit as an appendix. The authorized officer may require an annual meeting with the holder to discuss the terms

and conditions of the permit or operating plan, annual use reports, or other concerns either party may have.

D. MONITORING BY THE FOREST SERVICE. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permit area and transmission facilities at any time for compliance with the terms of this permit. The holder shall comply with inspection requirements deemed appropriate by the authorized officer. The holder's obligations under this permit are not contingent upon any duty of the Forest Service to inspect the permit area or transmission facilities. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms and conditions of this permit.

IV. RIGHTS AND LIABILITIES

A. LEGAL EFFECT OF THE PERMIT. This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR 214 and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

B. VALID EXISTING RIGHTS. This permit is subject to all valid existing rights. Valid existing rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the holder for the exercise of any such right.

C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS. The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

D. SERVICES NOT PROVIDED. This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other such service by a government agency, utility, association, or individual.

E. RISK OF LOSS. The holder assumes all risk of loss associated with use or occupancy of the permit area, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and other forces of nature. If authorized temporary improvements in the permit area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

F. DAMAGE TO UNITED STATES PROPERTY. The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs and damage to government-owned improvements covered by this permit.

1. The holder shall be liable for all injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, or other costs in connection with rehabilitation or

restoration of natural resources resulting from the use or occupancy authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.J.

2. The holder shall be liable for damage caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause IV.F.1, except that liability shall not include reasonable and ordinary wear and tear.

G. HEALTH AND SAFETY. The holder shall take all measures necessary to protect the health and safety of all persons affected by the use and occupancy authorized by this permit. The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during the term of this permit that causes or threatens to cause a hazard to the health or safety of the public or the holder's employees or agents. The holder shall as soon as practicable notify the authorized officer of all serious accidents that occur in connection with these procedures, activities, events, or conditions. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations of the holder for hazardous conditions or compliance with health and safety standards.

H. ENVIRONMENTAL PROTECTION.

1. For purposes of clause IV.H and section V, "hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

2. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use and occupancy of the permit area. Environmental damage includes but is not limited to all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. If the environment or any government property covered by this permit becomes damaged in connection with the holder's use and occupancy, the holder shall as soon as practicable repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

3. The holder shall as soon as practicable, as completely as possible, and in compliance with all applicable laws and regulations abate any physical or mechanical procedure, activity, event, or

condition existing or occurring in connection with the authorized use and occupancy during or after the term of this permit that causes or threatens to cause harm to the environment, including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources.

I. INDEMNIFICATION OF THE UNITED STATES. The holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use or occupancy authorized by this permit. This indemnification provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use or occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous materials, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

J. BONDING. The authorized officer may require the holder to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this permit or any applicable law, regulation, or order.

K. STRICT LIABILITY. The holder shall be strictly liable (liable without proof of negligence) to the United States for up to \$1,000,000 per occurrence for any injury, loss, or damage arising in tort under this permit. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.

L. INSURANCE. The holder shall furnish proof of insurance, such as a certificate of insurance, to the authorized officer prior to issuance of this permit and each year thereafter that this permit is in effect. The Forest Service reserves the right to review the insurance policy and require any changes needed to ensure adequate coverage of the United States in connection with the authorized use and occupancy. The holder shall send an authenticated copy of any insurance policy obtained pursuant to this clause to the authorized officer immediately upon issuance of the policy. Any insurance policies obtained by the holder pursuant to this clause shall name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause and to the extent of the full limits of insurance available to the holder. The holder shall give 30 days prior written notice to the authorized officer of cancellation of or any modification to the insurance policy. The certificate of insurance, the authenticated copy of the insurance policy, and written notice of cancellation or modification of insurance policies should be sent to **United States Government C/O Ashton Ranger District P.O. Box 858 Ashton, ID 83420.** Minimum amounts of coverage and other insurance requirements are subject to change at the sole discretion of the authorized officer on the anniversary date of this permit.

1. The holder shall have in force liability insurance covering losses, including those arising from strict liability, associated with the use or occupancy authorized by this permit arising from personal injury or death and third-party property damage in the minimum amount of:

\$25,000 for injury or death to one person per occurrence;

\$500,000 injury or death to more than one person per occurrence; and

\$1,000,000 third-party property damage per occurrence.

V. RESOURCE PROTECTION

A. COMPLIANCE WITH ENVIRONMENTAL LAWS. The holder shall in connection with the use or occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., CERCLA, as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

B. VANDALISM. The holder shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

C. PESTICIDE USE.

1. Authorized Officer Concurrence. Pesticides may not be used outside of buildings in the permit area to control pests, including undesirable woody and herbaceous vegetation (including aquatic plants), insects, birds, rodents, or fish without prior written concurrence of the authorized officer. Only those products registered or otherwise authorized by the U.S. Environmental Protection Agency and appropriate State authority for the specific purpose planned shall be authorized for use within areas on National Forest System lands.

2. Pesticide-Use Proposal. Requests for concurrence of any planned uses of pesticides shall be provided in advance using the Pesticide-Use Proposal (form FS-2100-2). Annually the holder shall, on the due date established by the authorized officer, submit requests for any new, or continued, pesticide usage. The Pesticide-Use Proposal shall cover a 12-month period of planned use. The Pesticide-Use Proposal shall be submitted at least 60 days in advance of pesticide application. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time a Pesticide-Use Proposal was submitted.

3. Labeling, Laws, and Regulations. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers. No pesticide waste, excess materials, or containers shall be disposed of in any area administered by the Forest Service.

D. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES. The holder shall immediately notify the authorized officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall follow the applicable inadvertent discovery protocols for the undertaking provided in an agreement executed pursuant to section 106 of the National Historic Preservation Act, 54 U.S.C. 306108; if there are no such agreed-upon protocols, the holder shall leave these discoveries intact and in place until consultation has occurred, as informed, if applicable, by any programmatic agreement with tribes. Protective and mitigation measures developed under this clause shall be the responsibility of the holder. However, the holder shall give the authorized officer written notice before implementing these measures and shall coordinate with the authorized officer for proximate and contextual discoveries extending beyond the permit area.

E. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA).

In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the holder inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the holder shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The holder shall follow the applicable NAGPRA protocols for the undertaking provided in the NAGPRA plan of action or the NAGPRA comprehensive agreement; if there are no such agreed-upon protocols, the holder shall as soon as practicable notify the authorized officer of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the forest archaeologist certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.

F. PROTECTION OF THREATENED AND ENDANGERED SPECIES, SENSITIVE SPECIES, AND SPECIES OF CONSERVATION CONCERN AND THEIR HABITAT.

1. Threatened and Endangered Species and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531 et seq., as amended, or within designated critical habitat shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on listed species or designated critical habitat affected by the authorized use and occupancy. Discovery by the holder or the Forest Service of other sites within the permit area containing threatened or endangered species or designated critical habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

2. Sensitive Species and Species of Conservation Concern and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals designated by the Regional Forester as sensitive species or as species of conservation concern pursuant to FSM 2670 shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder shall take any protective and mitigation measures specified by the authorized officer as necessary

and appropriate to avoid or reduce effects on sensitive species or species of conservation concern or their habitat affected by the authorized use and occupancy. Discovery by the holder or the Forest Service of other sites within the permit area containing sensitive species or species of conservation concern or their habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

G. CONSENT TO STORE HAZARDOUS MATERIALS. The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

H. CLEANUP AND REMEDIATION.

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer or the authorized officer's designated representative, of any oil discharge or of the release of a hazardous material in the permit area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is as defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The holder shall immediately notify the authorized officer or the authorized officer's designated representative of any release or threatened release of any hazardous material in or near the permit area which may be harmful to public health or welfare or which may adversely affect natural resources on federal lands.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the holder's activities in the permit area, regardless of whether those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

VI. LAND USE FEE AND DEBT COLLECTION

A. LAND USE FEES. The use or occupancy authorized by this permit is exempt from a land use fee or the land use fee has been waived in full pursuant to 36 CFR 251.57 and Forest Service Handbook 2709.11, Chapter 30.

VII. REVOCATION, SUSPENSION, AND TERMINATION

A. REVOCATION AND SUSPENSION. The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with federal, state, or local law.
2. For noncompliance with the terms of this permit.
3. For abandonment or other failure of the holder to exercise the privileges granted.
4. With the consent of the holder.

5. For specific and compelling reasons in the public interest.

Prior to revocation or suspension, other than immediate suspension under clause VII.B, the authorized officer shall give the holder written notice of the grounds for revocation or suspension and a reasonable period, typically not to exceed 90 days, to cure any noncompliance.

B. IMMEDIATE SUSPENSION. The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing. The holder may request an on-site review with the authorized officer's supervisor of the adverse conditions prompting the suspension. The authorized officer's supervisor shall grant this request within 48 hours. Following the on-site review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

C. APPEALS AND REMEDIES. Written decisions by the authorized officer relating to administration of this permit are subject to administrative appeal pursuant to 36 CFR Part 214, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

D. TERMINATION. This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a specified date and termination upon change of control of the business entity. Termination of this permit shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION

WITHOUT ISSUANCE OF A NEW PERMIT. Upon revocation or termination of this permit without issuance of a new permit, the holder shall remove all structures and improvements, except those owned by the United States, within a reasonable period prescribed by the authorized officer and shall restore the site to the satisfaction of the authorized officer. If the holder fails to remove all structures and improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VIII. MISCELLANEOUS PROVISIONS

A. MEMBERS OF CONGRESS. No member of or delegate to Congress or resident commissioner

shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

B. CURRENT ADDRESSES. The holder and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for billing and payment of land use fees.

C. SUPERSEDED PERMIT. This permit supersedes the special use permits designated **FALL RIVER RURAL ELECTRIC, COOPERATIVE, INC., ISL404022, dated 02/26/1999 and TEB404006, Issued 10/02/1956.**

D. SUPERIOR CLAUSES. If there is a conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.

E. FEES - EXEMPTIONS AND WAIVERS (A-10).

LAND USE FEES. The use or occupancy authorized by this permit is exempt from a land use fee or the land use fee has been waived in full pursuant to 36 CFR 251.57 and Forest Service Handbook 2709.11, chapter 30. Every 5 years, the Authorized Officer shall review the criteria for a land use fee waiver, and if they no longer apply, shall charge the full land use fee.

F. SURVEYS, LAND CORNERS (D-4).

The holder shall protect, in place, all public land survey monuments, private property corners, and Forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges permitted by this authorization, depending on the type of monument destroyed, the holder shall see that they are reestablished or referenced in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the county surveyor, or (3) the specifications of the Forest Service.

Further, the holder shall cause such official survey records as are affected to be amended as provided by law. Nothing in this clause shall relieve the holder's liability for the willful destruction or modification of any Government survey marker as provided at 18 U.S.C. 1858.

G. RIGHT-OF-WAY CLEARING, POWERLINE (F-15).

REMOVAL AND PLANTING OF VEGETATION

1. Removal of Non-Hazardous Vegetation and Planting of Vegetation. Except as provided in emergencies pursuant to paragraph 2, trees, shrubs, grasses, and other plants may be removed, destroyed, or trimmed only in accordance with the vegetation management plan in Appendix B and only after the Authorized Officer's designated representative has marked or otherwise identified what may be removed, destroyed, or trimmed. Timber cut or destroyed shall be paid for at current stumpage rates for similar timber in the CARIBOU-TARGHEE National Forest. The Forest Service reserves the right to dispose of the merchantable timber to those other than the holder at no stumpage cost to the holder. Unmerchantable material shall be disposed of as directed by the Authorized Officer. Planting of trees, shrubs, and other plants in the permit area must have prior written approval from the Authorized Officer.

2. Removal of Hazardous Vegetation. The holder may remove, destroy, or trim hazardous vegetation in accordance with the vegetation management plan without the hazardous vegetation being marked or otherwise identified by the Authorized Officer or the Authorized Officer's designated representative. The holder shall notify the Authorized Officer as soon as possible of any removal of hazardous vegetation under this clause. For purposes of this clause, "hazardous vegetation" is defined as "a live or dead standing tree or other vegetation having a defect, singly or combined, in the roots, butt, bole, or limbs or with unreasonable arcing potential and so situated that the tree or other vegetation poses the risk of imminent mechanical failure to all or part of a power line, pole, or tower," "defect" is defined as "an injury or disease that seriously weakens the stems, roots, or branches of a tree or vegetation, predisposing all or part of it to fall;" "arcing" is defined as "the flow of electricity across a gap through the air from one conductor to another or to a grounded object;" and "imminent mechanical failure" is defined as "damage to a power line, pole, or tower from hazardous vegetation that could occur at any time."

H. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES(X-17).

The holder shall immediately notify the Authorized Officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall leave these discoveries intact and in place until directed otherwise by the Authorized Officer. Protective and mitigative measures specified by the Authorized Officer shall be the responsibility of the holder.

I. IMPROVEMENT RELOCATION (X-33).

This authorization is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the Authorized Officer.

J. GRIZZLY BEAR PROTECTION (R4-D5). This special use authorization includes land which is part of the habitat of the grizzly bear. Therefore, in compliance with Forest Service responsibilities under the Endangered Species Act of 1973, 16 U.S.C. 1531, the following conditions apply to this special use authorization:

a. The Forest Service Authorized Officer may order an immediate temporary suspension of all human activities permitted by this authorization and, if needed, revoke the special use authorization when, in his/her judgment, such action is necessary in order to prevent confrontation or conflict between humans and grizzly bears. The holder shall immediately comply with such order. The United States shall not be liable for any consequences from such a suspension or revocation. Suspension or revocation, may be appealed to the next higher level, as provided in Secretary of Agriculture Regulations.

b. The holder, his/her agents, employees, contractors, and subcontractors will comply with the requirements of the attached **Food Storage Order: 04-15-117 for the Teton Basin, Ashton/Island Park, and Dubois Ranger Districts of the Caribou-Targhee National Forest, dated January 29, 2010** in the conduct of any and all activities authorized. The Forest Service Authorized Officer may

review and revise the plan as needed.

c. The holder assumes full responsibility and shall hold the United States harmless from any and all claims by him/her or by third parties for any damages to life or property arising from the activities authorized by this special use authorization and encounters with grizzly bears, or from suspension or revocation of activities authorized by this special use authorization.

d. Intentional or negligent acts by the holder, his/her agents, employees, contractors, and subcontractors that result in injury or death of a grizzly bear will be cause for revocation of this authorization in whole or in part.

e. Failure to comply with provisions a, b, or c may result in suspension or revocation, of this authorization in whole or in part, and may cause criminal action to be taken against the holder under provisions of the Endangered Species Act of 1973, as amended, or other applicable authority.

The Grizzly Bear Management and Protection Plan provided for in paragraph b above will, as a minimum, address the following:

- a. Camp locations and period of time each location is to be used.
- b. Areas to avoid or enter, by type of activities, schedule.
- c. Seasonal or other human activity limitations.
- d. Livestock and Pets: 1) by location; 2) numbers; 3) types (horses, dogs, and so forth); and 4) treatment of carcasses.
- e. Food Storage: 1) livestock and pets; and 2) human.
- f. Food preparation and cleanup.
- g. Garbage and Refuse Disposal: 1) livestock and pets; and 2) human.
- h. Storage of game meat, if applicable.
- i. Suggestions for minimizing direct conflict.
- j. Human safety.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL ITS TERMS AND CONDITIONS.

BEFORE ANY PERMIT IS ISSUED TO AN ENTITY, DOCUMENTATION MUST BE PROVIDED TO THE AUTHORIZED OFFICER OF THE AUTHORITY OF THE SIGNATORY FOR THE ENTITY TO BIND IT TO THE TERMS AND CONDITIONS OF THE PERMIT.

ACCEPTED:

BRYAN CASE
CEO / GENERAL MANAGER

HOLDER NAME, PRECEDED BY NAME AND TITLE OF PERSON SIGNING ON BEHALF OF HOLDER, IF HOLDER IS AN ENTITY	SIGNATURE	DATE
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APPROVED:

MEL BOLLING
FOREST SUPERVISOR

NAME AND TITLE OF AUTHORIZED OFFICER	SIGNATURE	DATE
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According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

APPENDIX B – USBR O&M AGREEMENT

PN Draft last revised 8/29/96

Contract No. 6-07-10-W1126

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Minidoka Project, Idaho-Wyoming

SUPPLEMENTAL AND AMENDATORY CONTRACT PROVIDING FOR THE
TRANSFER OF CERTAIN FACILITIES TO THE FREMONT-MADISON
IRRIGATION DISTRICT FOR OPERATION AND MAINTENANCE

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Minidoka Project, Idaho-Wyoming

SUPPLEMENTAL AND AMENDATORY CONTRACT PROVIDING FOR THE
TRANSFER OF CERTAIN FACILITIES TO THE FREMONT-MADISON
IRRIGATION DISTRICT FOR OPERATION AND MAINTENANCE

THIS supplemental contract, made this 12th day of
September, 1996, pursuant to the Acts of Congress of June 17, 1902
(32 Stat. 388), and August 13, 1914 (38 Stat. 687), and acts amendatory thereof and
supplementary thereto, hereinafter called the Federal Reclamation Laws, by and
between the UNITED STATES OF AMERICA (hereinafter called the United States),
acting through the Regional Director (hereinafter called the Contracting Officer), Pacific
Northwest Region, Bureau of Reclamation (hereinafter called Reclamation), and the
FREMONT-MADISON IRRIGATION DISTRICT (hereinafter called the District), duly
organized and existing under the laws of the State of Idaho:

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, under the provisions of an existing contract between the United
States and the District (Contract No. Ilr-814, dated July 15, 1935, as amended and
supplemented, hereinafter referred to as "the 1935 contract"); the United States has
turned over to the District for care, operation, and maintenance that portion of the

project works of the Upper Snake River Storage Division, Minidoka Project, known as the Cross Cut Canal and Diversion Dam (hereinafter referred to as "transferred works"), and has retained the operation and maintenance of the remaining project facilities, including Cascade Creek Diversion Dam and Canal, Grassy Lake Dam and Reservoir, and Island Park Dam and Reservoir (hereinafter collectively referred to as "reserved works"); and

3. WHEREAS, Section 5 of the Reclamation Extension Act of August 13, 1914 (38 Stat. 687) provides that whenever any legally organized water user's association or irrigation district shall so request, the Secretary of the Interior is authorized, at the Secretary's discretion, to transfer to such organized entity the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations that the Secretary may prescribe; and

4. WHEREAS, the District has requested that care, operation, and maintenance of the remaining reserved works, as described above in Article 2, now be transferred to the District; and

5. WHEREAS, the United States is willing to transfer the care, operation, and maintenance of such project works to the District under the terms and conditions of this amendatory contract.

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby agreed as follows:

Definition

6. Whenever used in this amendatory contract, "Secretary" or "Contracting Officer" shall mean the Secretary of the Interior of the United States or his duly authorized representative.

Works Transferred

7. The 1935 contract is hereby amended by adding to Article 32 (Designation of Transferred and Reserved Works) therein the following language:

"Effective September 12, 1996 all such reserved works, including Cascade Creek Diversion Dam and Canal, Grassy Lake Dam, Island Park Dam, and all appurtenant structures, are hereby transferred from the United States to the District for care, operation, and maintenance in the manner and upon the terms and conditions hereinafter set out for both reserved works and transferred works."

Operation of Transferred Works

8. The 1935 contract is hereby amended by adding to Article 33 (Operation and Maintenance of Transferred Works) therein the following language:

"The District shall make releases from outlet works of the transferred works under direction from the Secretary, with input from the District as appropriate, and as outlined in the Standing Operating Procedures and Emergency Action Plan. The District

shall not make any changes in the transferred works without first obtaining written consent of the Secretary.

Some operations and maintenance of transferred works will continue to be performed by the United States. The work that will be performed by the United States and paid for in advance by the District includes:

- a. Making all operational decisions regarding releases from Island Park and Grassy Lake Reservoirs as part of the Snake River system; and
- b. Periodic inspections of all transferred works; and
- c. Reviewing, evaluating, and maintaining records of all piezometers and seepage, observation wells, and other instrumentation readings; and
- d. Reviewing, evaluating and maintaining records of all deflection and settlement points; and
- e. Surveying all deflection and settlement points; and
- f. Operation and maintenance of all stream and reservoir gauging equipment and structures, including "Hydromet" stations; and
- g. Developing and updating the Standing Operating Procedures for Island Park, Grassy Lake, and Cascade Creek Diversion Dam; and
- h. Cooperating with the Natural Resource Conservation Service in performing snow surveys, including operation and maintenance of "Sno-Tel" sites; and
- i. Cooperating with other agencies and interested parties in the Teton area micro-seismic network; and

j. All other work performed by the United States, as mutually agreed upon by the parties hereto, which is deemed to benefit the transferred works.

As the District develops the expertise and experience with the operations of the transferred works described herein, it is understood and agreed that much of the work which the United States intends to continue to perform, as listed above, shall also be transferred to the District, except for those work items that are inherently the responsibility of the United States. Unless otherwise determined by the Secretary, items reserved by the United States specifically include items 8(a), 8(b), 8(c), and 8(d) above and any other item which may from time to time be determined by the Secretary to inherently be the responsibility of the United States. With respect to items 8(e) through 8(i) above, and other items which may be identified from time to time, which are not inherently the responsibility of the United States, should the District demonstrate that such work is the type of work which the District then has expertise to perform, and the United States agrees that the District has such expertise, the United States shall transfer the same to the District, under then mutually agreed upon conditions, upon the District's written request.

The District shall annually submit to the Contracting Officer an estimate of its cost of operation and maintenance of the transferred works, as defined in Article 7 of this supplemental and amendatory contract, on or before January 31 of the year in which the costs will be incurred. The estimates will be reviewed and approved by the Secretary. In addition, the District shall annually submit the actual cost of operation and maintenance of the transferred works by January 31 following the year in which the

costs are incurred. Such statements shall include the cost and evidence of payment satisfactory to the Secretary of labor, supplies, materials, equipment, contracts, engineering, and administration, directly connected to the operation and maintenance of the transferred works for the previous year. The records supporting such statements of cost shall be kept separate and apart from other records of the District. Upon approval of such statements, the Secretary shall credit the expenses of the District for that portion of the expenses determined to be assignable to the non-reimbursable features of the facilities such as flood control, fish and wildlife, and recreation. The amount of the credit may vary depending upon the allocation of project costs then in effect. The credit will reduce the amount owed by the District to the United States for the following year. If the credit exceeds the reimbursable expenses expected to be incurred for work performed by the United States, the excess will be paid to the District by the United States. If the credit is less than the reimbursable expenses expected to be incurred for work performed by the United States, the difference will be paid by the District upon issuance of a bill for collection by the United States.

On or before January 31 of the year in which costs will be incurred, the United States shall submit an estimate to the District, which shall be as detailed as reasonably possible, of the type of work to be performed by the United States during that year and the approximate costs which shall be incurred by the United States to perform said work for that year. The District shall be allowed to give input on the estimate of work to be performed. Unless the work is of an emergency nature, as determined by the Secretary, the Secretary shall make a reasonable effort to obtain

input from the District in project planning and accomplishment, but shall not be obligated to incorporate items which are not in the best interest of the United States as determined by the Secretary."

Reserved Works Operated and Maintained by the United States

9. Article 50 (Reserved Works Operated and Maintained by the United States) of the 1935 contract is hereby amended by deleting all language from that article.

Advance Payment for Operation and Maintenance

10. Article 51 (Advance Payment for Operation and Maintenance) of the 1935 contract is hereby amended by deleting all language from that article.

Emergency Reserve Fund

11. (a) Commencing with the date of execution of this supplemental and amendatory contract, the District shall accumulate and maintain a reserve fund, which the District shall keep available to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other like emergencies threatening or causing interruption of water service. Expenditures from the fund shall only be as in accordance with Article 11(d) of this supplemental and amendatory contract, or as approved in writing by the Secretary.

(b) The District shall accumulate the reserve fund with annual deposits or investments of not less than \$16,000 to a federally insured interest-or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in paragraph (d). Such annual deposits and the

accumulation of interest to the reserve fund shall continue until the basic amount of \$80,000 is accumulated. Following an emergency expenditure from the fund, the annual deposits shall continue from the year following the emergency expenditure until the previous balance is restored. After the initial amount is accumulated or after the previous balance is restored, the annual deposits may be discontinued and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

(c) Upon mutual agreement between the District and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the project, the size of the annual operation and maintenance budget, additions to, deletions from, or changes in project works, and operation and maintenance costs not contemplated when this supplemental and amendatory contract was executed.

(d) The District may make expenditures from such reserve fund only for meeting usual operation and maintenance costs incurred during periods of special stress as described in paragraph (a); or for meeting unforeseen extraordinary operation and maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or for meeting betterment costs (in situations where recurrence of severe problems can be eliminated) during such periods of special stress. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval by the Contracting Officer prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures

therefrom, the District shall restore that balance by the accumulation of annual deposits, as specified in paragraph (b).

(e) During any period in which any of the project works are operated and maintained by the United States, as described in Article 33 of the 1935 contract, the reserve fund shall be available for like use by the United States.

(f) On or before April 1 of each year, the District shall provide an annual statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.

Administration of Project Lands

12. The lands and rights-of-way acquired and needed by the United States for the purposes of care, operation, and maintenance of project works (hereinafter referred to as "project lands") may be used by the District for such purposes. The District shall ensure that no unauthorized encroachment occurs on project lands and rights-of-way. The District shall not issue rights-of-way across project lands, issue land rights to project lands, or issue leases, licenses, permits, or special use agreements involving project lands, rights-of-way, or transferred works. All such land use instruments shall only be issued by the Contracting Officer.

Title to any lands, interests in lands acquired and facilities constructed thereon, as a necessary component of the project shall be conveyed to and title held in the name of the United States until otherwise provided by Congress. Such acquisitions must be carried out in accordance with the provisions of P.L. 91-646 as amended, (42 U.S.C. 4601 et seq.). Lands and interests in lands will be conveyed by general

warranty deed, free of liens and encumbrances, subject only to items determined acceptable by the United States and expressed in writing.

The United States and the District will cooperate in the resolution of realty disputes involving third parties, with the United States taking the lead once the District has provided Reclamation written notice of such disputes.

Water Conservation

13. The District is subject to Section 210.(b) of the Reclamation Reform Act of 1982 (Public Law 97-293).

Power Rights Retained by the United States

14. The United States retains all rights to power development involving transferred works. Such rights shall include the right to construct new power facilities; and right-of-way for penstocks, powerplants, switch yards, roads, and other related equipment.

Public Access

15. The District shall continue to provide and allow public access for recreational purposes on project rights-of-way, other real property, interests, and easements in conformance with existing uses and agreements.

Previous Contracts To Remain In Effect

16. This contract is supplementary to the contract being amended, and that contract, as well as any other existing agreements between the parties hereto, is to remain in full force and effect except as herein amended.

Term

17. This supplemental and amendatory contract may be terminated upon ninety (90) days written notice by either party, except that the effective date of termination may not be during the irrigation season, defined as a period of each year beginning April 1 and ending October 31 of that year.

Secretary the Arbiter of Disputes Involving Questions of Fact

18. In the event of any disputes between the parties hereto arising out of this contract involving questions of fact, and so far as the provisions hereof require a determination of fact to be made, the Secretary is hereby designated to act in good faith as the arbiter of such questions and as the one required to make such determinations of fact and the Secretary's decision thereon shall be conclusive as against the parties hereto.

Compliance with Cultural Resource Requirements

19. (a) As Island Park Dam has been determined to be eligible for listing on the National Register of Historic Places; and the other transferred works may prove to be eligible for listing; and as archeological resources have been identified or may be identified on lands associated with the transferred works, the District shall comply with provisions of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470), as amended, and with other law and Department of the Interior regulations, to protect and maintain the historic integrity of the transferred works and other historical or archeological resources on associated lands. In accordance with procedures in the Code of Federal Regulations (Title 36- Part 800), the District shall notify and consult

with Reclamation to determine if proposed activities or actions could adversely affect a historical or archeological resource.

(b) To provide sufficient time for compliance with the procedures of 36 CFR 800, the District shall make every reasonable effort to notify the Contracting Officer no less than 6 months in advance of the start of any activity or action that could reasonably be expected to affect said resources. The District shall provide any drawings or descriptions of the proposed action or photographs of the location necessary for the Reclamation Archeologist to assess potential effects. Situations requiring notification include: use of lands and rights-of-way that lie outside of existing routine work areas, or actions that could (1) change the physical appearance of a transferred work, (2) remove or change associated equipment, or (3) insert new elements in or near the transferred work.

(c) Upon notification from the District to the Contracting Officer, in accordance with provisions in 36 CFR 800, the Reclamation Archeologist shall determine if an archeological survey is necessary. Either Reclamation or the District shall complete any necessary surveys. The Reclamation Archeologist shall then consult with the State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) to determine if the proposed action or activity will adversely affect a historical or archeological resource. The District shall be invited to participate in the consultations.

If, after consultation, the Reclamation Archeologist determines that the proposed action or activity is damaging to the integrity of a historical or archeological resource eligible for the National Register of Historic Places, Reclamation will:

- (1) Deny permission to execute the activity or action; or,
- (2) Consult with the District to modify the proposed activity or action so as to reduce or avoid the damaging effect; or,
- (3) Require historic documentation or other mitigative action to offset the damaging effect.

If historic documentation or other mitigative action is necessary to offset damaging effects to historical or archeological resources, a case-by-case determination shall be made by Reclamation as to who shall be responsible for the costs and how costs shall be shared, if appropriate. The District shall be allowed to give input in determining responsibility for such costs.

Standard Provisions

20. Standard provisions which are applicable to this supplemental and amendatory contract are listed below and the full text of such provisions are attached as Exhibit A and are hereby made a part of this supplemental and amendatory contract.

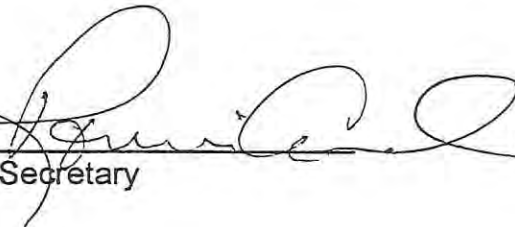
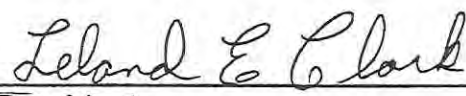
- a. Notices
- b. Contingent on Appropriation or Allotment of Funds
- c. Officials Not to Benefit
- d. Assignment Limited -- Successors and Assigns Obligated
- e. Compliance with Reclamation Laws

- f. Equal Opportunity
- g. Compliance with Civil Rights Laws and Regulations
- h. Quality of Water
- i. Water and Air Pollution Control
- j. Clean Air and Water
- k. Hazardous Materials

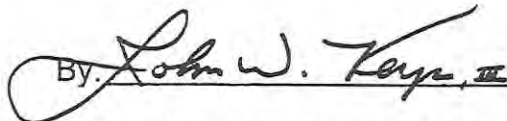
IN WITNESS WHEREOF, the parties hereto have signed their names the
day and year first above written.

FREMONT-MADISON IRRIGATION DISTRICT

(SEAL)

Attest:  Secretary By:  President

UNITED STATES OF AMERICA


By:  Regional Director, PN Region
Bureau of Reclamation

STATE OF IDAHO)

: ss
County of MADISON)

On this 5th day of SEPTEMBER, 1996, before me, a notary public, personally appeared LELAND B. CLARK & RONNIE ARO, known to me to be the official of Fremont-Madison Irrigation District that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said Fremont-Madison Irrigation District, for the uses and purposes therein mentioned, and on oath stated that ^{THEY WERE} he was authorized to execute said instrument.

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



Notary Public in and for the
State of Idaho
Residing at REXBURG

(SEAL)

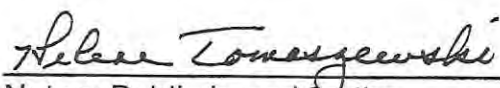
My commission expires: 10-1-99

STATE OF IDAHO)

: ss
County of Ada)

On this 12th day of SEPTEMBER, 1996, personally appeared before me JOHN W. KEYS III, to me known to be the official of the UNITED STATES of AMERICA that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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



Notary Public in and for the
State of Idaho
Residing at NAHMA ID

My commission expires: 01-16-2002



(SEAL)

STANDARD PROVISIONS

The Contractor, as referred to in the following Standard Provisions, shall be the Fremont-Madison Irrigation District.

NOTICES

a. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, PN Region, Bureau of Reclamation, 1150 N. Curtis Road, Boise, Idaho 83706-1234, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Fremont-Madison Irrigation District, PO Box 15, St. Anthony, Idaho 83445-0015. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

b. The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

c. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

d. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

COMPLIANCE WITH RECLAMATION LAWS

e. The parties agree that the delivery of irrigation water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including, but not limited to, the Reclamation Reform Act of 1982 (Public Law 97-293).

EQUAL OPPORTUNITY

f. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

g. (1) The Contract shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective

implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(2) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(3) The Contractor makes this agreement in consideration of and for the purposes of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognized and agreed that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

QUALITY OF WATER

h. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

WATER AND AIR POLLUTION CONTROL

i. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the States of Idaho and Wyoming, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

CLEAN AIR AND WATER

j. (1) The Contractor agrees as follows:

(a) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the execution of this contract.

(b) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was executed unless and until the EPA eliminates the name of such facility or facilities from such listing.

(c) To use its best efforts to comply with clean air standards and clean water standards at the facility where the contract work is being performed.

(d) To insert the substance of the provisions of this article into any nonexempt subcontract, including this paragraph (1)(d).

(2) The terms used in this article have the following meanings:

(a) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(b) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(c) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(d) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

(e) The term "comply" means compliance with clean air or water standards. Comply shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

(f) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

HAZARDOUS MATERIALS

k. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be

used, produced, transported, stored or disposed of on or in lands, waters or facilities owned by the United States or administered by Reclamation.

(2) "Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.

(3) The Contractor may not allow contamination of lands, waters or facilities owned by the United States or administered by Reclamation by hazardous materials, thermal pollution, refuse, garbage, sewage, effluent, industrial waste, petroleum products, mine tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide containers or any other pollutants.

(4) The Contractor shall report to Reclamation, within 24 hours of its occurrence, any event which may or does result in pollution or contamination adversely affecting lands, water or facilities owned by the United States or administered by Reclamation.

(5) Violation of any of the provisions of this Article shall constitute grounds for immediate termination of this contract and shall make the Contractor liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

(6) The Contractor agrees to include the provision contained in paragraphs (1) through (5) of this Article in any subcontract or third party contract it may enter into pursuant to this contract.

(7) Reclamation agrees to provide information necessary for the Contractor, using reasonable diligence, to comply with the provision of this Article.

APPENDIX C – USFWS SPECIES REPORT

IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

Location

Fremont County, Idaho



Local office

Idaho Fish And Wildlife Office

☎ (208) 378-5243

📅 (208) 378-5262

1387 South Vinnell Way, Suite 368
Boise, ID 83709-1657

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Draw the project location and click CONTINUE.
2. Click DEFINE PROJECT.
3. Log in (if directed to do so).
4. Provide a name and description for your project.
5. Click REQUEST SPECIES LIST.

Listed species¹ and their critical habitats are managed by the [Ecological Services Program](#) of the U.S. Fish and Wildlife Service (USFWS) and the fisheries division of the National Oceanic and Atmospheric Administration (NOAA Fisheries²).

Species and critical habitats under the sole responsibility of NOAA Fisheries are **not** shown on this list. Please contact [NOAA Fisheries](#) for [species under their jurisdiction](#).

1. Species listed under the [Endangered Species Act](#) are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information. IPaC only shows species that are regulated by USFWS (see FAQ).
2. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

The following species are potentially affected by activities in this location:

Mammals

NAME

STATUS

Canada Lynx *Lynx canadensis*

Threatened

There is **final** critical habitat for this species. The location of the critical habitat is not available.

<http://ecos.fws.gov/ecp/species/3652>

Grizzly Bear *Ursus arctos horribilis*

Threatened

There is **proposed** critical habitat for this species. The location of the critical habitat is not available.

<http://ecos.fws.gov/ecp/species/7642>

Insects

NAME

STATUS

Monarch Butterfly *Danaus plexippus*

Candidate

Wherever found.

No critical habitat has been designated for this species.

<http://ecos.fws.gov/ecp/species/9743>

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

THERE ARE NO CRITICAL HABITATS AT THIS LOCATION

Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

1. The [Migratory Birds Treaty Act](#) of 1918.
2. The [Bald and Golden Eagle Protection Act](#) of 1940.

Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Measures for avoiding and minimizing impacts to birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Nationwide conservation measures for birds <http://www.fws.gov/migratorybirds/pdf/management>

</nationwiderstandardconservationmeasures.pdf>

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern](#) (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME

BREEDING SEASON (IF A BREEDING SEASON IS INDICATED FOR A BIRD ON YOUR LIST, THE BIRD MAY BREED IN YOUR PROJECT AREA SOMETIME WITHIN THE TIMEFRAME SPECIFIED, WHICH IS A VERY LIBERAL ESTIMATE OF THE DATES INSIDE WHICH THE BIRD BREEDS ACROSS ITS ENTIRE RANGE. "BREEDS ELSEWHERE" INDICATES THAT THE BIRD DOES NOT LIKELY BREED IN YOUR PROJECT AREA.)

Bald Eagle *Haliaeetus leucocephalus*

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<http://ecos.fws.gov/ecp/species/1626>

Breeds Jan 1 to Aug 31

Cassin's Finch *Carpodacus cassinii*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<http://ecos.fws.gov/ecp/species/9462>

Breeds May 15 to Jul 15

Clark's Grebe *Aechmophorus clarkii*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds Jun 1 to Aug 31

Evening Grosbeak *Coccothraustes vespertinus*

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Breeds May 15 to Aug 10

Franklin's Gull *Leucophaeus pipixcan*

Breeds May 1 to Jul 31

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Golden Eagle *Aquila chrysaetos*

Breeds Jan 1 to Aug 31

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<http://ecos.fws.gov/ecp/species/1680>

Lesser Yellowlegs *Tringa flavipes*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<http://ecos.fws.gov/ecp/species/9679>

Olive-sided Flycatcher *Contopus cooperi*

Breeds May 20 to Aug 31

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<http://ecos.fws.gov/ecp/species/3914>

Rufous Hummingbird *elasphorus rufus*

Breeds Apr 15 to Jul 15

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<http://ecos.fws.gov/ecp/species/8002>

Willet *Tringa semipalmata*

Breeds Apr 20 to Aug 5

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week

12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.

2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

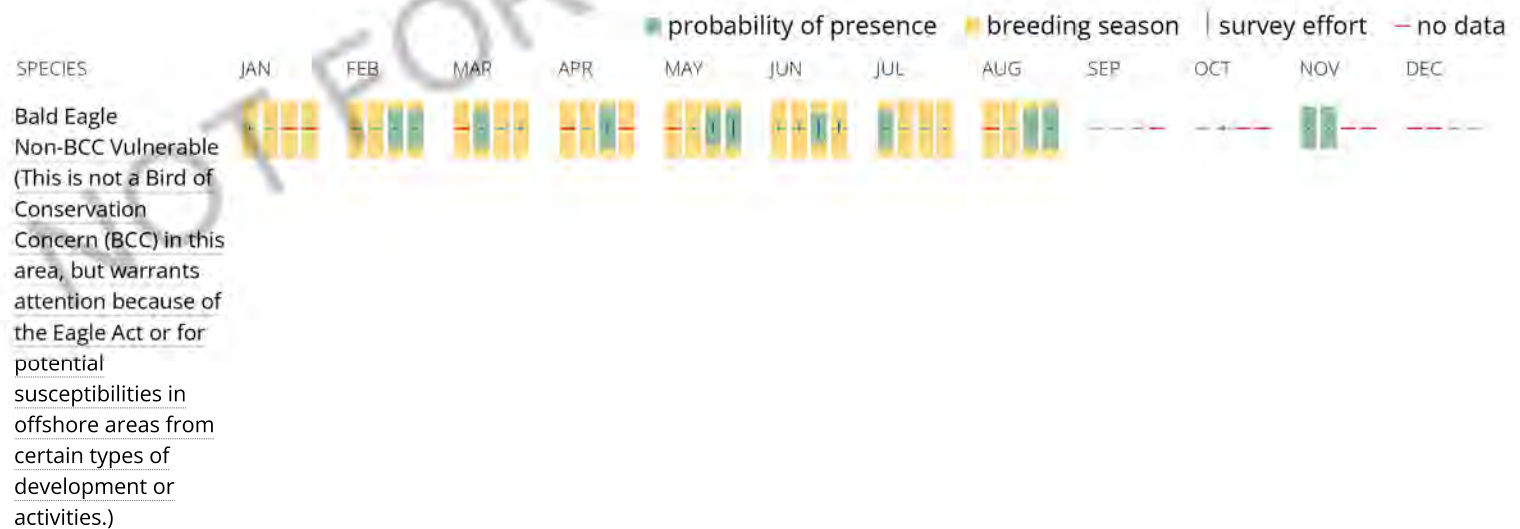
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

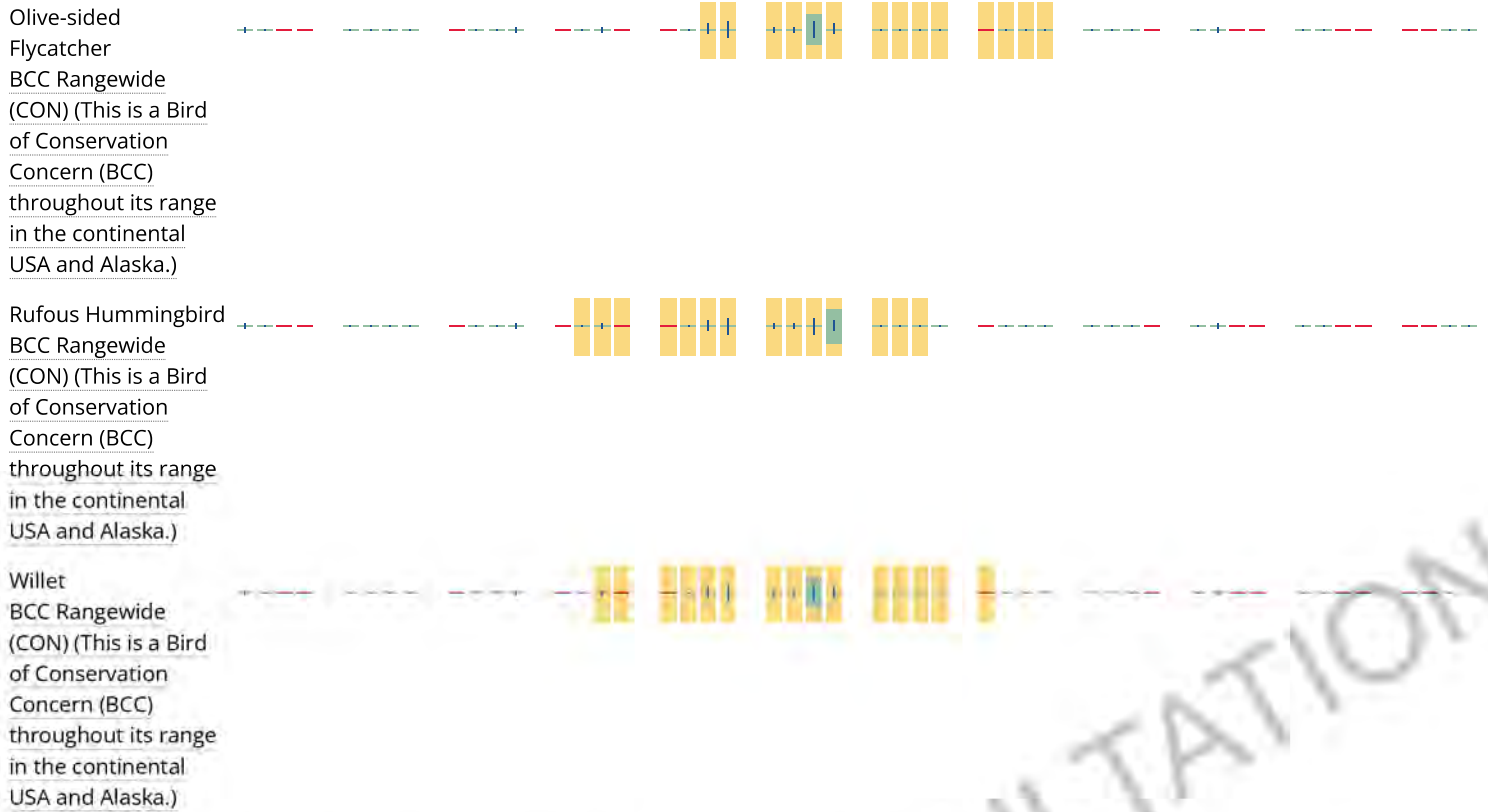
No Data (—)

A week is marked as having no data if there were no survey events for that week.

Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.





Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the migratory birds potentially occurring in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [AKN Phenology Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more

about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering, migrating or present year-round in my project area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may refer to the following resources: [The Cornell Lab of Ornithology All About Birds Bird Guide](#), or (if you are unsuccessful in locating the bird of interest there), the [Cornell Lab of Ornithology Neotropical Birds guide](#). If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort

is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

Facilities

National Wildlife Refuge lands

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS AT THIS LOCATION.

Fish hatcheries

THERE ARE NO FISH HATCHERIES AT THIS LOCATION.

Wetlands in the National Wetlands Inventory

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

This location overlaps the following wetlands:

LAKE

[L1UBHh](#)

RIVERINE

[R3UBH](#)

[R3USC](#)

[R4SBC](#)

[R5UBH](#)

A full description for each wetland code can be found at the [National Wetlands Inventory website](#)

Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.