



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

FREEDOM OF INFORMATION ACT PROGRAM

January 15, 2021

In reply refer to: FOIAs #BPA-2020-00943 & #BPA-2020-00944-F

Andrew Isaac

(b) (6)

Dear Mr. Isaac,

This communication is the Bonneville Power Administration (BPA) response to your two requests, BPA-2020-00943 & BPA-2020-00944-F, for agency information made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). BPA received your information requests on July 14, 2020. Acknowledgment letters, as required by 5 U.S.C. § 552, were sent to you on July 27, 2020.

Request BPA-2020-00943-F

“Description of records or material being requested: Stagecoach Lane in Ada County, Idaho 1. Bonneville Power Administration (BPA) signed 1997 Memorandum of Agreement with Idaho Department of Fish and Game (IFG) and all amendments/modifications with signatures and dates. 2. BPA approval, with signatures and dates, authorizing IFG to grant an easement to Gabriel Krueger for construction of a private road to access private property for a commercial business operation which crosses IFG land located on Stagecoach Lane located in Ada County, Idaho. The IFG-owned road and surrounding land was purchased with BPA money. 3. BPA and IFG NEPA analysis and decision(s) for allowing construction of a private road on Stagecoach Lane (Ada County, Idaho) by Gabriel Krueger over IFG-owned land and road, which was purchased with BPA money.”

Request BPA-2020-00944-F

“Description of records or material being requested: Lucky Peak Lane and Cartwheel Lane in Ada County, Idaho 1. Bonneville Power Administration (BPA) signed 1997 Memorandum of Agreement with Idaho Department of Fish and Game (IFG) and all amendments/modifications with signatures and dates. 2. BPA approval, with signatures and dates, authorizing IFG to build a parking lot on and adjacent to Lucky Peak Lane (Hammer Flat) in Ada County (Boise), Idaho designated for public access and recreation purposes; although IFG has consistently stated this entire area is critical winter range for deer, elk, pronghorn, etc. 3. BPA and IFG NEPA analysis and decision(s) for removing vegetation on Hammer Flat due to creation of a parking lot on Lucky Peak Lane. IFG constructed the parking lot on July 1 & 2, 2020. The IFG-owned land

where the parking lot has been constructed was purchased with BPA money. 4. BPA and IFG NEPA analysis and decision(s) for removing vegetation and forever altering habitat along Lucky Peak Lane and Cartwheel Lane (Hammer Flat) to allow construction of a 24 foot paved private road (with additional land for the road shoulder) over IFG-owned land and roads, which was purchased with BPA money. The private roads were constructed from June 29 – July 9, 2020.”

Response

Knowledgeable personnel in BPA’s Real Property Field Office performed records searches in response to your FOIA requests. Agency personnel gathered the records responsive to your requests. The locations requested are all located within the Sandy Point property, so the records found in the searches relate to both requests. Rather than send you two sets of records, BPA is providing a combined set of records responsive to both requests. BPA’s combined final responses are comprised of 213 pages of records. BPA is herein releasing 199 pages in full, and releasing 11 pages with redactions applied under 5 U.S.C. § 552(b)(6) (Exemption 6). An explanation of the exemption applied follows.

Explanation of Exemptions

The FOIA generally requires the release of all agency records upon request. However, the FOIA permits or requires withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)). Section (b) of the FOIA, which contains the FOIA’s nine statutory exemptions, also directs agencies to release to FOIA requesters any reasonably segregable, non-exempt information that is contained in those records.

Exemption 6

Exemption 6 serves to protect information in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy” (5 U.S.C. § 552(b)(6)), and if there is no public interest that outweighs the privacy interest. BPA relies on Exemption 6 in this instance to withhold personal signatures and cell numbers. BPA can find no public interest in the release of this information as it does not shed light on BPA operations, as an agency.

The above described analysis satisfies the standard set forth at 5 U.S.C. § 552(a)(8)(A) that agencies shall withhold information under FOIA “only if (I) the agency reasonably foresees that disclosure would harm an interest protect by an exemption...; or (II) disclosure is prohibited by law...” 5 U.S.C. § 552(a)(8)(A) also provides that whenever full disclosure of a record is not possible, agencies shall “consider whether partial disclosure of information is possible...and (II) take reasonable steps necessary to segregate and release nonexempt information.” Therefore, we have determined that, in certain instances, a partial disclosure is proper.

Fees

There are no fees associated with the agency’s response to your FOIA request.

Certification

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the search and records release described above. Your FOIA requests BPA-2020-00943-F and BPA-2020-00944-F are now both closed, with the responsive agency records provided.

Appeal

The adequacy of the search may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to:

Director, Office of Hearings and Appeals
HG-1, L'Enfant Plaza
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

You may contact BPA's FOIA Public Liaison, Jason Taylor, at 503.230.3537, jetaylor@bpa.gov, or at the address on this letter header, for any further assistance and to discuss any aspect of your request. Additionally you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail: ogis@nara.gov
Phone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Questions about this communication may be directed to Thanh Knudson, Flux Resources LLP, at etknudson@bpa.gov or 503.230.5221.

Sincerely,



Candice D. Palen
Freedom of Information/Privacy Act Officer

Attachments: The responsive agency records accompany this communication.

OCT 07 1997

COPY

Southern Idaho
Wildlife Mitigation Agreement

Bonneville Power Administration

State of Idaho, through Idaho Department of Fish and Game and
Idaho Fish & Game Commission

September 1997

SOUTHERN IDAHO WILDLIFE MITIGATION

MEMORANDUM OF AGREEMENT

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SOUTHERN IDAHO WILDLIFE MITIGATION

MEMORANDUM OF AGREEMENT

This Agreement is made between the State of Idaho, Idaho Fish and Game Commission and Idaho Department of Fish and Game, and the United States of America, acting through the Department of Energy and the Bonneville Power Administration (hereinafter BPA), and is binding on the parties, their successors and assigns. This Agreement supersedes the June 1997 South Fork Snake/Palisades Wildlife Mitigation Agreement between the State of Idaho and BPA.

RECITALS

A. The State of Idaho, Idaho Fish and Game Commission and Idaho Department of Fish and Game (hereinafter Idaho), has the authority to enter into this Agreement pursuant to Idaho Code Sections 36-103, 36-104, and 36-106. Where this Agreement discusses Idaho, the Commission's and the Department's agents and assigns are implied.

B. BPA is a power marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (Act) directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the program adopted by the Pacific Northwest Electric Power and Conservation Planning Council (Council) under subsection 4(h) of the Act, and other environmental laws.

C. Idaho and the Palisades, Anderson Ranch, Black Canyon, and Minidoka Interagency Work Groups have developed the Southern Idaho Wildlife Mitigation Project (hereinafter Project). The Project has been approved by the Council and BPA. BPA has completed an Environmental Assessment, DOE/EA No. 0956 and reached a finding of no significant impact (September 1995), for the South Fork Snake/Palisades Project, and completed the Wildlife Mitigation Program Final Environmental Impact Statement (March 1997) and Record of Decision (June 1997), all pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370c.

D. When fully implemented, the Project will include numerous real property interests (Property or Properties)--conservation easements and fee-title land acquisitions--as well as habitat

improvement activities. Idaho will dedicate the Properties in the Project to wildlife habitat protection permanently, and will manage the Properties according to the terms of this Agreement and site-specific management plans (Management Plans) that Idaho will prepare; however, the Properties within the Project may vary from time to time as parcels are acquired or sold as provided under this Agreement.

E. BPA funding under this Agreement will be provided in a manner consistent with section 4(h)(10)(D) of the Act after BPA receives a recommendation from the Council that the measure be funded at a particular level, and BPA accepts that recommendation. This process is referred to as prioritization.

F. The underlying purpose of the Agreement is to protect, mitigate, and enhance wildlife and wildlife habitat permanently, through the acquisition, protection and management of the Properties.

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. BPA Obligations (a) In consideration of the promises and covenants made and set out herein, BPA shall make monetary transfers to Idaho in amounts agreed upon by the parties within 10 days of receipt of a signed Intergovernmental Contract and invoice from Idaho.

(b) In addition, BPA shall reimburse Idaho's costs of complying with federal real property acquisition law, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655; provided, for any acquisition involving potential relocation costs of \$20,000 or more, Idaho shall enlist the assistance of BPA's Manager, Real Property Services, before taking any action or making any commitments that will necessitate reimbursement by BPA under this paragraph.

2. Operation and Maintenance (a) On or before the beginning of fiscal year 1999 (October 1, 1998), BPA shall start providing a reasonable amount of additional funds for continued operation and maintenance (O&M) of the mitigation to maintain or provide positive wildlife and/or wildlife habitat benefits.

(i) For properties acquired in fee with BPA funds, reasonable may be defined as sufficient funding to, among other things, maintain the staffing and equipment needed to protect

habitat through limiting grazing trespass; maintain the property boundary fences; suppress noxious weed infestations; perform habitat improvement and monitoring activities as delineated in the Management Plans; perform Habitat Evaluation Procedures (HEPs) as required in section 9(b) of this Agreement; and where necessary, pay in-lieu property taxes, county weed assessments, and fire suppression costs.

(ii) For properties acquired as conservation easements with BPA funds, reasonable may be defined as including funding for monitoring and enforcement of easement terms and performing habitat improvements.

(iii) For habitat improvements made with BPA funds on properties acquired or managed by Idaho with funds from a source other than BPA, reasonable may be defined as amounts sufficient to protect those habitat improvements through limiting grazing trespass, maintaining the property boundary fences, suppressing noxious weed infestations, monitoring activities and other activities as delineated in the Management Plans.

(b) By June 30, 2001, the parties shall make their best efforts to negotiate an operation and maintenance funding scheme for the Project. Payment may be on an annual basis, lump sum, or by any other means agreed to by the parties. Funding negotiated for operations and maintenance will be subject to prioritization.

(c) Net revenue received from managing the Properties, including conservation reserve program payments or other similar payments, shall be used only to (i) pay costs associated with the land managed, including but not limited to payment of in-lieu property taxes, county weed assessments, and fire suppression costs, or (ii) to implement the Management Plans. Net revenues may be subtracted from O&M funds that would otherwise have been provided by BPA, unless otherwise agreed by the parties.

3. Idaho Department of Fish and Game Obligations (a) The monies provided pursuant to sections 1 and 2 above, any interest earned from them, and net income earned from the Properties shall constitute the Fund. Idaho shall deposit the Fund in an interest bearing account and maintain grant accounting to allow tracking of all expenditures from the Fund.

(b) Idaho may use the Fund only to purchase the Properties, improve them, conduct inventories, HEPs (pursuant to guidelines published by the U.S. Fish and Wildlife Service), develop Management Plans, and to accomplish reasonable operation and maintenance.

Expenditures from the Fund must be pursuant to the Management Plans; provided, Idaho may use the Fund for acquisitions prior to developing a Management Plan for a particular site.

Idaho may also use the Fund to improve habitat on public lands, including those owned or managed by Idaho in the mitigation area; provided, public lands does not include lands owned or managed by a person or entity having a wildlife mitigation agreement with BPA calling for that person or entity to be responsible for operation and maintenance or habitat improvement costs.

The Fund may be used for wildlife mitigation purposes only, and will not be used in lieu of other expenditures Idaho must make under other agreements or provisions of law. The Fund may not be used to pay fees-in-lieu of property taxes, county weed assessments, operation and maintenance, or fire suppression on lands that were not purchased for purposes of Southern Idaho wildlife mitigation or that Idaho owned or operated prior to this Agreement.

(c) Idaho will use the Fund to implement wildlife mitigation activities as outlined in the Intergovernmental Contracts and within the area delineated in Attachment A of this Agreement. Idaho may utilize its own processes in conducting any and all pre-acquisition activities, that include, by way of example, appraisals, drafting and presenting to sellers earnest money agreements, purchase and sale agreements, hazardous materials audits, and conducting surveys; provided, Idaho will comply with federal real property acquisition laws, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655. Where Idaho has no established procedure, it will follow BPA or federal procedures.

(d) Idaho shall protect the properties in the Project as wildlife habitat permanently on behalf of BPA, preventing any and all uses of the Properties that are inconsistent with this Agreement, the Council's Program, or the Management Plans.

(e) Property acquired pursuant to this Agreement is subject to the condition that it be managed for wildlife under this Agreement. If BPA determines that a Property is not being managed for wildlife, as evidenced by a twenty percent drop in the highest documented HEP values, then the Property shall vest in BPA in fee simple absolute, unless BPA provides written consent to such cessation of use or lack of compliance. To allow the Property to vest in BPA, Idaho shall take title to real property it purchases under this Agreement by a deed conveying fee simple with an executory limitation over. The deed should be substantially equivalent to Attachment C. This provision is inapplicable if the twenty percent drop in HEP values is proximately caused by force majeure as described in section 6 or BPA's failure to provide additional funds for operation and maintenance as described in section 2.

4. Management Plans (a) Idaho shall use the Fund to develop an inventory of the resources existing on the Properties. Based on the information obtained from the inventories Idaho shall develop a site specific management plan (Management Plan) for each mitigation site within two years of the date of acquisition. The Management Plans will describe the mitigation in detail, including its baseline HEP results and how and when estimated HUs from improvement activities will be achieved and sustained. The Management Plans will focus on habitat management concerns including: the management of noxious weeds, the use of grazing and other means of manipulating habitat to reach desired conditions for wildlife, road closures, access, and other management practices designed to protect wildlife and their habitats. BPA will not approve proposed management practices that in its opinion may impede the increase in HEP value of improvement HUs. Upon completion, the Management Plans shall be incorporated and made a part of this Agreement.

(b) The NEPA documents mentioned in Recital C of this Agreement will be incorporated by reference into the Management Plans. Idaho will use the Fund to manage the properties to benefit wildlife permanently, according to the Management Plans, the terms of this Agreement, and the Environmental Assessment performed by BPA. BPA must approve the Management Plans before implementation, and it may not withhold its approval unreasonably.

5. Incidents of Ownership Idaho will have all management and operational control of the Project and Properties, and will therefore be solely responsible for all incidents of ownership of real property interests acquired with the Fund. Subject to the limitations of state law, Idaho agrees to take lawful actions to hold harmless and indemnify BPA from any liability from any incident of ownership that may arise in the implementation of the Management Plan. Such incidents of ownership include, but are not limited to, hazardous waste response, cultural resource mitigation, and tort liability. Nothing in this Agreement shall be so construed or interpreted to commit or obligate Idaho to unlawfully expend funds that have not been appropriated or budgeted.

6. Force Majeure Should an unforeseen event, such as a flood, wildfire, drought, or pestilence, destroy or diminish the Properties' values as wildlife habitat, Idaho shall have no obligation to reproduce the Properties' pre-existing wildlife values any faster than natural regeneration reproduces them.

7. Historic Properties Idaho will assume the responsibilities for historic property protection pursuant to a subsequent agreement between the parties, in a manner substantially equivalent to that described in Attachment B, for all mitigation actions under this Agreement. Idaho will integrate management planning for historic and cultural resources, as defined by the National Historic Preservation Act, with the wildlife management practices as a means of avoiding impacts to cultural and historic resources. Surveys shall be done before initiating non-exempt ground-disturbing activities. Idaho will also avoid sensitive sites if at all possible in implementing habitat improvement actions. Only ground-disturbing activities approved in the Management Plans may be undertaken. Idaho may use the Fund, or if it is exhausted seek additional monies through the prioritization process, for the surveys or any cultural or historic resource mitigation necessitated as a result of Idaho's actions under this Agreement.

8. Recording by Idaho Department of Fish and Game For any real property Idaho acquires under this Agreement, Idaho shall have this Agreement and a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, acknowledged and recorded with all appropriate authorities under Idaho law, at the time Idaho takes title to or assumes control of such property. After this Agreement has been recorded in a county once, subsequent deeds recorded in the same county may refer to the recording data for the Agreement instead of re-recording it. Within 30 days of recording(s), Idaho shall submit to the BPA contracting officer a copy of the recorded documents showing the recording information. In the event Idaho exercises its option to sell or exchange any of the Properties acquired for mitigation, as authorized in Section 9 of this Agreement, Idaho shall lawfully record a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, for the newly acquired property.

(b) For properties Idaho acquires in less than fee interest under this Agreement, Idaho shall ensure (i) the restrictions on the deeds include third party enforcement language approved by BPA, and (ii) the deeds are acknowledged and recorded under Idaho law.

9. Acquisition, Sale, Trade If a sale or trade of a Property would provide a net gain in HUs or aid in the fulfillment of the management objectives as stated in this Agreement and the Management Plan, then Idaho may sell or trade any Property after meeting the following conditions:

(a) obtaining written concurrence by the BPA Manager, Fish and Wildlife Division, and

not being done in practice for each property, as far as I know.

(b) demonstrating that the new real property interests are of equal or greater wildlife habitat value, as measured by a habitat evaluation procedure, to the species targeted in this Agreement, or aid in fulfillment of the Management Plan or facilitate management of Property already acquired.

(c) In completing the transaction Idaho will record, with all appropriate authorities, a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, ensuring the property being acquired through acquisition, sale, or trade is permanently protected for wildlife and wildlife habitat as outlined in this Agreement.

The Fund may be used to facilitate the acquisition, sale or trade or to perform HEPs related to it.

10. Protection of Tribal Rights Nothing in this Agreement is intended to nor shall abrogate any federally protected or reserved Indian right.

11. BPA Monitoring For properties Idaho manages, BPA shall have the right to enter upon the properties at reasonable times to monitor Idaho's compliance with this Agreement and to enforce its terms.

12. Idaho Department of Fish and Game Reporting Beginning January 30, 1998, and every January 30 thereafter, Idaho shall provide BPA an annual report including, but not necessarily limited to, the following information: general descriptions of the real property interests in the Project, any HEP analyses undertaken or in progress, management activities undertaken or in progress, violations of easement terms and enforcement action taken. Idaho shall also provide an accounting of the Fund, including any expenditures, interest earned, and net income derived from the management of the Project. At its own expense, BPA may audit Idaho's accounting records related to the Project.

13. Public Access The public shall have reasonable access to the Properties Idaho owns or manages. Public access is encouraged, but not required, for Properties not managed by Idaho under this Agreement. Public access and use may not result in adverse impacts to wildlife, the reduction of wildlife habitat values, or the destruction of other natural resource values for which the Properties are managed, or impede the increase in HEP value of improvement HUs. Nothing in this Agreement limits the authority or ability of Idaho to manage the Properties for lawful

hunting, fishing or trapping, public safety, wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites.

14. BPA Credit Idaho shall support BPA's taking of the following protection, mitigation, and enhancement credit:

(a) For having used BPA funds to purchase and manage Properties BPA shall receive as a credit to wildlife mitigation under the Act, at a minimum, the HUs agreed upon in the Intergovernmental Contracts, and as a maximum, the actual HUs achieved or acquired.

(b) Idaho will conduct HEPs for breeding bald eagle, wintering bald eagle, Canada goose, mallard, black-capped chickadee, mink, ruffed grouse, mule deer/elk, pheasant, sharp-tailed grouse, river otter, sage grouse, and yellow warbler. The specific list and number of target species will vary by hydroelectric project. The results of the HEPs shall be used to evaluate the credit due on each specific mitigation site. For mitigation actions involving partnerships, BPA shall receive full credit proportional to its investment in the acquisition, improvement costs, or operations and maintenance.

(c) For all Properties: The parties may agree to conduct subsequent HEP studies at any time. The party requesting the study shall fund it unless the parties agree otherwise.

(d) Idaho agrees that BPA's expenditure of money is consistent with section 4(h) of the Act. Idaho shall support BPA's obtaining full credit for its expenditures with respect to protecting and managing existing habitat on the Properties, and for habitat improvements when implemented on the Properties, so long as BPA complies with the terms of this Agreement.

(e) BPA shall use the credit recognized by Idaho under this Agreement toward satisfaction of BPA's wildlife mitigation responsibility for Palisades, Anderson Ranch, Black Canyon, and Minidoka Dams and Reservoirs and any other hydroelectric projects amended into the Council's Program for Southern Idaho and agreed to by the parties. Provided, if another crediting methodology is imposed by applicable law or by judicial decision, agreed to between BPA and Idaho, or adopted by BPA through rulemaking, that formula shall be used to recompute the credit provided in this part and the recomputed credit shall be used for all purposes, including the final determination of BPA's ultimate obligation to provide wildlife mitigation, protection, and

enhancement; however, in no event will any such recalculation affect BPA's obligations under this Agreement.

15. Limitation of Credit The credit BPA obtains for the consideration paid to implement the Project as required and provided in this Agreement shall not be affected or diminished as a result of the failure of Idaho to carry out its obligations to maintain the Properties as provided in this Agreement.

16. Binding Effect This Agreement shall be binding on the parties and their assigns and successors. Either party shall have the right to enforce the terms of this Agreement as provided herein.

17. Dispute Resolution BPA and Idaho agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the properties to non-binding mediation. This provision shall be triggered when one party makes a written request for the other party to join in mediation. Within 30 days of this provision being triggered, the parties shall select a mediator, or if they are unable to select a mediator, each party shall select a mediator and the two selected will choose a third mediator who shall be the sole mediator. The parties shall use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60 days and there have been at least two mediation sessions, any party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation no party shall initiate any legal proceeding except in aid of mediation or to avoid irreparable harm from a direct threat to the wildlife resources protected under this Agreement. Each party shall pay its own mediation costs and fees, including those incurred in selection of a mediator; the parties shall share the costs and fees of the mediator equally.

18. Effective Date This Agreement shall be effective when signed by the Chairman of the Idaho Fish and Game Commission, after receiving lawful approval from the Commission in an open meeting; the Director of the Idaho Department of Fish and Game; BPA's Group Vice President of Environment, Fish and Wildlife; and BPA's Manager, Real Property Services.

19. Contract Approval If a court of competent jurisdiction finds that a portion of this Agreement that relates to the Properties and their use or the ability of BPA to exercise its rights with respect to the Properties is unauthorized or not binding on Idaho, this Agreement

shall be terminated and BPA shall determine the Properties acquired under this Agreement and owned by Idaho are not being managed pursuant to the Agreement; title to such Properties as BPA chooses to accept shall then vest in the United States, BPA, in fee simple absolute. Idaho shall also convey to BPA any and all personal property acquired with funding provided by BPA under this Agreement, and remit any remainder sums in the Fund to BPA, after which time the parties will have no further obligations to each other under this Agreement. Provided, that unless agreed to by the parties, the parties shall use their best efforts to enter into a new and binding agreement that carries out the intent of this Agreement. Any party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement.

20. Modification The parties by mutual agreement may modify the terms of this Agreement. Any such modification shall be in writing signed by both parties.

21. Enforcement of Agreement Against Idaho This Agreement is enforceable in any court of competent jurisdiction, whether for equitable relief or damages.

22. Attorney Fees In the event of litigation involving this Agreement each party shall bear its own costs and attorney fees, including those incurred on appeal.

23. Waiver The failure of any party to require strict performance of any term of this Agreement or a party's waiver of performance shall not be a waiver of any future performance or of a party's right to require strict performance in the future.

IN WITNESS WHEREOF, the parties have signed this Agreement below.

Boh
9-15-97

By: (b) (6)
Alexandra B. Smith
Group Vice President
Environment, Fish and Wildlife
Bonneville Power Administration
Date: 9/15/97

By: (b) (6)
John R. Cowger
Manager, Real Property Services
Bonneville Power Administration
Date: 9/26/97

By: (b) (6)
John E. Burns, Chairman on behalf of
Idaho Fish and Game Commission
State of Idaho, Department of Fish and Game
Date: 9/9/97

By: (b) (6)
Stephen P. Mealey Director
Idaho Department of Fish and Game
State of Idaho, Department of Fish and Game
Date: 9-8-97

ATTACHMENTS A, B, and C

ATTACHMENT A

DESCRIPTION OF PROJECT AREA

The project area includes wildlife mitigation project sites in southern Idaho associated with Palisades, Anderson Ranch, Minidoka, Black Canyon hydroelectric projects and any other hydroelectric projects amended into the Council's program and agreed to by the parties.

ATTACHMENT B

SAMPLE HISTORIC PRESERVATION ACT PROGRAMMATIC AGREEMENT

DRAFT PROGRAMMATIC AGREEMENT
among
**THE BONNEVILLE POWER ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE IDAHO STATE HISTORIC PRESERVATION OFFICER**
regarding implementation of
SOUTHERN IDAHO WILDLIFE MITIGATION PROJECTS

WHEREAS, the Bonneville Power Administration is a Federal Power Marketing Agency (PMA), created under the authority of the Bonneville Project Act (16 U.S.C. §§ 832-832I);

WHEREAS, the Advisory Council on Historic Preservation (Council) was established as an independent agency by the National Historic Preservation Act (NHPA) at 16 U.S.C. § 470L. Pursuant to Section 106 of the NHPA, the Council provides comments to an Agency Official on the effects of undertakings on historic properties in accordance with its implementing regulations, "Protection of Historic Properties," 36 CFR Part 800.

WHEREAS, the role of the state historic preservation officer (SHPO) in regard to programmatic agreements is set out in 36 C.F.R. § 800.1(c)(1)(ii);

WHEREAS, the Bonneville Power Administration (BPA) and other potential managing entities such as the Idaho Department of Fish and Game (IDFG); the Bureau of Land Management (BLM); the United States Forest Service (USFS); and the Shoshone-Bannock Tribes (Tribes) propose to protect, mitigate and enhance wildlife and wildlife habitat adversely affected by the development of the Federal Columbia River Hydrosystem in accordance with the South Fork Snake River/Palisades Wildlife Mitigation Project Final Environmental Assessment and Finding of No Significant Impact and the Wildlife Programmatic Environmental Impact Statement;

WHEREAS, BPA recognizes that mitigation efforts related to the development of the Federal Columbia River Hydrosystem could possibly affect historic properties. For the purposes of this PA, the term "historic properties" means any prehistoric or historic district, site, building, structure, or object, or any property of traditional religious and cultural importance to an Indian tribe, that is included in, or eligible for inclusion in, the National Register. This term includes artifacts, records, and remains that are related to and located within such properties;

WHEREAS, the parties have consulted with the Council, and among themselves, as required by Section 106 of NHPA and the Council's implementing regulations, 36 CFR Part 800, and have chosen to develop this Programmatic Agreement in accordance with 36 CFR Section 800.13 of the Council's regulations;

WHEREAS, the Shoshone-Bannock Tribes (Tribes) have been invited to consult and to sign the Agreement in concurrence; and the Tribes' Cultural Committee is hereby designated as the Tribes' representative for purposes of this agreement;

[add a whereas for the Shoshone-Paiutes? - Nancy, ACHP]

WHEREAS, BPA, in the mitigation effort, may acquire and/or transfer real property or real property interests to other entities who will then assume the responsibility for cultural preservation on said property consistent with this agreement;

NOW, THEREFORE, the Council and the parties agree that the mitigation of wildlife and habitat adversely affected by development of the Columbia River Hydropower System shall be conducted in accordance with the following stipulations, which will fully satisfy BPA's duties pursuant to Section 106 of NHPA.

STIPULATIONS

BPA, with the cooperation of the Idaho Department of Fish and Game and the Shoshone-Bannock Tribe, will ensure that the following measures are carried out

1. Survey and Evaluation

The entity responsible for managing BPA-funded fish and wildlife mitigation on lands in Southern Idaho shall identify and evaluate historic properties potentially affected by land management activities in accordance with the following procedure:

- (a) Activities typically requiring survey and evaluation are included in but not limited to those listed in Appendix B. BPA and the managing entity will determine the project's area of potential effects and conduct surveys, that will be done following the recommendations of the Interior Secretary's "Standards and Guidelines for Identification" (48 Fed. Reg. 44716, 44720 (Dep't Int. 1983)). Surveys and evaluations by the managing entity will be conducted in consultation with the SHPO, Tribes, and BPA. Consultation at a minimum will include opportunity for at least a ten (10)

day review of survey plan(s). Evaluation of historic properties shall be in accordance with 36 C.F.R. part 63, "Determination of Eligibility for Inclusion in the National Register of Historic Places." The managing entity shall forward survey and evaluation results to BPA for review, after which BPA will forward the results to the SHPO and Tribes for a 30-day review.

(b) If cultural material is discovered during any surveys or evaluations, the materials will be noted but left in place unless, in the judgement of the surveying archaeologist, collection is necessary for protection purposes.

(c) If no historic properties are identified during the survey, the project may proceed after the 30-day review by the SHPO and Tribes described in stipulation 1(a).

(d) Other land management activities (those listed in Appendix A) are generally exempt from the need for advance survey and evaluation. However, the managing entity shall promptly report to BPA, Tribes and the SHPO any potential historic properties encountered during implementation of these activities, and shall consult with the SHPO, BPA, and the Tribes about the need to survey and evaluate such properties.

2. Historic Properties Management Plan (HPMP)

In order to fulfill BPA's Section 106 obligations, the managing entity shall prepare an HPMP for projects with historic properties discovered through implementation of stipulation 1 (above).

(a) The HPMP shall be developed in consultation with BPA, the Tribes and the SHPO within one year of the determination of eligibility, and amended as warranted by changing conditions and discovery of additional historic properties. A single HPMP may be prepared for each parcel of land within contiguous boundaries, or where the managing entity is managing other properties similarly situated, and it may include multiple historic properties.

(b) In preparing HPMPs, they shall be prepared by or under the supervision of an individual who possesses the qualifications recommended by the Interior Secretary's "Professional Qualifications Standards" (48 Fed. Reg. 44,716, 44,738).

(c) The HPMP shall include the following:

- 1) An overview, synthesizing available information on the history, prehistory, and ethnography of the area, as a context for management of historic properties;
- 2) an inventory of historic properties present, including a description of each historic property, the significant element or elements of each property that qualifies it for inclusion in the National Register, and appropriate maps, plans, and photographs;
- 3) a discussion of the potential for and intended use of historic properties in ways that do not cause significant damage to or deterioration of the property;
- 4) means to preserve historic properties in place, including protection from vandalism;
- 5) if treatment other than preservation in place is proposed, the HPMP should also discuss the alternative treatment(s), such as research value, interpretive potential, cultural importance to descendants of site creators, cost of preserving the site in place, or lack of alternatives to achieving the project goals;
- 6) a balancing of BPA's mission and historic property preservation or other proposed treatments;
- 7) stipulations for compliance with appropriate sections, where applicable, of NAGPRA (25 U.S.C. §§ 3001-3013), NHPA (16 U.S.C. §§ 470-470x-6), ARPA (16 U.S.C. §§ 470aa-470mm) and the American Indian Religious Freedom Act (AIRFA) (42 U.S.C. § 1996), including definition of a consultation process between BPA and the Shoshone-Bannock Tribes to ensure adequate communication of the actions to be taken under the Wildlife Mitigation Projects. Consultation with the Tribes shall be maintained specifically to solicit input on traditional use or other tribal concerns directly related to this consultation process and Programmatic Agreement.

(d) The managing entity or BPA will provide copies of the draft HPMP to the SHPO, Tribes, Council and other interested parties for review and comment. BPA will direct the managing entity not to take action with potential adverse effect on a historic property until the HPMP is implemented, or section 106 responsibilities are otherwise fulfilled.

3. Discoveries

If cultural material that is not covered by the HPMP (Stipulation 2) is discovered during the implementation of the Project, the managing entity will ensure that all work in the area of the discovery will immediately cease and the managing entity will contact BPA, the Tribes, and the SHPO. BPA, in consultation with the SHPO and Tribes, will determine if the cultural material represents an historic property which is eligible to the National Register of Historic Places. If the material does represent an historic property, BPA will determine the appropriate treatment of the historic property in consultation with the SHPO and the Tribes, as appropriate.

4. Curation

The parties recognize that Tribal traditions do not normally support curation. However, if curation of non-burial materials is deemed necessary as discussed under stipulation 1(b), BPA and the managing entity shall ensure that all curation of records and other items resulting from identification, evaluation, and data recovery efforts proceeds in accordance with 36 CFR 79 and, where applicable, the provisions of the Native American Graves Protection and Repatriation Act (PL101-601). Collections and records will be curated at an appropriate repository. Materials shall be maintained in accordance with 36 CFR 79 until any specified analyses are complete and they are curated or returned to their owners.

5. Human Remains

BPA and the land-managing entity shall ensure that any human remains encountered during the course of this undertaking are treated in a respectful manner. No construction activities will be allowed in the vicinity of the discovery until a Notice to Proceed is provided by BPA and/or the land managing entity. A reasonable and good-faith effort shall be made to identify the appropriate ancestors, Native American or otherwise, related to the burial, and consult with them concerning the treatment of remains. If human remains are encountered on Federal lands, the land-managing entity shall consult with Native Americans, or other groups related to the burial, to determine treatment and disposition measures consistent with applicable Federal law (such as the Native American Graves Protection and Repatriation Act). BPA, SHPO and the Shoshone-Bannock Tribe will address specific NAGPRA procedures regarding the discovery of human skeletal remains in an MOA.

If human remains are encountered on State or private lands, BPA shall ensure, in consultation with the SHPO, that they are treated according to the provisions of Idaho's 1984 Protection of Graves Act, Sections 27-501 through 27-504. If Native American remains are encountered, the appropriate tribal policy will be followed. If objections are raised by any party to this Agreement regarding the treatment of human remains, BPA shall consult to resolve the objections in accordance with Stipulation 9.

6. Training

Managing entity staff shall attend training in cultural resources management and/or the Section 106 review process, or demonstrate knowledge of these subjects.

7. Annual Report

The managing entity shall prepare an annual report regarding implementation of this PA, and shall distribute the report to BPA, the SHPO, the Tribes and the Advisory Council. Annual reports should include:

- a. Name of contact person for each wildlife management area;
- b. a summary of general land management activities for the year;
- c. a specific description of the survey, evaluation and HPMP activity undertaken in that year;
- d. a discussion of problems and successes in managing historic properties and implementing this PA, including the views of Tribes and other interested parties;
- e. training undertaken by managing entity staff per stipulation #6;
- and
- f. anticipated date of the next annual report.

This report shall be the basis for BPA, the land managing entity, SHPO, Council, Tribes, and other interested parties annually reviewing the implementation of the PA and determining if changes in the PA or implementation are necessary. The first report is due not later than one year from execution of this PA, or as otherwise agreed in writing by the consulting parties.

8. Amendment of the Agreement

Any party to the agreement may request that this PA be amended, whereupon the parties will consult in accordance with 36 C.F.R. § 800.13

to consider such amendment. Any amendment or addendum to this agreement shall be executed in the same manner as the original.

9. Dispute Resolution

Should BPA, the SHPO, or the Tribes be unable to resolve a dispute regarding implementation of this PA, they may consult with the Council staff. If the dispute is still not resolved after a period of 60 day, the SHPO shall request the further comments of the Council pursuant to 36 C.F.R. § 800.6(b).

10. Termination

BPA or the SHPO may terminate this PA by providing 120 days' notice, in writing, to the other parties, including concurring parties, provided that the parties will meet during the period prior to termination to seek agreement, amendment, or other action that would avoid termination. It is the intent of the parties that this agreement last for the duration of the South Fork Snake River Programmatic Management Plan. In the event of termination, BPA and the land management entity will comply with 36 C.F.R. §§ 800.4-800.6 with regard to land management activities.

11. Other Indian Tribes

Nothing in this agreement is intended to affect the interests or rights of any other Indian tribe.

Execution of this PA by BPA, the SHPO, the Council, plus concurrence by the Tribes and implementation by the managing entity(ies) demonstrate that BPA has taken into account the potential effects of the South Fork Snake River/Palisades Wildlife Mitigation Project Final Environmental Assessment and Finding of No Significant Impact, in full compliance with the requirements of Section 106 of the NHPA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

Date: _____

Title: _____

BONNEVILLE POWER ADMINISTRATION

By: _____

Date: _____

Title: _____

IDAHO STATE HISTORIC PRESERVATION OFFICER

By: _____

Date: _____

Title: _____

Concur:
SHOSHONE-BANNOCK TRIBES

By: _____

Date: _____

Title: _____

IDAHO DEPARTMENT OF FISH AND GAME

By: _____

Date: _____

Title: _____

APPENDIX "A"

Land Management Activities Normally Exempt from Prior Survey and Evaluation

- * Acquisition of a conservation easement (survey and evaluation normally will be required prior to implementation of Appendix B activities funded by BPA or the managing agency within the easement)
- * Management of vegetation not associated with structural landscaping (i.e., non-mechanical weed control or tree topping)
- * Maintenance of fences not requiring excavation
- * Construction and/or preparation of wildlife mitigation structures, facilities or alterations to land where such activities or their use will not involve excavation or ground disturbance, nor create a risk of unearthing historical items or resources

APPENDIX "B"

Examples of Land Management Activities Normally Requiring Prior Survey and Evaluation

- * Acquisition of land in fee (survey and evaluation would be limited to an overview-type survey for informational purposes only, with no testing) [SHPO wanted moved to here, BPA added qualifying parenthetical]
- * Construction of buildings, including site preparation
- * Removal of buildings more than 50 years old
- * Modification of buildings more than 50 years old
- * Excavation for trenches, ditches or ponds, or any other ground-disturbing activities

DRAFT PROGRAMMATIC AGREEMENT 10
South Fork Snake River Management Plan

- * Construction of roads
- * Logging

NWeintraub:nw:5373:5/2/97 (ECN-W:\ECN\ECN96\EQ-13-5.(sf\p)

ATTACHMENT C

The Deed Conveying Fee Simple With an Executory Limitation Over shall include the following provision or one equivalent to it:

Title to this property shall vest in the United States, Bonneville Power Administration (BPA), upon (1) the determination by the Bonneville Power Administration (BPA) that this real property is not being managed for wildlife, as described in the August 1997 Southern Idaho Wildlife Agreement on file with the BPA Manager, Real Property Services, and (2) BPA's choosing to accept conveyance of the property.

From: [Fife,Sandra A \(BPA\) - EWM-4](#)
To: [Haserot,Heidi M \(BPA\) - TERR-3](#); [Campbell,Kara M \(CONTR\) - TERR-3](#)
Cc: [Kaplowe,David J \(BPA\) - EWM-4](#)
Subject: FW: FOIA request for parking lot
Date: Wednesday, July 22, 2020 1:08:40 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)
[image006.jpg](#)

Hi Heidi,

IDFG's follow up response for the parking lot construction is below. Let me know if there is a need for additional information.

Thanks!

Sandra

From: Bosworth,Bill <bill.bosworth@idfg.idaho.gov>
Sent: Wednesday, July 22, 2020 12:11 PM
To: Fife,Sandra A (BPA) - EWM-4 <safife@bpa.gov>
Cc: Elam,Steve <steve.elam@idfg.idaho.gov>
Subject: [EXTERNAL] RE: FOIA request for parking lot

Hi Sandra,

No federal funds are being used to construct the parking lot, so NEPA does not apply.

Let me know if we can provide additional help.

Best Regards,
Bill

From: Fife,Sandra A (BPA) - EWM-4 <safife@bpa.gov>
Sent: Wednesday, July 22, 2020 12:14 PM
To: Bosworth,Bill <bill.bosworth@idfg.idaho.gov>
Cc: Elam,Steve <steve.elam@idfg.idaho.gov>
Subject: FOIA request for parking lot

Hi Bill,

I neglected to forward a second FOIA request last week. The attached request relates to the construction of the parking lot. Specifically could you provide the NEPA analysis that was conducted relating to construction of the parking lot. Thanks much!

Sandra

Sandra Fife

Fish and wildlife project manager | EWM-4
BONNEVILLE POWER ADMINISTRATION

bpa.gov | P 503-230-3678 | C (b) (6)



From: [Fife, Sandra A \(BPA\) - EWM-4](#)
To: [Haserot, Heidi M \(BPA\) - TERR-3](#)
Cc: [Campbell, Kara M \(CONTR\) - TERR-3](#); [Kaplowe, David J \(BPA\) - EWM-4](#)
Subject: FW: FOIAA request-Hammer Flats
Date: Wednesday, July 22, 2020 10:41:46 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)
[image006.jpg](#)
[image007.gif](#)
Importance: High

Hi Heidi,

IDFG's response to the FOIA request is below. Essentially, the FOIA requester's basis for information about IDFG using BPA funds for construction of a private road, was incorrect. IDFG did not pay for road construction. IDFG did grant an easement to accommodate use of an existing road for a land-locked parcel.

Sandra

From: Bosworth, Bill <bill.bosworth@idfg.idaho.gov>
Sent: Tuesday, July 21, 2020 4:27 PM
To: Fife, Sandra A (BPA) - EWM-4 <safife@bpa.gov>
Cc: Elam, Steve <steve.elam@idfg.idaho.gov>
Subject: [EXTERNAL] FW: FOIAA request-Hammer Flats
Importance: High

Hi Sandra,

Before getting to your questions, I would like to clarify the nature of the easement granted to Ms. Krueger identified in the records request. IDFG granted the easement to accommodate use of an existing road. The road provides necessary access to a property "land-locked" when IDFG purchased the adjacent property. The statement in Mr. Isaac's request indicating the easement was "for construction of a private road" is not consistent with IDFG's reason for granting the easement.

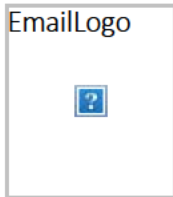
With that context, the direct answer to your question is a little anticlimactic: IDFG did not pay for road construction.

If this raises additional questions or need for discussion, please don't hesitate to let me know. If its easier to talk on the phone, always feel free to use my cell number (b) (6)

Best Regards,
Bill

Bill Bosworth
Lands/Mitigation Coordinator

Idaho Department of Fish and Game
600 S. Walnut
Boise, ID 83712



<https://idfg.idaho.gov>

From: Fife, Sandra A (BPA) - EWM-4 <safife@bpa.gov>
Sent: Friday, July 17, 2020 10:25 AM
To: Elam, Steve <steve.elam@idfg.idaho.gov>
Subject: FOIAA request-Hammer Flats
Importance: High

Hi Steve,

We have had a FOIA request related to toad construction at Sandy Point. My task as relates, is to provide NEPA analysis completed by BPA and IDFG. My question for you is, did IDG pay for road construction there, and where funds that originated from BPA used for this purpose either through the stewardship fund or the annual contract? The request is attached. Any information you have would be helpful, particularly as relates to NEPA analysis.

Thank you!

Sandra

Sandra Fife
Fish and wildlife project manager | EWM-4
BONNEVILLE POWER ADMINISTRATION
bpa.gov | P 503-230-3678 | C (b) (6)



Southern Idaho Wildlife Mitigation
Memorandum of Agreement
Between
The State of Idaho and Bonneville Power Administration

September 2014

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This Agreement is made between the STATE OF IDAHO (“**IDAHO**”), by and through its DEPARTMENT OF FISH AND GAME (“**IDFG**”), and BONNEVILLE POWER ADMINISTRATION (“**BPA**”). Together Idaho and BPA are the Parties to this Memorandum of Agreement (“**Agreement**”).

I. Introduction

A. *Purpose of the Agreement*

The Parties enter this Agreement to address Federal habitat mitigation obligations for wildlife in southern Idaho, while also providing ecosystem benefits for resident fish. In particular, this Agreement permanently resolves any rights, claims, or interests Idaho has in wildlife-related mitigation under the Pacific Northwest Electric Power Planning and Conservation Act (“**Northwest Power Act**”) and other applicable laws related to the Federal Columbia River Power System (“**FCRPS**”) dams in southern Idaho. These dams include the Boise Diversion, Black Canyon, Anderson Ranch, Palisades, and Minidoka (“**southern Idaho dams**”).¹ In addition, this Agreement resolves any rights, claims, or interests Idaho has in resident fish- and wildlife-related mitigation related to the operational impacts of Deadwood Dam. The Bureau of Reclamation (“**Reclamation**”) owns and operates these dams for multiple public purposes, including irrigation, irrigation power, commercial power, recreation, and fish and wildlife.

B. *Idaho’s Interests*

This Agreement applies to all interested Idaho State agencies, boards, or commissions. IDFG will be the lead representative for Idaho. To the extent of the authority granted to it under Idaho law, IDFG represents Idaho, including all other interested Idaho state agencies, boards, or commissions, in this Agreement. Pursuant to Idaho Code § 36-103(a), Idaho’s wildlife policy is to preserve, protect, perpetuate, and manage all

¹ The effects of the Boise Diversion Dam on fish and wildlife have been mitigated already, so it is not addressed further in this Agreement.

wildlife within Idaho. Idaho assists BPA in fulfilling BPA's wildlife mitigation responsibilities related to southern Idaho dams.

C. BPA's Interests

BPA is a power-marketing agency within the U. S. Department of Energy. BPA has wildlife mitigation responsibilities under the Northwest Power Act, 16 U.S.C. § 839b(h)(10)(A), and other environmental laws. This includes mitigation for wildlife impacts associated with the southern Idaho dams.

Using its Northwest Power Act authorities, BPA has implemented various wildlife mitigation projects, including habitat acquisition and improvement, to address the effects of southern Idaho dams. Where possible, BPA prioritizes and funds mitigation projects that have both wildlife and fish benefits, reflecting an ecosystem approach to mitigation.

D. Southern Idaho Mitigation History

The Parties entered a programmatic wildlife mitigation agreement in May 1997 to address the effects of FCRPS dams on wildlife and wildlife habitat in southern Idaho. That agreement established the roles, responsibilities, and commitments of each Party to implement wildlife mitigation projects. The Parties executed a revised agreement in September 1997 ("**1997 MOA**") and began implementing wildlife mitigation for the southern Idaho dams.

Attachment 1 to this Agreement shows the real property acquired by Idaho with BPA funding under the 1997 MOA. Upon execution of this Agreement, ongoing activities for all of the properties Idaho acquired under the 1997 MOA, and activities for future acquisitions under this Agreement, will be covered by a single BPA project implemented by Idaho called the "**Southern Idaho Wildlife Mitigation Project.**" "**Project Properties**" will include properties acquired by Idaho under the 1997 MOA and under this Agreement.

Idaho agreed in 2010 with the Shoshone-Bannock Tribes of the Fort Hall Reservation, and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, (collectively “**the Tribes**”) to allocate implementation for the wildlife mitigation opportunities related to Federal hydropower projects in the mid-Snake and upper Snake River basins. Those entities agreed the Idaho share (“**Idaho share**”) is 50% (one half). See **Attachment 2**. This Agreement addresses the Idaho share only.

E. Deadwood Dam

The Northwest Power and Conservation Council (“**Council**”) has included mitigation for the construction and resulting inundation impacts from Deadwood Dam in its Columbia River Basin Fish and Wildlife Program (“**Council Program**”). BPA denies any legal obligation to address construction and inundation effects of Deadwood Dam, but accepts a duty for the commercial power share of operational impacts. The Parties have decided to resolve any rights, claims, or interests Idaho has in resident fish- and wildlife-related mitigation related to the operational impacts of Deadwood Dam by including funding and commitments in this Agreement to address those impacts.

This Agreement does not (1) resolve any rights, claims, or interests Idaho has in resident fish- and wildlife-related mitigation to address construction and inundation impacts of Deadwood Dam or (2) change BPA’s position that it has no obligation to mitigate those impacts.

F. Other Agencies

Reclamation owns and operates Black Canyon, Anderson Ranch, Palisades, and Minidoka dams in southern Idaho.

G. Coordination with Tribes

The Parties have discussed this Agreement with the Tribes. BPA has a separate mitigation agreement with each of the Tribes and works with them on a government-to-

government basis to mitigate fish and wildlife habitat in southern Idaho. This Agreement does not establish any binding legal precedent affecting the Tribes.

H. Definitions

- **Construction and inundation impacts (“C & I”)** means the effects to wildlife and wildlife habitat from the construction of a dam and the subsequent inundation from its reservoir.
- **Mitigation** and **mitigate** are used to encompass the obligation to “protect, mitigate, and enhance” wildlife and related habitat affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries.²
- **Operational impacts** are those adverse impacts to wildlife and wildlife habitat that may be associated with the operation of dams and reservoirs.
- **Project** means Southern Idaho Wildlife Mitigation Project.
- **Project Properties** means property interests, acquired by Idaho under the 1997 MOA and under this Agreement.
- **Restoration** means on-the-ground habitat improvement action that is typically done on a larger scale than stewardship, often including earthmoving activities or construction, and occurs only once or at most infrequently.
- **Stewardship** means land management, operation, maintenance and stewardship activities, along with project management and oversight, with representative stewardship activities enumerated in Section II.F.3.j.
- **Wildlife** means terrestrial and aquatic wildlife excluding fish.

² See generally, 16 U.S.C. §§ 839b (h)(1), (2), (5), and (10) (describing the Northwest Power Act objectives and agency obligations).

II. Commitments for Wildlife Mitigation

A. Agreement

The commitments in this Agreement fully address any rights, claims, or interests Idaho has in wildlife-related mitigation or mitigation funding related to C & I and operational impacts from southern Idaho dams, and in resident fish- and wildlife-related mitigation related to operational impacts of Deadwood Dam, pursuant to the Northwest Power Act and Federal law.

B. Defining Federal Wildlife Mitigation Obligations

To avoid longstanding debates involving use of the Habitat Evaluation Procedure and Habitat Units, the Parties agree to use acreage to define Federal wildlife mitigation associated with southern Idaho dams.

C. Impacts and Amounts of Mitigation

1. C & I Impacts

The construction of southern Idaho dams and the inundation from their reservoirs affected approximately 33,290 acres. The Idaho share of wildlife mitigation from construction and inundation of southern Idaho dams is thus approximately 16,645 acres. To date BPA has funded, and Idaho has mitigated, approximately 8,722 acres. Attachment 1 lists these completed projects. This Agreement addresses mitigation for the remaining 8,588 acres.

2. Operational Impacts

For the purpose of wildlife mitigation for southern Idaho dams and for the purpose of resident fish and wildlife mitigation for Deadwood Dam, operational impacts equate to an additional 1,330 acres. To resolve the Idaho share of these operational impacts, BPA will fund, and Idaho will assume responsibility for, mitigation of 665 acres.

3. *Remaining Federal Mitigation Responsibility*

The Idaho share of the remaining Federal mitigation responsibility, as described in Sections II.C.1. and II.C.2., totals 8,588 acres—7,923 acres remaining for C& I impacts, plus 665 acres for operational impacts. Idaho assumes the responsibility to mitigate at least 8,588 acres using funding provided by BPA under this Agreement.

Table 1: Total acres lost, acquired, and remaining to mitigate

Total losses	33,290
Idaho Share of C&I— one half	16,645
Idaho acres acquired	8,722
Total C&I remaining	7,923
Plus half operational loss	665
Total remaining Idaho share	8,588

4. *Crediting for Pre-Agreement and Remaining Mitigation*

BPA may seek other credit for mitigation benefits achieved under this Agreement for any fish, aquatic, or other mitigation obligation under the Northwest Power Act or other laws, provided BPA does so in consultation with Idaho and seeks Idaho’s concurrence. Should Idaho not concur, the Parties may proceed with either the Dispute Resolution provisions of this Agreement or mechanisms provided by the legal framework under which BPA is seeking other credit.

D. *Principles Guiding Future Wildlife Mitigation Projects*

The Parties will work collaboratively to mitigate the remaining Idaho share of 8,588 acres. Idaho and BPA will coordinate efforts under this Agreement with the Tribes to the extent practical to address Federal, state, and tribal interests appropriately.

1. Idaho already owns and manages tens of thousands of acres in Idaho for the benefit of fish, wildlife, and the public. IDFG has a policy establishing criteria for acquisition of property, including criteria for acquisition of property using

Federal funds, such as funds provided under the Pittman-Robertson Act. IDFG develops plans for management of its wildlife management areas and other properties. Many of Idaho's acquisitions with BPA funding under the 1997 MOA have expanded or enhanced IDFG's already existing wildlife management areas.

2. Idaho will:

- Actively seek to combine the BPA funding from this Agreement with funding from other sources to leverage wildlife mitigation under this Agreement.
- Comply with IDFG and Commission Land Acquisition policy.³
- Use the Idaho Comprehensive Wildlife Conservation Strategy,⁴ individual species management plans, and Council subbasin plans to assess wildlife values and priorities for project selection.
- Follow BPA's In-Lieu and Capitalization policies.⁵
- Cooperate with BPA due diligence necessary for acquiring and managing mitigation properties.
- Notify Reclamation of proposed acquisitions.
- Continue to participate in good faith in the Council's categorical and geographic reviews of BPA-funded wildlife habitat projects.

E. Ecosystem Benefits

Idaho will take an ecosystem approach in selecting, restoring, and managing both existing and new real property interests under this Agreement. By protecting and restoring ecosystem structures and functional links between ecosystem elements, the Parties expect the Agreement to enable significant benefits to fish, wildlife, and other resources of interest.

³ Copies on file at IDFG and BPA.

⁴ <http://fishandgame.idaho.gov/public/wildlife/cwcs/>

⁵ See the Capitalization Policy at <http://efw.bpa.gov/IntegratedFWP/policyframework.aspx>; see In lieu-related policy documents generally at <http://efw.bpa.gov/IntegratedFWP/policyframework.aspx>

F. BPA Funding of the Southern Idaho Wildlife Mitigation Project

1. Acquisition Funding

Beginning in FY⁶ 2015 and extending through FY 2024, BPA will make payments totaling \$22 million (“**Acquisition Funding**”) for approved new projects and their stewardship in the amounts identified below and summarized in **Attachment 3**. BPA will provide Acquisition Funding on a project-by-project basis, subject to the terms of this Agreement.

- a. BPA will review each project and its constituent elements (e.g., acquisition, planning, restoration, stewardship) to determine whether the project meets the conditions required for capitalization.
- b. The Parties will determine what portion of Acquisition Funding to dedicate to stewardship as new acres are protected through implementation of the Agreement. BPA will transfer such funding to the Stewardship Account established in Section II.F.3 as requested by Idaho.
- c. Regardless of how BPA classifies a project’s funding—e.g., capital or expense—the annual total available budget remains the sum of the commitments stated in Section II.F and as adjusted in the manner allowed in Sections II.F.6-8. See Attachment 3.

2. Stewardship Funding for 1997 MOA Properties

BPA will provide Idaho funds to address stewardship of all Project Properties acquired under the 1997 MOA. By December 31, 2014, BPA will transfer a total of \$14,000,000 to Idaho’s designated Stewardship Account as established in Section II.F.3.

⁶ References in this Agreement to “FY” are to the Federal fiscal year.

3. *Stewardship Account*

- a. Idaho will deposit Stewardship Funding received under Section II.F.2, and funds allocated for stewardship of new acquisitions from Acquisition Funding under Section II.F.1, into a “**Stewardship Account.**” The Stewardship Account will become the property of Idaho and be managed and controlled by Idaho for the permanent protection of Project Properties. The Stewardship Account will be a public endowment fund not subject to Idaho Code § 67-1210.
- b. If funds in the Stewardship Account are inadequate to fulfill its purposes, BPA has no obligation to provide additional funding. If the Parties later agree that the amount in the Stewardship Account exceeds the amount needed to fulfill its purposes, then Idaho may spend such agreed-upon excess on expanding and improving the Southern Idaho Wildlife Mitigation Project.
- c. Idaho will invest the Stewardship Account and its earnings in a manner to provide stable and regular distribution of earnings to Idaho, while still preserving and increasing over time the value of the Stewardship Account at a rate equal to or in excess of the rate of inflation. Idaho will invest and manage the Stewardship Account in accordance with the Idaho Uniform Prudent Investor Act, Idaho Code Title 68 Chapter 5, and Idaho is authorized to invest the assets of the Stewardship Account and its earnings in any investment authorized by the Act. IDFG’s Director will have fiduciary responsibility for the Stewardship Account.
- d. The funds in the Stewardship Account may be used, without additional consultation with BPA, to pay reasonable expenses for governance of the Stewardship Account, including fiduciary consulting, and investment management of the Stewardship Account on behalf of Idaho.
- e. The Stewardship Account will be accepted by the State of Idaho Endowment Fund Investment Board (“**EFIB**”), at EFIB’s discretion and

subject to the consent of the Idaho Board of Land Commissioners, as authorized by, and consistent with, Idaho Code § 57-720. If EFIB does not accept the Stewardship Account for investment, the Stewardship Account will be deposited in a combination of the Fish Game Expendable Trust Account and the Fish and Game Nonexpendable Trust Account, as established pursuant to Idaho Code §§36-108 and 36-109.

- f. Idaho shall account for the Stewardship Account separately from other funds. Idaho, through EFIB or the Treasurer as appropriate, may deduct the expenses for investment of such funds from investment proceeds, and may combine or pool funds for investment purposes. EFIB will allocate earnings, formulate investment policies, and audit funds as set forth in Idaho Code § 57-720. The Treasurer will allocate earnings, formulate investment policies and audit funds in accordance with state law.
- g. IDFG's Director will have sole discretion to determine the amount of the earnings to distribute from the Stewardship Account to the Fish and Game Account for expenditure, the amount of earnings to retain as earnings for subsequent distribution, and the amount of earnings to be designated as a deposit to the Stewardship Account, which deposit will constitute an addition to principal and not earnings. Earnings for the Stewardship Account will be annually calculated upon direction established by IDFG's Director to the EFIB or Treasurer, as appropriate.
- h. Idaho may create and manage separate accounts or funds within the Stewardship Account for individual or groups of Project Properties. Distributions from the Stewardship Account may be expended for stewardship activities on any Project Property at Idaho's discretion.
- i. BPA is funding Idaho to provide stewardship on the Project Properties—as described below—in a manner that preserves or enhances a property or group of properties' conservation value permanently. Idaho will use BPA funding for stewardship activities on Project Properties that help fulfill the

terms of this Agreement, meet legal obligations associated with land ownership not otherwise prohibited by this Agreement, and follow any land management plan for a property or group of properties whose acquisition BPA approved.

j. Representative stewardship activities include, but are not limited to, the following:

- Maintain and defend boundaries and other legal property interests;
- Monitor and address surrounding land uses or activities that could adversely affect conservation values;
- Maintain IDFG's realty files, including photos, maps, tax and ownership information;
- Update site management plans;
- Maintain roads, bridges, trails, gates, fences, locks, and signage;
- Control and prevent unauthorized public access or use;
- Prevent encroachment and mitigate risk of catastrophic wildfire;
- Inventory, map, and evaluate wildlife and habitat conditions;
- Provide outreach to neighbors, stakeholders, local governments, and volunteers;
- Detect, map, and treat invasive species;
- Plan, conduct, and monitor effects from prescribed fire;
- Manage vegetation through mowing and other activities;
- Prepare Stewardship Account and Project Property monitoring reports.

k. Limitations on the Use of the Stewardship Account.

- i. Through FY 2024, Idaho may use funds in the Stewardship Account for restoration and acquisition activities only after consulting with BPA and meeting all environmental compliance conditions and due diligence that BPA identifies associated with acquiring real property interests. After FY 2024, Idaho may use funds in the Stewardship Account for restoration and acquisition, in addition to stewardship activities, for southern Idaho wildlife mitigation without consulting with BPA.

- ii. Idaho shall not pay property taxes or make payments in lieu of taxes with any funds provided by BPA. Idaho may make such payments from income generated from Project Properties as described in Section II.F.10.
 - iii. Idaho will not make any use or expenditure of these monies for any purpose other than those identified in Section II.F.3. To do so would violate this Agreement and provide justification and cause for BPA to cease making any further payments under this Agreement and demand custody and control of the Stewardship Account until Idaho reinstates all funds used in violation of this Agreement.
- l. Idaho's stewardship actions under this Agreement are not considered an ongoing Federal action. Except as provided in Section II.F.3.k.i above, Idaho is not required to get any environmental compliance approvals from BPA for activities carried out with funds from the Stewardship Account, other than approvals that may be otherwise required under an easement or land management plan. Federal regulations shall not, by reason of BPA's funding, apply to contracts issued by Idaho for any work on the Project Properties.
- m. Based on the most recent review of Idaho's southern Idaho wildlife mitigation projects,⁷ the Parties agree the funding and commitments provided in this Agreement will enable Idaho to acquire and manage habitat in a manner consistent with the Council Program's objectives. The Parties also agree that the funding and commitments provided in this Agreement are adequate to provide stewardship in perpetuity for all Project Properties.

⁷ISRP, Review of IDFG's Revised Southern Idaho Wildlife Mitigation Projects (July 24, 2009)
<http://www.nwcouncil.org/fw/isrp/isrp2009-31/>

- n. Upon complete delivery of Stewardship Funding and funding for stewardship from Acquisition Funding to the Stewardship Account, BPA will have forever satisfied any and all Federal obligations to Idaho or any other entity under any law to fund the stewardship of Project Properties. In addition, except as provided otherwise in Sections II.F.6 and III.C.3, Idaho will not request or support the requests of others for any additional funding from BPA for stewardship or restoration activities for any Project Properties.

4. Administrative Funding

Beginning in FY 2015 and extending through FY 2024, BPA will provide \$400,000 annually to Idaho for administrative expenses (“**Administrative Funding**”). See Attachment 3. BPA will provide Administrative Funding using annual contracts typical to BPA’s Fish and Wildlife Program issued and managed using BPA Purchasing Instructions.⁸ Subject to the funding commitments and limitations of this Agreement, the annual contracts will incorporate the work elements in PISCES pertaining to land acquisition and administration. **Attachment 6** identifies PISCES work elements that are appropriate for annual contracts for Administrative Funding, along with other elements as BPA may authorize.⁹ If Idaho reasonably objects to any provision in an annual contract and informal negotiations with BPA’s Contracting Officer do not resolve the matter, Idaho may make its objection in writing to the Head Contracting Authority and BPA shall provide a timely written response.

- a. By the end of FY2024, BPA will pay to Idaho no less than the sum total of \$4,000,000 (four million dollars), along with inflation adjustments as provided in Section II.F.8. Should Idaho not expend all Administrative Funding monies during any one year, upon contract closeout, BPA will either reschedule the funds for use in a future year, or, at Idaho’s request, deposit the funds into the Stewardship Account.

⁸ <http://www.bpa.gov/Doing%20Business/purchase/Pages/default.aspx>

⁹ See also the Work Elements Document linked at <http://efw.bpa.gov/contractors/statementsofwork.aspx>

5. Idaho's Use of Administrative Funding.

The Parties understand that Idaho will use Administrative Funding to fund Project implementation, including but not limited to the following:

- a. personnel, services and supplies, equipment, professional services, contracts, and any other expense that Idaho determines is necessary to technically support and administer a robust wildlife habitat mitigation program;
- b. pre-acquisition and acquisition expenses, such as surveys, appraisals, baseline reports, relocation expenses, and title reports supporting the execution and recording of covenants for new acquisitions and acquisitions under the 1997 MOA pursuant to Section III.D;
- c. Intergovernmental coordination, including Federal, state, tribal, and local entities;
- d. initial site stabilization for new acquisitions as well as monitoring, evaluation, and restoration of wildlife habitat on Project Properties and, in Idaho's sole discretion, on properties that others acquire under this Agreement;
- e. management of the Stewardship Account and all projects and programs associated with that Account;
- f. preparation of reports, management plans, and performance of other administrative responsibilities under this Agreement; and
- g. BPA's internal expenses for appraisal, survey, other realty services and environmental land audit work for Idaho's acquisitions under this Agreement, excluding expenses for BPA's Fish and Wildlife Division, legal, or environmental compliance.

6. Additional Administrative Funding

BPA will consider providing continued funds from FYs 2025-2034 to help Idaho ensure its effective administration of the Southern Idaho Wildlife Mitigation Project. The Parties will make reasonable efforts to negotiate this subsequent funding plan before the expiration of this Agreement, starting from a consideration of the base of \$400,000

annually (plus inflation as provided in Section II.F.8, minus pre-acquisition, initial site stabilization, restoration, and other expenses that will no longer be incurred), and taking into account Idaho's future needs to administer the Project.

7. *Pre-scheduling and Rescheduling.*

Both Parties will make a good faith effort to fully allocate and expend the funds outlined in Section II.F of this Agreement. To do so, annual project budgets may fluctuate plus or minus 20 percent in relation to the budget commitments in this Agreement, to allow for shifts between years, *i.e.*, "**rescheduling**", or to an earlier time, *i.e.*, "**prescheduling**." Fluctuations within an overall project's scope of work, but outside of the 20 percent band, can also occur if mutually agreeable for reasons such as, but not limited to, floods, fires, or other emergency or *force majeure* events.

- a. BPA's financial commitments are described in fiscal year terms, but BPA Fish and Wildlife Program contracts are not necessarily aligned to the fiscal year. As a result, the expense budgets in Attachment 3 will be interpreted as project-year budgets. This means that a project (as implemented through a BPA-issued contract or contracts) can start anytime during the Federal fiscal year (October 1 through September 30) and use that project year budget for the full implementation period (usually one year).
- b. BPA will allow prescheduling future budgets and rescheduling unspent budgets if the adjustment complies with the amounts shown in Attachment 3.
- c. The budget cap in each fiscal year is 120% of the original inflation-adjusted budget as shown in Attachment 3. This cap governs Idaho's requests for prescheduling and rescheduling adjustments. The Parties may agree to adjust the 120% cap to better fulfill the purposes of this Agreement. To exceed a 120% cap, Idaho will notify BPA at least six months in advance of the potential need for such an adjustment. BPA may decline to make the adjustment to avoid a "bow wave" of spending in any given year and on other reasonable grounds.

8. Inflation Adjustment

Beginning in FY 2019, BPA will increase the annual payments for Acquisition Funding and Administrative Funding by 2.5% each year. BPA will add the inflation adjustment, compounded, as shown in Attachment 3, but will not subsequently adjust project budgets as the schedule of that work changes.

9. Full Expenditure of Funds.

The Parties intend to expend all funds provided in this Agreement, except those held in trust in the Stewardship Account, by the end of FY 2024. If at the end of FY 2024 Acquisition Funding, except monies held in trust in the Stewardship Account, remains unexpended, the Parties will either extend the time for their expenditure through FY 2029 or, provided Idaho has acquired at least 8,588 acres, place the unexpended balance in the Stewardship Account. The Parties will structure BPA's payment of the balance of any unexpended funds to be completed expeditiously and in a manner that fits BPA's available budgets while accommodating Idaho's interests.

10. Net Proceeds from Project Properties

Idaho will deposit the net proceeds from any income generated from Project Properties through property-specific fees (*e.g.*, timber receipts, grazing lease fees, recreational or hunting fees, movie rights or royalties, sale of fixtures, etc.) into either the Fish and Game Account or the Stewardship Account. "**Net Proceeds**" refers to proceeds remaining after necessary expenses related to the income-generating activity. Idaho will account for Net Proceeds separately from other funding. Idaho may pay property taxes, payments in lieu of taxes, and other expenses and assessments using income generated from Project Properties. Idaho may use income generated from one Project Property to address expenses arising on other Project Properties. Idaho will only spend Net Proceeds for the benefit of Project Properties for purposes allowed under this Agreement.

G. Relation to acres acquired

The Parties will pursue cost sharing and other efficiencies so that the funds provided under this Agreement could result in acquiring more than 8,588 acres during the term of this Agreement. As a result, BPA will provide funding for projects as described above through FY 2024, even if the 8,588 acre land acquisition target is met earlier.

H. Additional Contributions to Stewardship Account

To the extent allowed by Idaho Law, Idaho may also deposit to the Stewardship Account, any funds donated, bequeathed, devised, or conditionally granted by individuals or entities other than BPA to Idaho for the purpose of stewardship of Project Properties for investment and management according to the terms of any such donations, bequeathals, devises, or grants. Idaho will separately account for any such funds. In calculating earnings of the Stewardship Account under Section II.F.3, Idaho will deduct any gifts, grants, transfers, deposits or devises to the Stewardship Account during the fiscal year for which the calculation is made.

III. Additional Commitments

A. Secure Funding

BPA will take reasonable steps to ensure that the commitments in this Agreement are not modified or reduced based on agency-wide streamlining or other cost-cutting efforts, and include the estimated cost of implementing this Agreement in the agency's revenue requirement to be recovered through base wholesale power rates.

B. Permanent Protection

1. All habitat acquisitions in fee or by easement that BPA funds under this Agreement must include provisions for permanent protection and enforcement of those protections. For fee acquisitions, Idaho will execute and record a covenant running with the land substantively equivalent to the template

provided in **Attachment 4**. Where Idaho secures a conservation easement rather than fee, it will ensure that the United States, acting through BPA or its successor agency, obtains a third party right of enforcement substantively equivalent to the template provided in **Attachment 5**.

2. Property acquired under this Agreement will be held by Idaho in trust for the public and fish and wildlife.
3. The Parties acknowledge the value of public recreational and educational use of lands protected under this Agreement and that enabling these activities is part of IDFG's statutory mission and an appropriate use for Project Properties. IDFG may exercise its discretion to determine reasonable public access for Project Properties.
4. Idaho agrees to BPA's access to all Project Properties with reasonable notice, and to BPA's perpetual enforcement rights for covenants and third party right documents executed for Project Properties under this Agreement.

C. Adequacy and Support of Agreement

Idaho agrees that the projects listed in Attachment 1, combined with the funding and commitments by BPA in this Agreement, permanently satisfy and resolve any rights, claims, or interests Idaho has in wildlife-related mitigation related to the construction, inundation, and operation of southern Idaho dams, and wildlife- or fish-related mitigation related to the operational impacts from Deadwood Dam, whether those effects are measured as habitat units, acres, or some other metric; and whether those effects are considered primary, secondary, cumulative, or otherwise.

1. This Agreement binds all interested Idaho State agencies, boards, or commissions.
2. During the term of this Agreement, if Idaho submits recommendations or comments, or supports those of another entity, related to wildlife habitat and southern Idaho dams or Deadwood Dam operations in relation to the Council Program, then all such recommendations or comments will follow and be

intended to effectuate this Agreement. Idaho will cooperate in good faith in assisting BPA to respond to any allegations that BPA has not fulfilled its Northwest Power Act wildlife-related mitigation responsibilities for the Idaho share of mitigation for southern Idaho dams, or for the Idaho share of mitigation for operational impacts of Deadwood Dam, whether in legal, administrative or general public forums, to the extent Idaho may do so without waiving Idaho's sovereign immunity or immunity under the Eleventh Amendment to the United States Constitution, and subject to constraints imposed under Idaho law.

3. Neither Party may seek to increase or reduce the funding specified in this Agreement, or support others in doing so, unless the Parties agree that one or more of the following exceptions apply:
 - a. There have been substantial and significant changes in applicable Federal law or in the physical attributes or operating parameters of southern Idaho dams or Deadwood Dam,
 - b. *force majeure* events, or
 - c. BPA agrees with the Tribes, whether through settlement or otherwise, to increase the amount of mitigation recognized for Deadwood Dam or southern Idaho dams.

If the Parties disagree over whether substantial and significant changes have occurred, neither Party may seek changes in this Agreement until completing dispute resolution as provided in Section IV.C. This section, however, does not restrict either Party from soliciting, receiving, or granting monies, or supporting others in doing so, in other programs not designed to directly address the Federal wildlife mitigation responsibility arising from the effects occurring, or that have occurred from, the construction, inundation, and operation, of southern Idaho dams.

D. 1997 MOA

This Agreement supersedes the 1997 MOA. For consistency in fulfilling Idaho's obligations under Section III.B to execute and record covenants for permanent protection of Project Properties, BPA will execute and record an extinguishment or amendment of its executory interests for Project Properties acquired under the 1997 MOA (Attachment 1) that Idaho holds in fee, and Idaho will execute and record covenants to replace or amend the executory interests on these properties. The Parties will make their best efforts to fully perform their duties under this section by September 30, 2016.

E. Consistency with the Council Program

This Agreement is consistent with the Council Program¹⁰ in that the Agreement does the following:

- uses acres as a measureable objective to address unfinished mitigation for southern Idaho dams;
- protects properties and ensures their management for wildlife mitigation in perpetuity;
- provides funding for long-term maintenance of the habitat;
- provides sufficient funds to demonstrate a substantial likelihood of achieving the Agreement's wildlife mitigation objectives;
- builds on the Parties' mitigation commitments in the 1997 MOA to provide full mitigation;
- overcomes the impasse related to the Habitat Evaluation Procedure used to establish the initial wildlife habitat loss assessments incorporated into the Council Program; and
- provides habitat benefits for southern Idaho fish.

F. Idaho Property Ownership and Management

The United States and BPA make no warranties or representations whatsoever

¹⁰ See generally, Northwest Power and Conservation Council, Columbia River Basin Fish and Wildlife Program at pages 20-21 (2009). <http://www.nwcouncil.org/fw/program/program-2009-amendments/>

regarding any real property interest in the Project Properties. Idaho assumes all management and operational control of the properties, and will therefore be responsible for all incidents of ownership. Idaho will take all lawful actions, assume full responsibility, and not seek any additional contributions from BPA for incidents of ownership that may arise from the acquisition and stewardship of any property covered by this Agreement. Such incidents of ownership include, but are not limited to, payments in lieu of taxes, taxes, levies, assessments, hazardous waste response, fire suppression, cultural or historic resource mitigation or preservation, endangered species protection, noxious weed or invasive species management, and tort liability.

G. Future Transmission Facilities

Idaho accepts that in the future BPA may seek to construct, locate, operate, maintain, and access future transmission facilities within one or more Project Properties. If BPA seeks to do so, there shall be no additional consideration owed by BPA to Idaho, beyond the funds provided in this Agreement, for securing the easement for these purposes. Should such a transmission easement be needed by BPA over a Project Property, the Parties will negotiate the terms and conditions of the easement, in accordance with applicable law (including appropriate mitigation measures, identified as part of the environmental analysis for the transmission right of way, to be funded by BPA), and taking into account the purpose of this Agreement. Transmission right-of-way easements shall be for the sole purpose of transmission of electrical power and ancillary transmission communications. Such transmission facilities are expressly not precluded by this Agreement.

H. Consolidating IDFG's BPA Mitigation Contracts

Upon execution of this Agreement, BPA and IDFG will promptly execute a new statement of work for the Southern Idaho Wildlife Mitigation Project, 1995-057-00, to consolidate contracts numbered 65189, 62940, and 63060. The Parties will update and

revise the statement of work annually as appropriate to reflect the terms of this Agreement.

I. Non-Appropriation of Idaho Funds

This Agreement shall in no way be construed so as to bind or obligate Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time.

J. Public Records

Nothing in this Agreement prohibits access to information as required by state and Federal public information and open records laws.

K. Reporting

1. Beginning in FY 2015 and through FY 2024, and for as long as Idaho accepts annual funding to administer the Southern Idaho Wildlife Mitigation Project, Idaho shall prepare an annual report for BPA and the Council for wildlife mitigation funded through this Agreement, and use the BPA project tracking system, PISCES.
2. Beginning in FY 2015 and continuing through FY 2034, Idaho will provide to BPA an annual accounting of the use of funds from the Stewardship Account, documenting all expenditures made using the Stewardship Account. BPA may inspect Idaho's records for the Stewardship Account at any time upon reasonable notice, which shall be no less than five business days.
3. Idaho will offer to meet with BPA at least once annually to assess progress and discuss future project opportunities.
4. Idaho will send all reports required under this Agreement to F&W Project Manager, KEWM-4, P.O. Box 3621, Portland, Oregon 97208-3621, unless otherwise directed by BPA.

IV. Administrative Provisions

A. *Good Faith Implementation*

This Agreement rests on bargained-for consideration. The Parties will work together to fulfill their commitments. Matters explicitly addressed within or related to this Agreement routinely arise in a variety of contexts and forums, often on short notice and in time-sensitive situations. The Parties will make reasonable efforts to implement and support this Agreement in good faith.

Because questions or concerns may arise regarding a Party's compliance with this Agreement, the Parties will take the following steps.

- Designate a person to be initially and chiefly responsible for coordinating internal questions regarding compliance with the Agreement.
- Make reasonable efforts to consult together before making decisions implementing this Agreement, and support it at all of their respective organizational levels—*e.g.*, policy, legal, and technical.
- On a continuing basis, take steps to ensure that all levels of their organizations, and other interested or affected federal and Idaho agencies, boards, and commissions, are made aware of the existence of this Agreement and the specific commitments and obligations herein, and emphasize the importance of meeting them.
- Make best efforts to consult with the other Party before taking any action that could reasonably be interpreted as inconsistent with any part of this Agreement. Other issues relating to the natural resources of southern Idaho dams may arise in a broader context than this Agreement that may impact the Parties. The Parties agree to make best efforts to identify such other issues, and consult with the other Party before taking any action that could adversely affect the purposes

and provisions of this Agreement. The Parties will make best efforts to resolve such other issues in a manner that preserves this Agreement and the spirit of collaboration fostered by it.

B. Periodic Review and Modification

The Parties agree to review this Agreement, including the attachments, and any issues concerning its implementation, in FY 2019. At any time, either Party may propose an amendment of the Agreement. No amendment of the Agreement is effective unless and until it is in writing and signed by all Parties.

C. Dispute Resolution

The Parties will attempt to resolve disputes arising out of or relating to this Agreement by following the dispute resolution mechanism in this section and without resort to administrative, judicial or other formal dispute resolution procedures. This section provides the Parties an opportunity to fully and candidly discuss and resolve disputes without the expense, risk, and delay of formal dispute resolution.

If the Parties cannot resolve a dispute regarding this Agreement or management of the Project and Project Properties under this Agreement through informal discussions, they will submit such dispute to non-binding mediation. Either Party may trigger this section by making a written request for the other Party to join in mediation. Within 30 days of triggering this provision, the Parties will select a mediator, or if they are unable to select a mediator, each Party will select a mediator and the two selected will choose a third mediator who will be the sole mediator. The Parties will use reasonable efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60 days and there have been at least two mediation sessions, either Party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of

mediation, no Party may initiate any legal proceeding except in aid of mediation. The Parties will each cover their own costs of dispute resolution and share equally the costs of mediation.

For disputes arising under annual contracts issued by BPA to fulfill its obligations for Administrative Funding, the Parties interpret this Dispute Resolution section as consistent with Section 21.3.14 of the BPA Purchasing Instructions, which allows the contractor and contracting officer to use alternative means of dispute resolution under the Contract Disputes Act. The Parties will only agree to binding arbitration, however, on a case-by-case basis.

D. Effective Date

This Agreement becomes effective from the date of the last signature.

E. Applicable Law

Federal law governs this Agreement and any action, whether mediated or litigated, brought or enforced, except where the Agreement specifically cites Idaho law.

F. Authority

Each Party represents and acknowledges that it has full legal authority to execute this Agreement.

G. Indian Trust and Treaty Rights

Nothing in this Agreement changes any tribe's legal rights, authorities, or jurisdiction related to wildlife, fish, or wildlife or fish habitat management.

H. Severability

If any court, regardless of appeal, invalidates any part of this Agreement as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, the

Parties will consider that as constituting a material change and will negotiate as provided in Section IV.C, Dispute Resolution.

I. Entire Agreement

This Agreement represents the entire agreement between the Parties concerning Federal wildlife-related mitigation related to the construction, inundation and operation of southern Idaho dams and concerning Federal resident fish- and wildlife-related mitigation for the operational impacts of Deadwood Dam. All previous communications between the Parties, either oral or written, with reference to the subject matter of this Agreement are superseded. Unless authorized in this Agreement, neither Party may impose on the other any additional requirements concerning reporting, documentation, planning, procedure, or any other subject related to mitigation activities under this Agreement.

J. Precedent

This Agreement, including but not limited to its reliance on acres instead of habitat units, shall not set a precedent for how either Party may approach wildlife mitigation and crediting elsewhere in Idaho.

K. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement.

SIGNATURES:

(b) (6)

Gregory K. Delwiche
Acting Administrator/Chief Executive Officer
Bonneville Power Administration

9-23-14

Date

(b) (6)

C. L. "Butch" Otter
Governor
State of Idaho

9-22-2014

Date

(b) (6)

Virgil Moore
Director, Idaho Department of Fish and Game

9/19/2014

Date

Attachment 1

IDFG's Southern Idaho Wildlife Mitigation Acreage to Date						
Dam	Property	Acquisition Sponsor	Current Landowner	Total Acres Protected	IDFG Acres Credited	Notes
Anderson Ranch						
	Smith (Boise River)	IDFG	IDFG	59	59	
	Rice Property	IDFG	IDFG	1,364	1,364	
	Faulkner/Bliss Point	IDFG	IDFG	1,802	1,802	
	Sandy Point	IDFG	IDFG	138	138	
	Hammer Flats	IDFG	IDFG	705	705	
Black Canyon						
	Payette River	IDFG	IDFG	91	91	
	Krueger	IDFG	IDFG	166	166	
Palisades						
	Horkley (Deer Parks)	IDFG	BLM	120	120	
	Menan/Kinghorn I (Deer Parks)	IDFG	BLM	142	142	
	Boyle Ranch (Deer Parks)	IDFG	BLM	2,592	1,295	Project shared between IDFG and SBT
	Allen	IDFG	BLM	81	81	
	Beaver/Kinghorn II	IDFG	BLM	310	155	Project shared between IDFG and SBT
	Palisades Noxious Weed	IDFG	N/A	N/A	N/A	
	Pine Creek/Kruse	IDFG	easement/TRLT*	800	400	Project shared between IDFG and SBT
	Winterfeld	IDFG	easement/IDFG	422	211	Project shared between IDFG and SBT
	Quarter Circle	IDFG	IDFG	2,135	712	Project shared between IDFG and SBT
	Soda Hills	SBT	BLM	2,563	1,281	Project shared between IDFG and SBT
Minidoka						
Totals				13,490	8,722	
*Easement held by Teton Regional Land Trust						

Attachment 2

August 13, 2010

Lorri Bodi
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

Dear Mrs. Bodi,

In coordination with the Bonneville Power Administration, the Southern Idaho Wildlife mitigation partners; the Idaho Dept of Fish and Game, the Shoshone-Bannock Tribe, and the Shoshone-Paiute Tribe, have cooperatively been working on a permanent settlement solution for the wildlife mitigation program. In an effort to facilitate each partners successful settlement agreement with Bonneville Power Administration, the partners have agreed to an allocation of habitat units (HU) that define the wildlife mitigation debt incurred by construction and inundation of the federal hydrosystem projects in the Mid and Upper Snake Provinces.

The partners agree that this wildlife mitigation debt be allocated as follows:

- **Shoshone-Bannock Tribe** – 50% of the total debt in the Upper Snake province and 10% of the total debt in the Mid Snake province, then reduced by the habitat units already mitigated for by the Shoshone-Bannock Tribes.
- **Shoshone-Paiute-Tribe** – 40% of the total debt in the Mid Snake province then reduced by habitat units already mitigated for by the Shoshone-PaiuteTribe.
- **Idaho Department of Fish and Game** – 50% of the total debt in the Upper Snake province and 50% of the total debt in the Mid Snake province then reduced by habitat units already mitigated for by the Idaho Department of Fish and Game.

We hope this information is helpful to you in your considerations of settlement for Southern Idaho.

We look forward to timely discussions on this important topic.

Respectfully,

Idaho Dept of
Fish and Game

Shoshone-Bannock
Tribes

Shoshone-Paiute
Tribes

(b) (6)

Cal Groen
Deputy Director

Nathan Small
Council Chairman

Robert Bear
Chairman, Business Council



cc: Governor Butch Otter, Bill Booth, NPCC

Attachment 3

Proposed Funding Stream for Southern Idaho Wildlife Mitigation Agreement with IDFG

CAPITAL	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	TOTAL
New Acquisitions and Stewardship	0	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000	\$2,500,000	\$2,000,000	\$0	\$0	\$0	\$0	\$22,000,000
Stewardship for Existing Acquisitions	\$14,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$14,000,000
Inflation	\$0	\$0	\$0	\$0	\$0	\$62,500	\$101,250	\$0	\$0	\$0	\$0	\$163,750
TOTAL Capital Inflation Adjusted Budgets	\$14,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$2,500,000	\$2,562,500	\$2,101,250	\$0	\$0	\$0	\$0	\$36,163,750
120% Max		\$6,000,000	\$6,000,000	\$6,000,000	\$3,000,000	\$3,075,000	\$2,521,500	\$0	\$0	\$0	\$0	
EXPENSE												
Administration and Pre-Acquisition Funding	\$0	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$4,000,000
Inflation	\$0	\$0	\$0	\$0	\$0	\$10,000	\$20,250	\$30,756	\$41,525	\$52,563	\$63,877	\$218,972
TOTAL Expense Inflation Adjusted Budgets	\$0	\$400,000	\$400,000	\$400,000	\$400,000	\$410,000	\$420,250	\$430,756	\$441,525	\$452,563	\$463,877	\$4,218,972
120% Max	\$0	\$480,000	\$480,000	\$480,000	\$480,000	\$492,000	\$504,300	\$516,908	\$529,830	\$543,076	\$556,653	
Grand Total (including inflation) \$40,382,722												

Attachment 4

After recording, return to:
Bonneville Power Administration
Real Property Services, TERR
Attn: BPA Tract No.
P.O. Box 3621
Portland, OR 97208-3621

COVENANT RUNNING WITH THE LAND

Covenant. The State of Idaho, through the Idaho Fish and Game Commission and the Idaho Department of Fish and Game (hereinafter Idaho or Grantor), for and in consideration of funding (insert actual dollar and legal amount BPA paid for purchase,) provided to acquire fee ownership of certain real property in the County of XXX, State of Idaho, hereby grants, bargains, conveys, and warrants to the United States of America, acting by and through the Department of Energy, Bonneville Power Administration, its successors and assigns (hereinafter BPA or Grantee), this covenant, created under the provisions of the Idaho Conservation Easement Act, Idaho Code §§ 55-2101 to 55-2109 and implemented under applicable state and federal law, which runs with the land legally described as follows:

A tract of land located in [Legal description—alternatively, attach the legal description as an exhibit.]

Under this covenant running with the land, Idaho will use this real property for the public purposes of mitigation, permanent protection and enhancement of wildlife and wildlife habitat, [and to protect historic properties, as such are identified by BPA and IDFG at the time of acquisition], and to allow public access that is reasonable in light of these purposes.

Idaho acquired this real property to help BPA in partially fulfilling its duty to protect, mitigate, and enhance wildlife habitat affected by the development of the Federal Columbia River Power System as required by section 4(h)(10)(A) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 *et. seq.* The funds were provided under a Memorandum of Agreement (MOA) between Idaho and BPA, dated September 2014 and recorded in [identify County] under file No.XXXX. To fulfill its promises to BPA under the MOA, Idaho or its assign is recording this covenant running with the land. Provided, (1) should Idaho choose to exercise its rights to sell or exchange the property and BPA concurs, as evidenced by an affidavit executed by Idaho and BPA, or (2) a court finds the MOA is not binding on one of the parties, then this covenant will become void and be removed as an encumbrance upon this real property, or portion thereof.

ACKNOWLEDGED

By: _____
{NAME}
Secretary, Idaho Fish and Game Commission
Director, Idaho Department of Fish and Game
State of Idaho

Date: _____

Date:

ACCEPTED

By: _____
{NAME}
Manager, Real Property Services
United States of America

Date: _____

ACKNOWLEDGMENT

STATE OF)
) ss.
County of)

On this _____ day of _____, 20_____, before me
personally
appeared _____,
known to me or proved to me on the basis of satisfactory evidence to be the person who
executed the within instrument as the _____

acknowledged to me that ___he executed the same freely and voluntarily in such
capacity; and on oath stated that ___ he was authorized to execute said instrument in such
official or representative capacity.

Notary Public in and for the

State of _____

(SEAL) Residing at _____

My commission expires _____.

Attachment 5

Template Language Third Party Rights to Enforce

Third Party Right Insertion. Where Idaho secures a conservation easement, it shall ensure the grantor grants third party rights of enforcement to the United States and third party right implementation provisions as part of the granting clause as follows:

For the same consideration cited above, Grantor hereby voluntarily conveys and warrants to the United States of America and its assigns third party rights of enforcement, entry, and inspection.

Definition of BPA's jurisdiction and control over third party rights should also be in the body of the conservation easement after the granting clause, where language specifically may be as follows:

Third Party Rights. Grantor has conveyed the rights of enforcement, entry, and inspection to the United States of America and its assigns in [cite section]. The Department of Energy, Bonneville Power Administration (BPA) is the acquiring federal agency having jurisdiction and control over the third party rights, which are more particularly described as follows:

Enforcement. BPA may, after providing Idaho with notice and a reasonable time to respond and engage in good faith consultation (where reasonable means no more than 14 calendar days, except in cases of emergency or unavailability of Idaho where BPA may reasonably act immediately to stop or mitigate a threat to conservation values), exercise all of the rights and remedies of Idaho and is entitled to all of the indemnifications provided to Idaho. If Idaho exercises the rights and remedies of the easement, then Idaho will be entitled to reimbursement from Grantor of its costs of enforcement. If BPA exercises the rights and remedies of the easement, then BPA will be entitled to reimbursement from Grantor of its costs of enforcement. If Idaho and BPA jointly exercise the rights and remedies of the easement, then Idaho and BPA will work cooperatively to apportion the costs of enforcement in accordance with the efforts of each.

Entry and Inspection. BPA may, in a reasonable manner and at reasonable times, enter and inspect the easement area to determine compliance with the terms of the conservation easement. Except in the case of an emergency, BPA will attempt to give Grantor and Idaho notice prior to such entry and inspection, which notice may be by telephone or electronic mail.

BPA shall sign an acceptance of the third party enforcement rights on the conservation easement document before Idaho records it.

Attachment 6

PISCES Work Elements Available for Statements of Work using the Administrative Funding

Work Element Number	Work Element Name	Notes
27	Remove Debris	This work element should only be used for removal of fences, buildings, infrastructure or equipment that are on the property at time of purchase. The work element cannot be used to remove debris/trash that is disposed of on the property after it is purchased. Also, the work element cannot be used to clean up hazardous waste, which should be cleaned up prior to closing.
29	Increase Instream Habitat Complexity and Stabilization	
30	Realign, Connect, and/or Create Channel	
33	Decommission Road/Relocate Road	
34	Develop Alternative Water Source	
35	Develop Pond	
36	Develop Terrestrial Habitat Features	
40	Install Fence	
47	Plant Vegetation	This work element can be used for as many years as needed to reach restoration goals.
48	Practice No-till and Conservation Tillage Systems	
55	Erosion and Sedimentation Control	
69	Install Fish Screen	
85	Remove/Breach Fish Passage Barrier	
98	Other	
99	Outreach and Education	
114	Identify and Select Projects	
115	Produce Inventory or Assessment	
119	Manage and Administer Projects	
122	Provide Technical Review	
132	Produce (Annual) Progress Report	
141	Produce Other Report	
148	Install Flow Measuring Device	

156	Develop RM&E Methods and Designs	
157	Collect/Generate/Validate Field and Lab Data	
158	Mark/Tag Animals	
160	Create/Manage/Maintain Database	
161	Disseminate Raw/Summary Data and Results	
162	Analyze/Interpret Data	
165	Produce Environmental Compliance Documentation	
172	Conduct Pre-Acquisition Activities	
174	Produce Plan	
175	Produce Design and/or Specifications	
180	Enhance Floodplain/Remove, Modify, Breach Dike	
181	Create, Restore, and/or Enhance Wetland	
183	Produce Journal Article	
184	Install Fish Passage Structure	
185	Produce Pisces Status Report	
191	Watershed Coordination	
193	Produce Land Management Plan	
199	Remove Vegetation	This work element can be used for as many years as needed to reach restoration goals.
203	Install Water Conservation Measure	



**Department of Energy
Bonneville Power Administration
PO Box 3621
Portland, OR 97208-3621**

March 21, 2017

In reply to: TERR-3

BPA CASE NO: 20170204
TRACT ID: SIDHO-WL-16
EASEMENT: Warranty Deed with Future Executory Limitation (Sandy Point)
Ada County, Idaho

Idaho Department of Fish and Game
Attn: James Stoll
13000 E Highway 21
Boise, ID 8371

LAND USE AGREEMENT

RJ Highlands, LLC, a Nevada limited liability company conveyed a fee simple interest in the Sandy Point property to the State of Idaho Fish and Game Commission for the use and benefit of the Idaho Department of Fish and Game (IDFG), through a Warranty Deed (Exhibit A), recorded September 26, 2012 under Ada County Auditor's File No. 112098918. Bonneville Power Administration (BPA) provided funds for this acquisition under the terms of the Southern Idaho Wildlife Mitigation Memorandum of Agreement (MOA) signed with Idaho in September 1997. In return for funding this acquisition, BPA was conveyed a future executory limitation interest in the property.

In 1999, IDFG purchased several properties directly north of Sandy Point from Dr. Krueger. Specifically excluded from that conveyance were the existing water rights and the wells appurtenant to Parcel A, Lot N-11 and referenced in Water Agreement and Grant of Easement (Exhibit B), along with the right of access to the well for maintenance and repairs. The referenced water rights and wells, along with the right of access, are still held by Dr. Krueger's successor in interest and not by IDFG, even though IDFG subsequently purchased the properties (Sandy Point) through which the waterline runs.

IDFG received a request from the current owner of parcel S1611212275 (formerly owned by John W. Anderson and Kathryn R. Anderson) to replace the existing waterline that runs through Sandy Point with three separate lines, as shown on Exhibit C. This work would include excavation and burying the waterlines within the existing footprint in the roadway.

IDFG seeks to grant a utility easement to the new landowner to clarify and document the area to which the utility easement runs, to abolish any possible property rights outside of the new utility easement and to ensure that the utility remains now and into the future in the road as being the least intrusive to the wildlife that IDFG is protecting. By this Land Use Agreement, BPA hereby acknowledges and approves of the waterline replacement and grant of utility easement subject to the following conditions:

- All completed work will be contained to the existing footprint within the roadway. BPA will be provided with an as-built survey.
- Construction work is allowed as per the provisions of the utility easement. If any work on the waterline needs to be conducted outside the parameters set forth in the utility easement draft, attached as Exhibit D, IDFG will request additional approval from BPA.
- This land use agreement replaces in its entirety Land Use Agreement #2001717 issued by BPA on 12/21/2016.

All other terms and conditions of the Warranty Deed and MOA shall remain in full effect. IDFG shall not make any changes or additions to the use of the protected property without BPA's review. Any other uses must be applied for separately.

IDFG hereby acknowledges and agrees to be responsible for all cost and damages incurred by the waterline replacement.

This agreement is entered into with the express understanding that it is not assignable or transferable. This agreement is revocable by BPA and does not modify, change, or otherwise alter the rights BPA acquired by the Warranty Deed and MOA. BPA may terminate this agreement upon 30 days written notice. In order for BPA to exercise its right to revoke or terminate this agreement, BPA in its sole discretion must determine that the IDFG is violating the terms of the Warranty Deed and MOA (Exhibit A) and provide this reasoning to the IDFG, who will have 30 days to cure this violation.

IN ADDITION, THE FOLLOWING IS BROUGHT TO YOUR ATTENTION

IDFG agrees to assume risk of loss, damage, or injury which may result from its use of the protected property to the extent such risk, loss, damage, or injury is covered by IDFG's insurance, except for such loss, damage, or injury for which BPA may be responsible under the provisions of the Federal Tort Claims Act, 62 Stat. 982, as amended. The parties agree that any damage to BPA's property interest caused by or

resulting from IDFG, its assigns, tenants, agents, contractors or any other person using with or without the permission of IDFG, may be repaired by BPA, and the actual cost of such repair shall be charged against and be paid by IDFG. However, BPA shall first notify IDFG of its intent to repair damage and provide IDFG an opportunity to repair such damage.

If you have any questions or concerns, please notify the BPA Realty Office. You may direct any communication to Bonneville Power Administration, Real Estate Field Services, attention Heidi Haserot (TERR-3), PO Box 3621, Portland, OR 97208-3621 or by telephone at 503-230-3115.

THIS LAND USE AGREEMENT BECOMES EFFECTIVE UPON THE SIGNATURE OF ALL PARTIES.

I HAVE READ, UNDERSTAND, AND CONCUR WITH THE TERMS OF THIS AGREEMENT:

(b) (6)

State of Idaho Fish and Game Commission
for the use and benefit of the Idaho
Department of Fish and Game

5/8/2017
Date

Virgil Moore
Printed Name

Director / Secretary
Title

THIS AGREEMENT IS HEREBY AUTHORIZED BY BONNEVILLE POWER ADMINISTRATION:

(b) (6)

Heidi Haserot
Realty Specialist

3/16/17
Date

ADA COUNTY RECORDER Christopher D. Rich AMOUNT 130.00 41
 BOISE IDAHO 09/26/2012 11:21 AM
 DEPUTY Che Fowler
 Simplifile Electronic Recording
 RECORDED-REQUEST OF
 TITLEONE BOISE



TitleOne
 a title & escrow co.

Order Number: 12210507 ST/SID

WARRANTY DEED

For the valuable consideration of \$460,000.00.

RJ Highlands, LLC, a Nevada limited liability company, the Grantor, does hereby grant, bargain sell and convey unto, **State of Idaho Fish and Game Commission**, for the use and benefit of the Idaho **Department of Fish and Game**, whose current address is **600 S. Walnut St., Boise, ID 83707**, the Grantee, the following described premises, in Ada County, Idaho, To Wit:

Legal description attached as Exhibit A

BPA provided funds under a Memorandum of Agreement (MOA) signed with Idaho in September 1997, recorded with this deed attached hereto and by this reference incorporated herein as Exhibit B. For the same consideration cited above, where funding for fee title was provided by BPA, Grantor hereby grants, bargains, sells and conveys to the United States of America and its assigns an executory limitation over, under, upon, and across the real property legally described in Exhibit A, created and implemented under applicable state and federal law, including but not limited to Idaho Code 55-105. The Parties understand this executory limitation to be a future interest in the real property described in Exhibit A (BPA Tract No. SIDHO-WL-16), where fee title shall immediately vest in the United States of America upon occurrence of the Condition Subsequent described in Exhibit C attached hereto and by this reference incorporated herein, and where the duration of the executor limitation is also described in Exhibit C.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee; and subject to all existing patent reservations, easements, right(s) of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, general taxes and assessments, including irrigation and utility assessments (if any) for the current year, which are not due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever. Whenever the context so requires, the singular number includes the plural.

Dated:



TitleOne

a title & escrow co.

Order Number: 12210507 *ST/SID*

WARRANTY DEED

For the valuable consideration of \$460,000.00.

RJ Highlands, LLC, a Nevada limited liability company, the Grantor, does hereby grant, bargain sell and convey unto, **State of Idaho Fish and Game Commission, for the use and benefit of the Idaho Department of Fish and Game**, whose current address is **600 S. Walnut St., Boise, ID 83707**, the Grantee, the following described premises, in **Ada County, Idaho**, To Wit:

Legal description attached as Exhibit A

BPA provided funds under a Memorandum of Agreement (MOA) signed with Idaho in September 1997, recorded with this deed attached hereto and by this reference incorporated herein as Exhibit B. For the same consideration cited above, where funding for fee title was provided by BPA, Grantor hereby grants, bargains, sells and conveys to the United States of America and its assigns an executory limitation over, under, upon, and across the real property legally described in Exhibit A, created and implemented under applicable state and federal law, including but not limited to Idaho Code 55-105. The Parties understand this executory limitation to be a future interest in the real property described in Exhibit A (BPA Tract No. SIDHO-WL-16), where fee title shall immediately vest in the United States of America upon occurrence of the Condition Subsequent described in Exhibit C attached hereto and by this reference incorporated herein, and where the duration of the executor limitation is also described in Exhibit C.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee; and subject to all existing patent reservations, easements, right(s) of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, general taxes and assessments, including irrigation and utility assessments (if any) for the current year, which are not due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever. Whenever the context so requires, the singular number includes the plural.

Dated:

RJ Highlands, LLC, a Nevada limited liability company

By: NSB Holdings Inc., a Nevada corporation, its Manager

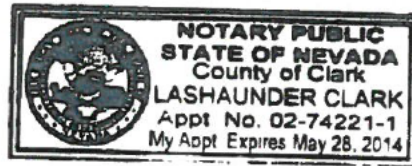
By: (b) (6)
John G. Sullivan, President

STATE OF Nevada)
County of Clark) ss.

On this 13th day of September, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared John G. Sullivan, known or identified to me to be the President of NSB Holdings Inc., said corporation known to me to be the Member/Manager of RJ Highlands, LLC, the company that executed the instrument and acknowledged to me that he executed the same for and on behalf of said LLC and that said LLC executed it.

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

[Signature]
NOTARY PUBLIC
My Commission Expires: 5/28/2014



Acceptance of Deed by the Idaho Fish and Game Commission
(b) (6)

[Signature]
Virgil Moore
Secretary
Idaho Fish and Game Commission

Date: 9-21-12

ACKNOWLEDGEMENT

State of Idaho)
) SS.
County of Ada)

On this 21st day of Sept., 2012, before me, a Notary Public in and for said State, personally appeared Virgil Moore, known or identified to me to be the person whose name is subscribed to the within instrument as the Secretary of the Idaho Fish and Game Commission, and acknowledged to me that he executed the same.

[Signature]
Notary Public for the State of Idaho
Residing at: Boise
My Commission Expires: My Commission Expires August 31, 2017



Executory limitation ACCEPTED BY the United States of America

(b) (6)

Margareth H. Wolcott
Manager, Real Property Services
Bonneville Power Administration

Sept. 25, 2012
Date

ACKNOWLEDGMENT

STATE OF Oregon)
County of Multnomah) ss.

On this 25 day of September, 2012, before me personally appeared Margareth H. Wolcott, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Manager, Real Property Services, Bonneville Power Administration and acknowledged to me that she executed the same freely and voluntarily in such capacity, and on oath stated that she was authorized to execute said instrument in such official or representative capacity.

Charlene R Belt
Notary Public in and for the State of Oregon
(SEAL) Residing at Vancouver, WA
My commission expires September 12, 2016

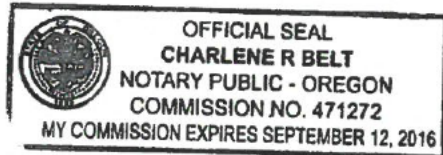


Exhibit A

Parcel I:

A fifty foot roadway formerly known as Lot R-1 of the unrecorded plat of Lucky Peak Subdivision No. 1, located in Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North $89^{\circ}20'18''$ East 1327.60 feet along the South line of said Section 2 to the Real Point of Beginning of this description, said point also being the Southwest corner of a street shown on the unrecorded plat of Lucky Peak Subdivision No. 1 and noted as (Private Street Lot R-1); thence

North $00^{\circ}51'01''$ West 50.00 feet to a point; thence

North $89^{\circ}20'18''$ East 587.06 feet to a point of curvature; thence along a curve to the left 47.03 feet, said curve having a radius of 30.00 feet, a central angle of $89^{\circ}49'31''$, tangents of 29.91 feet, and a chord which bears North $44^{\circ}25'32''$ East 42.36 feet to a point of tangency; thence

North $00^{\circ}29'13''$ West 654.62 feet to a point of curvature; thence along a curve to the right 170.49 feet, said curve having a radius of 785.60 feet a central angle of $12^{\circ}26'04''$, tangents of 85.58 feet, and a chord which bears North $05^{\circ}43'49''$ East 170.16 feet to a point of tangency; thence

North $11^{\circ}56'51''$ East 1213.69 feet to a point of curvature; thence along a curve to the left 110.16 feet, said curve having a radius of 188.80 feet, a central angle of $33^{\circ}25'46''$, tangents of 56.70 feet, and a chord which bears North $04^{\circ}46'02''$ West 108.60 feet to a point of tangency; thence

North $21^{\circ}28'55''$ West 695.97 feet to a point of curvature; thence along a curve to the left 124.50 feet, said curve having a radius of 165.49 feet, a central angle of $43^{\circ}06'14''$, tangents of 65.36 feet, and a chord which bears North $43^{\circ}02'02''$ West 121.58 feet to a point of tangency; thence

North $64^{\circ}35'09''$ West 64.00 feet to a point of curvature; thence along a curve to the right 261.48 feet, said curve having a radius of 188.69 feet, a central angle of $79^{\circ}24'00''$, tangents of 156.65 feet, and a chord which bears North $24^{\circ}53'09''$ West 241.06 feet to a point of tangency; thence

North $14^{\circ}48'51''$ East 78.54 feet to a point of curvature; thence along a curve to the right 733.27 feet, said curve having a radius of 425.70 feet, a central angle of $98^{\circ}41'33''$, tangents of 495.73 feet, and a chord which bears North $64^{\circ}09'38''$ East 645.92 feet to a point of reverse curvature; thence along a curve to the left 329.96 feet, said curve having a radius of 650.00 feet, a central angle of $29^{\circ}05'07''$, tangents of 168.62 feet, and a chord which bears South $81^{\circ}02'10''$ East 326.43 feet to a point of tangency; thence

North $84^{\circ}25'17''$ East 25.19 feet to a point of curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of $46^{\circ}11'13''$, tangents of 8.53 feet, and a chord which bears North $61^{\circ}19'41''$ East 15.69 feet to a point of reverse curvature; thence along a curve to the right 213.92 feet, said curve having a radius of 45.00 feet, a central angle of $272^{\circ}22'26''$, and a chord which bears South $05^{\circ}34'43''$ East 62.31 feet to a point of reverse curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of $46^{\circ}11'13''$, tangents of 8.53 feet, and a chord which bears North $72^{\circ}29'06''$ West 15.69 feet to a point of tangency; thence

South $84^{\circ}25'17''$ West 25.19 feet to a point of curvature; thence along a curve to the right 355.34 feet, said curve having a radius of 700.00 feet, a central angle of $29^{\circ}05'07''$, tangents of 181.59 feet, and a chord which bears North $81^{\circ}02'10''$ West 351.54 feet to a point of reverse curvature; thence along a curve to the left 647.15 feet, said curve having a radius of 375.70 feet, a central angle of $98^{\circ}41'33''$, tangents of 437.51 feet, and a chord which bears South $64^{\circ}09'38''$ West 570.06 feet to a point of tangency; thence

South $14^{\circ}48'51''$ West 78.54 feet to a point of curvature; thence along a curve to the left 192.20 feet, said curve having a radius of 138.69 feet, a central angle of $79^{\circ}24'10''$, tangents of 115.15 feet, and a chord which bears South $24^{\circ}53'14''$ East 177.19 feet to a point of tangency; thence

South $64^{\circ}35'09''$ East 64.00 feet to a point of curvature; thence along a curve to the right 162.11 feet, said curve having a radius of 215.49 feet, a central angle of $43^{\circ}06'14''$, tangents of 85.11 feet, and a chord which bears South $43^{\circ}02'02''$ East 158.32 feet to a point of tangency; thence

South $21^{\circ}28'55''$ East 577.02 (577.04) feet to a point of curvature; thence along a curve to the left 76.74 feet, said curve having a radius of 30.00 feet, a central angle of $146^{\circ}34'14''$, tangents of 99.90 feet, and a chord which bears North $85^{\circ}13'58''$ East 57.46 feet to a point of tangency; thence

North $11^{\circ}56'51''$ East 276.69 (276.67) feet to a point of tangency; thence along a curve to the right 124.37 feet, said curve having a radius of 232.27 feet, a central angle of $30^{\circ}40'48''$, tangents of 63.72 feet, and a chord which bears North $27^{\circ}17'15''$ East 122.89 feet to a point of tangency; thence

North $42^{\circ}37'39''$ East 418.52 feet to a point of curvature; thence along a curve to the right 172.83 feet, said curve having a radius of 80.68 feet, a central angle of $122^{\circ}44'13''$, tangents of 147.78 feet, and a chord which bears South $76^{\circ}00'14''$ East 141.63 feet to a point of tangency; thence

South 14°38'08" East 250.09 feet to a point of curvature; thence along a curve to the left 154.22 feet, said curve having a radius of 182.88 feet, a central angle of 48°18'59", tangents of 82.03 feet, and a chord which bears South 38°47'37" East 149.69 feet to a point of tangency; thence

South 62°57'07" East 78.45 feet to a point of curvature; thence along a curve to the left 94.24 feet, said curve having a radius of 149.78 feet, a central angle of 36°02'53", tangents of 48.74 feet, and a chord which bears South 80°58'33" East 92.69 feet to a point of compound curvature; thence along a curve to the left 89.55 feet, said curve having a radius of 174.85 feet, a central angle of 29°20'44", tangents of 45.78 feet, and a chord which bears North 66°19'38" East 88.58 feet to a point of tangency; thence

North 51°39'16" East 86.82 feet to a point of curvature; thence along a curve to the left 117.65 feet, said curve having a radius of 265.03 feet, a central angle of 25°26'01", tangents of 59.81 feet, and a chord which bears North 38°56'16" East 116.68 feet to a point of tangency; thence

North 26°13'15" East 80.46 feet to a point of curvature; thence along a curve to the right 173.38 feet, said curve having a radius of 94.66 feet, a central angle of 104°56'38", tangents of 123.24 feet, and a chord which bears North 78°41'34" East 150.14 feet to a point of tangency; thence

South 48°50'07" East 58.79 feet to a point of curvature; thence along a curve to the left 129.00 feet, said curve having a radius of 500.29 feet, a central angle of 14°46'25", tangents of 64.86 feet, and a chord which bears South 56°13'19" East 128.64 feet to a point of tangency; thence

South 63°36'32" East 194.42 feet to a point of curvature; thence along a curve to the right 146.04 feet, said curve having a radius of 88.86 feet, a central angle of 94°09'49", tangents of 95.56 feet, and a chord which bears South 16°31'38" East 130.15 feet to a point of tangency; thence

South 30°33'17" West 55.83 feet to a point of curvature; thence along a curve to the left 151.37 feet, said curve having a radius of 105.85 feet, a central angle of 81°56'14", tangents of 91.91 feet, and chord which bears South 10°24'50" East 138.80 feet to a point of tangency; thence

South 51°22'57" East 51.76 feet to a point of curvature; thence along a curve to the right 74.91 feet, said curve having a radius of 188.92 feet, a central angle of 22°43'07", tangents of 37.95 feet, and a chord which bears South 40°01'23" East 74.42 feet to a point of reverse curvature; thence along a curve to the left 159.46 feet, said curve having a radius of 71.45 feet, a central angle of 127°52'20", tangents of 146.08 feet, and a chord which bears North 87°24'00" East 128.37 feet to a point of tangency; thence

North 23°27'50" East 30.59 feet to a point of curvature; thence along a curve to the right 121.94 feet, said curve having a radius of 350.93 feet, a central angle of 19°54'30", tangents of 61.59 feet, and chord which bears North 33°25'05" East 121.32 feet to a point of tangency; thence

North 43°22'20" East 54.40 feet to a point of curvature; thence along a curve to the left 121.78 feet, said curve having a radius of 521.54 feet, a central angle of 13°22'44", tangents of 61.17 feet, and a chord which bears North 36°40'58" East 121.51 feet to a point of tangency; thence

North 29°59'36" East 46.04 feet to a point of curvature; thence along a curve to the right 96.85 feet, said curve having a radius of 569.97 feet, a central angle of 09°44'10", tangents of 48.54 feet, and a chord which bears North 34°51'41" East 96.74 feet to a point of tangency; thence

North 39°43'46" East 325.54 feet to a point of curvature; thence along a curve to the right 166.28 feet, said curve having a radius of 454.78 feet, a central angle of 20°56'55", tangents of 84.08 feet, and a chord which bears North 50°12'13" East 165.35 feet to a point of tangency; thence

North 60°40'41" East 3.34 feet to a point of curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 37°35'04" East 15.69 feet to a point of reverse curvature; thence along a curve to the right 213.92 feet, said curve having a radius of 45.00 feet, a central angle of 272°22'26", and a chord which bears South 29°19'19" East 62.31 feet to a point of reverse curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears South 83°46'17" West 15.69 feet to a point of tangency; thence

South 60°40'41" West 3.34 feet to a point of curvature; thence along a curve to the left 148.00 feet, said curve having a radius of 404.78 feet, a central angle of 20°56'55", tangents of 74.83 feet, and a chord which bears South 50°12'13" West 147.17 feet to a point of tangency; thence

South 39°43'46" West 325.54 feet to a point of curvature; thence along a curve to the left 88.36 feet, said curve having a radius of 519.97 feet, a central angle of 09°44'10", tangents of 44.29 feet, and a chord which bears South 34°51'41" West 88.25 feet to a point of tangency; thence

South 29°59'36" West 46.04 feet to a point of curvature; thence along a curve to the right 133.46 feet, said curve having a radius of 571.54 feet, a central angle of 13°22'44", tangents of 67.03 feet, and a chord which bears South 36°40'58" West 133.15 feet to a point of tangency; thence

South 43°22'20" West 54.40 feet to a point of curvature; thence along a curve to the left 104.56 feet, said curve having a radius of 300.93 feet, a central angle of 19°54'30", tangents of 52.81 feet, and a chord which bears South 33°25'05" West 104.04 feet to a point of tangency; thence

South 23°27'50" West 30.59 feet to a point of curvature; thence along a curve to the right 271.05 feet, said curve having a radius of 121.45 feet, a central angle of 127°52'20", tangents of 248.31 feet, and a chord which bears South 87°24'00" West 218.20 feet to a point of reverse curvature; thence along a curve to the left 55.08 feet, said curve having a radius of 138.92 feet, a central angle of 22°43'07", tangents of 27.91 feet, and a chord which bears North 40°01'23" West 54.72 feet to a point of tangency; thence North 51°22'57" West 51.76 feet to a point of curvature; thence along a curve to the right 222.88 feet, said curve having a radius of 155.85 feet, a central angle of 81°56'14", tangents of 135.33 feet, and a chord which bears North 10°24'50" West 204.36 feet to a point of tangency; thence North 30°33'17" East 55.83 feet to a point of curvature; thence along a curve to the left 63.87 feet, said curve having a radius of 38.86 feet, a central angle of 94°09'49", tangents of 41.79 feet, and a chord which bears North 16°31'38" West 56.92 feet to a point of tangency; thence North 63°36'32" West 194.42 feet to a point of curvature; thence along a curve to the right 141.89 feet, said curve having a radius of 550.29 feet, a central angle of 14°46'25", tangents of 71.34 feet, and a chord which bears North 56°13'19" West 141.50 feet to a point of tangency; thence North 48°50'07" West 58.79 feet to a point of curvature; thence along a curve to the left 81.80 feet, said curve having a radius of 44.66 feet, a central angle of 104°56'38", tangents of 58.14 feet, and a chord which bears South 78°41'34" West 70.84 feet to a point of tangency; thence South 26°13'15" West 80.46 feet to a point of curvature; thence along a curve to the right 139.84 feet, said curve having a radius of 315.03 feet, a central angle of 25°26'01", tangents of 71.09 feet, and a chord which bears South 38°56'15" West 138.70 feet to a point of tangency; thence South 51°39'16" West 86.82 feet to a point of curvature; thence along a curve to the right 115.16 feet, said curve having a radius of 224.85 feet, a central angle of 29°20'44", tangents of 58.87 feet, and a chord which bears South 66°19'38" West 113.91 feet to a point of compound curvature; thence along a curve to the right 125.69 feet, said curve having a radius of 199.78 feet, a central angle of 36°02'53", tangents of 65.01 feet, and a chord which bears North 80°58'33" West 123.63 feet to a point of tangency; thence North 62°57'07" West 78.45 feet to a point of curvature; thence along a curve to the right 196.38 feet, said curve having a radius of 232.88 feet, a central angle of 48°18'59", tangents of 104.46 feet, and a chord which bears North 38°47'37" West 190.62 feet to a point of tangency; thence North 14°38'08" West 250.09 feet to a point of curvature; thence along a curve to the left 65.72 feet, said curve having a radius of 30.68 feet, a central angle of 122°44'13", tangents of 56.20 feet, and a chord which bears North 76°00'14" West 53.86 feet to a point of tangency; thence South 42°37'39" West 418.52 feet to a point of curvature; thence along a curve to the left 97.60 feet, said curve having a radius of 182.27 feet, a central angle of 30°40'48", tangents of 50.00 feet, and a chord which bears South 27°17'15" West 96.44 feet to a point of tangency; thence South 11°56'51" West 1737.74 feet to a point of curvature; thence along a curve to the left 159.64 feet, said curve having a radius of 735.60 feet, a central angle of 12°26'04", tangents of 80.14 feet, and a chord which bears South 05°43'49" West 159.33 feet to a point of tangency; thence South 00°29'13" East 624.78 feet to a point of curvature; thence along a curve to the left 84.71 feet, said curve having a radius of 100.30 feet, a central angle of 48°23'28", tangents of 45.07 feet, and a chord which bears South 24°40'57" East 82.22 feet to a point of non-tangency; thence South 1°06'42" East 34.44 feet to a point on the South side of said street as shown on the unrecorded plat of Lucky Peak Subdivision No. 1, said point also on the South line of said Section 2; thence South 89°20'18" West along said South line 700.40 feet to the Real Point of Beginning of this description.

AND

A parcel of land being a portion of Lots W-3 and W-4 of the unrecorded plat of Lucky Peak Subdivision No. 1 located in the East half of the Southwest quarter of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'18" East along the South side of said Section 2 a distance of 1327.60 feet to a point; thence North 00°51'01" West 1019.87 feet to the Real Point of Beginning of this description; thence continuing North 00°51'01" West 88.39 feet to a point; thence North 89°05'36" East 687.92 feet to a point on the Westerly side of a street as shown on the unrecorded plat of Lucky Peak Subdivision No. 1, and noted as (Private Street Lot R-1); thence South 11°56'51" West along said Westerly side 88.40 feet to a point; thence South 88°54'18" West 668.34 feet to the Real Point of Beginning of this description.

Parcel II:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 00°51'01" East 1391.99 feet to the Real Point of Beginning; thence South 00°51'01" East 292.00 feet to a point; thence North 89°06'41" East 871.91 feet to a point; thence North 21°28'52" West 317.00 feet to a point; thence South 88°45'12" West 760.22 feet to the Point of Beginning.

Parcel III:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 05°01'01" East 1683.99 feet to the Real Point of Beginning; thence North 89°06'41" East 871.91 feet to a point; thence South 21°28'52" East 142.00 feet to a point; thence South 11°57'09" West 171.87 feet to a point; thence South 89°08'38" West 883.86 feet to a point; thence North 0°51'01" West 300.00 feet to the Real Point of Beginning.

Parcel IV:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 00°51'01" East 1983.99 feet to the Real Point of Beginning; thence South 00°51'01" East 255.00 feet to a point; thence North 89°07'31" East 825.98 feet to a point; thence North 11°58'09" East 261.24 feet to a point; thence South 89°08'38" West 883.86 feet to the Real Point of Beginning.

Parcel V:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East of the Boise Meridian, Ada County, Idaho; thence North 89°47'25" East 1327.60 feet to a point; thence North 0°23'53" West 1413.20 feet to the Real Point of Beginning; thence North 0°23'53" West 305.0 feet to a point; thence North 89°34'39" East 825.98 feet to a point; thence South 12°24'17" West 312.28 feet to a point; thence South 89°32'20" West 756.78 feet to the Real Point of Beginning.

Parcel VI:

A parcel of land in the East half of the Southwest quarter of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian; thence North 89°29'31" East 1312.28 feet to the West 1/16 corner of Section 2 (record North 89°47' East 1334.7 feet); thence South 00°51'01" East 3863.52 feet along the 1/16 line (record South 00°02' East 3910.23 feet) to the Real Point of Beginning; thence North 89°07'13" East 757.11 feet to a point (record North 89°47' East 766.14 feet); thence South 11°56'51" West 312.26 feet to a point (record South 12°20' West 307.12 feet); thence South 89°05'36" West 687.94 feet to a point (record South 89°47' West 700.37 feet); thence

North 00°51'01" West 304.79 feet to the Point of Beginning (record North 00°02' West 300.00 feet).

Parcel VII:

A part of the Southeast quarter of the Southwest quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, State of Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence North 89°47' East a distance of 1320.0 feet to a point; thence North 0°02' East a distance of 685.40 feet to the Real Point of Beginning; thence North 89°47' East a distance of 645.58 feet to a point; thence North 0°07' West a distance of 82.85 feet to a point; thence North 12°20' East a distance of 257.77 feet to a point; thence South 89°47' West a distance of 700.37 feet to a point; thence South 0°02' West a distance of 334.47 feet to the Real Point of Beginning.

Parcel VIII:

A part of the Southeast quarter of the Southwest quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, State of Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence North 89°47' East a distance of 1320.0 feet to a point; thence North 0°02' East a distance of 342.65 feet to the Real Point of Beginning; thence North 89°47' East a distance of 646.7 feet to a point; thence North 0°07' West a distance of 342.75 feet to a point; thence South 89°47' West a distance of 645.58 feet to a point; thence South 0°02' West a distance of 342.68 feet to the Real Point of Beginning.

Parcel IX:

A tract of land situated in Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho.

Commencing at a copper weld marking the corner common to Sections 2, 3, 10 and 11, Township 2 North, Range 3 East, Boise Meridian; thence North 89°20'18" East along the North boundary of Section 11, a distance of 559.31 feet to a point on the Westerly right-of-way line of a road; thence South 28°26'39" East a distance of 890.32 feet to the Real Point of Beginning; thence South 28°26'39" East a distance of 23.61 feet to a 5/8 inch iron pin marking an angle point in the right-of-way line; thence South 69°51'14" East along said right of way line a distance of 90.11 feet to a 5/8 inch iron pin; thence South 46°28'28" West a distance of 640.36 feet to a 5/8 inch iron pin on a rock rim; thence North 32°57'25" West along said rim a distance of 106.56 feet to a 5/8 inch iron pin; thence North 20°18'25" West continuing along rim a distance of 105.28 feet to a 5/8 inch iron pin; thence North 56°39'09" East a distance of 554.21 feet to the Real Point of Beginning.

Parcel X:

Beginning at the Northwest corner of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'17" East 560.30 feet to a point; thence South 28°28'33" East 913.40 feet to a point; thence South 69°50'44" East 90.00 feet to the Real Point of Beginning; thence South 69°50'44" East 326.69 feet to a point; thence South 35°34'00" West 700.54 feet to a point; thence

North 63°43'00" West 91.19 feet to a point; thence
North 61°49'00" West 79.10 feet to a point; thence
North 47°30'00" West 185.37 feet to a point; thence
North 63°00'00" West 84.68 feet to a point; thence
North 46°29'16" East 640.70 feet to the Point of Beginning.

Parcel XI:

A parcel of land being a portion of Government Lots 2 and 3 (Northwest quarter) of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner section of Section 11, Township 2 North, Range 3 East, Boise Meridian, Idaho, Ada County, Idaho, also being the Northwest corner of Government Lot 3; thence
North 89°20'18" East along the North lines of the Northwest quarter and Government Lots 2 and 3 of said Section 11, a distance of 2654.98 feet to a point on the East line of said Government Lot 2; thence
South 0°48'48" West along the said East line of Government Lot 2 a distance of 1075.20 feet to the Real Point of Beginning of this description; thence
South 00°48'48" East continuing along said East line 605.26 feet to a point on a curve on the Northerly right of way of State Highway No. 21; thence along the said Northerly right of way along a curve to the right 223.30 feet, said curve having a radius of 855.78 feet, a central angle of 14°57'00", tangents of 112.29 feet, and a chord which bears South 63°06'39" West 222.66 feet to a point being 200 feet West of said East line of Government Lot 2; thence
North 00°48'48" West along a line 200 feet West of and parallel to said East line 216.73 feet to a point on the surveyed base of the Talus Slope North of said Highway; thence along the surveyed base of said Talus Slope the following courses and distances:
South 49°51'33" West 53.19 feet to a point; thence
South 60°02'59" West 93.52 feet to a point; thence
South 46°54'50" West 74.53 feet to a point; thence
South 32°46'22" West 59.58 feet to a point; thence
South 52°18'35" West 72.08 feet to a point; thence
South 57°50'33" West 38.88 feet to a point; thence
South 00°42'00" East, leaving said surveyed base, 18.55 feet (formerly approximately 30 feet) to a point on the said Northerly right of way of State Highway No. 21; thence along said Northerly right of way the following courses and distances:
North 89°46'21" West 581.18 feet to a point of curvature; thence along a curve to the right 657.85 feet, said curve having a radius of 2195.64 feet, a central angle of 17°10'00", tangents of 331.41 feet, and a chord which bears North 81°10'08" West 655.39 feet to a point of compound curvature; thence along a curve to the right 569.30 feet, said curve having a radius of 1332.20 feet, a central angle of 24°29'05", tangents of 289.06 feet, and a chord which bears North 60°32'48" West 564.97 feet to a point; thence leaving said Northerly right of way
North 46°29'01" East 217.51 feet to a point; thence
South 62°59'59" East 84.68 feet to a point; thence
South 47°29'59" East 185.37 feet to a point; thence
South 61°48'59" East 79.10 feet to a point; thence
South 63°42'59" East 91.19 feet to a point; thence
South 68°35'00" East 128.45 feet to a point; thence
South 75°28'31" East 267.84 feet to a point; thence
South 75°30'53" East 68.34 feet to a point; thence
South 88°49'32" East 109.10 feet to a point; thence
North 73°55'48" East 52.52 feet to a point; thence
South 87°20'37" East 104.25 feet to a point; thence
North 81°25'59" East 75.40 feet to a point; thence
North 86°08'00" East 152.88 feet to a point; thence
North 42°18'00" East 235.39 feet to a point; thence
North 57°19'49" East 92.78 feet to a point; thence
North 69°08'00" East 94.20 feet to a point; thence
North 40°22'00" East 243.63 feet to a point; thence
North 71°43'17" East 137.82 feet to a point; thence
North 76°37'17" East 65.91 feet to a point; thence
North 49°41'17" East 101.61 feet to the Real Point of Beginning of this description.

AND

A parcel of land being a portion of Government Lots 2 and 3 (Northwest quarter) of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner section of Section 11, Township 2 North, Range 3 East, Boise Meridian, Idaho, Ada County, Idaho, also being the Northwest corner of Government Lot 3; thence
North 89°20'18" East along the North lines of the Northwest quarter and Government Lot 3 of said Section 11 a distance of 560.35 feet to the Real Point of Beginning of this description; thence
South 28°28'32" East 913.47 feet to a point; thence
South 69°50'55" East 642.87 feet to a point; thence
North 49°10'48" East 1146.83 feet to a point on the Westerly side of Sandy Point Drive as conveyed to the Ada County Highway Commission under Instrument No. 7515233 and re-recorded under Instrument No. 7532588; thence
North 58°49'43" West along said Westerly side of Sandy Point Drive 51.68 feet to a point; thence
South 49°10'48" West 1081.27 feet to a point; thence
South 79°45'14" West 34.45 feet to a point; thence
North 69°50'55" West 575.40 feet to a point; thence
North 28°27'46" West 868.33 feet to a point on the said North line of the Northwest quarter and Government Lot 3; thence
South 89°20'18" West along said North lines 56.52 feet to a point to the Real Point of Beginning of this description.

Parcel XII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2435.85 feet to a point on the South boundary of the tract herein described, which tract is called Tract V-1 for identification, the True Point of Beginning; thence
South 52°58' East 407.46 feet to the Southeast corner of Tract V-1; thence
North 25°02'24" East 485.83 feet to the Northeast corner of Tract V-1; thence
South 68°01'17" West 169.85 feet to a point; thence
North 73°59'51" West 80.17 feet to a point; thence
North 56°59'38" West 239.59 feet to a point; thence
North 23°14'02" West 143.07 feet to a point; thence
North 18°52'08" West 224.64 feet to the Northwest corner of Tract V-1; thence
South 44°33'42" West 485.15 feet to the Southwest corner of Tract V-1; thence
South 52°58' East 468.69 feet to the True Point of Beginning.

Parcel XIII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2135.85 feet to the Real Point of Beginning; thence
South 52°58' East 458.74 feet to a point; thence
North 9°38' East 320.16 feet to a point; thence
North 52°58' West 877.5 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 435.0 feet to the Point of Beginning.

Parcel XIV:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1835.85 feet to the Real Point of Beginning; thence
South 52°58' East 577.65 feet to a point; thence

North 0°07' East 355.78 feet to a point; thence
North 52°58' West 893.74 feet to a point; thence
South 12°20' West 313.10 feet to a point; thence
South 52°58' East 398.95 feet to the Point of Beginning.

Parcel XV:

A part of the East half of the Southwest quarter and part of the West half of the Southeast quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian, Ada County, Idaho, described as follows:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East of the Boise Meridian; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1535.85 feet to the Real Point of Beginning; thence
South 52°58' East 569.60 feet to a point; thence
North 19°40' East 298.01 feet to a point; thence
North 52°58' West 976.5 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 365.0 feet to the Point of Beginning.

Parcel XVI:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1235.85 feet to the Real Point of Beginning; thence
South 52°58' East 750.0 feet to a point; thence
North 2°39' East 344.65 feet to a point; thence
North 52°58' West 1012.22 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 326.60 feet to the Point of Beginning.

Parcel XVII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 935.85 feet to the Real Point of Beginning; thence
South 52°58' East 610.0 feet to a point; thence
North 46°02' East 228.01 feet to a point; thence
North 52°58' West 1076.60 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 290.73 feet to the Point of Beginning.

Parcel XVIII:

A part of the Southeast quarter of the Southwest quarter; and a part of the Southwest quarter of the Southeast quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 635.85 feet to the Real Point of Beginning; thence
South 52°58' East a distance of 525.21 feet to a point; thence
North 34°59' East a distance of 284.63 feet to a point; thence
North 52°58' West a distance of 900.73 feet to a point; thence
South 12°20' West a distance of 313.1 feet to a point; thence

South 52°58' East a distance of 254.86 feet to the Real Point of Beginning.

Parcel XIX:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2435.85 feet to a point; thence
South 52°58' East a distance of 407.46 feet to the Real Point of Beginning; thence
South 9°38' West 321.61 feet to a point; thence
South 0°07' West 354.29 feet to a point; thence
South 19°40' West 242.97 feet to the Southwest corner of the tract; thence
North 89°46'18" East 783.21 feet to the Southeast corner of the tract; thence
North 11°13'51" East 231.41 feet to a point; thence
North 10°56'37" East 79.12 feet to a point; thence
North 11°03'49" East 164.15 feet to a point; thence
North 3°10'43" East 445.91 feet to a point; thence
North 10°20'55" West 219.05 feet to a point; thence
North 16°52'29" West 106.38 feet to a point; thence
North 20°43'37" East 162.50 feet to the Northeast corner of the tract; thence
North 63°17'02" West 271.24 feet to a point; thence
North 52°15'18" West 157.40 feet to the Northwest corner of the tract; thence
South 33°01'03" West 160.89 feet to a point; thence
South 35°30'14" West 155.45 feet to a point; thence
South 25°02'24" West 485.83 feet to the True Point of Beginning.

Exhibit B
1997 Memorandum of Agreement
between the State of Idaho and BPA

for copy

OCT 07 1997

Southern Idaho
Wildlife Mitigation Agreement

Bonneville Power Administration

State of Idaho, through Idaho Department of Fish and Game and
Idaho Fish & Game Commission

September 1997

SOUTHERN IDAHO WILDLIFE MITIGATION
MEMORANDUM OF AGREEMENT

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SOUTHERN IDAHO WILDLIFE MITIGATION

MEMORANDUM OF AGREEMENT

This Agreement is made between the State of Idaho, Idaho Fish and Game Commission and Idaho Department of Fish and Game, and the United States of America, acting through the Department of Energy and the Bonneville Power Administration (hereinafter BPA), and is binding on the parties, their successors and assigns. This Agreement supersedes the June 1997 South Fork Snake/Palisades Wildlife Mitigation Agreement between the State of Idaho and BPA.

RECITALS

A. The State of Idaho, Idaho Fish and Game Commission and Idaho Department of Fish and Game (hereinafter Idaho), has the authority to enter into this Agreement pursuant to Idaho Code Sections 36-103, 36-104, and 36-106. Where this Agreement discusses Idaho, the Commission's and the Department's agents and assigns are implied.

B. BPA is a power marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (Act) directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the program adopted by the Pacific Northwest Electric Power and Conservation Planning Council (Council) under subsection 4(h) of the Act, and other environmental laws.

C. Idaho and the Palisades, Anderson Ranch, Black Canyon, and Minidoka Interagency Work Groups have developed the Southern Idaho Wildlife Mitigation Project (hereinafter Project). The Project has been approved by the Council and BPA. BPA has completed an Environmental Assessment, DOE/EA No. 0956 and reached a finding of no significant impact (September 1995), for the South Fork Snake/Palisades Project, and completed the Wildlife Mitigation Program Final Environmental Impact Statement (March 1997) and Record of Decision (June 1997), all pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370c.

D. When fully implemented, the Project will include numerous real property interests (Property or Properties)--conservation easements and fee-title land acquisitions--as well as habitat

improvement activities. Idaho will dedicate the Properties in the Project to wildlife habitat protection permanently, and will manage the Properties according to the terms of this Agreement and site-specific management plans (Management Plans) that Idaho will prepare; however, the Properties within the Project may vary from time to time as parcels are acquired or sold as provided under this Agreement.

E. BPA funding under this Agreement will be provided in a manner consistent with section 4(h)(10)(D) of the Act after BPA receives a recommendation from the Council that the measure be funded at a particular level, and BPA accepts that recommendation. This process is referred to as prioritization.

F. The underlying purpose of the Agreement is to protect, mitigate, and enhance wildlife and wildlife habitat permanently, through the acquisition, protection and management of the Properties.

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. BPA Obligations (a) In consideration of the promises and covenants made and set out herein, BPA shall make monetary transfers to Idaho in amounts agreed upon by the parties within 10 days of receipt of a signed Intergovernmental Contract and invoice from Idaho.

(b) In addition, BPA shall reimburse Idaho's costs of complying with federal real property acquisition law, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655; provided, for any acquisition involving potential relocation costs of \$20,000 or more, Idaho shall enlist the assistance of BPA's Manager, Real Property Services, before taking any action or making any commitments that will necessitate reimbursement by BPA under this paragraph.

2. Operation and Maintenance (a) On or before the beginning of fiscal year 1999 (October 1, 1998), BPA shall start providing a reasonable amount of additional funds for continued operation and maintenance (O&M) of the mitigation to maintain or provide positive wildlife and/or wildlife habitat benefits.

(i) For properties acquired in fee with BPA funds, reasonable may be defined as sufficient funding to, among other things, maintain the staffing and equipment needed to protect

habitat through limiting grazing trespass; maintain the property boundary fences; suppress noxious weed infestations; perform habitat improvement and monitoring activities as delineated in the Management Plans; perform Habitat Evaluation Procedures (HEPs) as required in section 9(b) of this Agreement; and where necessary, pay in-lieu property taxes, county weed assessments, and fire suppression costs.

(ii) For properties acquired as conservation easements with BPA funds, reasonable may be defined as including funding for monitoring and enforcement of easement terms and performing habitat improvements.

(iii) For habitat improvements made with BPA funds on properties acquired or managed by Idaho with funds from a source other than BPA, reasonable may be defined as amounts sufficient to protect those habitat improvements through limiting grazing trespass, maintaining the property boundary fences, suppressing noxious weed infestations, monitoring activities and other activities as delineated in the Management Plans.

(b) By June 30, 2001, the parties shall make their best efforts to negotiate an operation and maintenance funding scheme for the Project. Payment may be on an annual basis, lump sum, or by any other means agreed to by the parties. Funding negotiated for operations and maintenance will be subject to prioritization.

(c) Net revenue received from managing the Properties, including conservation reserve program payments or other similar payments, shall be used only to (i) pay costs associated with the land managed, including but not limited to payment of in-lieu property taxes, county weed assessments, and fire suppression costs, or (ii) to implement the Management Plans. Net revenues may be subtracted from O&M funds that would otherwise have been provided by BPA, unless otherwise agreed by the parties.

3. Idaho Department of Fish and Game Obligations (a) The monies provided pursuant to sections 1 and 2 above, any interest earned from them, and net income earned from the Properties shall constitute the Fund. Idaho shall deposit the Fund in an interest bearing account and maintain grant accounting to allow tracking of all expenditures from the Fund.

(b) Idaho may use the Fund only to purchase the Properties, improve them, conduct inventories, HEPs (pursuant to guidelines published by the U.S. Fish and Wildlife Service), develop Management Plans, and to accomplish reasonable operation and maintenance.

Expenditures from the Fund must be pursuant to the Management Plans; provided, Idaho may use the Fund for acquisitions prior to developing a Management Plan for a particular site.

Idaho may also use the Fund to improve habitat on public lands, including those owned or managed by Idaho in the mitigation area; provided, public lands does not include lands owned or managed by a person or entity having a wildlife mitigation agreement with BPA calling for that person or entity to be responsible for operation and maintenance or habitat improvement costs.

The Fund may be used for wildlife mitigation purposes only, and will not be used in lieu of other expenditures Idaho must make under other agreements or provisions of law. The Fund may not be used to pay fees-in-lieu of property taxes, county weed assessments, operation and maintenance, or fire suppression on lands that were not purchased for purposes of Southern Idaho wildlife mitigation or that Idaho owned or operated prior to this Agreement.

(c) Idaho will use the Fund to implement wildlife mitigation activities as outlined in the Intergovernmental Contracts and within the area delineated in Attachment A of this Agreement. Idaho may utilize its own processes in conducting any and all pre-acquisition activities, that include, by way of example, appraisals, drafting and presenting to sellers earnest money agreements, purchase and sale agreements, hazardous materials audits, and conducting surveys; provided, Idaho will comply with federal real property acquisition laws, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655. Where Idaho has no established procedure, it will follow BPA or federal procedures.

(d) Idaho shall protect the properties in the Project as wildlife habitat permanently on behalf of BPA, preventing any and all uses of the Properties that are inconsistent with this Agreement, the Council's Program, or the Management Plans.

(e) Property acquired pursuant to this Agreement is subject to the condition that it be managed for wildlife under this Agreement. If BPA determines that a Property is not being managed for wildlife, as evidenced by a twenty percent drop in the highest documented HEP values, then the Property shall vest in BPA in fee simple absolute, unless BPA provides written consent to such cessation of use or lack of compliance. To allow the Property to vest in BPA, Idaho shall take title to real property it purchases under this Agreement by a deed conveying fee simple with an executory limitation over. The deed should be substantially equivalent to Attachment C. This provision is inapplicable if the twenty percent drop in HEP values is proximately caused by force majeure as described in section 6 or BPA's failure to provide additional funds for operation and maintenance as described in section 2.

4. Management Plans (a) Idaho shall use the Fund to develop an inventory of the resources existing on the Properties. Based on the information obtained from the inventories Idaho shall develop a site specific management plan (Management Plan) for each mitigation site within two years of the date of acquisition. The Management Plans will describe the mitigation in detail, including its baseline HEP results and how and when estimated HUs from improvement activities will be achieved and sustained. The Management Plans will focus on habitat management concerns including: the management of noxious weeds, the use of grazing and other means of manipulating habitat to reach desired conditions for wildlife, road closures, access, and other management practices designed to protect wildlife and their habitats. BPA will not approve proposed management practices that in its opinion may impede the increase in HEP value of improvement HUs. Upon completion, the Management Plans shall be incorporated and made a part of this Agreement.

(b) The NEPA documents mentioned in Recital C of this Agreement will be incorporated by reference into the Management Plans. Idaho will use the Fund to manage the properties to benefit wildlife permanently, according to the Management Plans, the terms of this Agreement, and the Environmental Assessment performed by BPA. BPA must approve the Management Plans before implementation, and it may not withhold its approval unreasonably.

5. Incidents of Ownership Idaho will have all management and operational control of the Project and Properties, and will therefore be solely responsible for all incidents of ownership of real property interests acquired with the Fund. Subject to the limitations of state law, Idaho agrees to take lawful actions to hold harmless and indemnify BPA from any liability from any incident of ownership that may arise in the implementation of the Management Plan. Such incidents of ownership include, but are not limited to, hazardous waste response, cultural resource mitigation, and tort liability. Nothing in this Agreement shall be so construed or interpreted to commit or obligate Idaho to unlawfully expend funds that have not been appropriated or budgeted.

6. Force Majeure Should an unforeseen event, such as a flood, wildfire, drought, or pestilence, destroy or diminish the Properties' values as wildlife habitat, Idaho shall have no obligation to reproduce the Properties' pre-existing wildlife values any faster than natural regeneration reproduces them.

7. Historic Properties Idaho will assume the responsibilities for historic property protection pursuant to a subsequent agreement between the parties, in a manner substantially equivalent to that described in Attachment B, for all mitigation actions under this Agreement. Idaho will integrate management planning for historic and cultural resources, as defined by the National Historic Preservation Act, with the wildlife management practices as a means of avoiding impacts to cultural and historic resources. Surveys shall be done before initiating non-exempt ground-disturbing activities. Idaho will also avoid sensitive sites if at all possible in implementing habitat improvement actions. Only ground-disturbing activities approved in the Management Plans may be undertaken. Idaho may use the Fund, or if it is exhausted seek additional monies through the prioritization process, for the surveys or any cultural or historic resource mitigation necessitated as a result of Idaho's actions under this Agreement.

8. Recording by Idaho Department of Fish and Game For any real property Idaho acquires under this Agreement, Idaho shall have this Agreement and a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, acknowledged and recorded with all appropriate authorities under Idaho law, at the time Idaho takes title to or assumes control of such property. After this Agreement has been recorded in a county once, subsequent deeds recorded in the same county may refer to the recording data for the Agreement instead of re-recording it. Within 30 days of recording(s), Idaho shall submit to the BPA contracting officer a copy of the recorded documents showing the recording information. In the event Idaho exercises its option to sell or exchange any of the Properties acquired for mitigation, as authorized in Section 9 of this Agreement, Idaho shall lawfully record a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, for the newly acquired property.

(b) For properties Idaho acquires in less than fee interest under this Agreement, Idaho shall ensure (i) the restrictions on the deeds include third party enforcement language approved by BPA, and (ii) the deeds are acknowledged and recorded under Idaho law.

9. Acquisition, Sale, Trade If a sale or trade of a Property would provide a net gain in HUs or aid in the fulfillment of the management objectives as stated in this Agreement and the Management Plan, then Idaho may sell or trade any Property after meeting the following conditions:

(a) obtaining written concurrence by the BPA Manager, Fish and Wildlife Division, and

(b) demonstrating that the new real property interests are of equal or greater wildlife habitat value, as measured by a habitat evaluation procedure, to the species targeted in this Agreement, or aid in fulfillment of the Management Plan or facilitate management of Property already acquired.

(c) In completing the transaction Idaho will record, with all appropriate authorities, a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, ensuring the property being acquired through acquisition, sale, or trade is permanently protected for wildlife and wildlife habitat as outlined in this Agreement.

The Fund may be used to facilitate the acquisition, sale or trade or to perform HEPs related to it.

10. Protection of Tribal Rights Nothing in this Agreement is intended to nor shall abrogate any federally protected or reserved Indian right.

11. BPA Monitoring For properties Idaho manages, BPA shall have the right to enter upon the properties at reasonable times to monitor Idaho's compliance with this Agreement and to enforce its terms.

12. Idaho Department of Fish and Game Reporting Beginning January 30, 1998, and every January 30 thereafter, Idaho shall provide BPA an annual report including, but not necessarily limited to, the following information: general descriptions of the real property interests in the Project, any HEP analyses undertaken or in progress, management activities undertaken or in progress, violations of easement terms and enforcement action taken. Idaho shall also provide an accounting of the Fund, including any expenditures, interest earned, and net income derived from the management of the Project. At its own expense, BPA may audit Idaho's accounting records related to the Project.

13. Public Access The public shall have reasonable access to the Properties Idaho owns or manages. Public access is encouraged, but not required, for Properties not managed by Idaho under this Agreement. Public access and use may not result in adverse impacts to wildlife, the reduction of wildlife habitat values, or the destruction of other natural resource values for which the Properties are managed, or impede the increase in HEP value of improvement HUs. Nothing in this Agreement limits the authority or ability of Idaho to manage the Properties for lawful

hunting, fishing or trapping, public safety, wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites.

14. BPA Credit Idaho shall support BPA's taking of the following protection, mitigation, and enhancement credit:

(a) For having used BPA funds to purchase and manage Properties BPA shall receive as a credit to wildlife mitigation under the Act, at a minimum, the HUs agreed upon in the Intergovernmental Contracts, and as a maximum, the actual HUs achieved or acquired.

(b) Idaho will conduct HEPs for breeding bald eagle, wintering bald eagle, Canada goose, mallard, black-capped chickadee, mink, ruffed grouse, mule deer/elk, pheasant, sharp-tailed grouse, river otter, sage grouse, and yellow warbler. The specific list and number of target species will vary by hydroelectric project. The results of the HEPs shall be used to evaluate the credit due on each specific mitigation site. For mitigation actions involving partnerships, BPA shall receive full credit proportional to its investment in the acquisition, improvement costs, or operations and maintenance.

(c) For all Properties: The parties may agree to conduct subsequent HEP studies at any time. The party requesting the study shall fund it unless the parties agree otherwise.

(d) Idaho agrees that BPA's expenditure of money is consistent with section 4(h) of the Act. Idaho shall support BPA's obtaining full credit for its expenditures with respect to protecting and managing existing habitat on the Properties, and for habitat improvements when implemented on the Properties, so long as BPA complies with the terms of this Agreement.

(e) BPA shall use the credit recognized by Idaho under this Agreement toward satisfaction of BPA's wildlife mitigation responsibility for Palisades, Anderson Ranch, Black Canyon, and Minidoka Dams and Reservoirs and any other hydroelectric projects amended into the Council's Program for Southern Idaho and agreed to by the parties. Provided, if another crediting methodology is imposed by applicable law or by judicial decision, agreed to between BPA and Idaho, or adopted by BPA through rulemaking, that formula shall be used to recompute the credit provided in this part and the recomputed credit shall be used for all purposes, including the final determination of BPA's ultimate obligation to provide wildlife mitigation, protection, and

enhancement; however, in no event will any such recalculation affect BPA's obligations under this Agreement.

15. Limitation of Credit The credit BPA obtains for the consideration paid to implement the Project as required and provided in this Agreement shall not be affected or diminished as a result of the failure of Idaho to carry out its obligations to maintain the Properties as provided in this Agreement.

16. Binding Effect This Agreement shall be binding on the parties and their assigns and successors. Either party shall have the right to enforce the terms of this Agreement as provided herein.

17. Dispute Resolution BPA and Idaho agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the properties to non-binding mediation. This provision shall be triggered when one party makes a written request for the other party to join in mediation. Within 30 days of this provision being triggered, the parties shall select a mediator, or if they are unable to select a mediator, each party shall select a mediator and the two selected will choose a third mediator who shall be the sole mediator. The parties shall use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60 days and there have been at least two mediation sessions, any party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation no party shall initiate any legal proceeding except in aid of mediation or to avoid irreparable harm from a direct threat to the wildlife resources protected under this Agreement. Each party shall pay its own mediation costs and fees, including those incurred in selection of a mediator; the parties shall share the costs and fees of the mediator equally.

18. Effective Date This Agreement shall be effective when signed by the Chairman of the Idaho Fish and Game Commission, after receiving lawful approval from the Commission in an open meeting; the Director of the Idaho Department of Fish and Game; BPA's Group Vice President of Environment, Fish and Wildlife; and BPA's Manager, Real Property Services.

19. Contract Approval If a court of competent jurisdiction finds that a portion of this Agreement that relates to the Properties and their use or the ability of BPA to exercise its rights with respect to the Properties is unauthorized or not binding on Idaho, this Agreement

shall be terminated and BPA shall determine the Properties acquired under this Agreement and owned by Idaho are not being managed pursuant to the Agreement; title to such Properties as BPA chooses to accept shall then vest in the United States, BPA, in fee simple absolute. Idaho shall also convey to BPA any and all personal property acquired with funding provided by BPA under this Agreement, and remit any remainder sums in the Fund to BPA, after which time the parties will have no further obligations to each other under this Agreement. Provided, that unless agreed to by the parties, the parties shall use their best efforts to enter into a new and binding agreement that carries out the intent of this Agreement. Any party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement.

20. Modification The parties by mutual agreement may modify the terms of this Agreement. Any such modification shall be in writing signed by both parties.

21. Enforcement of Agreement Against Idaho This Agreement is enforceable in any court of competent jurisdiction, whether for equitable relief or damages.

22. Attorney Fees In the event of litigation involving this Agreement each party shall bear its own costs and attorney fees, including those incurred on appeal.

23. Waiver The failure of any party to require strict performance of any term of this Agreement or a party's waiver of performance shall not be a waiver of any future performance or of a party's right to require strict performance in the future.

IN WITNESS WHEREOF, the parties have signed this Agreement below.

1306
9-15-97

By: (b) (6)
Alexandra B. Smith
Group Vice President
Environment, Fish and Wildlife
Bonneville Power Administration
Date: 9/15/97

By: (b) (6)
John R. Cowger
Manager, Real Property Services
Bonneville Power Administration
Date: 9/26/97

By: (b) (6)
John E. Burns, Chairman on behalf of
Idaho Fish and Game Commission
State of Idaho, Department of Fish and Game
Date: 9/9/87

By: (b) (6)
Stephen P. Mealey Director
Idaho Department of Fish and Game
State of Idaho, Department of Fish and Game
Date: 9-8-97

ATTACHMENTS A, B, and C

ATTACHMENT A

DESCRIPTION OF PROJECT AREA

The project area includes wildlife mitigation project sites in southern Idaho associated with Palisades, Anderson Ranch, Minidoka, Black Canyon hydroelectric projects and any other hydroelectric projects amended into the Council's program and agreed to by the parties.

ATTACHMENT B

SAMPLE HISTORIC PRESERVATION ACT PROGRAMMATIC AGREEMENT

DRAFT PROGRAMMATIC AGREEMENT
among
THE BONNEVILLE POWER ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE IDAHO STATE HISTORIC PRESERVATION OFFICER
regarding implementation of
SOUTHERN IDAHO WILDLIFE MITIGATION PROJECTS

WHEREAS, the Bonneville Power Administration is a Federal Power Marketing Agency (PMA), created under the authority of the Bonneville Project Act (16 U.S.C. §§ 832-832I);

WHEREAS, the Advisory Council on Historic Preservation (Council) was established as an independent agency by the National Historic Preservation Act (NHPA) at 16 U.S.C. § 470L Pursuant to Section 106 of the NHPA, the Council provides comments to an Agency Official on the effects of undertakings on historic properties in accordance with its implementing regulations, "Protection of Historic Properties," 36 CFR Part 800.

WHEREAS, the role of the state historic preservation officer (SHPO) in regard to programmatic agreements is set out in 36 C.F.R. § 800.1(c)(1)(ii);

WHEREAS, the Bonneville Power Administration (BPA) and other potential managing entities such as the Idaho Department of Fish and Game (IDFG); the Bureau of Land Management (BLM); the United States Forest Service (USFS); and the Shoshone-Bannock Tribes (Tribes) propose to protect, mitigate and enhance wildlife and wildlife habitat adversely affected by the development of the Federal Columbia River Hydrosystem in accordance with the South Fork Snake River/Palisades Wildlife Mitigation Project Final Environmental Assessment and Finding of No Significant Impact and the Wildlife Programmatic Environmental Impact Statement;

WHEREAS, BPA recognizes that mitigation efforts related to the development of the Federal Columbia River Hydrosystem could possibly affect historic properties. For the purposes of this PA, the term "historic properties" means any prehistoric or historic district, site, building, structure, or object, or any property of traditional religious and cultural importance to an Indian tribe, that is included in, or eligible for inclusion in, the National Register. This term includes artifacts, records, and remains that are related to and located within such properties;

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DRAFT PROGRAMMATIC AGREEMENT 2
South Fork Snake River Management Plan

WHEREAS, the parties have consulted with the Council, and among themselves, as required by Section 106 of NHPA and the Council's implementing regulations, 36 CFR Part 800, and have chosen to develop this Programmatic Agreement in accordance with 36 CFR Section 800.13 of the Council's regulations;

WHEREAS, the Shoshone-Bannock Tribes (Tribes) have been invited to consult and to sign the Agreement in concurrence; and the Tribes' Cultural Committee is hereby designated as the Tribes' representative for purposes of this agreement;

[add a whereas for the Shoshone-Paiutes? - Nancy, ACHP]

WHEREAS, BPA, in the mitigation effort, may acquire and/or transfer real property or real property interests to other entities who will then assume the responsibility for cultural preservation on said property consistent with this agreement;

NOW, THEREFORE, the Council and the parties agree that the mitigation of wildlife and habitat adversely affected by development of the Columbia River Hydropower System shall be conducted in accordance with the following stipulations, which will fully satisfy BPA's duties pursuant to Section 106 of NHPA.

STIPULATIONS

BPA, with the cooperation of the Idaho Department of Fish and Game and the Shoshone-Bannock Tribe, will ensure that the following measures are carried out

1. Survey and Evaluation

The entity responsible for managing BPA-funded fish and wildlife mitigation on lands in Southern Idaho shall identify and evaluate historic properties potentially affected by land management activities in accordance with the following procedure:

- (a) Activities typically requiring survey and evaluation are included in but not limited to those listed in Appendix B. BPA and the managing entity will determine the project's area of potential effects and conduct surveys, that will be done following the recommendations of the Interior Secretary's "Standards and Guidelines for Identification" (48 Fed. Reg. 44716, 44720 (Dep't Int. 1983)). Surveys and evaluations by the managing entity will be conducted in consultation with the SHPO, Tribes, and BPA. Consultation at a minimum will include opportunity for at least a ten (10)

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DRAFT PROGRAMATIC AGREEMENT 3
South Fork Snake River Management Plan

day review of survey plan(s). Evaluation of historic properties shall be in accordance with 36 C.F.R. part 63, "Determination of Eligibility for Inclusion in the National Register of Historic Places." The managing entity shall forward survey and evaluation results to BPA for review, after which BPA will forward the results to the SHPO and Tribes for a 30-day review.

(b) If cultural material is discovered during any surveys or evaluations, the materials will be noted but left in place unless, in the judgement of the surveying archaeologist, collection is necessary for protection purposes.

(c) If no historic properties are identified during the survey, the project may proceed after the 30-day review by the SHPO and Tribes described in stipulation 1(a).

(d) Other land management activities (those listed in Appendix A) are generally exempt from the need for advance survey and evaluation. However, the managing entity shall promptly report to BPA, Tribes and the SHPO any potential historic properties encountered during implementation of these activities, and shall consult with the SHPO, BPA, and the Tribes about the need to survey and evaluate such properties.

2. Historic Properties Management Plan (HPMP)

In order to fulfill BPA's Section 106 obligations, the managing entity shall prepare an HPMP for projects with historic properties discovered through implementation of stipulation 1 (above).

(a) The HPMP shall be developed in consultation with BPA, the Tribes and the SHPO within one year of the determination of eligibility, and amended as warranted by changing conditions and discovery of additional historic properties. A single HPMP may be prepared for each parcel of land within contiguous boundaries, or where the managing entity is managing other properties similarly situated, and it may include multiple historic properties.

(b) In preparing HPMPs, they shall be prepared by or under the supervision of an individual who possesses the qualifications recommended by the Interior Secretary's "Professional Qualifications Standards" (48 Fed. Reg. 44,716, 44,738).

(c) The HPMP shall include the following:

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DRAFT PROGRAMMATIC AGREEMENT 4
South Fork Snake River Management Plan

- 1) An overview, synthesizing available information on the history, prehistory, and ethnography of the area, as a context for management of historic properties;
 - 2) an inventory of historic properties present, including a description of each historic property, the significant element or elements of each property that qualifies it for inclusion in the National Register, and appropriate maps, plans, and photographs;
 - 3) a discussion of the potential for and intended use of historic properties in ways that do not cause significant damage to or deterioration of the property;
 - 4) means to preserve historic properties in place, including protection from vandalism;
 - 5) if treatment other than preservation in place is proposed, the HPMP should also discuss the alternative treatment(s), such as research value, interpretive potential, cultural importance to descendants of site creators, cost of preserving the site in place, or lack of alternatives to achieving the project goals;
 - 6) a balancing of BPA's mission and historic property preservation or other proposed treatments;
 - 7) stipulations for compliance with appropriate sections, where applicable, of NAGPRA (25 U.S.C. §§ 3001-3013), NHPA (16 U.S.C. §§ 470-470x-6), ARPA (16 U.S.C. §§ 470aa-470mm) and the American Indian Religious Freedom Act (AIRFA) (42 U.S.C. § 1996), including definition of a consultation process between BPA and the Shoshone-Bannock Tribes to ensure adequate communication of the actions to be taken under the Wildlife Mitigation Projects. Consultation with the Tribes shall be maintained specifically to solicit input on traditional use or other tribal concerns directly related to this consultation process and Programmatic Agreement.
- (d) The managing entity or BPA will provide copies of the draft HPMP to the SHPO, Tribes, Council and other interested parties for review and comment. BPA will direct the managing entity not to take action with potential adverse effect on a historic property until the HPMP is implemented, or section 106 responsibilities are otherwise fulfilled.

3. Discoveries

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If cultural material that is not covered by the HPMP (Stipulation 2) is discovered during the implementation of the Project, the managing entity will ensure that all work in the area of the discovery will immediately cease and the managing entity will contact BPA, the Tribes, and the SHPO. BPA, in consultation with the SHPO and Tribes, will determine if the cultural material represents an historic property which is eligible to the National Register of Historic Places. If the material does represent an historic property, BPA will determine the appropriate treatment of the historic property in consultation with the SHPO and the Tribes, as appropriate.

4. **Curation**

The parties recognize that Tribal traditions do not normally support curation. However, if curation of non-burial materials is deemed necessary as discussed under stipulation 1(b), BPA and the managing entity shall ensure that all curation of records and other items resulting from identification, evaluation, and data recovery efforts proceeds in accordance with 36 CFR 79 and, where applicable, the provisions of the Native American Graves Protection and Repatriation Act (PL101-601). Collections and records will be curated at an appropriate repository. Materials shall be maintained in accordance with 36 CFR 79 until any specified analyses are complete and they are curated or returned to their owners.

5. **Human Remains**

BPA and the land-managing entity shall ensure that any human remains encountered during the course of this undertaking are treated in a respectful manner. No construction activities will be allowed in the vicinity of the discovery until a Notice to Proceed is provided by BPA and/or the land managing entity. A reasonable and good-faith effort shall be made to identify the appropriate ancestors, Native American or otherwise, related to the burial, and consult with them concerning the treatment of remains. If human remains are encountered on Federal lands, the land-managing entity shall consult with Native Americans, or other groups related to the burial, to determine treatment and disposition measures consistent with applicable Federal law (such as the Native American Graves Protection and Repatriation Act). BPA, SHPO and the Shoshone-Bannock Tribe will address specific NAGPRA procedures regarding the discovery of human skeletal remains in an MOA.

DRAFT PROGRAMMATIC AGREEMENT 6
South Fork Snake River Management Plan

If human remains are encountered on State or private lands, BPA shall ensure, in consultation with the SHPO, that they are treated according to the provisions of Idaho's 1984 Protection of Graves Act, Sections 27-501 through 27-504. If Native American remains are encountered, the appropriate tribal policy will be followed. If objections are raised by any party to this Agreement regarding the treatment of human remains, BPA shall consult to resolve the objections in accordance with Stipulation 9.

6. Training

Managing entity staff shall attend training in cultural resources management and/or the Section 106 review process, or demonstrate knowledge of these subjects.

7. Annual Report

The managing entity shall prepare an annual report regarding implementation of this PA, and shall distribute the report to BPA, the SHPO, the Tribes and the Advisory Council. Annual reports should include:

- a. Name of contact person for each wildlife management area;
- b. a summary of general land management activities for the year;
- c. a specific description of the survey, evaluation and HPMP activity undertaken in that year;
- d. a discussion of problems and successes in managing historic properties and implementing this PA, including the views of Tribes and other interested parties;
- e. training undertaken by managing entity staff per stipulation #6; and
- f. anticipated date of the next annual report.

This report shall be the basis for BPA, the land managing entity, SHPO, Council, Tribes, and other interested parties annually reviewing the implementation of the PA and determining if changes in the PA or implementation are necessary. The first report is due not later than one year from execution of this PA, or as otherwise agreed in writing by the consulting parties.

8. Amendment of the Agreement

Any party to the agreement may request that this PA be amended, whereupon the parties will consult in accordance with 36 C.F.R. § 800.13

DRAFT of 5/5/97

DRAFT PROGRAMMATIC AGREEMENT 7
South Fork Snake River Management Plan

to consider such amendment. Any amendment or addendum to this agreement shall be executed in the same manner as the original.

9. **Dispute Resolution**

Should BPA, the SHPO, or the Tribes be unable to resolve a dispute regarding implementation of this PA, they may consult with the Council staff. If the dispute is still not resolved after a period of 60 day, the SHPO shall request the further comments of the Council pursuant to 36 C.F.R. § 800.6(b).

10. **Termination**

BPA or the SHPO may terminate this PA by providing 120 days' notice, in writing, to the other parties, including concurring parties, provided that the parties will meet during the period prior to termination to seek agreement, amendment, or other action that would avoid termination. It is the intent of the parties that this agreement last for the duration of the South Fork Snake River Programmatic Management Plan. In the event of termination, BPA and the land management entity will comply with 36 C.F.R. §§ 800.4-800.6 with regard to land management activities.

11. **Other Indian Tribes**

Nothing in this agreement is intended to affect the interests or rights of any other Indian tribe.

DRAFT PROGRAMATIC AGREEMENT 8
South Fork Snake River Management Plan

Execution of this PA by BPA, the SHPO, the Council, plus concurrence by the Tribes and implementation by the managing entity(ies) demonstrate that BPA has taken into account the potential effects of the South Fork Snake River/Palisades Wildlife Mitigation Project Final Environmental Assessment and Finding of No Significant Impact, in full compliance with the requirements of Section 106 of the NHPA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
Title: _____

BONNEVILLE POWER ADMINISTRATION

By: _____ Date: _____
Title: _____

IDAHO STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Title: _____

Concur:
SHOSHONE-BANNOCK TRIBES

By: _____ Date: _____
Title: _____

IDAHO DEPARTMENT OF FISH AND GAME

By: _____ Date: _____
Title: _____

DRAFT of 5/5/97

APPENDIX "A"

Land Management Activities Normally Exempt from Prior Survey and Evaluation

- * Acquisition of a conservation easement (survey and evaluation normally will be required prior to implementation of Appendix B activities funded by BPA or the managing agency within the easement)
- * Management of vegetation not associated with structural landscaping (i.e., non-mechanical weed control or tree topping)
- * Maintenance of fences not requiring excavation
- * Construction and/or preparation of wildlife mitigation structures, facilities or alterations to land where such activities or their use will not involve excavation or ground disturbance, nor create a risk of unearthing historical items or resources

APPENDIX "B"

Examples of Land Management Activities Normally Requiring Prior Survey and Evaluation

- * Acquisition of land in fee (survey and evaluation would be limited to an overview-type survey for informational purposes only, with no testing) [SHPO wanted moved to here, BPA added qualifying parenthetical]
- * Construction of buildings, including site preparation
- * Removal of buildings more than 50 years old
- * Modification of buildings more than 50 years old
- * Excavation for trenches, ditches or ponds, or any other ground-disturbing activities

DRAFT of 5/5/97

DRAFT PROGRAMMATIC AGREEMENT 10
South Fork Snake River Management Plan

- * Construction of roads
- * Logging

NWeintraub:nw:5373:5/2/97 (ECN-W:\ECN\ECN96\EQ-13-5.(sf\p)

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ATTACHMENT C

The Deed Conveying Fee Simple With an Executory Limitation Over shall include the following provision or one equivalent to it:

Title to this property shall vest in the United States, Bonneville Power Administration (BPA), upon (1) the determination by the Bonneville Power Administration (BPA) that this real property is not being managed for wildlife, as described in the August 1997 Southern Idaho Wildlife Agreement on file with the BPA Manager, Real Property Services, and (2) BPA's choosing to accept conveyance of the property.

Exhibit C
Description of United States' Executory Limitation

Background:

The Idaho Fish and Game Commission and the Idaho Department of Fish and Game (Idaho) acquired this real property to help BPA in partially fulfilling BPA's duty to protect, mitigate, and enhance wildlife habitat affected by the development of the Federal Columbia River Power System as required by section 4(h)(10)(A) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839b(h)(10)(A). BPA provided the funds under a Memorandum of Agreement (MOA) signed with Idaho in September 1997 (Exhibit B herewith). To fulfill its promises to BPA under the MOA, Idaho is recording an executory limitation from Grantor to the United States in the Statutory Warranty Deed ("Deed") to which this description is attached as Exhibit C.

Description of Condition Subsequent:

Under the executory limitation conveyed to the United States of America and its assigns in the Deed, fee title to the real property described in Exhibit A of the Deed (BPA Tract No. SIDHO-WL-16) shall immediately vest in the United States of America upon satisfaction of the following conditions (i.e., occurrence of condition subsequent):

- (1) the determination by BPA that this real property is not being permanently managed for wildlife, as described in the September 1997 Southern Wildlife Mitigation Agreement on file with the BPA Manager, Real Property Services, and as evidenced by a determination by the Regional Habitat Evaluation Procedure (HEP) Team, or its successor, of a twenty percent drop from the highest HEP values documented by the Regional HEP Team or its successor, in a report completed following the "Variation" and "Stacking" standard operating procedures identified in Appendix A of the Northwest Power and Conservation Council's Wildlife Crediting Forum Report on Forum Deliberations January 2010 – May 2011 (September 2011) on file with the BPA Manager, Real Property Services, and
- (2) the decision by BPA to accept fee title ownership of the property on behalf of the United States of America.

Duration:

This executory limitation shall remain valid so long as Idaho holds title to this real property, provided, the executory limitation will not be triggered under the following circumstances:

- (1) Idaho choosing to exercise its rights under section 9 of the MOA to sell or exchange the property, and BPA concurs, as evidenced by an affidavit executed by Idaho and BPA; or
- (2) a court finds the MOA is not binding on one of the parties.

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9037279

WATER AGREEMENT AND GRANT OF EASEMENT

THIS AGREEMENT ("Agreement") made and entered into this 30 day of May, 1990, by, between and among DEVELOPERS INTERNATIONAL, INC., an Idaho corporation ("Developers"), RONALD C. YANKE and LINDA L. YANKE, husband and wife, of Boise, Idaho ("Yankes"), and JOHN W. ANDERSON and KATHRYN R. ANDERSON, husband and wife, of Boise, Idaho ("Andersons").

R E C I T A L S

WHEREAS, Yankes are the owners of real property more particularly described on Exhibit A, and upon which is located a water well (the "Well"); and

WHEREAS, the Andersons own real property, with a dwelling located thereon, in Section 11, T.2N., R.3E., Boise Meridian, Ada County, Idaho, more particularly described in Exhibit B, and the Yankes own real property, with a dwelling located thereon, in Section 11, T.2N., R.3E., Boise Meridian, Ada County, Idaho, more particularly described in Exhibit C (together sometimes herein-after referred to as the "Properties"); and

WHEREAS, Developers owns real property located in Section 2, T.2N, R.3E, Boise Meridian, Ada County, Idaho, more particularly described in Exhibit D (the "Developers Property") upon which the erection of a single-family dwelling is contemplated; and

WHEREAS, Developers, Yankes and Andersons desire to define and settle each party's rights and obligations incident to the

use of the Well located on the real property described on Exhibit A.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. All parties acknowledge that the ownership of the Well and the real property where it is located is in Yankes, and all parties agree to execute any and all documents reasonably necessary to establish Yankes' ownership in recordable form, said documents to contain reservations of rights to use of water from the Well as provided herein.

2. Yankes hereby grant to Andersons or their assigns the right to continued uninterrupted use of the Well for the purpose of providing water to Andersons' property; provided, however, water use and irrigation shall be limited to domestic use for one residence and irrigation water for approximately one and one-half ($1\frac{1}{2}$) acres.

3. Yankes hereby grant to Developers or its assigns the right of use of the Well for the purposes of providing domestic water for one residence and providing irrigation water for approximately one and one-half ($1\frac{1}{2}$) acres to the Developers Property described on Exhibit D, and further grants any and all easements as shall be necessary for the installation of any system or systems for the transportation of water from the Well to the Developers Property.

4. Yankes agree that the use of the Well for their property shall be limited to domestic use for one residence and irrigation water for approximately one and one-half (1½) acres of property.

5. To create and preserve an orderly procedure for sharing the costs of obtaining water from the Well, the parties agree that:

A. Yankes and Andersons and Developers will each pay all costs associated with the transportation to and distribution of water upon their respective properties. Developers shall have no obligations whatsoever to maintain, repair or pay electricity costs until such time as water is put to actual beneficial use on the Developers Property.

B. Within sixty (60) days of the execution of this Agreement, the Yankes and Andersons shall cause meters to be installed at appropriate locations upon each of their properties to measure the amount of water used by Yankes and Andersons and within thirty (30) days of the diversion for beneficial use on the Developers Property, Developers shall cause a meter to be installed at an appropriate location to measure the amount of water used on the Developers Property. Each party hereby grants to the other parties and their agents and contractors, a license to enter upon such party's property for the purpose of installing and maintaining such meters, and for reading such measured water usage on a

periodic basis. The cost of installing any meters as of the execution of this Agreement shall be paid by the party for whose use of water the meter will measure.

Provided, however, Yankes and Andersons may both mutually agree to extend indefinitely the timeframe when both parties shall be required to place meters on their appropriate waterlines. Should they agree to this extension, either Yankes or Andersons, at any time in the future, may serve notice on the other party of their desire to require meters to be installed, and both parties shall immediately be required to install the meters. In addition, should Developers, or its successors, construct a dwelling and require use of the Well, all parties agree that the meters will then be installed.

C. The parties shall establish a standard monthly charge to be billed to the parties actually beneficially using water based upon a reasonable estimate of the electricity costs of providing water to the parties on a continual basis.

D. Not less frequently than every six (6) months, the parties shall determine the total cost (excluding the cost described in paragraph E herein) of operation during the previous six-month period or such shorter time as has passed since accounts were settled, and shall allocate such costs among the parties in the proportion of each party's use of

water to the total use of water during that period. The parties shall give notice of the total amount due from each party, which shall reflect the credit for the standard monthly payments made by each party as provided in paragraph C above.

E. The costs of operating, maintaining and administering the Well (excluding electricity costs described in paragraph C above), but including the repair or replacement of assets such as pipes or pumping equipment, shall be borne by Yankes and Andersons equally. At such time as Developers or its assigns commence beneficial use of the water, the costs shall be split in three (3) equal shares. The cost of maintaining meters and systems for the delivery of water to each party's property shall be borne by the party whose property benefits from the use of each such system or meter.

6. Each party shall be responsible for submitting claims covering their own water rights and water uses in the Snake River Adjudication. Each party shall be responsible for applying for, obtaining, amending, etc. any such water rights and licenses for their uses as allowed by this Agreement. All water uses provided for in this Agreement must be in compliance with the Idaho Department of Water Resources' requirements.

7. Each party grants consent to each other party to come onto that party's land to repair or replace water lines that join the main junction box connected to the Well. If any water line

becomes damaged beyond repair, the party whose house lines are connected to the damaged water lines may enter on the property of those lines to replace them. All repairs to lines or equipment lying between the main junction and the individual homes shall be made and paid for by the individual homeowner. Each party shall be allowed to keep the existing lines that carry water to the household for domestic purposes and shall be allowed to replace said lines for such uses as are: (i) reasonably necessary; and (ii) substantially similar in nature and quantity to uses to which said party puts water as of the date of this Agreement, and Developers shall be entitled to install lines and divert water for such uses as are reasonably necessary to the full enjoyment of domestic and agricultural use of the Developers Property. It shall be the mutual responsibility of the parties to cause all maintenance and repairs to be performed and to keep the records of all costs in maintaining the Well and provide all other parties with said records from time to time or upon request.

8. This Agreement may be assigned by any party to any successor in interest of the property benefited by this Agreement without consent of the others and shall be binding upon the successors in interest and assigns of the parties.

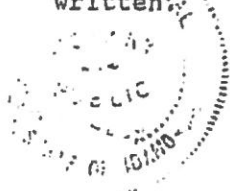
9. The rights of the parties pursuant to this Agreement shall pass to their successors in interest, assigns, heirs, devisees, executors, beneficiaries and future owners of the properties benefited by this Agreement, and in the case of

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STATE OF IDAHO)
 : ss.
County of)

On this 13th day of ~~May~~ ^{July}, 1990, before me, VIRGINIA
McDONALD, a notary public for said State, personally
appeared RONALD C. YANKE and LINDA L. YANKE, husband and wife,
known or identified to me to be the persons who executed the
instrument, and acknowledged to me that they executed the same.

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



Virginia McDonald
Notary Public
Residing at: Boise Idaho
My Commission Expires: 3-18-91

STATE OF IDAHO)
 : ss.
County of)

On this 9th day of ~~May~~ ^{July}, 1990, before me, Janet L.
Blosch, a notary public for said State, personally
appeared JOHN W. ANDERSON and KATHRYN R. ANDERSON, husband and
wife, known or identified to me to be the persons who executed
the instrument, and acknowledged to me that they executed the
same.

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



Janet L. Blosch
Notary Public
Residing at: Boise, Idaho
My Commission Expires: 3-17-93

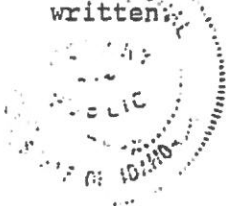
5044

1226001385

STATE OF IDAHO)
 : ss.
County of)

On this 13th day of ~~May~~ ^{July}, 1990, before me, VIRGINIA
MCDONALD, a notary public for said State, personally
appeared RONALD C. YANKE and LINDA L. YANKE, husband and wife,
known or identified to me to be the persons who executed the
instrument, and acknowledged to me that they executed the same.

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



Virginia McDonald
Notary Public
Residing at: Boise Idaho
My Commission Expires: 3-18-91

STATE OF IDAHO)
 : ss.
County of)

On this 9th day of ~~May~~ ^{July}, 1990, before me, Janet L.
Blosch, a notary public for said State, personally
appeared JOHN W. ANDERSON and KATHRYN R. ANDERSON, husband and
wife, known or identified to me to be the persons who executed
the instrument, and acknowledged to me that they executed the
same.

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



Janet L. Blosch
Notary Public
Residing at: Boise, Idaho
My Commission Expires: 3-17-93

5044

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EXHIBIT A

A parcel of land located in Section 2, T.2N., R.3E., B.M., Ada County, Idaho, more particularly described as follows:

BEGINNING at the corner common to Sections 2, 3, 10 and 11, T.2N., R.3E., B.M.; thence N.89°20'18"E., 1327.60 feet on the line common to said Sections 2 and 11 to the W 1/16 corner; thence N.0°51'01"W., 3957.10 feet to the NW 1/16 corner of said Section 2; thence N.89°28'00" E., 1316.11 feet to the CN 1/16 corner of said Section 2; thence N.89°27'10" E., 53.00 feet to the Real Point of Beginning;

THENCE continuing N.89°27'10"E., 810 feet to a point; thence S.29°44'33"W., 544.61 feet to a point; thence N.45°43'31"W., 14.42 feet to a point; thence S.65°07'44"W., 543.36 feet to a point; thence S.16°40'33"E., 248.66 feet to a point; thence westerly on the arc of a circle 80.68 feet in radius curving to the left an arc distance of 99.54 feet, the chord of said arc running S.77°58'26"W., 93.35 feet to a point; thence S.42°37'39"W., 418.52 feet to a point; thence southerly on the arc of a circle 232.27 feet in radius curving to the left an arc distance of 124.37 feet, the chord of said arc running S.27°17'15"W., 122.89 feet to a point; thence S.11°56'51"W., 276.67 feet to a point; thence westerly on the arc of a circle 30.00 feet in radius curving to the left an arc distance of 76.74 feet, the chord of said arc running S.85°13'58"W., 57.46 feet to a point; thence N.21°28'55"W., 577.04 feet to a point; thence northwesterly on the arc of a circle 215.49 feet in radius curving to the left an arc distance of 162.11 feet, the chord of said arc running N.43°02'02"W., 158.32 feet to a point; thence N.64°35'09"W., 64.00 feet to a point; thence northerly on the arc of a circle 138.69 feet in radius curving to the right an arc distance of 192.20 feet, the chord of said arc running N.24°53'09"W., 177.18 feet to a point; thence N.14°48'51"E., 78.54 feet to a point; thence northeasterly on the arc of a circle 375.70 feet in radius curving to the right an arc distance of 647.15 feet, the chord of said arc running N.64°09'37"E., 570.06 feet to a point; thence easterly on the arc of a circle 700.00 feet in radius curving to the left an arc distance of 355.34 feet, the chord of said arc running S.81°02'10"E., 351.54 feet to a point; thence easterly on the arc of a circle 20.00 feet in radius curving to the right an arc distance of 16.12 feet, the chord of said arc running S.72°29'06"E., 15.69 feet to a point; thence northly on the arc of a circle 45.00 feet in radius curving to the left an arc distance of 213.92 feet, the chord of said arc running N.5°34'43"W., 62.31 feet to a point; thence westerly on the arc of a circle 20.00 feet in radius curving to the right an arc distance of 16.12 feet, the chord of said arc running S.61°19'40" W., 15.69 feet to a point; thence N.1°41'22"E., 473.79 feet to the Real Point of Beginning, said parcel contains 23.35 acres more or less.

EXHIBIT

A

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EXCEPTING and reserving the right to grantor, its successors and assigns, to construct and maintain, at any time and from time to time, a street or roadway across the above described land, nor to exceed 50 feet in width; the center line of said right of way is described as follows:

Beginning at a brass cap, the Northwest 1/16th corner of Section Two (2), Township Two (2) North, Range Three (3) East, B.M., Ada County, Idaho: thence N.89°28'00" E. a distance of 2,179.11 feet to a point; thence S. 29°44'33"W. a distance of 514.61 feet to a point; thence N.45°43'31"W. a distance of 180.00 feet to a point; thence S.65°07'44"W. a distance of 235.0 feet, more or less to the roadway located in the Northwest $\frac{1}{4}$ of said section known and referred to as Cartwheel Drive.

The right of way hereby reserved is and shall be for use in common by grantor, its successors and assigns, and grantees, their successors and assigns, and such roadway as may be constructed and maintained along said easement may be located in manner to make it reasonably practical and adequate for ordinary vehicular traffic with such variation from the center line thereof as may be reasonably necessary by reason of the nature of the land.

1226001388

EXHIBIT B

BEGINNING at the NW corner of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho.

Thence N. 89°20'17" E., 1603.62 feet to the real point of beginning; thence N. 89°20'17" E., 245.0 feet to a point; thence S. 03°37'14" E., 721.0 feet to a point, thence S. 49°10'14" W., 360.0 feet to a point; thence N. 01°05'23" W., 952.27 feet to the real point of beginning.

EXCEPT beginning at the NW corner of Section 11, T. 2N., R. 3E., B.M.; thence N. 89°20'17" E., 1603.62 feet to a point; thence S. 01°05'23" E., 430.0 feet to the real point of beginning; thence N. 88°22' E., 263.72 feet to a point; thence S. 03°37'14" E., 295.0 feet to a point; thence S. 49°10'14" W., 360.0 feet to a point; thence N. 01°05'23" W., 522.27 feet to the real point of beginning.

And...

PLACED BY *[illegible]*, M. L.
EXHIBIT
B

1226001389

EXHIBIT C

That portion of Government Lot 2 of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at the northwest corner of said Section 11, North 89°20'17" East 1,848.62 feet to a point; thence South 03°37'14" East 71.0 feet to the real point of beginning; thence South 36°04'46" East 519.5 feet to a point; thence South 49°10'40" West 350.05 feet to a point; thence North 03°37'14" West 650.0 feet to the point of beginning.

EXHIBIT
C

1226001390

EXHIBIT D

A tract of land located in Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the section corner common to Sections 2, 3, 10 and 11, T.2N., R.3E., B.M.; thence N 89°20'18" E along the section line common to said Sections 2 and 11, 1327.60 feet to the West 1/16 corner; thence N 00°51'01" W along the West, North-South 1/16 line, 2565.25 feet to the POINT OF BEGINNING;

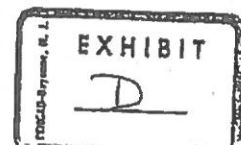
Thence continuing N 00°51'01" W, 320.16 feet to a point;

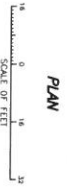
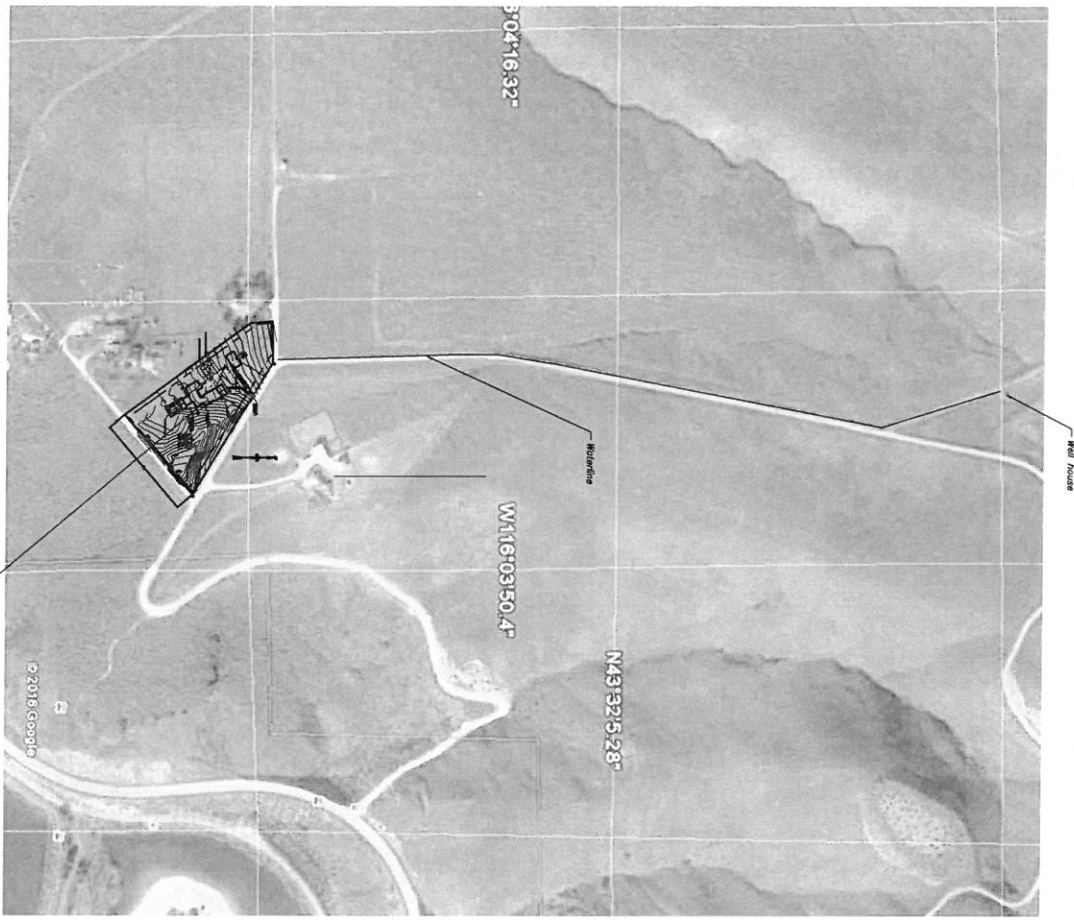
Thence N 84°14'06" E, 577.48 feet to a point;

Thence along a curve to the right, having a central angle of 43°06'14", a radius of 165.49 feet, a chord which bears S 43°02'02" E, 121.58 feet, and an arc length of 124.50 feet;

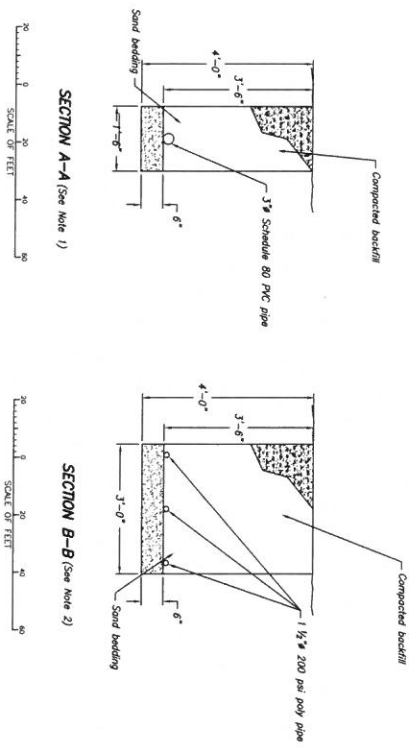
Thence S 21°28'55" E, 293.47 feet to a point;

Thence S 88°46'52" W, 760.42 feet to the Point of Beginning.





Residence to end waterline, see Note 1.



- NOTES**
1. Section A-A represents one alternative in which the 3" pipe conveys three different residential property's volume of water to a point in which the line intersects to each residence.
 2. Section B-B represents one alternative in which three separate 1 1/2" poly pipelines convey water to three different residential properties.
 3. There is an existing pipeline that has been in-place for over 20 years and has had many leaking problems. With the addition of the newest residence brings an opportunity to replace the leaky pipeline with a new, needed pipeline. The pipeline (either alternative shown in Section A-A or B-B) is hard to see on the plan, but as a line intersects the pipeline.

SHEET NO. 2

JCLC LLC

9797 SANDY POINT LANE
PLAN
1469 SF

DATE: 8/2/16
UNIT NO:
SCALE: 3/8" = 1'-0"
REVISIONS
NWD PELETASIS DETACHED GARAGE

EXHIBIT D



TEMPORARY CONSTRUCTION AND PERMANENT UTILITY EASEMENT AGREEMENT

This Temporary Construction and Permanent Utility Easement Agreement (“Agreement”) is entered into by and between Idaho Department of Fish & Game (Grantor), 600 S. Walnut, Boise, ID 83707, Jessee Poletasio, 9797 Sandy Point Lane, Boise, ID 83716, David H. Spencer, 9800 E. Hwy. 21, Boise, Idaho 83716, and Michael L. McGlathery, 9892 E. Hwy 21, Boise ID 83716. (“the Grantees”) (“Grantor” and “Grantees” collectively, “Parties”).

RECITALS

A. In 2012, Grantor purchased real property located in Ada County, Idaho and legally described on the attached and incorporated Exhibit A (“Grantor’s Property”). The Bonneville Power Administration (“BPA”) holds a future executory limitation interest in Grantor’s Property pursuant to the Warranty Deed filed under Ada County Recording Number 112098918, which is incorporated herein by this reference.

B. Grantees own of record certain real property adjacent to Grantor’s Property also located in Ada County, Idaho and legally described on the attached and incorporated Exhibit B (“Grantees’ Property”). Jessee Poletasio’s property is referenced as Property A, David Spencer’s Property is referenced as Property B, and Michael McGathery’s Property is referenced as Property C therein. *See* Exhibit B.

C. In 2009, Grantor acquired property north of Grantees properties, which included a Well that provides domestic water to the three (3) Grantee properties by way of an existing waterline, pursuant to a Warranty Deed filed under Ada County Recording Number 99050876, which is incorporated herein by this reference. The Well is located appurtenant to Ada County Parcel S1602244200, as more fully described in Exhibit C. The Warranty Deed specifically excluded existing water rights to the Well, along with the right to access to the Well for maintenance and repairs. The junction box used to connect the Grantees to the waterline is located on Property A.

D. The three (3) Grantees are parties to a “Water Agreement and Grant of Easement” (“Water Agreement”), which was filed under Ada County Recorder Number 9037279, which is incorporated into this Agreement. The Water Agreement provides each of the three (3) Grantees domestic water rights from the Well on Grantor’s property, and a reciprocal easement for purposes of entering each other’s land or Grantor’s land to repair or replace the water lines.

E. Grantor has received a request from Grantee Jessee Poletasio to replace the existing waterline that runs through Grantor’s Property with three (3) separate lines, for the purpose of delivering water to Grantees’ properties more efficiently. The existing junction box used to connect the Grantees to the waterline will be used to connect the replacement waterlines anticipated by this Agreement. The junction box is located exclusively on Mr. Poletasio’s property, and the replacement waterlines will be stacked, running from the Well to the edge of Mr. Poletasio’s property along the established

2.2. Temporary Construction Easement. The Temporary Construction Easement shall commence on the effective date of this Agreement and shall automatically terminate and expire upon the date construction of the Improvements are completed. Upon expiration of the term of the Temporary Construction Easement, all of the rights and benefits of Grantees in, to and under this Agreement with respect to the Temporary Construction Easement shall automatically terminate and be of no further force and effect.

3. Construction of Utility Improvements.

3.1 Costs/Lien-Free Construction. Grantee shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of Grantor's Property all costs and expenses of construction, restoration and maintenance of the Improvements.

3.2. Compliance with Laws. Grantee shall construct the Improvements in a workmanlike manner and in compliance with the applicable statutes, ordinances, rules and regulations of all governing public authorities as those statutes, ordinances, rules and regulations are amended from time to time.

3.3. Restoration. In the event the surface of the Easement Area is disturbed by Grantee's exercise of any of its easement rights under this Agreement, such area shall be restored to the condition in which it existed at the commencement of such activities. Grantee acknowledges and agrees that the cost of any such restoration shall be Grantee's sole responsibility.

3.4. Accessibility of Roadway During Construction. Grantees further agree to construct the Improvements in a manner which will allow the Easement Area to be accessible to thru traffic during all phases of the construction of the improvements.

3.5. Construction Outside of Roadway. Grantees further agree that if any work on the waterline needs to be conducted outside of the Easement Area roadway footprint, Grantees understand that such a decision must first be presented by Grantor to BPA for approval, and that Grantees may not engage in any construction outside of the Easement Area footprint until such approval is obtained. See Ada County Recording Number 112098918. Since Grantees will be constructing the waterlines, this Agreement subjects Grantees to this construction restriction.

3.6. Grantees' Prior Easements Through Grantor's Land. Nothing herein shall affect the water rights to the Well located on Grantor's Property pursuant to the Water Agreement, Ada County Recorder Number 1226001377. Notwithstanding, because the Easement Area established by this Agreement utilizes a different waterline pathway than existed at the time the Water Agreement was entered into, this Agreement extinguishes Grantees' prior easements over Grantor's property for the purposes of repairing or replacing the existing water lines on Grantor's Property. Grantees agree that their sole

easement for the waterlines running from Property A to the Well is established by the Easement Area, described in this Agreement.

3.7. Assumption of the Risk. Grantees agree to assume the risk of loss, damage, or injury which may result from their use of the property. The Parties agree that any damage to Grantor's Property caused by or resulting from Grantees, its assigns, tenants, agents, contractors or any other person using with or without the permission of Grantor, may be repaired by Grantor, and the actual costs of such repair shall be charged against and be paid by Grantees. However, Grantor must first notify Grantees of its intent to repair damage and provide Grantees an opportunity to repair such damage.

4. General Principles.

4.1. Covenants Running with the Land/Assignment. The Parties to this Agreement acknowledge and agree that the easements and other rights conferred by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the Parties and their respective grantees, heirs, successors and assigns. Without limiting the foregoing, Grantor acknowledges that Grantees' rights under this Agreement are assignable; that Grantees may enter into agreements to sell or otherwise may transfer Grantees' Property, either to affiliates of Grantees or to third parties, and that Grantor hereby consents to Grantees' assignment of all of their right, title and interest and their delegation of all of their obligations created under this Agreement, upon any such sale or transfer and, upon any such assignment, Grantees shall be forever released and discharged from any and all claims, demands and damages which Grantor may have, make or suffer as a result of anything done or occurring after the date of such assignment. Nothing contained in this Section 4.1, however, shall in any way be construed as releasing Grantees' successors and assigns from any obligations to Grantor created by this Agreement or to in any way limit Grantor's remedies at law or in equity as against such successors and assigns.

4.2. Effective Date. This Agreement shall be effective upon the date it is executed by an authorized representative of each signing party.

4.3. Authorized Representative. Each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

4.4. Notices. Any notice permitted or required by this Agreement shall be deemed received, if delivered, when actually received, or, if mailed, on the third (3rd) day after mailing by registered or certified mail, postage prepaid, to the party's address set forth below their respective signatures to this Agreement.

4.5. Plan. Grantees shall provide Grantor with as-built drawings and a survey showing the location and depth of the improvements installed in the Easement Area.

4.6. Further Cooperation. Each of the signatories to this Agreement agrees to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this Agreement.

4.7. Recording Agreement. It is hereby acknowledged by all Parties hereto that this Agreement shall be recorded in Ada County, State of Idaho.

IN WITNESS WHEREOF, the Parties have executed this Agreement upon the date following their respective signatures.

GRANTOR
IDAHO DEPARTMENT OF FISH
AND GAME

(b) (6)

Virgil Moore, Director
Idaho Department of Fish and game;
Secretary, Idaho Fish and Commission

7/17/17
DATED

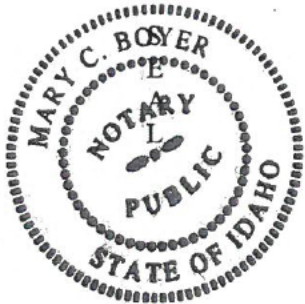
STATE OF IDAHO)

) ss.

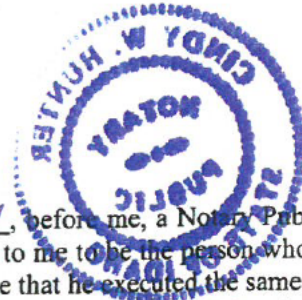
County of)

On this 17th day of July, 2017, before me, a Notary Public for the State of Idaho, personally appeared Virgil Moore known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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



Mary C. Bosyer
Notary Public for the State of Idaho
Residing at Laurel ID
My Commission Expires _____ My Commission Expires
August 31, 2017



GRANTEE

(b) (6)

Jessee Poletasio

DATED

July 13/17

STATE OF IDAHO)

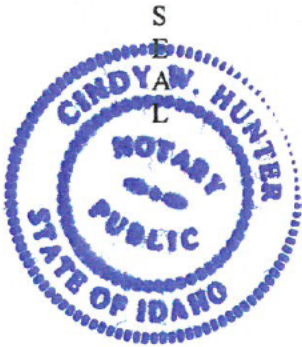
)

) ss.

County of)

On this 13 day of July, 2017, before me, a Notary Public for the State of Idaho, personally appeared Jessee Poletasio known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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



Cindy W Hunter
Notary Public for the State of Idaho

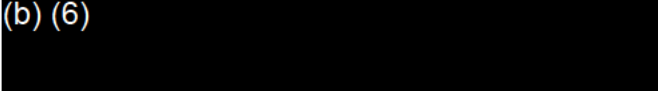
Residing at Boise ID Ada County

My Commission Expires 4/21/2020



GRANTEE

(b) (6)



Michael L. McGlathery


6/30/17
DATED

STATE OF IDAHO)
) ss.
County of Ada)

On this 30th day of June, 2017, before me, a Notary Public for the State of Idaho, personally appeared Michael L. McGlathery known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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





Notary Public for the State of Idaho
Residing at Meridian, Idaho
My Commission Expires 10-19-22

GRANTEE

(b) (6)



David H. Spencer

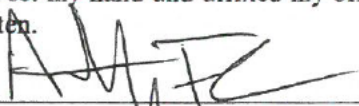
6/26/17
DATED

STATE OF IDAHO)
County of Ada) ss.
)

On this 26 day of June, 2017, before me, a Notary Public for the State of Idaho, personally appeared David H. Spencer known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

S
E
A
ANTHONY FONDINO
NOTARY PUBLIC
STATE OF IDAHO



Notary Public for the State of Idaho
Residing at Boise, ID
My Commission Expires 7-8-22

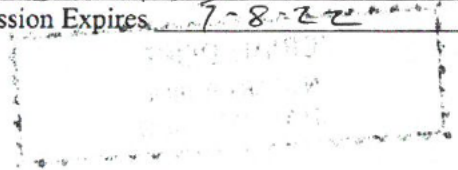


Exhibit A

Parcel I:

A fifty foot roadway formerly known as Lot R-1 of the unrecorded plat of Lucky Peak Subdivision No. 1, located in Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'18" East 1327.60 feet along the South line of said Section 2 to the Real Point of Beginning of this description, said point also being the Southwest corner of a street shown on the unrecorded plat of Lucky Peak Subdivision No. 1 and noted as (Private Street Lot R-1); thence

North 00°51'01" West 50.00 feet to a point; thence

North 89°20'18" East 587.06 feet to a point of curvature; thence along a curve to the left 47.03 feet, said curve having a radius of 30.00 feet, a central angle of 89°49'31", tangents of 29.91 feet, and a chord which bears North 44°25'32" East 42.36 feet to a point of tangency; thence

North 00°29'13" West 654.62 feet to a point of curvature; thence along a curve to the right 170.49 feet, said curve having a radius of 785.60 feet a central angle of 12°26'04", tangents of 85.58 feet, and a chord which bears North 05°43'49" East 170.16 feet to a point of tangency; thence

North 11°56'51" East 1213.69 feet to a point of curvature; thence along a curve to the left 110.16 feet, said curve having a radius of 188.80 feet, a central angle of 33°25'46", tangents of 56.70 feet, and a chord which bears North 04°46'02" West 108.60 feet to a point of tangency; thence

North 21°28'55" West 695.97 feet to a point of curvature; thence along a curve to the left 124.50 feet, said curve having a radius of 165.49 feet, a central angle of 43°06'14", tangents of 65.36 feet, and a chord which bears North 43°02'02" West 121.58 feet to a point of tangency; thence

North 64°35'09" West 64.00 feet to a point of curvature; thence along a curve to the right 261.48 feet, said curve having a radius of 188.69 feet, a central angle of 79°24'00", tangents of 156.65 feet, and a chord which bears North 24°53'09" West 241.06 feet to a point of tangency; thence

North 14°48'51" East 78.54 feet to a point of curvature; thence along a curve to the right 733.27 feet, said curve having a radius of 425.70 feet, a central angle of 98°41'33", tangents of 495.73 feet, and a chord which bears North 64°09'38" East 645.92 feet to a point of reverse curvature; thence along a curve to the left 329.96 feet, said curve having a radius of 650.00 feet, a central angle of 29°05'07", tangents of 168.62 feet, and a chord which bears South 81°02'10" East 326.43 feet to a point of tangency; thence

North 84°25'17" East 25.19 feet to a point of curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 61°19'41" East 15.69 feet to a point of reverse curvature; thence along a curve to the right 213.92 feet, said curve having a radius of 45.00 feet, a central angle of 272°22'26", and a chord which bears South 05°34'43" East 62.31 feet to a point of reverse curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 72°29'06" West 15.69 feet to a point of tangency; thence

South 84°25'17" West 25.19 feet to a point of curvature; thence along a curve to the right 355.34 feet, said curve having a radius of 700.00 feet, a central angle of 29°05'07", tangents of 181.59 feet, and a chord which bears North 81°02'10" West 351.54 feet to a point of reverse curvature; thence along a curve to the left 647.15 feet, said curve having a radius of 375.70 feet, a central angle of 98°41'33", tangents of 437.51 feet, and a chord which bears South 64°09'38" West 570.06 feet to a point of tangency; thence

South 14°48'51" West 78.54 feet to a point of curvature; thence along a curve to the left 192.20 feet, said curve having a radius of 138.69 feet, a central angle of 79°24'10", tangents of 115.15 feet, and a chord which bears South 24°53'14" East 177.19 feet to a point of tangency; thence

South 64°35'09" East 64.00 feet to a point of curvature; thence along a curve to the right 162.11 feet, said curve having a radius of 215.49 feet, a central angle of 43°06'14", tangents of 85.11 feet, and a chord which bears South 43°02'02" East 158.32 feet to a point of tangency; thence

South 21°28'55" East 577.02 (577.04) feet to a point of curvature; thence along a curve to the left 76.74 feet, said curve having a radius of 30.00 feet, a central angle of 146°34'14", tangents of 99.90 feet, and a chord which bears North 85°13'58" East 57.46 feet to a point of tangency; thence

North 11°56'51" East 276.69 (276.67) feet to a point of tangency; thence along a curve to the right 124.37 feet, said curve having a radius of 232.27 feet, a central angle of 30°40'48", tangents of 63.72 feet, and a chord which bears North 27°17'15" East 122.89 feet to a point of tangency; thence

North 42°37'39" East 418.52 feet to a point of curvature; thence along a curve to the right 172.83 feet, said curve having a radius of 80.68 feet, a central angle of 122°44'13", tangents of 147.78 feet, and a chord which bears South 76°00'14" East 141.63 feet to a point of tangency; thence

South 14°38'08" East 250.09 feet to a point of curvature; thence along a curve to the left 154.22 feet, said curve having a radius of 182.88 feet, a central angle of 48°18'59", tangents of 82.03 feet, and a chord which bears South 38°47'37" East 149.69 feet to a point of tangency; thence

South 62°57'07" East 78.45 feet to a point of curvature; thence along a curve to the left 94.24 feet, said curve having a radius of 149.78 feet, a central angle of 36°02'53", tangents of 48.74 feet, and a chord which bears South 80°58'33" East 92.69 feet to a point of compound curvature; thence along a curve to the left 89.55 feet, said curve having a radius of 174.85 feet, a central angle of 29°20'44", tangents of 45.78 feet, and a chord which bears North 66°19'38" East 88.58 feet to a point of tangency; thence

North 51°39'16" East 86.82 feet to a point of curvature; thence along a curve to the left 117.65 feet, said curve having a radius of 265.03 feet, a central angle of 25°26'01", tangents of 59.81 feet, and a chord which bears North 38°56'16" East 116.68 feet to a point of tangency; thence

North 26°13'15" East 80.46 feet to a point of curvature; thence along a curve to the right 173.38 feet, said curve having a radius of 94.66 feet, a central angle of 104°56'38", tangents of 123.24 feet, and a chord which bears North 78°41'34" East 150.14 feet to a point of tangency; thence

South 48°50'07" East 58.79 feet to a point of curvature; thence along a curve to the left 129.00 feet, said curve having a radius of 500.29 feet, a central angle of 14°46'25", tangents of 64.86 feet, and a chord which bears South 56°13'19" East 128.64 feet to a point of tangency; thence

South 63°36'32" East 194.42 feet to a point of curvature; thence along a curve to the right 146.04 feet, said curve having a radius of 88.86 feet, a central angle of 94°09'49", tangents of 95.56 feet, and a chord which bears South 16°31'38" East 130.15 feet to a point of tangency; thence

South 30°33'17" West 55.83 feet to a point of curvature; thence along a curve to the left 151.37 feet, said curve having a radius of 105.85 feet, a central angle of 81°56'14", tangents of 91.91 feet, and chord which bears South 10°24'50" East 138.80 feet to a point of tangency; thence

South 51°22'57" East 51.76 feet to a point of curvature; thence along a curve to the right 74.91 feet, said curve having a radius of 188.92 feet, a central angle of 22°43'07", tangents of 37.95 feet, and a chord which bears South 40°01'23" East 74.42 feet to a point of reverse curvature; thence along a curve to the left 159.46 feet, said curve having a radius of 71.45 feet, a central angle of 127°52'20", tangents of 146.08 feet, and a chord which bears North 87°24'00" East 128.37 feet to a point of tangency; thence

North 23°27'50" East 30.59 feet to a point of curvature; thence along a curve to the right 121.94 feet, said curve having a radius of 350.93 feet, a central angle of 19°54'30", tangents of 61.59 feet, and chord which bears North 33°25'05" East 121.32 feet to a point of tangency; thence

North 43°22'20" East 54.40 feet to a point of curvature; thence along a curve to the left 121.78 feet, said curve having a radius of 521.54 feet, a central angle of 13°22'44", tangents of 61.17 feet, and a chord which bears North 36°40'58" East 121.51 feet to a point of tangency; thence

North 29°59'36" East 46.04 feet to a point of curvature; thence along a curve to the right 96.85 feet, said curve having a radius of 569.97 feet, a central angle of 09°44'10", tangents of 48.54 feet, and a chord which bears North 34°51'41" East 96.74 feet to a point of tangency; thence

North 39°43'46" East 325.54 feet to a point of curvature; thence along a curve to the right 166.28 feet, said curve having a radius of 454.78 feet, a central angle of 20°56'55", tangents of 84.08 feet, and a chord which bears North 50°12'13" East 165.35 feet to a point of tangency; thence

North 60°40'41" East 3.34 feet to a point of curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 37°35'04" East 15.69 feet to a point of reverse curvature; thence along a curve to the right 213.92 feet, said curve having a radius of 45.00 feet, a central angle of 272°22'26", and a chord which bears South 29°19'19" East 62.31 feet to a point of reverse curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears South 83°46'17" West 15.69 feet to a point of tangency; thence

South 60°40'41" West 3.34 feet to a point of curvature; thence along a curve to the left 148.00 feet, said curve having a radius of 404.78 feet, a central angle of 20°56'55", tangents of 74.83 feet, and a chord which bears South 50°12'13" West 147.17 feet to a point of tangency; thence

South 39°43'46" West 325.54 feet to a point of curvature; thence along a curve to the left 88.36 feet, said curve having a radius of 519.97 feet, a central angle of 09°44'10", tangents of 44.29 feet, and a chord which bears South 34°51'41" West 88.25 feet to a point of tangency; thence

South 29°59'36" West 46.04 feet to a point of curvature; thence along a curve to the right 133.46 feet, said curve having a radius of 571.54 feet, a central angle of 13°22'44", tangents of 67.03 feet, and a chord which bears South 36°40'58" West 133.15 feet to a point of tangency; thence

South 43°22'20" West 54.40 feet to a point of curvature; thence along a curve to the left 104.56 feet, said curve having a radius of 300.93 feet, a central angle of 19°54'30", tangents of 52.81 feet, and a chord which bears South 33°25'05" West 104.04 feet to a point of tangency; thence

South 23°27'50" West 30.59 feet to a point of curvature; thence along a curve to the right 271.05 feet, said curve having a radius of 121.45 feet, a central angle of 127°52'20", tangents of 248.31 feet, and a chord which bears South 87°24'00" West 218.20 feet to a point of reverse curvature; thence along a curve to the left 55.08 feet, said curve having a radius of 138.92 feet, a central angle of 22°43'07", tangents of 27.91 feet, and a chord which bears North 40°01'23" West 54.72 feet to a point of tangency; thence North 51°22'57" West 51.76 feet to a point of curvature; thence along a curve to the right 222.88 feet, said curve having a radius of 155.85 feet, a central angle of 81°56'14", tangents of 135.33 feet, and a chord which bears North 10°24'50" West 204.36 feet to a point of tangency; thence North 30°33'17" East 55.83 feet to a point of curvature; thence along a curve to the left 63.87 feet, said curve having a radius of 38.86 feet, a central angle of 94°09'49", tangents of 41.79 feet, and a chord which bears North 16°31'38" West 56.92 feet to a point of tangency; thence North 63°36'32" West 194.42 feet to a point of curvature; thence along a curve to the right 141.89 feet, said curve having a radius of 550.29 feet, a central angle of 14°46'25", tangents of 71.34 feet, and a chord which bears North 56°13'19" West 141.50 feet to a point of tangency; thence North 48°50'07" West 58.79 feet to a point of curvature; thence along a curve to the left 81.80 feet, said curve having a radius of 44.66 feet, a central angle of 104°56'38", tangents of 58.14 feet, and a chord which bears South 78°41'34" West 70.84 feet to a point of tangency; thence South 26°13'15" West 80.46 feet to a point of curvature; thence along a curve to the right 139.84 feet, said curve having a radius of 315.03 feet, a central angle of 25°26'01", tangents of 71.09 feet, and a chord which bears South 38°56'15" West 138.70 feet to a point of tangency; thence South 51°39'16" West 86.82 feet to a point of curvature; thence along a curve to the right 115.16 feet, said curve having a radius of 224.85 feet, a central angle of 29°20'44", tangents of 58.87 feet, and a chord which bears South 66°19'38" West 113.91 feet to a point of compound curvature; thence along a curve to the right 125.69 feet, said curve having a radius of 199.78 feet, a central angle of 36°02'53", tangents of 65.01 feet, and a chord which bears North 80°58'33" West 123.63 feet to a point of tangency; thence North 62°57'07" West 78.45 feet to a point of curvature; thence along a curve to the right 196.38 feet, said curve having a radius of 232.88 feet, a central angle of 48°18'59", tangents of 104.46 feet, and a chord which bears North 38°47'37" West 190.62 feet to a point of tangency; thence North 14°38'08" West 250.09 feet to a point of curvature; thence along a curve to the left 65.72 feet, said curve having a radius of 30.68 feet, a central angle of 122°44'13", tangents of 56.20 feet, and a chord which bears North 76°00'14" West 53.86 feet to a point of tangency; thence South 42°37'39" West 418.52 feet to a point of curvature; thence along a curve to the left 97.60 feet, said curve having a radius of 182.27 feet, a central angle of 30°40'48", tangents of 50.00 feet, and a chord which bears South 27°17'15" West 96.44 feet to a point of tangency; thence South 11°56'51" West 1737.74 feet to a point of curvature; thence along a curve to the left 159.64 feet, said curve having a radius of 735.60 feet, a central angle of 12°26'04", tangents of 80.14 feet, and a chord which bears South 05°43'49" West 159.33 feet to a point of tangency; thence South 00°29'13" East 624.78 feet to a point of curvature; thence along a curve to the left 84.71 feet, said curve having a radius of 100.30 feet, a central angle of 48°23'28", tangents of 45.07 feet, and a chord which bears South 24°40'57" East 82.22 feet to a point of non-tangency; thence South 1°06'42" East 34.44 feet to a point on the South side of said street as shown on the unrecorded plat of Lucky Peak Subdivision No. 1, said point also on the South line of said Section 2; thence South 89°20'18" West along said South line 700.40 feet to the Real Point of Beginning of this description.

AND

A parcel of land being a portion of Lots W-3 and W-4 of the unrecorded plat of Lucky Peak Subdivision No. 1 located in the East half of the Southwest quarter of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'18" East along the South side of said Section 2 a distance of 1327.60 feet to a point; thence North 00°51'01" West 1019.87 feet to the Real Point of Beginning of this description; thence continuing North 00°51'01" West 88.39 feet to a point; thence North 89°05'36" East 687.92 feet to a point on the Westerly side of a street as shown on the unrecorded plat of Lucky Peak Subdivision No. 1, and noted as (Private Street Lot R-1); thence South 11°56'51" West along said Westerly side 88.40 feet to a point; thence South 88°54'18" West 668.34 feet to the Real Point of Beginning of this description.

Parcel II:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 00°51'01" East 1391.99 feet to the Real Point of Beginning; thence South 00°51'01" East 292.00 feet to a point; thence North 89°06'41" East 871.91 feet to a point; thence North 21°28'52" West 317.00 feet to a point; thence South 88°45'12" West 760.22 feet to the Point of Beginning.

Parcel III:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 05°01'01" East 1683.99 feet to the Real Point of Beginning; thence North 89°06'41" East 871.91 feet to a point; thence South 21°28'52" East 142.00 feet to a point; thence South 11°57'09" West 171.87 feet to a point; thence South 89°08'38" West 883.86 feet to a point; thence North 0°51'01" West 300.00 feet to the Real Point of Beginning.

Parcel IV:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 00°51'01" East 1983.99 feet to the Real Point of Beginning; thence South 00°51'01" East 255.00 feet to a point; thence North 89°07'31" East 825.98 feet to a point; thence North 11°58'09" East 261.24 feet to a point; thence South 89°08'38" West 883.86 feet to the Real Point of Beginning.

Parcel V:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East of the Boise Meridian, Ada County, Idaho; thence North 89°47'25" East 1327.60 feet to a point; thence North 0°23'53" West 1413.20 feet to the Real Point of Beginning; thence North 0°23'53" West 305.0 feet to a point; thence North 89°34'39" East 825.98 feet to a point; thence South 12°24'17" West 312.28 feet to a point; thence South 89°32'20" West 756.78 feet to the Real Point of Beginning.

Parcel VI:

A parcel of land in the East half of the Southwest quarter of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian; thence North 89°29'31" East 1312.28 feet to the West 1/16 corner of Section 2 (record North 89°47' East 1334.7 feet); thence South 00°51'01" East 3863.52 feet along the 1/16 line (record South 00°02' East 3910.23 feet) to the Real Point of Beginning; thence North 89°07'13" East 757.11 feet to a point (record North 89°47' East 766.14 feet); thence South 11°56'51" West 312.26 feet to a point (record South 12°20' West 307.12 feet); thence South 89°05'36" West 687.94 feet to a point (record South 89°47' West 700.37 feet); thence

North 00°51'01" West 304.79 feet to the Point of Beginning (record North 00°02' West 300.00 feet).

Parcel VII:

A part of the Southeast quarter of the Southwest quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, State of Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence North 89°47' East a distance of 1320.0 feet to a point; thence North 0°02' East a distance of 685.40 feet to the Real Point of Beginning; thence North 89°47' East a distance of 645.58 feet to a point; thence North 0°07' West a distance of 82.85 feet to a point; thence North 12°20' East a distance of 257.77 feet to a point; thence South 89°47' West a distance of 700.37 feet to a point; thence South 0°02' West a distance of 334.47 feet to the Real Point of Beginning.

Parcel VIII:

A part of the Southeast quarter of the Southwest quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, State of Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence North 89°47' East a distance of 1320.0 feet to a point; thence North 0°02' East a distance of 342.65 feet to the Real Point of Beginning; thence North 89°47' East a distance of 646.7 feet to a point; thence North 0°07' West a distance of 342.75 feet to a point; thence South 89°47' West a distance of 645.58 feet to a point; thence South 0°02' West a distance of 342.68 feet to the Real Point of Beginning.

Parcel IX:

A tract of land situated in Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho.

Commencing at a copper weld marking the corner common to Sections 2, 3, 10 and 11, Township 2 North, Range 3 East, Boise Meridian; thence North 89°20'18" East along the North boundary of Section 11, a distance of 559.31 feet to a point on the Westerly right-of-way line of a road; thence South 28°26'39" East a distance of 890.32 feet to the Real Point of Beginning; thence South 28°26'39" East a distance of 23.61 feet to a 5/8 inch iron pin marking an angle point in the right-of-way line; thence South 69°51'14" East along said right of way line a distance of 90.11 feet to a 5/8 inch iron pin; thence South 46°28'28" West a distance of 640.36 feet to a 5/8 inch iron pin on a rock rim; thence North 32°57'25" West along said rim a distance of 106.56 feet to a 5/8 inch iron pin; thence North 20°18'25" West continuing along rim a distance of 105.28 feet to a 5/8 inch iron pin; thence North 56°39'09" East a distance of 554.21 feet to the Real Point of Beginning.

Parcel X:

Beginning at the Northwest corner of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'17" East 560.30 feet to a point; thence South 28°28'33" East 913.40 feet to a point; thence South 69°50'44" East 90.00 feet to the Real Point of Beginning; thence South 69°50'44" East 326.69 feet to a point; thence South 35°34'00" West 700.54 feet to a point; thence

North 63°43'00" West 91.19 feet to a point; thence
North 61°49'00" West 79.10 feet to a point; thence
North 47°30'00" West 185.37 feet to a point; thence
North 63°00'00" West 84.68 feet to a point; thence
North 46°29'16" East 640.70 feet to the Point of Beginning.

Parcel XI:

A parcel of land being a portion of Government Lots 2 and 3 (Northwest quarter) of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner section of Section 11, Township 2 North, Range 3 East, Boise Meridian, Idaho, Ada County, Idaho, also being the Northwest corner of Government Lot 3; thence

North 89°20'18" East along the North lines of the Northwest quarter and Government Lots 2 and 3 of said Section 11, a distance of 2654.98 feet to a point on the East line of said Government Lot 2; thence

South 0°48'48" West along the said East line of Government Lot 2 a distance of 1075.20 feet to the Real Point of Beginning of this description; thence

South 00°48'48" East continuing along said East line 605.26 feet to a point on a curve on the Northerly right of way of State Highway No. 21; thence along the said Northerly right of way along a curve to the right 223.30 feet, said curve having a radius of 855.78 feet, a central angle of 14°57'00", tangents of 112.29 feet, and a chord which bears South 63°06'39" West 222.66 feet to a point being 200 feet West of said East line of Government Lot 2; thence

North 00°48'48" West along a line 200 feet West of and parallel to said East line 216.73 feet to a point on the surveyed base of the Talus Slope North of said Highway; thence along the surveyed base of said Talus Slope the following courses and distances:

South 49°51'33" West 53.19 feet to a point; thence

South 60°02'59" West 93.52 feet to a point; thence

South 46°54'50" West 74.53 feet to a point; thence

South 32°46'22" West 59.58 feet to a point; thence

South 52°18'35" West 72.08 feet to a point; thence

South 57°50'33" West 38.88 feet to a point; thence

South 00°42'00" East, leaving said surveyed base, 18.55 feet (formerly approximately 30 feet) to a point on the said Northerly right of way of State Highway No. 21; thence along said Northerly right of way the following courses and distances:

North 89°46'21" West 581.18 feet to a point of curvature; thence along a curve to the right 657.85 feet, said curve having a radius of 2195.64 feet, a central angle of 17°10'00", tangents of 331.41 feet, and a chord which bears North 81°10'08" West 655.39 feet to a point of compound curvature; thence along a curve to the right 569.30 feet, said curve having a radius of 1332.20 feet, a central angle of 24°29'05", tangents of 289.06 feet, and a chord which bears North 60°32'48" West 564.97 feet to a point; thence leaving said Northerly right of way

North 46°29'01" East 217.51 feet to a point; thence

South 62°59'59" East 84.68 feet to a point; thence

South 47°29'59" East 185.37 feet to a point; thence

South 61°48'59" East 79.10 feet to a point; thence

South 63°42'59" East 91.19 feet to a point; thence

South 68°35'00" East 128.45 feet to a point; thence

South 75°28'31" East 267.84 feet to a point; thence

South 75°30'53" East 68.34 feet to a point; thence

South 88°49'32" East 109.10 feet to a point; thence

North 73°55'48" East 52.52 feet to a point; thence

South 87°20'37" East 104.25 feet to a point; thence

North 81°25'59" East 75.40 feet to a point; thence

North 86°08'00" East 152.88 feet to a point; thence

North 42°18'00" East 235.39 feet to a point; thence

North 57°19'49" East 92.78 feet to a point; thence

North 69°08'00" East 94.20 feet to a point; thence

North 40°22'00" East 243.63 feet to a point; thence

North 71°43'17" East 137.82 feet to a point; thence

North 76°37'17" East 65.91 feet to a point; thence

North 49°41'17" East 101.61 feet to the Real Point of Beginning of this description.

AND

A parcel of land being a portion of Government Lots 2 and 3 (Northwest quarter) of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner section of Section 11, Township 2 North, Range 3 East, Boise Meridian, Idaho, Ada County, Idaho, also being the Northwest corner of Government Lot 3; thence
North 89°20'18" East along the North lines of the Northwest quarter and Government Lot 3 of said Section 11 a distance of 560.35 feet to the Real Point of Beginning of this description; thence
South 28°28'32" East 913.47 feet to a point; thence
South 69°50'55" East 642.87 feet to a point; thence
North 49°10'48" East 1146.83 feet to a point on the Westerly side of Sandy Point Drive as conveyed to the Ada County Highway Commission under Instrument No. 7515233 and re-recorded under Instrument No. 7532588; thence
North 58°49'43" West along said Westerly side of Sandy Point Drive 51.68 feet to a point; thence
South 49°10'48" West 1081.27 feet to a point; thence
South 79°45'14" West 34.45 feet to a point; thence
North 69°50'55" West 575.40 feet to a point; thence
North 28°27'46" West 868.33 feet to a point on the said North line of the Northwest quarter and Government Lot 3; thence
South 89°20'18" West along said North lines 56.52 feet to a point to the Real Point of Beginning of this description.

Parcel XII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2435.85 feet to a point on the South boundary of the tract herein described, which tract is called Tract V-1 for identification, the True Point of Beginning; thence
South 52°58' East 407.46 feet to the Southeast corner of Tract V-1; thence
North 25°02'24" East 485.83 feet to the Northeast corner of Tract V-1; thence
South 68°01'17" West 169.85 feet to a point; thence
North 73°59'51" West 80.17 feet to a point; thence
North 56°59'38" West 239.59 feet to a point; thence
North 23°14'02" West 143.07 feet to a point; thence
North 18°52'08" West 224.64 feet to the Northwest corner of Tract V-1; thence
South 44°33'42" West 485.15 feet to the Southwest corner of Tract V-1; thence
South 52°58' East 468.69 feet to the True Point of Beginning.

Parcel XIII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2135.85 feet to the Real Point of Beginning; thence
South 52°58' East 458.74 feet to a point; thence
North 9°38' East 320.16 feet to a point; thence
North 52°58' West 877.5 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 435.0 feet to the Point of Beginning.

Parcel XIV:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1835.85 feet to the Real Point of Beginning; thence
South 52°58' East 577.65 feet to a point; thence

North 0°07' East 355.78 feet to a point; thence
North 52°58' West 893.74 feet to a point; thence
South 12°20' West 313.10 feet to a point; thence
South 52°58' East 398.95 feet to the Point of Beginning.

Parcel XV:

A part of the East half of the Southwest quarter and part of the West half of the Southeast quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian, Ada County, Idaho, described as follows:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East of the Boise Meridian; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1535.85 feet to the Real Point of Beginning; thence
South 52°58' East 569.60 feet to a point; thence
North 19°40' East 298.01 feet to a point; thence
North 52°58' West 976.5 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 365.0 feet to the Point of Beginning.

Parcel XVI:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1235.85 feet to the Real Point of Beginning; thence
South 52°58' East 750.0 feet to a point; thence
North 2°39' East 344.65 feet to a point; thence
North 52°58' West 1012.22 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 326.60 feet to the Point of Beginning.

Parcel XVII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 935.85 feet to the Real Point of Beginning; thence
South 52°58' East 610.0 feet to a point; thence
North 46°02' East 228.01 feet to a point; thence
North 52°58' West 1076.60 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 290.73 feet to the Point of Beginning.

Parcel XVIII:

A part of the Southeast quarter of the Southwest quarter, and a part of the Southwest quarter of the Southeast quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 635.85 feet to the Real Point of Beginning; thence
South 52°58' East a distance of 525.21 feet to a point; thence
North 34°59' East a distance of 284.63 feet to a point; thence
North 52°58' West a distance of 900.73 feet to a point; thence
South 12°20' West a distance of 313.1 feet to a point; thence

South 52°58' East a distance of 254.86 feet to the Real Point of Beginning.

Parcel XIX:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2435.85 feet to a point; thence
South 52°58' East a distance of 407.46 feet to the Real Point of Beginning; thence
South 9°38' West 321.61 feet to a point; thence
South 0°07' West 354.29 feet to a point; thence
South 19°40' West 242.97 feet to the Southwest corner of the tract; thence
North 89°46'18" East 783.21 feet to the Southeast corner of the tract; thence
North 11°13'51" East 231.41 feet to a point; thence
North 10°56'37" East 79.12 feet to a point; thence
North 11°03'49" East 164.15 feet to a point; thence
North 3°10'43" East 445.91 feet to a point; thence
North 10°20'55" West 219.05 feet to a point; thence
North 16°52'29" West 106.38 feet to a point; thence
North 20°43'37" East 162.50 feet to the Northeast corner of the tract; thence
North 63°17'02" West 271.24 feet to a point; thence
North 52°15'18" West 157.40 feet to the Northwest corner of the tract; thence
South 33°01'03" West 160.89 feet to a point; thence
South 35°30'14" West 155.45 feet to a point; thence
South 25°02'24" West 485.83 feet to the True Point of Beginning.

EXHIBIT B

Property A

Parcel: S1611212280
Year: 2017
Parcel Status: Active in 2017
Primary Owner:
POLETASIO JESSEE
Zone Code: R1
Total Acres: 2.818
Tax Code Area: 2.818
Instrument Number:
2016041116
Property Description:
PAR #2280 POR GOV LOT 1
SEC 11 2N 3E
PARCEL B R/S 10377
#212277R

Property B

Parcel: S1611212300
Year: 2017
Parcel Status: Active in 2017
Primary Owner:
SPENCER DAVID H
Zone Code: RP
Total Acres: 1.86
Tax Code Area: 52
Instrument Number:
9999013050
Property Description:
PAR #2300 OF NE4NW4
SEC 11 2N 3E
#94084590

Property C

Parcel: S1611212350
Year: 2017
Parcel Status: Active in 2017
Primary Owner:
MCGLATHERY MICHAEL L
Zone Code: R1
Total Acres: 2.09

Tax Code Area: 52

Property Description:

PAR #2350 OF NE4NW4

SEC 11 2N 3E

#9129352

EXHIBIT C

The Well

Parcel: S1602244200

Year: 2017

Parcel Status: Active in 2017

Primary Owner:

IDAHO STATE FISH & GAME DEPT

Zone Code: RP

Total Acres: 22.34

Tax Code Area: 52

Property Description:

PAR #244200 OF SE4NW4

SEC 02 2N 3W

#241600-R 131202-S

#99050876 #99050874

Exhibit D

DESCRIPTION FOR
WATER LINE EASEMENT

A utility easement located in the SW1/4 of Section 2 and the NW 1/4 of Section 11, T.2N., R.3E., B.M., Ada County, Idaho more particularly described as follows:

Commencing at the W1/16 corner of said Section 2, from which the S1/4 corner of said Section 2 bears North 89°34'20" East, 1327.16 feet;

thence along the South boundary line of said Section 2 North 89°34'20" East, 520.08 feet to the **REAL POINT OF BEGINNING**;

thence continuing along said South boundary line North 89°34'20" East 127.62 feet;

thence leaving the said South boundary line North 00°19'40" West, 342.65 feet;

thence North 02°04'27" West, 488.58 feet;

thence North 12°15'07" East, 1,356.38 feet;

thence North 20°48'25" West, 453.18 feet;

thence North 62°03'31" East, 61.60 feet;

thence South 27°56'29" East, 28.00 feet;

thence South 62°03'31" West, 49.99 feet;

thence South 20°48'25" East, 431.29 feet;

thence South 12°15'07" West, 1,359.13 feet;

thence South 02°04'46" East, 486.74 feet;

thence South 00°19'40" East, 357.85 feet;

thence South 89°34'20" West, 141.81 feet;

thence North 03°25'04" West, 15.02 feet to the **REAL POINT OF BEGINNING**.





SCALE: 1" = 100'



KAPERNICK PROPERTY

IDAHO FISH AND GAME PROPERTY

IDAHC

ISAAC PROPERTY

S2.04'46"E 486.74'
N2.04'27"W 488.58'

S0.19'40"E 357.85'
N0.19'40"W 342.65'

N89°34'20"E
127.62'

BASIS OF BEARING
N89°34'20"E 1327.16'

W 1/16

N89°34'20"E 520.08'

RPOB

N3°25'04"W
15.02'

S89°34'20"W
141.81'

S 2
S 11
1/4

N:\ISG Projects\Hammer Flats Water ESMT 17-074\dwg\Easement Exhibit.dwg 4/17/2017 2:13:32 PM



IDAHO
SURVEY
GROUP, P.C.

1450 E. WATERTOWER ST.
SUITE 130
MERIDIAN, IDAHO 83642
(208) 848-8570

EXHIBIT "___" DRAWING FOR
WATER LINE EASEMENT

LOCATED IN THE SW 1/4 OF SEC. 2 & THE NW1/4 OF SEC. 11, T.2N., R.3E., B.M.,
ADA COUNTY, IDAHO

JOB NO.
17-074

SHEET NO.
1 of 2

DWG. DATE
4/17/2017

N62°03'31"E
61.60'

S27°56'29"E
28.00'

WELL HOUSE

N62°03'31"E
49.99'

IDAHO FISH AND GAME PROPERTY

IDAHO FISH AND GAME PROPERTY

S20°48'25"E 431.29'

N20°48'25"W 453.18'

IDAHO FISH AND GAME PROPERTY

N12°15'07"E 1356.38'

S12°15'07"W 1359.13'


IDAHO FISH AND GAME PROPERTY



SCALE: 1" = 100'



S:\ISG Projects\Hammer Flats Water ESMI 17-074\dwg\Easement Exhibit.dwg 4/17/2017 2:11:15 PM

 IDAHO SURVEY GROUP, P.C.	1450 E. WATERTOWER ST. SUITE 130 MERIDIAN, IDAHO 83642 (208) 846-8570
	EXHIBIT "___" DRAWING FOR WATER LINE EASEMENT

LOCATED IN THE SW 1/4 OF SEC. 2 & THE NW1/4 OF SEC. 11, T.2N., R.3E., B.M., ADA COUNTY, IDAHO

JOB NO. 17-074
SHEET NO. 2 of 2
DWG. DATE 4/17/2017



Department of Energy
Bonneville Power Administration
PO Box 3621
Portland, OR 97208-3621

April 2, 2019

In reply refer to: TERR-3
BPA CASE NO.: 20190142
TRACT ID: SIDHO-WL-16
EASEMENT: Warranty Deed with Future Executory Limitation (Sandy Point)
Ada County, Idaho

Idaho Department of Fish and Game
Attn: Steve Elam
13000 E Highway 21
Boise, ID 83716

Determination of Compatible Use

Dear Mr. Elam:

Thank you for notifying the Bonneville Power Administration ("**Bonneville**") of the Idaho Department of Fish and Game's ("**IDFG**") intent to develop a small, 3-4 vehicle (50' x 50' area) designated parking area on the Sandy Point wildlife mitigation property in Ada County, Idaho ("**Protected Property**").

In 2012, Bonneville provided funding for IDFG to acquire the Protected Property, legally described in **Exhibit A**, pursuant to the terms of the 1997 Southern Idaho Wildlife Mitigation Memorandum of Agreement ("**MOA**") between Bonneville and the State of Idaho. In accordance with the terms of the MOA, Bonneville was granted a future executory limitation interest in the Protected Property through the Warranty Deed filed under Ada County Recording Number 112098918 on September 26, 2012, attached as **Exhibit B**. The future executory limitation interest ensures that Sandy Point will be permanently protected for wildlife and its habitat.

Bonneville understands that the planned parking area would be graveled and fenced, would include a 4' x 4' kiosk, and would require moving an existing gate. There are no plans for utilities, washroom, or garbage at the parking area. The designated parking area is more particularly described in **Exhibit C** and would be developed at the location shown on **Exhibit D**. Bonneville also understand that the purpose of the parking area is to reduce impacts from vehicles on the Protected Property's wildlife habitat and to improve public safety related to access from the public road.

Because the purpose of the parking area is to reduce vehicle impacts on the Protected Property's wildlife habitat, Bonneville concurs that the parking area is compatible with the wildlife mitigation purpose for which the Protected Property was acquired. Bonneville does not object to IDFG's development of the parking area, provided that (1) IDFG employs necessary and appropriate measures to minimize or eliminate adverse impacts to wildlife and wildlife habitat, and (2) IDFG will notify Bonneville of any intent to modify the parking area or its use in the future. Prior to any such modification, or if IDFG intends to undertake other modifications to the Protected Property, please contact the Bonneville Realty Office.

The terms and conditions of the 2014 Southern Idaho Wildlife Mitigation Memorandum of Agreement between Bonneville and IDFG, which now governs management and responsibilities related to the Protected Property, remain in effect. This document does not in any way affect IDFG's ongoing responsibility for all incidents of ownership, including but not limited to payments in lieu of taxes, taxes, levies, assessments, hazardous waste response, fire suppression, cultural or historic resource mitigation or preservation, endangered species protection, noxious weed or invasive species management, and tort liability. In addition, this document does not create or imply an obligation for Bonneville to fund development of the parking area or create any federal nexus to IDFG's management of the Protected Property.

Please sign below to indicate your understanding and concurrence. This document becomes effective upon the signature of both parties. If you have any questions or concerns, please notify the Bonneville Realty Office. You may direct any communication to Bonneville Power Administration, Real Estate Field Services, attention Heidi Haserot (TERR-3), PO Box 3621, Portland, OR 97208-3621 or by telephone at 503.230.3115.

(b) (6)



Steve Elam
Idaho Department of Fish and Game

4-3-2019
Date

(b) (6)



Heidi Haserot
Realty Specialist, Bonneville Power Administration

4/5/19
Date

Cc: Sandra Fife, EWM-4
Tucker Miles, LN-7

EXHIBIT A LEGAL DESCRIPTION

Exhibit A

Parcel I:

A fifty foot roadway formerly known as Lot R-1 of the unrecorded plat of Lucky Peak Subdivision No. 1, located in Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'18" East 1327.60 feet along the South line of said Section 2 to the Real Point of Beginning of this description, said point also being the Southwest corner of a street shown on the unrecorded plat of Lucky Peak Subdivision No. 1 and noted as (Private Street Lot R-1); thence

North 00°51'01" West 50.00 feet to a point; thence

North 89°20'18" East 587.06 feet to a point of curvature; thence along a curve to the left 47.03 feet, said curve having a radius of 30.00 feet, a central angle of 89°49'31", tangents of 29.91 feet, and a chord which bears North 44°25'32" East 42.36 feet to a point of tangency; thence

North 00°29'13" West 654.62 feet to a point of curvature; thence along a curve to the right 170.49 feet, said curve having a radius of 785.60 feet a central angle of 12°26'04", tangents of 85.58 feet, and a chord which bears North 05°43'49" East 170.16 feet to a point of tangency; thence

North 11°56'51" East 1213.69 feet to a point of curvature; thence along a curve to the left 110.16 feet, said curve having a radius of 188.80 feet, a central angle of 33°25'46", tangents of 56.70 feet, and a chord which bears North 04°46'02" West 108.60 feet to a point of tangency; thence

North 21°28'55" West 695.97 feet to a point of curvature; thence along a curve to the left 124.50 feet, said curve having a radius of 165.49 feet, a central angle of 43°06'14", tangents of 65.36 feet, and a chord which bears North 43°02'02" West 121.58 feet to a point of tangency; thence

North 64°35'09" West 64.00 feet to a point of curvature; thence along a curve to the right 261.48 feet, said curve having a radius of 188.69 feet, a central angle of 79°24'00", tangents of 156.65 feet, and a chord which bears North 24°53'09" West 241.06 feet to a point of tangency; thence

North 14°48'51" East 78.54 feet to a point of curvature; thence along a curve to the right 733.27 feet, said curve having a radius of 425.70 feet, a central angle of 98°41'33", tangents of 495.73 feet, and a chord which bears North 64°09'38" East 645.92 feet to a point of reverse curvature; thence along a curve to the left 329.96 feet, said curve having a radius of 650.00 feet, a central angle of 29°05'07", tangents of 168.62 feet, and a chord which bears South 81°02'10" East 326.43 feet to a point of tangency; thence

North 84°25'17" East 25.19 feet to a point of curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 61°19'41" East 15.69 feet to a point of reverse curvature; thence along a curve to the right 213.92 feet, said curve having a radius of 45.00 feet, a central angle of 272°22'26", and a chord which bears South 05°34'43" East 62.31 feet to a point of reverse curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 72°29'06" West 15.69 feet to a point of tangency; thence

South 84°25'17" West 25.19 feet to a point of curvature; thence along a curve to the right 355.34 feet, said curve having a radius of 700.00 feet, a central angle of 29°05'07", tangents of 181.58 feet, and a chord which bears North 81°02'10" West 351.54 feet to a point of reverse curvature; thence along a curve to the left 647.15 feet, said curve having a radius of 375.70 feet, a central angle of 98°41'33", tangents of 437.51 feet, and a chord which bears South 64°09'38" West 570.06 feet to a point of tangency; thence

South 14°48'51" West 78.54 feet to a point of curvature; thence along a curve to the left 192.20 feet, said curve having a radius of 138.69 feet, a central angle of 79°24'10", tangents of 115.15 feet, and a chord which bears South 24°53'14" East 177.19 feet to a point of tangency; thence

South 64°35'09" East 64.00 feet to a point of curvature; thence along a curve to the right 162.11 feet, said curve having a radius of 215.49 feet, a central angle of 43°06'14", tangents of 85.11 feet, and a chord which bears South 43°02'02" East 158.32 feet to a point of tangency; thence

South 21°28'55" East 577.02 (577.04) feet to a point of curvature; thence along a curve to the left 76.74 feet, said curve having a radius of 30.00 feet, a central angle of 146°34'14", tangents of 99.90 feet, and a chord which bears North 85°13'58" East 57.46 feet to a point of tangency; thence

North 11°56'51" East 276.69 (276.67) feet to a point of tangency; thence along a curve to the right 124.37 feet, said curve having a radius of 232.27 feet, a central angle of 30°40'48", tangents of 63.72 feet, and a chord which bears North 27°17'15" East 122.89 feet to a point of tangency; thence

North 42°37'39" East 418.52 feet to a point of curvature; thence along a curve to the right 172.83 feet, said curve having a radius of 80.68 feet, a central angle of 122°44'13", tangents of 147.78 feet, and a chord which bears South 76°00'14" East 141.63 feet to a point of tangency; thence

South 14°38'08" East 250.09 feet to a point of curvature; thence along a curve to the left 154.22 feet, said curve having a radius of 182.88 feet, a central angle of 48°18'59", tangents of 82.03 feet, and a chord which bears South 38°47'37" East 149.69 feet to a point of tangency; thence

South 62°57'07" East 78.45 feet to a point of curvature; thence along a curve to the left 94.24 feet, said curve having a radius of 149.78 feet, a central angle of 36°02'53", tangents of 48.74 feet, and a chord which bears South 80°58'33" East 92.69 feet to a point of compound curvature; thence along a curve to the left 89.65 feet, said curve having a radius of 174.85 feet, a central angle of 29°20'44", tangents of 45.78 feet, and a chord which bears North 66°19'38" East 88.58 feet to a point of tangency; thence

North 51°39'16" East 88.82 feet to a point of curvature; thence along a curve to the left 117.65 feet, said curve having a radius of 265.03 feet, a central angle of 25°26'01", tangents of 59.81 feet, and a chord which bears North 38°56'16" East 116.68 feet to a point of tangency; thence

North 26°13'15" East 60.46 feet to a point of curvature; thence along a curve to the right 173.38 feet, said curve having a radius of 94.86 feet, a central angle of 104°58'38", tangents of 123.24 feet, and a chord which bears North 78°41'34" East 150.14 feet to a point of tangency; thence

South 48°50'07" East 58.79 feet to a point of curvature; thence along a curve to the left 129.00 feet, said curve having a radius of 500.29 feet, a central angle of 14°46'25", tangents of 64.86 feet, and a chord which bears South 56°13'19" East 128.64 feet to a point of tangency; thence

South 63°36'32" East 184.42 feet to a point of curvature; thence along a curve to the right 146.04 feet, said curve having a radius of 88.86 feet, a central angle of 94°09'49", tangents of 95.56 feet, and a chord which bears South 18°31'38" East 130.15 feet to a point of tangency; thence

South 30°33'17" West 55.83 feet to a point of curvature; thence along a curve to the left 151.37 feet, said curve having a radius of 105.85 feet, a central angle of 81°56'14", tangents of 91.91 feet, and chord which bears South 10°24'50" East 138.80 feet to a point of tangency; thence

South 51°22'57" East 51.76 feet to a point of curvature; thence along a curve to the right 74.91 feet, said curve having a radius of 188.92 feet, a central angle of 22°43'07", tangents of 37.95 feet, and a chord which bears South 40°01'23" East 74.42 feet to a point of reverse curvature; thence along a curve to the left 159.46 feet, said curve having a radius of 71.45 feet, a central angle of 127°52'20", tangents of 146.08 feet, and a chord which bears North 87°24'00" East 128.37 feet to a point of tangency; thence

North 23°27'50" East 30.59 feet to a point of curvature; thence along a curve to the right 121.94 feet, said curve having a radius of 350.93 feet, a central angle of 19°54'30", tangents of 61.59 feet, and chord which bears North 33°25'05" East 121.32 feet to a point of tangency; thence

North 43°22'20" East 54.40 feet to a point of curvature; thence along a curve to the left 121.78 feet, said curve having a radius of 521.54 feet, a central angle of 13°22'44", tangents of 61.17 feet, and a chord which bears North 36°40'58" East 121.51 feet to a point of tangency; thence

North 29°59'36" East 46.04 feet to a point of curvature; thence along a curve to the right 86.85 feet, said curve having a radius of 569.97 feet, a central angle of 09°44'10", tangents of 48.54 feet, and a chord which bears North 34°51'41" East 96.74 feet to a point of tangency; thence

North 39°43'46" East 325.54 feet to a point of curvature; thence along a curve to the right 166.28 feet, said curve having a radius of 454.78 feet, a central angle of 20°56'55", tangents of 84.08 feet, and a chord which bears North 50°12'13" East 165.35 feet to a point of tangency; thence

North 60°40'41" East 3.34 feet to a point of curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 48°11'13", tangents of 8.53 feet, and a chord which bears North 37°36'04" East 15.69 feet to a point of reverse curvature; thence along a curve to the right 213.92 feet, said curve having a radius of 45.00 feet, a central angle of 272°22'26", and a chord which bears South 29°19'19" East 62.31 feet to a point of reverse curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 48°11'13", tangents of 8.53 feet, and a chord which bears South 83°46'17" West 15.69 feet to a point of tangency; thence

South 60°40'41" West 3.34 feet to a point of curvature; thence along a curve to the left 148.00 feet, said curve having a radius of 404.78 feet, a central angle of 20°56'55", tangents of 74.83 feet, and a chord which bears South 50°12'13" West 147.17 feet to a point of tangency; thence

South 39°43'46" West 325.54 feet to a point of curvature; thence along a curve to the left 86.36 feet, said curve having a radius of 519.97 feet, a central angle of 09°44'10", tangents of 44.29 feet, and a chord which bears South 34°51'41" West 88.25 feet to a point of tangency; thence

South 29°59'36" West 46.04 feet to a point of curvature; thence along a curve to the right 133.46 feet, said curve having a radius of 571.54 feet, a central angle of 13°22'44", tangents of 67.03 feet, and a chord which bears South 36°40'58" West 133.15 feet to a point of tangency; thence

South 43°22'20" West 54.40 feet to a point of curvature; thence along a curve to the left 104.56 feet, said curve having a radius of 300.93 feet, a central angle of 19°54'30", tangents of 52.81 feet, and a chord which bears South 33°25'05" West 104.04 feet to a point of tangency; thence

South 23°27'50" West 30.59 feet to a point of curvature; thence along a curve to the right 271.05 feet, said curve having a radius of 121.45 feet, a central angle of 127°52'20", tangents of 248.31 feet, and a chord which bears South 87°24'00" West 218.20 feet to a point of reverse curvature; thence along a curve to the left 55.08 feet, said curve having a radius of 138.92 feet, a central angle of 22°43'07", tangents of 27.91 feet, and a chord which bears North 40°01'23" West 54.72 feet to a point of tangency; thence North 51°22'57" West 51.76 feet to a point of curvature; thence along a curve to the right 222.88 feet, said curve having a radius of 155.85 feet, a central angle of 81°56'14", tangents of 135.33 feet, and a chord which bears North 10°24'50" West 204.36 feet to a point of tangency; thence North 30°33'17" East 55.83 feet to a point of curvature; thence along a curve to the left 63.87 feet, said curve having a radius of 38.86 feet, a central angle of 94°09'49", tangents of 41.79 feet, and a chord which bears North 16°31'38" West 56.92 feet to a point of tangency; thence North 63°36'32" West 194.42 feet to a point of curvature; thence along a curve to the right 141.89 feet, said curve having a radius of 550.29 feet, a central angle of 14°46'25", tangents of 71.34 feet, and a chord which bears North 56°13'19" West 141.50 feet to a point of tangency; thence North 48°50'07" West 58.79 feet to a point of curvature; thence along a curve to the left 81.80 feet, said curve having a radius of 44.66 feet, a central angle of 104°56'38", tangents of 58.14 feet, and a chord which bears South 78°41'34" West 70.84 feet to a point of tangency; thence South 26°13'15" West 80.46 feet to a point of curvature; thence along a curve to the right 139.84 feet, said curve having a radius of 315.03 feet, a central angle of 25°26'01", tangents of 71.09 feet, and a chord which bears South 38°56'15" West 138.70 feet to a point of tangency; thence South 51°39'16" West 86.82 feet to a point of curvature; thence along a curve to the right 115.16 feet, said curve having a radius of 224.85 feet, a central angle of 29°20'44", tangents of 56.87 feet, and a chord which bears South 66°19'38" West 113.91 feet to a point of compound curvature; thence along a curve to the right 125.69 feet, said curve having a radius of 199.78 feet, a central angle of 36°02'53", tangents of 65.01 feet, and a chord which bears North 80°58'33" West 123.63 feet to a point of tangency; thence North 62°57'07" West 78.45 feet to a point of curvature; thence along a curve to the right 196.38 feet, said curve having a radius of 232.88 feet, a central angle of 48°18'59", tangents of 104.46 feet, and a chord which bears North 38°47'37" West 190.62 feet to a point of tangency; thence North 14°38'08" West 250.09 feet to a point of curvature; thence along a curve to the left 65.72 feet, said curve having a radius of 30.68 feet, a central angle of 122°44'13", tangents of 56.20 feet, and a chord which bears North 76°00'14" West 53.86 feet to a point of tangency; thence South 42°37'39" West 418.52 feet to a point of curvature; thence along a curve to the left 97.60 feet, said curve having a radius of 182.27 feet, a central angle of 30°40'48", tangents of 50.00 feet, and a chord which bears South 27°17'15" West 96.44 feet to a point of tangency; thence South 11°56'51" West 1737.74 feet to a point of curvature; thence along a curve to the left 159.64 feet, said curve having a radius of 735.60 feet, a central angle of 12°26'04", tangents of 80.14 feet, and a chord which bears South 05°43'49" West 159.33 feet to a point of tangency; thence South 00°29'13" East 624.78 feet to a point of curvature; thence along a curve to the left 84.71 feet, said curve having a radius of 100.30 feet, a central angle of 48°23'28", tangents of 45.07 feet, and a chord which bears South 24°40'57" East 82.22 feet to a point of non-tangency; thence South 1°08'42" East 34.44 feet to a point on the South side of said street as shown on the unrecorded plat of Lucky Peak Subdivision No. 1, said point also on the South line of said Section 2; thence South 89°20'18" West along said South line 700.40 feet to the Real Point of Beginning of this description.

AND

A parcel of land being a portion of Lots W-3 and W-4 of the unrecorded plat of Lucky Peak Subdivision No. 1 located in the East half of the Southwest quarter of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'18" East along the South side of said Section 2 a distance of 1327.60 feet to a point; thence North 00°51'01" West 1019.87 feet to the Real Point of Beginning of this description; thence continuing North 00°51'01" West 88.39 feet to a point; thence North 89°05'36" East 687.92 feet to a point on the Westerly side of a street as shown on the unrecorded plat of Lucky Peak Subdivision No. 1, and noted as (Private Street Lot R-1); thence South 11°56'51" West along said Westerly side 88.40 feet to a point; thence South 88°54'18" West 688.34 feet to the Real Point of Beginning of this description.

Parcel II:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 00°51'01" East 1391.99 feet to the Real Point of Beginning; thence South 00°51'01" East 292.00 feet to a point; thence North 89°06'41" East 871.91 feet to a point; thence North 21°28'52" West 317.00 feet to a point; thence South 88°45'12" West 760.22 feet to the Point of Beginning.

Parcel III:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 05°01'01" East 1683.99 feet to the Real Point of Beginning; thence North 89°06'41" East 871.91 feet to a point; thence South 21°28'52" East 142.00 feet to a point; thence South 11°57'08" West 171.87 feet to a point; thence South 89°08'38" West 683.86 feet to a point; thence North 0°51'01" West 300.00 feet to the Real Point of Beginning.

Parcel IV:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence South 45°31'26" East 1866.49 feet to a point; thence South 00°51'01" East 1883.99 feet to the Real Point of Beginning; thence South 00°51'01" East 255.00 feet to a point; thence North 89°07'31" East 825.98 feet to a point; thence North 11°58'09" East 261.24 feet to a point; thence South 89°08'36" West 683.86 feet to the Real Point of Beginning.

Parcel V:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East of the Boise Meridian, Ada County, Idaho; thence North 89°47'25" East 1327.60 feet to a point; thence North 0°23'53" West 1413.20 feet to the Real Point of Beginning; thence North 0°23'53" West 305.0 feet to a point; thence North 89°34'39" East 825.98 feet to a point; thence South 12°24'17" West 312.28 feet to a point; thence South 89°32'20" West 756.78 feet to the Real Point of Beginning.

Parcel VI:

A parcel of land in the East half of the Southwest quarter of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian; thence North 89°28'31" East 1312.28 feet to the West 1/16 corner of Section 2 (record North 89°47' East 1334.7 feet); thence South 00°51'01" East 3863.52 feet along the 1/16 line (record South 00°02' East 3910.23 feet) to the Real Point of Beginning; thence North 89°07'13" East 757.11 feet to a point (record North 89°47' East 766.14 feet); thence South 11°58'51" West 312.26 feet to a point (record South 12°20' West 307.12 feet); thence South 89°05'36" West 687.94 feet to a point (record South 89°47' West 700.37 feet); thence

North 00°51'01" West 304.79 feet to the Point of Beginning (record North 00°02' West 300.00 feet).

Parcel VII:

A part of the Southeast quarter of the Southwest quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, State of Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence
North 89°47' East a distance of 1320.0 feet to a point; thence
North 0°02' East a distance of 685.40 feet to the Real Point of Beginning; thence
North 89°47' East a distance of 645.58 feet to a point; thence
North 0°07' West a distance of 82.85 feet to a point; thence
North 12°20' East a distance of 257.77 feet to a point; thence
South 89°47' West a distance of 700.37 feet to a point; thence
South 0°02' West a distance of 334.47 feet to the Real Point of Beginning.

Parcel VIII:

A part of the Southeast quarter of the Southwest quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, State of Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence
North 89°47' East a distance of 1320.0 feet to a point; thence
North 0°02' East a distance of 342.65 feet to the Real Point of Beginning; thence
North 89°47' East a distance of 646.7 feet to a point; thence
North 0°07' West a distance of 342.75 feet to a point; thence
South 89°47' West a distance of 645.58 feet to a point; thence
South 0°02' West a distance of 342.68 feet to the Real Point of Beginning.

Parcel IX:

A tract of land situated in Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho.

Commencing at a copper weld marking the corner common to Sections 2, 3, 10 and 11, Township 2 North, Range 3 East, Boise Meridian; thence
North 89°20'18" East along the North boundary of Section 11, a distance of 559.31 feet to a point on the Westerly right-of-way line of a road; thence
South 28°26'39" East a distance of 890.32 feet to the Real Point of Beginning; thence
South 28°26'39" East a distance of 23.61 feet to a 5/8 inch iron pin marking an angle point in the right-of-way line; thence
South 69°51'14" East along said right of way line a distance of 90.11 feet to a 5/8 inch iron pin; thence
South 46°26'28" West a distance of 640.36 feet to a 5/8 inch iron pin on a rock rim; thence
North 32°57'25" West along said rim a distance of 106.56 feet to a 5/8 inch iron pin; thence
North 20°18'25" West continuing along rim a distance of 105.26 feet to a 5/8 inch iron pin; thence
North 56°39'09" East a distance of 554.21 feet to the Real Point of Beginning.

Parcel X:

Beginning at the Northwest corner of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°20'17" East 560.30 feet to a point; thence
South 28°28'33" East 913.40 feet to a point; thence
South 69°50'44" East 90.00 feet to the Real Point of Beginning; thence
South 69°50'44" East 326.69 feet to a point; thence
South 35°34'00" West 700.54 feet to a point; thence

North 63°43'00" West 91.19 feet to a point; thence
North 61°49'00" West 79.10 feet to a point; thence
North 47°30'00" West 185.37 feet to a point; thence
North 63°00'00" West 84.68 feet to a point; thence
North 46°29'16" East 640.70 feet to the Point of Beginning.

Parcel XI:

A parcel of land being a portion of Government Lots 2 and 3 (Northwest quarter) of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner section of Section 11, Township 2 North, Range 3 East, Boise Meridian, Idaho, also being the Northwest corner of Government Lot 3; thence
North 89°20'18" East along the North lines of the Northwest quarter and Government Lots 2 and 3 of said Section 11, a distance of 2654.98 feet to a point on the East line of said Government Lot 2; thence
South 0°48'48" West along the said East line of Government Lot 2 a distance of 1075.20 feet to the Real Point of Beginning of this description; thence
South 00°48'48" East continuing along said East line 605.26 feet to a point on a curve on the Northerly right of way of State Highway No. 21; thence along the said Northerly right of way along a curve to the right 223.30 feet, said curve having a radius of 855.78 feet, a central angle of 14°57'00", tangents of 112.29 feet, and a chord which bears South 63°06'39" West 222.66 feet to a point being 200 feet West of said East line of Government Lot 2; thence
North 00°48'48" West along a line 200 feet West of and parallel to said East line 216.73 feet to a point on the surveyed base of the Talus Slope North of said Highway; thence along the surveyed base of said Talus Slope the following courses and distances:
South 49°51'33" West 53.19 feet to a point; thence
South 60°02'59" West 93.52 feet to a point; thence
South 46°54'50" West 74.53 feet to a point; thence
South 32°46'22" West 59.58 feet to a point; thence
South 52°18'35" West 72.08 feet to a point; thence
South 57°50'33" West 38.88 feet to a point; thence
South 00°42'00" East, leaving said surveyed base, 18.55 feet (formerly approximately 30 feet) to a point on the said Northerly right of way of State Highway No. 21; thence along said Northerly right of way the following courses and distances:
North 89°46'21" West 581.18 feet to a point of curvature; thence along a curve to the right 657.85 feet, said curve having a radius of 2195.64 feet, a central angle of 17°10'00", tangents of 331.41 feet, and a chord which bears North 81°10'08" West 655.39 feet to a point of compound curvature; thence along a curve to the right 589.30 feet, said curve having a radius of 1332.20 feet, a central angle of 24°29'05", tangents of 289.06 feet, and a chord which bears North 60°32'48" West 564.97 feet to a point; thence leaving said Northerly right of way
North 46°29'01" East 217.51 feet to a point; thence
South 62°59'59" East 84.68 feet to a point; thence
South 47°29'59" East 185.37 feet to a point; thence
South 61°48'59" East 79.10 feet to a point; thence
South 63°42'59" East 91.19 feet to a point; thence
South 68°35'00" East 128.45 feet to a point; thence
South 76°28'31" East 267.84 feet to a point; thence
South 75°30'53" East 68.34 feet to a point; thence
South 88°49'32" East 109.10 feet to a point; thence
North 73°55'48" East 52.52 feet to a point; thence
South 87°20'37" East 104.25 feet to a point; thence
North 81°25'59" East 75.40 feet to a point; thence
North 86°08'00" East 152.88 feet to a point; thence
North 42°18'00" East 235.39 feet to a point; thence
North 57°18'49" East 92.78 feet to a point; thence
North 69°08'00" East 94.20 feet to a point; thence
North 40°22'00" East 243.63 feet to a point; thence
North 71°43'17" East 137.82 feet to a point; thence
North 76°37'17" East 65.91 feet to a point; thence
North 49°41'17" East 101.61 feet to the Real Point of Beginning of this description.

AND

A parcel of land being a portion of Government Lots 2 and 3 (Northwest quarter) of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner section of Section 11, Township 2 North, Range 3 East, Boise Meridian, Idaho, Ada County, Idaho, also being the Northwest corner of Government Lot 3; thence
North 89°20'18" East along the North lines of the Northwest quarter and Government Lot 3 of said Section 11 a distance of 560.35 feet to the Real Point of Beginning of this description; thence
South 28°28'32" East 913.47 feet to a point; thence
South 69°50'55" East 642.87 feet to a point; thence
North 49°10'48" East 1146.83 feet to a point on the Westerly side of Sandy Point Drive as conveyed to the Ada County Highway Commission under Instrument No. 7515233 and re-recorded under Instrument No. 7532588; thence
North 58°49'43" West along said Westerly side of Sandy Point Drive 51.68 feet to a point; thence
South 49°10'48" West 1081.27 feet to a point; thence
South 79°45'14" West 34.45 feet to a point; thence
North 69°50'55" West 575.40 feet to a point; thence
North 28°27'46" West 868.33 feet to a point on the said North line of the Northwest quarter and Government Lot 3; thence
South 89°20'18" West along said North lines 56.52 feet to a point to the Real Point of Beginning of this description.

Parcel XII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2435.85 feet to a point on the South boundary of the tract herein described, which tract is called Tract V-1 for identification, the True Point of Beginning; thence
South 52°58' East 407.46 feet to the Southeast corner of Tract V-1; thence
North 25°02'24" East 485.83 feet to the Northeast corner of Tract V-1; thence
South 68°01'17" West 169.85 feet to a point; thence
North 73°59'51" West 80.17 feet to a point; thence
North 56°59'38" West 239.59 feet to a point; thence
North 23°14'02" West 143.07 feet to a point; thence
North 18°52'08" West 224.64 feet to the Northwest corner of Tract V-1; thence
South 44°33'42" West 485.15 feet to the Southwest corner of Tract V-1; thence
South 52°58' East 488.69 feet to the True Point of Beginning.

Parcel XIII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2135.85 feet to the Real Point of Beginning; thence
South 52°58' East 458.74 feet to a point; thence
North 9°38' East 320.16 feet to a point; thence
North 52°58' West 877.5 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 435.0 feet to the Point of Beginning.

Parcel XIV:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1835.85 feet to the Real Point of Beginning; thence
South 52°58' East 577.65 feet to a point; thence

North 0°07' East 355.78 feet to a point; thence
North 52°58' West 893.74 feet to a point; thence
South 12°20' West 313.10 feet to a point; thence
South 52°58' East 398.95 feet to the Point of Beginning.

Parcel XV:

A part of the East half of the Southwest quarter and part of the West half of the Southeast quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian, Ada County, Idaho, described as follows:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East of the Boise Meridian; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1535.85 feet to the Real Point of Beginning; thence
South 52°58' East 569.80 feet to a point; thence
North 19°40' East 298.01 feet to a point; thence
North 52°58' West 976.5 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 365.0 feet to the Point of Beginning.

Parcel XVI:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1235.85 feet to the Real Point of Beginning; thence
South 52°58' East 750.0 feet to a point; thence
North 2°39' East 344.65 feet to a point; thence
North 52°58' West 1012.22 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 326.60 feet to the Point of Beginning.

Parcel XVII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 935.85 feet to the Real Point of Beginning; thence
South 52°58' East 610.0 feet to a point; thence
North 46°02' East 228.01 feet to a point; thence
North 52°58' West 1076.60 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 290.73 feet to the Point of Beginning.

Parcel XVIII:

A part of the Southeast quarter of the Southwest quarter; and a part of the Southwest quarter of the Southeast quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 635.85 feet to the Real Point of Beginning; thence
South 52°58' East a distance of 525.21 feet to a point; thence
North 34°59' East a distance of 284.63 feet to a point; thence
North 52°58' West a distance of 900.73 feet to a point; thence
South 12°20' West a distance of 313.1 feet to a point; thence

South 52°58' East a distance of 254.86 feet to the Real Point of Beginning.

Parcel XIX:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2435.85 feet to a point; thence
South 52°58' East a distance of 407.46 feet to the Real Point of Beginning; thence
South 9°38' West 321.61 feet to a point; thence
South 0°07' West 354.29 feet to a point; thence
South 19°40' West 242.97 feet to the Southwest corner of the tract; thence
North 89°46'18" East 783.21 feet to the Southeast corner of the tract; thence
North 11°13'51" East 231.41 feet to a point; thence
North 10°56'37" East 79.12 feet to a point; thence
North 11°03'49" East 184.15 feet to a point; thence
North 3°10'43" East 445.91 feet to a point; thence
North 10°20'55" West 219.05 feet to a point; thence
North 16°52'29" West 106.38 feet to a point; thence
North 20°43'37" East 162.50 feet to the Northeast corner of the tract; thence
North 63°17'02" West 271.24 feet to a point; thence
North 52°15'18" West 157.40 feet to the Northwest corner of the tract; thence
South 33°01'03" West 160.89 feet to a point; thence
South 35°30'14" West 155.45 feet to a point; thence
South 25°02'24" West 485.83 feet to the True Point of Beginning.

**EXHIBIT B
WARRANTY DEED**



TitleOne
a title & escrow co.

ADA COUNTY RECORDER Christopher D. Rich AMOUNT 130.00 41
BOISE IDAHO 09/26/2012 11:21 AM
DEPUTY Che Fowler
Simplify Electronic Recording
RECORDED-REQUEST OF
TITLEONE BOISE



112098918

Order Number: 12210507 57/512

WARRANTY DEED

For the valuable consideration of \$460,000.00.

RJ Highlands, LLC, a Nevada limited liability company, the Grantor, does hereby grant, bargain sell and convey unto, State of Idaho Fish and Game Commission, for the use and benefit of the Idaho Department of Fish and Game, whose current address is 600 S. Walnut St., Boise, ID 83707, the Grantee, the following described premises, in Ada County, Idaho, To Wit:

Legal description attached as Exhibit A

BPA provided funds under a Memorandum of Agreement (MOA) signed with Idaho in September 1997, recorded with this deed attached hereto and by this reference incorporated herein as Exhibit B. For the same consideration cited above, where funding for fee title was provided by BPA, Grantor hereby grants, bargains, sells and conveys to the United States of America and its assigns an executory limitation over, under, upon, and across the real property legally described in Exhibit A, created and implemented under applicable state and federal law, including but not limited to Idaho Code 55-105. The Parties understand this executory limitation to be a future interest in the real property described in Exhibit A (BPA Tract No. SIDHO-WL-16), where fee title shall immediately vest in the United States of America upon occurrence of the Condition Subsequent described in Exhibit C attached hereto and by this reference incorporated herein, and where the duration of the executor limitation is also described in Exhibit C.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee; and subject to all existing patent reservations, easements, right(s) of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, general taxes and assessments, including irrigation and utility assessments (if any) for the current year, which are not due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever. Whenever the context so requires, the singular number includes the plural.

Dated:

RJ Highlands, LLC, a Nevada limited liability company

By: NSB Holdings Inc., a Nevada corporation, its Manager

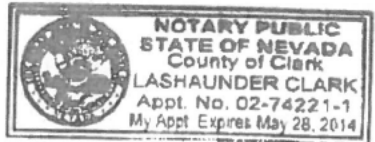
By: **(b) (6)**
John G. Sullivan, President

STATE OF Nevada)
County of Clark) ss.

On this 13th day of September, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared John G. Sullivan, known or identified to me to be the President of NSB Holdings Inc., said corporation known to me to be the Member/Manager of RJ Highlands, LLC, the company that executed the instrument and acknowledged to me that he executed the same for and on behalf of said LLC and that said LLC executed it.

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

[Signature]
NOTARY PUBLIC
My Commission Expires: 5/28/2014



Acceptance of Deed by the Idaho Fish and Game Commission

Virgil Moore
Secretary
Idaho Fish and Game Commission

Date: _____

ACKNOWLEDGEMENT

State of Idaho)
) ss.
County of Ada)

On this ____ day of _____, 2012, before me, a Notary Public in and for said State, personally appeared Virgil Moore, known or identified to me to be the person whose name is subscribed to the within instrument as the Secretary of the Idaho Fish and Game Commission, and acknowledged to me that he executed the same.

Notary Public for the State of Idaho
Residing at: _____
My Commission Expires: _____

RJ Highlands, LLC, a Nevada limited liability company

By: NSB Holdings Inc., a Nevada corporation, its Manager

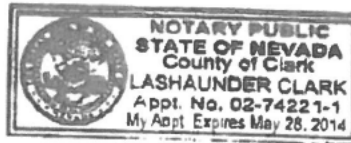
By: (b) (6)
John G. Sullivan, President

STATE OF Nevada)
County of Clark) ss.

On this 13th day of September 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared John G. Sullivan, known or identified to me to be the President of NSB Holdings Inc., said corporation known to me to be the Member/Manager of RJ Highlands, LLC, the company that executed the instrument and acknowledged to me that he executed the same for and on behalf of said LLC and that said LLC executed it.

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

Lashaunder Clark
NOTARY PUBLIC
My Commission Expires: 5/28/2014



Acceptance of Deed by the Idaho Fish and Game Commission

(b) (6)

Virgil Moore
Secretary
Idaho Fish and Game Commission

Date: 9-21-12

ACKNOWLEDGEMENT

State of Idaho)
) ss.
County of Ada)

On this 21st day of Sept. 2012, before me, a Notary Public in and for said State, personally appeared Virgil Moore, known or identified to me to be the person whose name is subscribed to the within instrument as the Secretary of the Idaho Fish and Game Commission, and acknowledged to me that he executed the same.

Mary C. Boyer
Notary Public for the State of Idaho
Residing at: Boise
My Commission Expires: My Commission Expires August 31, 2017



Executory limitation ACCEPTED BY the United States of America

(b) (6)

Margareth H. Wolcott
Manager, Real Property Services
Bonneville Power Administration

Sept. 25, 2012
Date

ACKNOWLEDGMENT

STATE OF Oregon

County of Multnomah ss.

On this 25 day of September, 2012, before me personally appeared Margareth H. Wolcott, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Manager, Real Property Services, Bonneville Power Administration and acknowledged to me that she executed the same freely and voluntarily in such capacity; and on oath stated that she was authorized to execute said instrument in such official or representative capacity.

Charlene R Belt

Notary Public in and for the State of Oregon
(SEAL) Residing at Vancouver, WA

My commission expires September 12, 2016

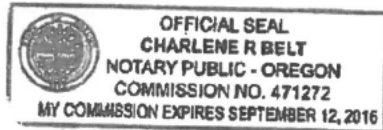


Exhibit A

Parcel I:

A fifty foot roadway formerly known as Lot R-1 of the unrecorded plat of Lucky Peak Subdivision No. 1, located in Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'18" East 1327.60 feet along the South line of said Section 2 to the Real Point of Beginning of this description, said point also being the Southwest corner of a street shown on the unrecorded plat of Lucky Peak Subdivision No. 1 and noted as (Private Street Lot R-1); thence

North 00°51'01" West 50.00 feet to a point; thence

North 89°20'18" East 587.06 feet to a point of curvature; thence along a curve to the left 47.03 feet, said curve having a radius of 30.00 feet, a central angle of 89°49'31", tangents of 29.91 feet, and a chord which bears North 44°25'32" East 42.36 feet to a point of tangency; thence

North 00°29'13" West 654.62 feet to a point of curvature; thence along a curve to the right 170.49 feet, said curve having a radius of 785.60 feet, a central angle of 12°26'04", tangents of 85.58 feet, and a chord which bears North 05°43'49" East 170.16 feet to a point of tangency; thence

North 11°56'51" East 1213.69 feet to a point of curvature; thence along a curve to the left 110.16 feet, said curve having a radius of 188.80 feet, a central angle of 33°25'46", tangents of 56.70 feet, and a chord which bears North 04°46'02" West 108.60 feet to a point of tangency; thence

North 21°28'55" West 895.97 feet to a point of curvature; thence along a curve to the left 124.50 feet, said curve having a radius of 165.49 feet, a central angle of 43°06'14", tangents of 65.36 feet, and a chord which bears North 43°02'02" West 121.58 feet to a point of tangency; thence

North 64°35'09" West 64.00 feet to a point of curvature; thence along a curve to the right 261.48 feet, said curve having a radius of 188.69 feet, a central angle of 79°24'00", tangents of 156.65 feet, and a chord which bears North 24°53'09" West 241.06 feet to a point of tangency; thence

North 14°48'51" East 78.54 feet to a point of curvature; thence along a curve to the right 733.27 feet, said curve having a radius of 425.70 feet, a central angle of 88°41'33", tangents of 496.73 feet, and a chord which bears North 64°09'38" East 645.92 feet to a point of reverse curvature; thence along a curve to the left 329.96 feet, said curve having a radius of 650.00 feet, a central angle of 29°05'07", tangents of 168.62 feet, and a chord which bears South 81°02'10" East 326.43 feet to a point of tangency; thence

North 84°25'17" East 25.19 feet to a point of curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 61°19'41" East 15.69 feet to a point of reverse curvature; thence along a curve to the right 213.92 feet, said curve having a radius of 45.00 feet, a central angle of 272°22'26", and a chord which bears South 05°34'43" East 62.31 feet to a point of reverse curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 72°28'06" West 15.69 feet to a point of tangency; thence

South 84°25'17" West 25.19 feet to a point of curvature; thence along a curve to the right 355.34 feet, said curve having a radius of 700.00 feet, a central angle of 29°05'07", tangents of 181.59 feet, and a chord which bears North 81°02'10" West 351.54 feet to a point of reverse curvature; thence along a curve to the left 647.15 feet, said curve having a radius of 375.70 feet, a central angle of 98°41'33", tangents of 437.51 feet, and a chord which bears South 64°09'38" West 570.06 feet to a point of tangency; thence

South 14°48'51" West 78.54 feet to a point of curvature; thence along a curve to the left 192.20 feet, said curve having a radius of 138.69 feet, a central angle of 79°24'10", tangents of 115.15 feet, and a chord which bears South 24°53'14" East 177.19 feet to a point of tangency; thence

South 64°35'09" East 64.00 feet to a point of curvature; thence along a curve to the right 162.11 feet, said curve having a radius of 215.49 feet, a central angle of 43°06'14", tangents of 85.11 feet, and a chord which bears South 43°02'02" East 158.32 feet to a point of tangency; thence

South 21°28'55" East 577.02 (577.04) feet to a point of curvature; thence along a curve to the left 76.74 feet, said curve having a radius of 30.00 feet, a central angle of 146°34'14", tangents of 99.90 feet, and a chord which bears North 85°13'58" East 57.46 feet to a point of tangency; thence

North 11°56'51" East 276.69 (276.67) feet to a point of tangency; thence along a curve to the right 124.37 feet, said curve having a radius of 232.27 feet, a central angle of 30°40'48", tangents of 63.72 feet, and a chord which bears North 27°17'15" East 122.89 feet to a point of tangency; thence

North 42°37'39" East 418.52 feet to a point of curvature; thence along a curve to the right 172.83 feet, said curve having a radius of 80.68 feet, a central angle of 122°44'13", tangents of 147.78 feet, and a chord which bears South 76°00'14" East 141.63 feet to a point of tangency; thence

South 14°38'08" East 250.09 feet to a point of curvature; thence along a curve to the left 154.22 feet, said curve having a radius of 182.88 feet, a central angle of 48°18'59", tangents of 82.03 feet, and a chord which bears South 38°47'37" East 149.59 feet to a point of tangency; thence
 South 62°57'07" East 78.45 feet to a point of curvature; thence along a curve to the left 84.24 feet, said curve having a radius of 149.78 feet, a central angle of 36°02'53", tangents of 48.74 feet, and a chord which bears South 80°58'33" East 92.69 feet to a point of compound curvature; thence along a curve to the left 89.55 feet, said curve having a radius of 174.85 feet, a central angle of 29°20'44", tangents of 45.78 feet, and a chord which bears North 86°19'38" East 88.58 feet to a point of tangency; thence
 North 51°39'16" East 86.82 feet to a point of curvature; thence along a curve to the left 117.65 feet, said curve having a radius of 265.03 feet, a central angle of 25°26'01", tangents of 59.81 feet, and a chord which bears North 38°56'16" East 116.68 feet to a point of tangency; thence
 North 26°13'15" East 80.46 feet to a point of curvature; thence along a curve to the right 173.38 feet, said curve having a radius of 94.86 feet, a central angle of 104°56'36", tangents of 123.24 feet, and a chord which bears North 78°41'34" East 150.14 feet to a point of tangency; thence
 South 48°50'07" East 58.79 feet to a point of curvature; thence along a curve to the left 129.00 feet, said curve having a radius of 500.29 feet, a central angle of 14°46'25", tangents of 64.86 feet, and a chord which bears South 56°13'19" East 128.64 feet to a point of tangency; thence
 South 63°36'32" East 194.42 feet to a point of curvature; thence along a curve to the right 146.04 feet, said curve having a radius of 88.86 feet, a central angle of 94°09'49", tangents of 95.56 feet, and a chord which bears South 16°31'38" East 130.15 feet to a point of tangency; thence
 South 30°33'17" West 55.83 feet to a point of curvature; thence along a curve to the left 151.37 feet, said curve having a radius of 105.65 feet, a central angle of 81°56'14", tangents of 91.91 feet, and chord which bears South 10°24'50" East 138.80 feet to a point of tangency; thence
 South 51°22'57" East 61.76 feet to a point of curvature; thence along a curve to the right 74.91 feet, said curve having a radius of 188.92 feet, a central angle of 22°43'07", tangents of 37.95 feet, and a chord which bears South 40°01'23" East 74.42 feet to a point of reverse curvature; thence along a curve to the left 159.46 feet, said curve having a radius of 71.45 feet, a central angle of 127°52'20", tangents of 146.08 feet, and a chord which bears North 87°24'00" East 128.37 feet to a point of tangency; thence
 North 23°27'50" East 30.59 feet to a point of curvature; thence along a curve to the right 121.94 feet, said curve having a radius of 350.93 feet, a central angle of 19°54'30", tangents of 61.59 feet, and chord which bears North 33°25'05" East 121.32 feet to a point of tangency; thence
 North 43°22'20" East 54.40 feet to a point of curvature; thence along a curve to the left 121.78 feet, said curve having a radius of 521.54 feet, a central angle of 13°22'44", tangents of 61.17 feet, and a chord which bears North 36°40'58" East 121.51 feet to a point of tangency; thence
 North 29°59'36" East 46.04 feet to a point of curvature; thence along a curve to the right 96.85 feet, said curve having a radius of 569.97 feet, a central angle of 09°44'10", tangents of 48.54 feet, and a chord which bears North 34°51'41" East 96.74 feet to a point of tangency; thence
 North 39°43'46" East 325.54 feet to a point of curvature; thence along a curve to the right 166.28 feet, said curve having a radius of 454.78 feet, a central angle of 20°56'55", tangents of 84.08 feet, and a chord which bears North 50°12'13" East 165.35 feet to a point of tangency; thence
 North 60°40'41" East 3.34 feet to a point of curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears North 37°35'04" East 15.69 feet to a point of reverse curvature; thence along a curve to the right 213.92 feet, said curve having a radius of 45.00 feet, a central angle of 272°22'26", and a chord which bears South 29°19'19" East 62.31 feet to a point of reverse curvature; thence along a curve to the left 16.12 feet, said curve having a radius of 20.00 feet, a central angle of 46°11'13", tangents of 8.53 feet, and a chord which bears South 83°46'17" West 15.69 feet to a point of tangency; thence
 South 60°40'41" West 3.34 feet to a point of curvature; thence along a curve to the left 148.00 feet, said curve having a radius of 404.78 feet, a central angle of 20°56'55", tangents of 74.63 feet, and a chord which bears South 50°12'13" West 147.17 feet to a point of tangency; thence
 South 39°43'46" West 326.54 feet to a point of curvature; thence along a curve to the left 88.36 feet, said curve having a radius of 519.97 feet, a central angle of 09°44'10", tangents of 44.29 feet, and a chord which bears South 34°51'41" West 88.25 feet to a point of tangency; thence
 South 29°59'36" West 46.04 feet to a point of curvature; thence along a curve to the right 133.46 feet, said curve having a radius of 571.54 feet, a central angle of 13°22'44", tangents of 67.03 feet, and a chord which bears South 36°40'58" West 133.15 feet to a point of tangency; thence
 South 43°22'20" West 54.40 feet to a point of curvature; thence along a curve to the left 104.56 feet, said curve having a radius of 300.93 feet, a central angle of 19°54'30", tangents of 52.81 feet, and a chord which bears South 33°25'05" West 104.04 feet to a point of tangency; thence

South 23°27'50" West 30.59 feet to a point of curvature; thence along a curve to the right 271.05 feet, said curve having a radius of 121.45 feet, a central angle of 127°52'20", tangents of 248.31 feet, and a chord which bears South 87°24'00" West 218.20 feet to a point of reverse curvature; thence along a curve to the left 55.08 feet, said curve having a radius of 138.92 feet, a central angle of 22°43'07", tangents of 27.91 feet, and a chord which bears North 40°01'23" West 54.72 feet to a point of tangency; thence North 51°22'57" West 51.76 feet to a point of curvature; thence along a curve to the right 222.88 feet, said curve having a radius of 155.85 feet, a central angle of 81°56'14", tangents of 135.33 feet, and a chord which bears North 10°24'50" West 204.36 feet to a point of tangency; thence North 30°33'17" East 55.83 feet to a point of curvature; thence along a curve to the left 63.87 feet, said curve having a radius of 38.86 feet, a central angle of 94°09'49", tangents of 41.79 feet, and a chord which bears North 16°31'38" West 56.92 feet to a point of tangency; thence North 63°36'32" West 194.42 feet to a point of curvature; thence along a curve to the right 141.89 feet, said curve having a radius of 550.29 feet, a central angle of 14°46'25", tangents of 71.34 feet, and a chord which bears North 56°13'19" West 141.50 feet to a point of tangency; thence North 48°50'07" West 58.79 feet to a point of curvature; thence along a curve to the left 81.80 feet, said curve having a radius of 44.66 feet, a central angle of 104°56'38", tangents of 58.14 feet, and a chord which bears South 78°41'34" West 70.84 feet to a point of tangency; thence South 26°13'16" West 80.46 feet to a point of curvature; thence along a curve to the right 139.84 feet, said curve having a radius of 315.03 feet, a central angle of 25°28'01", tangents of 71.09 feet, and a chord which bears South 38°56'15" West 138.70 feet to a point of tangency; thence South 51°39'16" West 86.82 feet to a point of curvature; thence along a curve to the right 115.16 feet, said curve having a radius of 224.85 feet, a central angle of 29°20'44", tangents of 58.87 feet, and a chord which bears South 66°19'38" West 113.91 feet to a point of compound curvature; thence along a curve to the right 125.69 feet, said curve having a radius of 199.78 feet, a central angle of 36°02'53", tangents of 65.01 feet, and a chord which bears North 80°58'33" West 123.63 feet to a point of tangency; thence North 62°57'07" West 78.45 feet to a point of curvature; thence along a curve to the right 196.38 feet, said curve having a radius of 232.88 feet, a central angle of 48°18'59", tangents of 104.46 feet, and a chord which bears North 38°47'37" West 190.62 feet to a point of tangency; thence North 14°38'08" West 250.09 feet to a point of curvature; thence along a curve to the left 65.72 feet, said curve having a radius of 30.68 feet, a central angle of 122°44'13", tangents of 56.20 feet, and a chord which bears North 76°00'14" West 53.86 feet to a point of tangency; thence South 42°37'39" West 418.52 feet to a point of curvature; thence along a curve to the left 97.60 feet, said curve having a radius of 182.27 feet, a central angle of 30°40'48", tangents of 50.00 feet, and a chord which bears South 27°17'15" West 96.44 feet to a point of tangency; thence South 11°58'51" West 1737.74 feet to a point of curvature; thence along a curve to the left 159.64 feet, said curve having a radius of 735.60 feet, a central angle of 12°26'04", tangents of 80.14 feet, and a chord which bears South 05°43'49" West 159.33 feet to a point of tangency; thence South 00°29'13" East 624.78 feet to a point of curvature; thence along a curve to the left 84.71 feet, said curve having a radius of 100.30 feet, a central angle of 48°23'28", tangents of 45.07 feet, and a chord which bears South 24°40'57" East 62.22 feet to a point of non-tangency; thence South 1°06'42" East 34.44 feet to a point on the South side of said street as shown on the unrecorded plat of Lucky Peak Subdivision No. 1, said point also on the South line of said Section 2; thence South 89°20'18" West along said South line 700.40 feet to the Real Point of Beginning of this description.

AND

A parcel of land being a portion of Lots W-3 and W-4 of the unrecorded plat of Lucky Peak Subdivision No. 1 located in the East half of the Southwest quarter of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence North 89°20'18" East along the South side of said Section 2 a distance of 1327.60 feet to a point; thence North 00°51'01" West 1019.87 feet to the Real Point of Beginning of this description; thence continuing North 00°51'01" West 88.39 feet to a point; thence North 89°05'36" East 687.92 feet to a point on the Westerly side of a street as shown on the unrecorded plat of Lucky Peak Subdivision No. 1, and noted as (Private Street Lot R-1); thence South 11°56'51" West along said Westerly side 88.40 feet to a point; thence South 88°54'18" West 668.34 feet to the Real Point of Beginning of this description.

Parcel II:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
South 45°31'26" East 1866.49 feet to a point; thence
South 00°51'01" East 1391.99 feet to the Real Point of Beginning; thence
South 00°51'01" East 292.00 feet to a point; thence
North 89°08'41" East 871.91 feet to a point; thence
North 21°28'52" West 317.00 feet to a point; thence
South 88°45'12" West 760.22 feet to the Point of Beginning.

Parcel III:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
South 45°31'26" East 1866.49 feet to a point; thence
South 05°01'01" East 1683.99 feet to the Real Point of Beginning; thence
North 89°08'41" East 871.91 feet to a point; thence
South 21°28'52" East 142.00 feet to a point; thence
South 11°57'08" West 171.87 feet to a point; thence
South 89°08'38" West 883.86 feet to a point; thence
North 0°51'01" West 300.00 feet to the Real Point of Beginning.

Parcel IV:

Beginning at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
South 45°31'26" East 1866.49 feet to a point; thence
South 00°51'01" East 1983.99 feet to the Real Point of Beginning; thence
South 00°51'01" East 255.00 feet to a point; thence
North 89°07'31" East 825.98 feet to a point; thence
North 11°58'09" East 261.24 feet to a point; thence
South 89°08'38" West 883.86 feet to the Real Point of Beginning.

Parcel V:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East of the Boise Meridian, Ada County, Idaho; thence
North 89°47'25" East 1327.60 feet to a point; thence
North 0°23'53" West 1413.20 feet to the Real Point of Beginning; thence
North 0°23'53" West 305.0 feet to a point; thence
North 89°34'39" East 825.98 feet to a point; thence
South 12°24'17" West 312.28 feet to a point; thence
South 89°32'20" West 756.78 feet to the Real Point of Beginning.

Parcel VI:

A parcel of land in the East half of the Southwest quarter of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian; thence
North 89°29'31" East 1312.28 feet to the West 1/16 corner of Section 2 (record North 89°47' East 1334.7 feet); thence
South 00°51'01" East 3863.52 feet along the 1/16 line (record South 00°02' East 3910.23 feet) to the Real Point of Beginning; thence
North 89°07'13" East 757.11 feet to a point (record North 89°47' East 766.14 feet); thence
South 11°56'51" West 312.26 feet to a point (record South 12°20' West 307.12 feet); thence
South 89°05'35" West 687.94 feet to a point (record South 89°47' West 700.37 feet); thence

North 00°51'01" West 304.79 feet to the Point of Beginning (record North 00°02' West 300.00 feet).

Parcel VII:

A part of the Southeast quarter of the Southwest quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, State of Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence
North 89°47' East a distance of 1320.0 feet to a point; thence
North 0°02' East a distance of 685.40 feet to the Real Point of Beginning; thence
North 89°47' East a distance of 645.58 feet to a point; thence
North 0°07' West a distance of 62.85 feet to a point; thence
North 12°20' East a distance of 257.77 feet to a point; thence
South 89°47' West a distance of 700.37 feet to a point; thence
South 0°02' West a distance of 334.47 feet to the Real Point of Beginning.

Parcel VIII:

A part of the Southeast quarter of the Southwest quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, State of Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence
North 89°47' East a distance of 1320.0 feet to a point; thence
North 0°02' East a distance of 342.65 feet to the Real Point of Beginning; thence
North 89°47' East a distance of 646.7 feet to a point; thence
North 0°07' West a distance of 342.75 feet to a point; thence
South 89°47' West a distance of 645.58 feet to a point; thence
South 0°02' West a distance of 342.65 feet to the Real Point of Beginning.

Parcel IX:

A tract of land situated in Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho.

Commencing at a copper weld marking the corner common to Sections 2, 3, 10 and 11, Township 2 North, Range 3 East, Boise Meridian; thence
North 89°20'18" East along the North boundary of Section 11, a distance of 559.31 feet to a point on the Westerly right-of-way line of a road; thence
South 28°26'39" East a distance of 890.32 feet to the Real Point of Beginning; thence
South 28°26'39" East a distance of 23.61 feet to a 5/8 inch iron pin marking an angle point in the right-of-way line; thence
South 69°51'14" East along said right of way line a distance of 90.11 feet to a 5/8 inch iron pin; thence
South 46°28'28" West a distance of 640.35 feet to a 5/8 inch iron pin on a rock rim; thence
North 32°57'25" West along said rim a distance of 106.55 feet to a 5/8 inch iron pin; thence
North 20°18'25" West continuing along rim a distance of 105.26 feet to a 5/8 inch iron pin; thence
North 56°39'09" East a distance of 554.21 feet to the Real Point of Beginning.

Parcel X:

Beginning at the Northwest corner of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°20'17" East 560.30 feet to a point; thence
South 28°28'33" East 913.40 feet to a point; thence
South 69°50'44" East 90.00 feet to the Real Point of Beginning; thence
South 69°50'44" East 326.69 feet to a point; thence
South 35°34'00" West 700.54 feet to a point; thence

North 63°43'00" West 91.19 feet to a point; thence
North 61°49'00" West 79.10 feet to a point; thence
North 47°30'00" West 185.37 feet to a point; thence
North 63°00'00" West 84.68 feet to a point; thence
North 46°29'16" East 640.70 feet to the Point of Beginning.

Parcel Xi:

A parcel of land being a portion of Government Lots 2 and 3 (Northwest quarter) of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner section of Section 11, Township 2 North, Range 3 East, Boise Meridian, Idaho, Ada County, Idaho, also being the Northwest corner of Government Lot 3; thence
North 89°20'18" East along the North lines of the Northwest quarter and Government Lots 2 and 3 of said Section 11, a distance of 2654.98 feet to a point on the East line of said Government Lot 2; thence
South 0°48'48" West along the said East line of Government Lot 2 a distance of 1075.20 feet to the Real Point of Beginning of this description; thence
South 00°48'48" East continuing along said East line 605.26 feet to a point on a curve on the Northerly right of way of State Highway No. 21; thence along the said Northerly right of way along a curve to the right 223.30 feet, said curve having a radius of 855.78 feet, a central angle of 14°57'00", tangents of 112.29 feet, and a chord which bears South 63°06'39" West 222.66 feet to a point being 200 feet West of said East line of Government Lot 2; thence
North 00°48'48" West along a line 200 feet West of and parallel to said East line 216.73 feet to a point on the surveyed base of the Talus Slope North of said Highway; thence along the surveyed base of said Talus Slope the following courses and distances:
South 49°51'33" West 53.19 feet to a point; thence
South 60°02'59" West 83.52 feet to a point; thence
South 46°54'50" West 74.53 feet to a point; thence
South 32°46'22" West 59.58 feet to a point; thence
South 52°18'35" West 72.06 feet to a point; thence
South 57°50'33" West 38.88 feet to a point; thence
South 00°42'00" East, leaving said surveyed base, 18.65 feet (formerly approximately 30 feet) to a point on the said Northerly right of way of State Highway No. 21; thence along said Northerly right of way the following courses and distances:
North 89°46'21" West 581.18 feet to a point of curvature; thence along a curve to the right 657.85 feet, said curve having a radius of 2195.64 feet, a central angle of 17°10'00", tangents of 331.41 feet, and a chord which bears North 81°10'08" West 655.39 feet to a point of compound curvature; thence along a curve to the right 569.30 feet, said curve having a radius of 1332.20 feet, a central angle of 24°29'05", tangents of 289.06 feet, and a chord which bears North 60°32'48" West 564.97 feet to a point; thence leaving said Northerly right of way
North 48°29'01" East 217.51 feet to a point; thence
South 62°59'59" East 84.68 feet to a point; thence
South 47°29'59" East 185.37 feet to a point; thence
South 61°48'59" East 79.10 feet to a point; thence
South 63°42'59" East 91.19 feet to a point; thence
South 68°35'00" East 128.45 feet to a point; thence
South 75°28'31" East 267.84 feet to a point; thence
South 75°30'53" East 68.34 feet to a point; thence
South 88°49'32" East 109.10 feet to a point; thence
North 73°55'46" East 52.52 feet to a point; thence
South 87°20'37" East 104.25 feet to a point; thence
North 81°25'59" East 75.40 feet to a point; thence
North 86°08'00" East 152.88 feet to a point; thence
North 42°18'00" East 235.39 feet to a point; thence
North 57°19'49" East 92.78 feet to a point; thence
North 69°08'00" East 94.20 feet to a point; thence
North 40°22'00" East 243.63 feet to a point; thence
North 71°43'17" East 137.82 feet to a point; thence
North 76°37'17" East 65.91 feet to a point; thence
North 49°41'17" East 101.61 feet to the Real Point of Beginning of this description.

AND

A parcel of land being a portion of Government Lots 2 and 3 (Northwest quarter) of Section 11, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at the Northwest corner section of Section 11, Township 2 North, Range 3 East, Boise Meridian, Idaho, Ada County, Idaho, also being the Northwest corner of Government Lot 3; thence
North 89°20'18" East along the North lines of the Northwest quarter and Government Lot 3 of said Section 11 a distance of 560.35 feet to the Real Point of Beginning of this description; thence
South 26°28'32" East 913.47 feet to a point; thence
South 69°50'55" East 642.87 feet to a point; thence
North 49°10'48" East 1146.83 feet to a point on the Westerly side of Sandy Point Drive as conveyed to the Ada County Highway Commission under Instrument No. 7515233 and re-recorded under Instrument No. 7532588; thence
North 58°49'43" West along said Westerly side of Sandy Point Drive 51.68 feet to a point; thence
South 48°10'48" West 1081.27 feet to a point; thence
South 79°45'14" West 34.45 feet to a point; thence
North 69°50'55" West 575.40 feet to a point; thence
North 28°27'46" West 868.33 feet to a point on the said North line of the Northwest quarter and Government Lot 3; thence
South 89°20'18" West along said North lines 56.52 feet to a point to the Real Point of Beginning of this description.

Parcel XII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2435.85 feet to a point on the South boundary of the tract herein described, which tract is called Tract V-1 for identification, the True Point of Beginning; thence
South 52°58' East 407.46 feet to the Southeast corner of Tract V-1; thence
North 25°02'24" East 485.83 feet to the Northeast corner of Tract V-1; thence
South 68°01'17" West 169.85 feet to a point; thence
North 73°59'51" West 80.17 feet to a point; thence
North 56°59'38" West 239.59 feet to a point; thence
North 23°14'02" West 143.07 feet to a point; thence
North 18°52'08" West 224.64 feet to the Northwest corner of Tract V-1; thence
South 44°33'42" West 485.15 feet to the Southwest corner of Tract V-1; thence
South 52°58' East 468.69 feet to the True Point of Beginning.

Parcel XIII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2135.85 feet to the Real Point of Beginning; thence
South 52°58' East 458.74 feet to a point; thence
North 9°38' East 320.16 feet to a point; thence
North 52°58' West 677.5 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 435.0 feet to the Point of Beginning.

Parcel XIV:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1835.85 feet to the Real Point of Beginning; thence
South 52°58' East 577.65 feet to a point; thence

North 0°07' East 355.78 feet to a point; thence
North 52°58' West 893.74 feet to a point; thence
South 12°20' West 313.10 feet to a point; thence
South 52°58' East 398.95 feet to the Point of Beginning.

Parcel XV:

A part of the East half of the Southwest quarter and part of the West half of the Southeast quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian, Ada County, Idaho, described as follows:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East of the Boise Meridian; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1535.85 feet to the Real Point of Beginning; thence
South 52°58' East 569.60 feet to a point; thence
North 19°40' East 298.01 feet to a point; thence
North 52°58' West 976.5 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 365.0 feet to the Point of Beginning.

Parcel XVI:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 1235.85 feet to the Real Point of Beginning; thence
South 52°58' East 750.0 feet to a point; thence
North 2°39' East 344.65 feet to a point; thence
North 52°58' West 1012.22 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 326.60 feet to the Point of Beginning.

Parcel XVII:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 935.85 feet to the Real Point of Beginning; thence
South 52°58' East 610.0 feet to a point; thence
North 46°02' East 228.01 feet to a point; thence
North 52°58' West 1076.60 feet to a point; thence
South 12°20' West 313.1 feet to a point; thence
South 52°58' East 290.73 feet to the Point of Beginning.

Parcel XVIII:

A part of the Southeast quarter of the Southwest quarter; and a part of the Southwest quarter of the Southeast quarter of Section 2, Township 2 North, Range 3 East of the Boise Meridian in Ada County, Idaho, more particularly described as follows:

Beginning at the Southwest corner of said Section 2; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 635.85 feet to the Real Point of Beginning; thence
South 52°58' East a distance of 525.21 feet to a point; thence
North 34°59' East a distance of 284.63 feet to a point; thence
North 52°58' West a distance of 900.73 feet to a point; thence
South 12°20' West a distance of 313.1 feet to a point; thence

South 52°58' East a distance of 254.86 feet to the Real Point of Beginning.

Parcel XIX:

Beginning at the Southwest corner of Section 2, Township 2 North, Range 3 East, Boise Meridian, Ada County, Idaho; thence
North 89°47' East a distance of 2028.4 feet to a point; thence
North 18°32' East a distance of 2435.85 feet to a point; thence
South 52°58' East a distance of 407.46 feet to the Real Point of Beginning; thence
South 9°38' West 321.61 feet to a point; thence
South 0°07' West 354.29 feet to a point; thence
South 19°40' West 242.87 feet to the Southwest corner of the tract; thence
North 89°46'18" East 783.21 feet to the Southeast corner of the tract; thence
North 11°13'51" East 231.41 feet to a point; thence
North 10°56'37" East 79.12 feet to a point; thence
North 11°03'49" East 164.15 feet to a point; thence
North 3°10'43" East 445.91 feet to a point; thence
North 10°20'55" West 219.05 feet to a point; thence
North 16°52'29" West 106.38 feet to a point; thence
North 20°43'37" East 162.50 feet to the Northeast corner of the tract; thence
North 63°17'02" West 271.24 feet to a point; thence
North 52°15'18" West 157.40 feet to the Northwest corner of the tract; thence
South 33°01'03" West 160.89 feet to a point; thence
South 35°30'14" West 155.45 feet to a point; thence
South 25°02'24" West 485.83 feet to the True Point of Beginning.

Exhibit B
1997 Memorandum of Agreement
between the State of Idaho and BPA

for copy
OCT 07 1997

Southern Idaho
Wildlife Mitigation Agreement

Bonneville Power Administration

State of Idaho, through Idaho Department of Fish and Game and
Idaho Fish & Game Commission

September 1997

SOUTHERN IDAHO WILDLIFE MITIGATION

MEMORANDUM OF AGREEMENT

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SOUTHERN IDAHO WILDLIFE MITIGATION

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Bonneville Power Administration and Idaho Department of Fish and Game

MEMORANDUM OF AGREEMENT

This Agreement is made between the State of Idaho, Idaho Fish and Game Commission and Idaho Department of Fish and Game, and the United States of America, acting through the Department of Energy and the Bonneville Power Administration (hereinafter BPA), and is binding on the parties, their successors and assigns. This Agreement supersedes the June 1997 South Fork Snake/Palisades Wildlife Mitigation Agreement between the State of Idaho and BPA.

RECITALS

A. The State of Idaho, Idaho Fish and Game Commission and Idaho Department of Fish and Game (hereinafter Idaho), has the authority to enter into this Agreement pursuant to Idaho Code Sections 36-103, 36-104, and 36-106. Where this Agreement discusses Idaho, the Commission's and the Department's agents and assigns are implied.

B. BPA is a power marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (Act) directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the program adopted by the Pacific Northwest Electric Power and Conservation Planning Council (Council) under subsection 4(h) of the Act, and other environmental laws.

C. Idaho and the Palisades, Anderson Ranch, Black Canyon, and Minidoka Interagency Work Groups have developed the Southern Idaho Wildlife Mitigation Project (hereinafter Project). The Project has been approved by the Council and BPA. BPA has completed an Environmental Assessment, DOE/EA No. 0956 and reached a finding of no significant impact (September 1995), for the South Fork Snake/Palisades Project, and completed the Wildlife Mitigation Program Final Environmental Impact Statement (March 1997) and Record of Decision (June 1997), all pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370c.

D. When fully implemented, the Project will include numerous real property interests (Property or Properties)--conservation easements and fee-title land acquisitions--as well as habitat

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Bonneville Power Administration and Idaho Department of Fish and Game

improvement activities. Idaho will dedicate the Properties in the Project to wildlife habitat protection permanently, and will manage the Properties according to the terms of this Agreement and site-specific management plans (Management Plans) that Idaho will prepare; however, the Properties within the Project may vary from time to time as parcels are acquired or sold as provided under this Agreement.

E. BPA funding under this Agreement will be provided in a manner consistent with section 4(h)(10)(D) of the Act after BPA receives a recommendation from the Council that the measure be funded at a particular level, and BPA accepts that recommendation. This process is referred to as prioritization.

F. The underlying purpose of the Agreement is to protect, mitigate, and enhance wildlife and wildlife habitat permanently, through the acquisition, protection and management of the Properties.

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. BPA Obligations (a) In consideration of the promises and covenants made and set out herein, BPA shall make monetary transfers to Idaho in amounts agreed upon by the parties within 10 days of receipt of a signed Intergovernmental Contract and invoice from Idaho.

(b) In addition, BPA shall reimburse Idaho's costs of complying with federal real property acquisition law, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655; provided, for any acquisition involving potential relocation costs of \$20,000 or more, Idaho shall enlist the assistance of BPA's Manager, Real Property Services, before taking any action or making any commitments that will necessitate reimbursement by BPA under this paragraph.

2. Operation and Maintenance (a) On or before the beginning of fiscal year 1999 (October 1, 1998), BPA shall start providing a reasonable amount of additional funds for continued operation and maintenance (O&M) of the mitigation to maintain or provide positive wildlife and/or wildlife habitat benefits.

(i) For properties acquired in fee with BPA funds, reasonable may be defined as sufficient funding to, among other things, maintain the staffing and equipment needed to protect

habitat through limiting grazing trespass; maintain the property boundary fences; suppress noxious weed infestations; perform habitat improvement and monitoring activities as delineated in the Management Plans; perform Habitat Evaluation Procedures (HEPs) as required in section 9(b) of this Agreement; and where necessary, pay in-lieu property taxes, county weed assessments, and fire suppression costs.

(ii) For properties acquired as conservation easements with BPA funds, reasonable may be defined as including funding for monitoring and enforcement of easement terms and performing habitat improvements.

(iii) For habitat improvements made with BPA funds on properties acquired or managed by Idaho with funds from a source other than BPA, reasonable may be defined as amounts sufficient to protect those habitat improvements through limiting grazing trespass, maintaining the property boundary fences, suppressing noxious weed infestations, monitoring activities and other activities as delineated in the Management Plans.

(b) By June 30, 2001, the parties shall make their best efforts to negotiate an operation and maintenance funding scheme for the Project. Payment may be on an annual basis, lump sum, or by any other means agreed to by the parties. Funding negotiated for operations and maintenance will be subject to prioritization.

(c) Net revenue received from managing the Properties, including conservation reserve program payments or other similar payments, shall be used only to (i) pay costs associated with the land managed, including but not limited to payment of in-lieu property taxes, county weed assessments, and fire suppression costs, or (ii) to implement the Management Plans. Net revenues may be subtracted from O&M funds that would otherwise have been provided by BPA, unless otherwise agreed by the parties.

3. Idaho Department of Fish and Game Obligations (a) The monies provided pursuant to sections 1 and 2 above, any interest earned from them, and net income earned from the Properties shall constitute the Fund. Idaho shall deposit the Fund in an interest bearing account and maintain grant accounting to allow tracking of all expenditures from the Fund.

(b) Idaho may use the Fund only to purchase the Properties, improve them, conduct inventories, HEPs (pursuant to guidelines published by the U.S. Fish and Wildlife Service), develop Management Plans, and to accomplish reasonable operation and maintenance.

Expenditures from the Fund must be pursuant to the Management Plans; provided, Idaho may use the Fund for acquisitions prior to developing a Management Plan for a particular site.

Idaho may also use the Fund to improve habitat on public lands, including those owned or managed by Idaho in the mitigation area; provided, public lands does not include lands owned or managed by a person or entity having a wildlife mitigation agreement with BPA calling for that person or entity to be responsible for operation and maintenance or habitat improvement costs.

The Fund may be used for wildlife mitigation purposes only, and will not be used in lieu of other expenditures Idaho must make under other agreements or provisions of law. The Fund may not be used to pay fees-in-lieu of property taxes, county weed assessments, operation and maintenance, or fire suppression on lands that were not purchased for purposes of Southern Idaho wildlife mitigation or that Idaho owned or operated prior to this Agreement.

(c) Idaho will use the Fund to implement wildlife mitigation activities as outlined in the Intergovernmental Contracts and within the area delineated in Attachment A of this Agreement. Idaho may utilize its own processes in conducting any and all pre-acquisition activities, that include, by way of example, appraisals, drafting and presenting to sellers earnest money agreements, purchase and sale agreements, hazardous materials audits, and conducting surveys; provided, Idaho will comply with federal real property acquisition laws, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655. Where Idaho has no established procedure, it will follow BPA or federal procedures.

(d) Idaho shall protect the properties in the Project as wildlife habitat permanently on behalf of BPA, preventing any and all uses of the Properties that are inconsistent with this Agreement, the Council's Program, or the Management Plans.

(e) Property acquired pursuant to this Agreement is subject to the condition that it be managed for wildlife under this Agreement. If BPA determines that a Property is not being managed for wildlife, as evidenced by a twenty percent drop in the highest documented HEP values, then the Property shall vest in BPA in fee simple absolute, unless BPA provides written consent to such cessation of use or lack of compliance. To allow the Property to vest in BPA, Idaho shall take title to real property it purchases under this Agreement by a deed conveying fee simple with an executory limitation over. The deed should be substantially equivalent to Attachment C. This provision is inapplicable if the twenty percent drop in HEP values is proximately caused by force majeure as described in section 6 or BPA's failure to provide additional funds for operation and maintenance as described in section 2.

4. Management Plans (a) Idaho shall use the Fund to develop an inventory of the resources existing on the Properties. Based on the information obtained from the inventories Idaho shall develop a site specific management plan (Management Plan) for each mitigation site within two years of the date of acquisition. The Management Plans will describe the mitigation in detail, including its baseline HEP results and how and when estimated HUs from improvement activities will be achieved and sustained. The Management Plans will focus on habitat management concerns including: the management of noxious weeds, the use of grazing and other means of manipulating habitat to reach desired conditions for wildlife, road closures, access, and other management practices designed to protect wildlife and their habitats. BPA will not approve proposed management practices that in its opinion may impede the increase in HEP value of improvement HUs. Upon completion, the Management Plans shall be incorporated and made a part of this Agreement.

(b) The NEPA documents mentioned in Recital C of this Agreement will be incorporated by reference into the Management Plans. Idaho will use the Fund to manage the properties to benefit wildlife permanently, according to the Management Plans, the terms of this Agreement, and the Environmental Assessment performed by BPA. BPA must approve the Management Plans before implementation, and it may not withhold its approval unreasonably.

5. Incidents of Ownership Idaho will have all management and operational control of the Project and Properties, and will therefore be solely responsible for all incidents of ownership of real property interests acquired with the Fund. Subject to the limitations of state law, Idaho agrees to take lawful actions to hold harmless and indemnify BPA from any liability from any incident of ownership that may arise in the implementation of the Management Plan. Such incidents of ownership include, but are not limited to, hazardous waste response, cultural resource mitigation, and tort liability. Nothing in this Agreement shall be so construed or interpreted to commit or obligate Idaho to unlawfully expend funds that have not been appropriated or budgeted.

6. Force Majeure Should an unforeseen event, such as a flood, wildfire, drought, or pestilence, destroy or diminish the Properties' values as wildlife habitat, Idaho shall have no obligation to reproduce the Properties' pre-existing wildlife values any faster than natural regeneration reproduces them.

7. Historic Properties Idaho will assume the responsibilities for historic property protection pursuant to a subsequent agreement between the parties, in a manner substantially equivalent to that described in Attachment B, for all mitigation actions under this Agreement. Idaho will integrate management planning for historic and cultural resources, as defined by the National Historic Preservation Act, with the wildlife management practices as a means of avoiding impacts to cultural and historic resources. Surveys shall be done before initiating non-exempt ground-disturbing activities. Idaho will also avoid sensitive sites if at all possible in implementing habitat improvement actions. Only ground-disturbing activities approved in the Management Plans may be undertaken. Idaho may use the Fund, or if it is exhausted seek additional monies through the prioritization process, for the surveys or any cultural or historic resource mitigation necessitated as a result of Idaho's actions under this Agreement.

8. Recording by Idaho Department of Fish and Game For any real property Idaho acquires under this Agreement, Idaho shall have this Agreement and a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, acknowledged and recorded with all appropriate authorities under Idaho law, at the time Idaho takes title to or assumes control of such property. After this Agreement has been recorded in a county once, subsequent deeds recorded in the same county may refer to the recording data for the Agreement instead of re-recording it. Within 30 days of recording(s), Idaho shall submit to the BPA contracting officer a copy of the recorded documents showing the recording information. In the event Idaho exercises its option to sell or exchange any of the Properties acquired for mitigation, as authorized in Section 9 of this Agreement, Idaho shall lawfully record a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, for the newly acquired property.

(b) For properties Idaho acquires in less than fee interest under this Agreement, Idaho shall ensure (i) the restrictions on the deeds include third party enforcement language approved by BPA, and (ii) the deeds are acknowledged and recorded under Idaho law.

9. Acquisition, Sale, Trade If a sale or trade of a Property would provide a net gain in HUs or aid in the fulfillment of the management objectives as stated in this Agreement and the Management Plan, then Idaho may sell or trade any Property after meeting the following conditions:

(a) obtaining written concurrence by the BPA Manager, Fish and Wildlife Division, and

(b) demonstrating that the new real property interests are of equal or greater wildlife habitat value, as measured by a habitat evaluation procedure, to the species targeted in this Agreement, or aid in fulfillment of the Management Plan or facilitate management of Property already acquired.

(c) In completing the transaction Idaho will record, with all appropriate authorities, a Deed Conveying Fee Simple with an Executory Limitation Over, Attachment C, ensuring the property being acquired through acquisition, sale, or trade is permanently protected for wildlife and wildlife habitat as outlined in this Agreement.

The Fund may be used to facilitate the acquisition, sale or trade or to perform HEPs related to it.

10. Protection of Tribal Rights Nothing in this Agreement is intended to nor shall abrogate any federally protected or reserved Indian right.

11. BPA Monitoring For properties Idaho manages, BPA shall have the right to enter upon the properties at reasonable times to monitor Idaho's compliance with this Agreement and to enforce its terms.

12. Idaho Department of Fish and Game Reporting Beginning January 30, 1998, and every January 30 thereafter, Idaho shall provide BPA an annual report including, but not necessarily limited to, the following information: general descriptions of the real property interests in the Project, any HEP analyses undertaken or in progress, management activities undertaken or in progress, violations of easement terms and enforcement action taken. Idaho shall also provide an accounting of the Fund, including any expenditures, interest earned, and net income derived from the management of the Project. At its own expense, BPA may audit Idaho's accounting records related to the Project.

13. Public Access The public shall have reasonable access to the Properties Idaho owns or manages. Public access is encouraged, but not required, for Properties not managed by Idaho under this Agreement. Public access and use may not result in adverse impacts to wildlife, the reduction of wildlife habitat values, or the destruction of other natural resource values for which the Properties are managed, or impede the increase in HEP value of improvement HUs. Nothing in this Agreement limits the authority or ability of Idaho to manage the Properties for lawful

hunting, fishing or trapping, public safety, wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites.

14. BPA Credit Idaho shall support BPA's taking of the following protection, mitigation, and enhancement credit:

(a) For having used BPA funds to purchase and manage Properties BPA shall receive as a credit to wildlife mitigation under the Act, at a minimum, the HUs agreed upon in the Intergovernmental Contracts, and as a maximum, the actual HUs achieved or acquired.

(b) Idaho will conduct HEPs for breeding bald eagle, wintering bald eagle, Canada goose, mallard, black-capped chickadee, mink, ruffed grouse, mule deer/elk, pheasant, sharp-tailed grouse, river otter, sage grouse, and yellow warbler. The specific list and number of target species will vary by hydroelectric project. The results of the HEPs shall be used to evaluate the credit due on each specific mitigation site. For mitigation actions involving partnerships, BPA shall receive full credit proportional to its investment in the acquisition, improvement costs, or operations and maintenance.

(c) For all Properties: The parties may agree to conduct subsequent HEP studies at any time. The party requesting the study shall fund it unless the parties agree otherwise.

(d) Idaho agrees that BPA's expenditure of money is consistent with section 4(h) of the Act. Idaho shall support BPA's obtaining full credit for its expenditures with respect to protecting and managing existing habitat on the Properties, and for habitat improvements when implemented on the Properties, so long as BPA complies with the terms of this Agreement.

(e) BPA shall use the credit recognized by Idaho under this Agreement toward satisfaction of BPA's wildlife mitigation responsibility for Palisades, Anderson Ranch, Black Canyon, and Minidoka Dams and Reservoirs and any other hydroelectric projects amended into the Council's Program for Southern Idaho and agreed to by the parties. Provided, if another crediting methodology is imposed by applicable law or by judicial decision, agreed to between BPA and Idaho, or adopted by BPA through rulemaking, that formula shall be used to recompute the credit provided in this part and the recomputed credit shall be used for all purposes, including the final determination of BPA's ultimate obligation to provide wildlife mitigation, protection, and

enhancement; however, in no event will any such recalculation affect BPA's obligations under this Agreement.

15. Limitation of Credit The credit BPA obtains for the consideration paid to implement the Project as required and provided in this Agreement shall not be affected or diminished as a result of the failure of Idaho to carry out its obligations to maintain the Properties as provided in this Agreement.

16. Binding Effect This Agreement shall be binding on the parties and their assigns and successors. Either party shall have the right to enforce the terms of this Agreement as provided herein.

17. Dispute Resolution BPA and Idaho agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the properties to non-binding mediation. This provision shall be triggered when one party makes a written request for the other party to join in mediation. Within 30 days of this provision being triggered, the parties shall select a mediator, or if they are unable to select a mediator, each party shall select a mediator and the two selected will choose a third mediator who shall be the sole mediator. The parties shall use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60 days and there have been at least two mediation sessions, any party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation no party shall initiate any legal proceeding except in aid of mediation or to avoid irreparable harm from a direct threat to the wildlife resources protected under this Agreement. Each party shall pay its own mediation costs and fees, including those incurred in selection of a mediator; the parties shall share the costs and fees of the mediator equally.

18. Effective Date This Agreement shall be effective when signed by the Chairman of the Idaho Fish and Game Commission, after receiving lawful approval from the Commission in an open meeting; the Director of the Idaho Department of Fish and Game; BPA's Group Vice President of Environment, Fish and Wildlife; and BPA's Manager, Real Property Services.

19. Contract Approval If a court of competent jurisdiction finds that a portion of this Agreement that relates to the Properties and their use or the ability of BPA to exercise its rights with respect to the Properties is unauthorized or not binding on Idaho, this Agreement

shall be terminated and BPA shall determine the Properties acquired under this Agreement and owned by Idaho are not being managed pursuant to the Agreement; title to such Properties as BPA chooses to accept shall then vest in the United States, BPA, in fee simple absolute. Idaho shall also convey to BPA any and all personal property acquired with funding provided by BPA under this Agreement, and remit any remainder sums in the Fund to BPA, after which time the parties will have no further obligations to each other under this Agreement. Provided, that unless agreed to by the parties, the parties shall use their best efforts to enter into a new and binding agreement that carries out the intent of this Agreement. Any party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement.

20. Modification The parties by mutual agreement may modify the terms of this Agreement. Any such modification shall be in writing signed by both parties.

21. Enforcement of Agreement Against Idaho This Agreement is enforceable in any court of competent jurisdiction, whether for equitable relief or damages.

22. Attorney Fees In the event of litigation involving this Agreement each party shall bear its own costs and attorney fees, including those incurred on appeal.

23. Waiver: The failure of any party to require strict performance of any term of this Agreement or a party's waiver of performance shall not be a waiver of any future performance or of a party's right to require strict performance in the future.

IN WITNESS WHEREOF, the parties have signed this Agreement below.

190h
1-15-97
By: (b) (6)
Alexandra B. Smith
Group Vice President
Environment, Fish and Wildlife
Bonneville Power Administration
Date: 9/15/97

By: (b) (6)
John K. Cowger
Manager, Real Property Services
Bonneville Power Administration
Date: 9/26/97

By: (b) (6)
John E. Burns, Chairman on behalf of
Idaho Fish and Game Commission
State of Idaho, Department of Fish and Game
Date: 9/9/89

By: (b) (6)
Stephen P. Mejlley Director
Idaho Department of Fish and Game
State of Idaho, Department of Fish and Game
Date: 9-2-97

ATTACHMENTS A, B, and C

ATTACHMENT A

DESCRIPTION OF PROJECT AREA

The project area includes wildlife mitigation project sites in southern Idaho associated with Palisades, Anderson Ranch, Minidoka, Black Canyon hydroelectric projects and any other hydroelectric projects amended into the Council's program and agreed to by the parties.

ATTACHMENT B

SAMPLE HISTORIC PRESERVATION ACT PROGRAMMATIC AGREEMENT

DRAFT PROGRAMMATIC AGREEMENT
among
**THE BONNEVILLE POWER ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE IDAHO STATE HISTORIC PRESERVATION OFFICER**
regarding implementation of
SOUTHERN IDAHO WILDLIFE MITIGATION PROJECTS

WHEREAS, the Bonneville Power Administration is a Federal Power Marketing Agency (PMA), created under the authority of the Bonneville Project Act (16 U.S.C. §§ 832-832I);

WHEREAS, the Advisory Council on Historic Preservation (Council) was established as an independent agency by the National Historic Preservation Act (NHPA) at 16 U.S.C. § 4701. Pursuant to Section 106 of the NHPA, the Council provides comments to an Agency Official on the effects of undertakings on historic properties in accordance with its implementing regulations, "Protection of Historic Properties," 36 CFR Part 800.

WHEREAS, the role of the state historic preservation officer (SHPO) in regard to programmatic agreements is set out in 36 C.F.R. § 800.1(c)(1)(ii);

WHEREAS, the Bonneville Power Administration (BPA) and other potential managing entities such as the Idaho Department of Fish and Game (IDFG); the Bureau of Land Management (BLM); the United States Forest Service (USFS); and the Shoshone-Bannock Tribes (Tribes) propose to protect, mitigate and enhance wildlife and wildlife habitat adversely affected by the development of the Federal Columbia River Hydrosystem in accordance with the South Fork Snake River/Palisades Wildlife Mitigation Project Final Environmental Assessment and Finding of No Significant Impact and the Wildlife Programmatic Environmental Impact Statement;

WHEREAS, BPA recognizes that mitigation efforts related to the development of the Federal Columbia River Hydrosystem could possibly affect historic properties. For the purposes of this PA, the term "historic properties" means any prehistoric or historic district, site, building, structure, or object, or any property of traditional religious and cultural importance to an Indian tribe, that is included in, or eligible for inclusion in, the National Register. This term includes artifacts, records, and remains that are related to and located within such properties;

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South Fork Snake River Management Plan

WHEREAS, the parties have consulted with the Council, and among themselves, as required by Section 106 of NHPA and the Council's implementing regulations, 36 CFR Part 800, and have chosen to develop this Programmatic Agreement in accordance with 36 CFR Section 800.13 of the Council's regulations;

WHEREAS, the Shoshone-Bannock Tribes (Tribes) have been invited to consult and to sign the Agreement in concurrence; and the Tribes' Cultural Committee is hereby designated as the Tribes' representative for purposes of this agreement;

[add a whereas for the Shoshone-Paiutes? - Nancy, ACHP]

WHEREAS, BPA, in the mitigation effort, may acquire and/or transfer real property or real property interests to other entities who will then assume the responsibility for cultural preservation on said property consistent with this agreement;

NOW, THEREFORE, the Council and the parties agree that the mitigation of wildlife and habitat adversely affected by development of the Columbia River Hydropower System shall be conducted in accordance with the following stipulations, which will fully satisfy BPA's duties pursuant to Section 106 of NHPA.

STIPULATIONS

BPA, with the cooperation of the Idaho Department of Fish and Game and the Shoshone-Bannock Tribe, will ensure that the following measures are carried out:

1. Survey and Evaluation

The entity responsible for managing BPA-funded fish and wildlife mitigation on lands in Southern Idaho shall identify and evaluate historic properties potentially affected by land management activities in accordance with the following procedure:

- (a) Activities typically requiring survey and evaluation are included in but not limited to those listed in Appendix B. BPA and the managing entity will determine the project's area of potential effects and conduct surveys, that will be done following the recommendations of the Interior Secretary's "Standards and Guidelines for Identification" (48 Fed. Reg. 44716, 44720 (Dep't Int. 1983)). Surveys and evaluations by the managing entity will be conducted in consultation with the SHPO, Tribes, and BPA. Consultation at a minimum will include opportunity for at least a ten (10)

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South Fork Snake River Management Plan

day review of survey plan(s). Evaluation of historic properties shall be in accordance with 36 C.F.R. part 63, "Determination of Eligibility for Inclusion in the National Register of Historic Places." The managing entity shall forward survey and evaluation results to BPA for review, after which BPA will forward the results to the SHPO and Tribes for a 30-day review.

(b) If cultural material is discovered during any surveys or evaluations, the materials will be noted but left in place unless, in the judgement of the surveying archaeologist, collection is necessary for protection purposes.

(c) If no historic properties are identified during the survey, the project may proceed after the 30-day review by the SHPO and Tribes described in stipulation 1(a).

(d) Other land management activities (those listed in Appendix A) are generally exempt from the need for advance survey and evaluation. However, the managing entity shall promptly report to BPA, Tribes and the SHPO any potential historic properties encountered during implementation of these activities, and shall consult with the SHPO, BPA, and the Tribes about the need to survey and evaluate such properties.

2. Historic Properties Management Plan (HPMP)

In order to fulfill BPA's Section 106 obligations, the managing entity shall prepare an HPMP for projects with historic properties discovered through implementation of stipulation 1 (above).

(a) The HPMP shall be developed in consultation with BPA, the Tribes and the SHPO within one year of the determination of eligibility, and amended as warranted by changing conditions and discovery of additional historic properties. A single HPMP may be prepared for each parcel of land within contiguous boundaries, or where the managing entity is managing other properties similarly situated, and it may include multiple historic properties.

(b) In preparing HPMPs, they shall be prepared by or under the supervision of an individual who possesses the qualifications recommended by the Interior Secretary's "Professional Qualifications Standards" (48 Fed. Reg. 44,716, 44,738).

(c) The HPMP shall include the following:

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South Fork Snake River Management Plan

- 1) An overview, synthesizing available information on the history, prehistory, and ethnography of the area, as a context for management of historic properties;
 - 2) an inventory of historic properties present, including a description of each historic property, the significant element or elements of each property that qualifies it for inclusion in the National Register, and appropriate maps, plans, and photographs;
 - 3) a discussion of the potential for and intended use of historic properties in ways that do not cause significant damage to or deterioration of the property;
 - 4) means to preserve historic properties in place, including protection from vandalism;
 - 5) if treatment other than preservation in place is proposed, the HPMP should also discuss the alternative treatment(s), such as research value, interpretive potential, cultural importance to descendants of site creators, cost of preserving the site in place, or lack of alternatives to achieving the project goals;
 - 6) a balancing of BPA's mission and historic property preservation or other proposed treatments;
 - 7) stipulations for compliance with appropriate sections, where applicable, of NAGPRA (25 U.S.C. §§ 3001-3013), NHPA (16 U.S.C. §§ 470-470x-6), ARPA (16 U.S.C. §§ 470aa-470mm) and the American Indian Religious Freedom Act (AIRFA) (42 U.S.C. § 1996), including definition of a consultation process between BPA and the Shoshone-Bannock Tribes to ensure adequate communication of the actions to be taken under the Wildlife Mitigation Projects. Consultation with the Tribes shall be maintained specifically to solicit input on traditional use or other tribal concerns directly related to this consultation process and Programmatic Agreement.
- (d) The managing entity or BPA will provide copies of the draft HPMP to the SHPO, Tribes, Council and other interested parties for review and comment. BPA will direct the managing entity not to take action with potential adverse effect on a historic property until the HPMP is implemented, or section 106 responsibilities are otherwise fulfilled.

3. Discoveries

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If cultural material that is not covered by the HPMP (Stipulation 2) is discovered during the implementation of the Project, the managing entity will ensure that all work in the area of the discovery will immediately cease and the managing entity will contact BPA, the Tribes, and the SHPO. BPA, in consultation with the SHPO and Tribes, will determine if the cultural material represents an historic property which is eligible to the National Register of Historic Places. If the material does represent an historic property, BPA will determine the appropriate treatment of the historic property in consultation with the SHPO and the Tribes, as appropriate.

4. Curation

The parties recognize that Tribal traditions do not normally support curation. However, if curation of non-burial materials is deemed necessary as discussed under stipulation 1(b), BPA and the managing entity shall ensure that all curation of records and other items resulting from identification, evaluation, and data recovery efforts proceeds in accordance with 36 CFR 79 and, where applicable, the provisions of the Native American Graves Protection and Repatriation Act (PL101-601). Collections and records will be curated at an appropriate repository. Materials shall be maintained in accordance with 36 CFR 79 until any specified analyses are complete and they are curated or returned to their owners.

5. Human Remains

BPA and the land-managing entity shall ensure that any human remains encountered during the course of this undertaking are treated in a respectful manner. No construction activities will be allowed in the vicinity of the discovery until a Notice to Proceed is provided by BPA and/or the land managing entity. A reasonable and good-faith effort shall be made to identify the appropriate ancestors, Native American or otherwise, related to the burial, and consult with them concerning the treatment of remains. If human remains are encountered on Federal lands, the land-managing entity shall consult with Native Americans, or other groups related to the burial, to determine treatment and disposition measures consistent with applicable Federal law (such as the Native American Graves Protection and Repatriation Act). BPA, SHPO and the Shoshone-Bannock Tribe will address specific NAGPRA procedures regarding the discovery of human skeletal remains in an MOA.

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South Fork Snake River Management Plan

If human remains are encountered on State or private lands, BPA shall ensure, in consultation with the SHPO, that they are treated according to the provisions of Idaho's 1984 Protection of Graves Act, Sections 27-501 through 27-504. If Native American remains are encountered, the appropriate tribal policy will be followed. If objections are raised by any party to this Agreement regarding the treatment of human remains, BPA shall consult to resolve the objections in accordance with Stipulation 9.

6. Training

Managing entity staff shall attend training in cultural resources management and/or the Section 106 review process, or demonstrate knowledge of these subjects.

7. Annual Report

The managing entity shall prepare an annual report regarding implementation of this PA, and shall distribute the report to BPA, the SHPO, the Tribes and the Advisory Council. Annual reports should include:

- a. Name of contact person for each wildlife management area;
- b. a summary of general land management activities for the year;
- c. a specific description of the survey, evaluation and HPMP activity undertaken in that year;
- d. a discussion of problems and successes in managing historic properties and implementing this PA, including the views of Tribes and other interested parties;
- e. training undertaken by managing entity staff per stipulation #6; and
- f. anticipated date of the next annual report.

This report shall be the basis for BPA, the land managing entity, SHPO, Council, Tribes, and other interested parties annually reviewing the implementation of the PA and determining if changes in the PA or implementation are necessary. The first report is due not later than one year from execution of this PA, or as otherwise agreed in writing by the consulting parties.

8. Amendment of the Agreement

Any party to the agreement may request that this PA be amended, whereupon the parties will consult in accordance with 36 C.F.R. § 800.13

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South Fork Snake River Management Plan

to consider such amendment. Any amendment or addendum to this agreement shall be executed in the same manner as the original.

9. Dispute Resolution

Should BPA, the SHPO, or the Tribes be unable to resolve a dispute regarding implementation of this PA, they may consult with the Council staff. If the dispute is still not resolved after a period of 60 days, the SHPO shall request the further comments of the Council pursuant to 36 C.F.R. § 800.6(b).

10. Termination

BPA or the SHPO may terminate this PA by providing 120 days' notice, in writing, to the other parties, including concurring parties, provided that the parties will meet during the period prior to termination to seek agreement, amendment, or other action that would avoid termination. It is the intent of the parties that this agreement last for the duration of the South Fork Snake River Programmatic Management Plan. In the event of termination, BPA and the land management entity will comply with 36 C.F.R. §§ 800.4-800.6 with regard to land management activities.

11. Other Indian Tribes

Nothing in this agreement is intended to affect the interests or rights of any other Indian tribe.

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South Fork Snake River Management Plan

Execution of this PA by BPA, the SHPO, the Council, plus concurrence by the Tribes and implementation by the managing entity(ies) demonstrate that BPA has taken into account the potential effects of the South Fork Snake River/Fallsades Wildlife Mitigation Project Final Environmental Assessment and Finding of No Significant Impact, in full compliance with the requirements of Section 106 of the NHPA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
Title: _____

BONNEVILLE POWER ADMINISTRATION

By: _____ Date: _____
Title: _____

IDAHO STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Title: _____

Concur:
SHOSHONE-BANNOCK TRIBES

By: _____ Date: _____
Title: _____

IDAHO DEPARTMENT OF FISH AND GAME

By: _____ Date: _____
Title: _____

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APPENDIX "A"

Land Management Activities Normally Exempt from Prior Survey and Evaluation

- Acquisition of a conservation easement (survey and evaluation normally will be required prior to implementation of Appendix B activities funded by BPA or the managing agency within the easement)
- Management of vegetation not associated with structural landscaping (i.e., non-mechanical weed control or tree topping)
- Maintenance of fences not requiring excavation
- Construction and/or preparation of wildlife mitigation structures, facilities or alterations to land where such activities or their use will not involve excavation or ground disturbance, nor create a risk of unearthing historical items or resources

APPENDIX "B"

Examples of Land Management Activities Normally Requiring Prior Survey and Evaluation

- Acquisition of land in fee (survey and evaluation would be limited to an overview-type survey for informational purposes only, with no testing) (SHPO wanted moved to here, BPA added qualifying parenthetical)
- Construction of buildings, including site preparation
- Removal of buildings more than 50 years old
- Modification of buildings more than 50 years old
- Excavation for trenches, ditches or ponds, or any other ground-disturbing activities

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South Fork Snake River Management Plan

- Construction of roads
- Logging

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ATTACHMENT C

The Deed Conveying Fee Simple With an Executory Limitation Over shall include the following provision or one equivalent to it:

Title to this property shall vest in the United States, Bonneville Power Administration (BPA), upon (1) the determination by the Bonneville Power Administration (BPA) that this real property is not being managed for wildlife, as described in the August 1997 Southern Idaho Wildlife Agreement on file with the BPA Manager, Real Property Services, and (2) BPA's choosing to accept conveyance of the property.

Exhibit C
Description of United States' Executory Limitation

Background:

The Idaho Fish and Game Commission and the Idaho Department of Fish and Game (Idaho) acquired this real property to help BPA in partially fulfilling BPA's duty to protect, mitigate, and enhance wildlife habitat affected by the development of the Federal Columbia River Power System as required by section 4(h)(10)(A) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839b(h)(10)(A). BPA provided the funds under a Memorandum of Agreement (MOA) signed with Idaho in September 1997 (Exhibit B herewith). To fulfill its promises to BPA under the MOA, Idaho is recording an executory limitation from Grantor to the United States in the Statutory Warranty Deed ("Deed") to which this description is attached as Exhibit C.

Description of Condition Subsequent:

Under the executory limitation conveyed to the United States of America and its assigns in the Deed, fee title to the real property described in Exhibit A of the Deed (BPA Tract No. SIDHO-WL-16) shall immediately vest in the United States of America upon satisfaction of the following conditions (i.e., occurrence of condition subsequent):

- (1) the determination by BPA that this real property is not being permanently managed for wildlife, as described in the September 1997 Southern Wildlife Mitigation Agreement on file with the BPA Manager, Real Property Services, and as evidenced by a determination by the Regional Habitat Evaluation Procedure (HEP) Team, or its successor, of a twenty percent drop from the highest HEP values documented by the Regional HEP Team or its successor, in a report completed following the "Variation" and "Stacking" standard operating procedures identified in Appendix A of the Northwest Power and Conservation Council's Wildlife Crediting Forum Report on Forum Deliberations January 2010 - May 2011 (September 2011) on file with the BPA Manager, Real Property Services, and
- (2) the decision by BPA to accept fee title ownership of the property on behalf of the United States of America.

Duration:

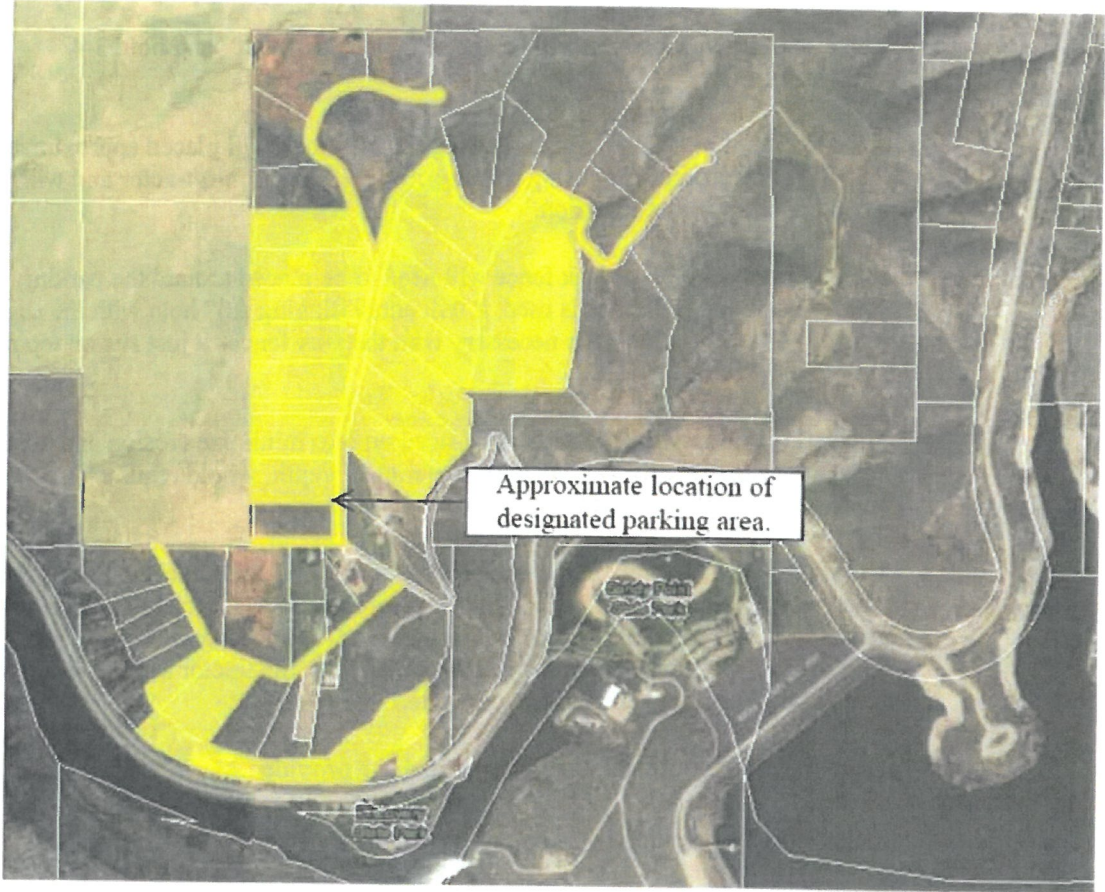
This executory limitation shall remain valid so long as Idaho holds title to this real property, provided, the executory limitation will not be triggered under the following circumstances:

- (1) Idaho choosing to exercise its rights under section 9 of the MOA to sell or exchange the property, and BPA concurs, as evidenced by an affidavit executed by Idaho and BPA; or
- (2) a court finds the MOA is not binding on one of the parties.

EXHIBIT C
PARKING AREA PROJECT DESCRIPTION

- The proposed parking area will be approximately 50' x 50' and hold 3-4 vehicles/trucks.
- The kiosk will be 4' x 4' in size. The legs of the kiosk will be placed approximately 2.5'-3' in the ground, dug using a 6" auger on the back of our tractor and will be set in concrete for stabilization.
- Either a buck and rail or jack fence will need to be placed around the parking area. If buck and rail fence is used, it will entail digging a 6" hole with the auger every 8' or so. No digging is necessary with the jack fence- it just sits on top of the ground.
- The parking area will need road mix placed on it to minimize erosion and dust. Using a dry gravel mix 1- 1 ¼" in diameter at 3" depth, would require approximately 75 yards of material.
- The gate that is currently at the intersection of Lucky Peak Lane and Sandy Point Lane will be relocated 300' up Lucky Peak Lane to deter motorized vehicle use up the road past the parking area. This will involve removing the current gate, digging two, 6" holes on either side of the road with the tractor auger, setting two gate posts in concrete and hanging the gate.
- There will be no utilities, washroom or garbage provided.

**EXHIBIT D
MAP (1 OF 2)**



**EXHIBIT D
MAP (2 OF 2)**





Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

ENVIRONMENT, FISH AND WILDLIFE

September 23, 2019

In reply refer to: EWM-4

Mr. Michael Pearson
Idaho Department of Fish and Game
600 S. Walnut
Boise, ID 83712

Dear Mr. Pearson,

This Letter of Agreement ("Letter") is entered into for the purposes of stating the intent of the Idaho Department of Fish and Game ("IDFG") and the U.S. Department of Energy, Bonneville Power Administration ("BPA"), regarding IDFG's request to transfer certain Administrative Funding to accounts originally reserved for Stewardship Funding as established in the 2014 Southern Idaho Wildlife Mitigation Memorandum of Agreement Between the State of Idaho and the Bonneville Power Administration ("MOA"). Capitalized terms in this Letter have the same meaning and effect as those in the MOA.

Under the MOA, BPA provides IDFG with Acquisition Funding for approved new land acquisitions and the associated stewardship. Payments for new land acquisitions are wired directly to the appropriate escrow account, and payments for the stewardship are deposited directly into a Stewardship Account. BPA also committed in the MOA to provide IDFG \$400,000 of Administrative Funding each year through FY 2024 to cover the costs of Project implementation. This funding is provided through annual contracts between BPA and IDFG.

IDFG has requested that \$230,000 of the \$400,000 provided for Administrative Funding in each year from FY 2020 until FY 2024 be paid into the Stewardship Account. This Administrative Funding payment would equal \$1,150,000. Applying the FY19 inflation rate of 2.5% to this value adds an additional \$28,750, increasing the total payment to \$1,178,750.

From FY 2015 through FY 2018, IDFG did not spend \$161,914 from the total amounts that were available for administrative expenses. IDFG requested that these funds be paid into the Stewardship Account, and BPA made the payment in March 2019, per MOA Section II.F.7. For FY 2019, IDFG has requested that BPA pay \$239,999 into the Stewardship Account. This brings the total payment to \$1,418,749.

Pursuant to Section II.F.7 of the MOA, BPA agrees to pay \$1,418,749 of Administrative Funding into the Stewardship Fund. IDFG accepts this payment with the following conditions:

1. The advance payment for FY 2020 through FY 2024 into the Stewardship Fund is a preschedule of funds pursuant to MOA Section II.F.7.c and does not increase or decrease the total amount of funding BPA has committed to provide to IDFG under the MOA;
2. The advance payment for FY 2020 through FY 2024 shall not include the annual adjustments for inflation for those years under MOA Section II.F.8. The remaining Administrative Funding, which will be provided through annual contracts between BPA and IDFG, shall continue to be adjusted for inflation; and
3. BPA will continue to provide approximately \$170,000 of Administrative Funding to IDFG each year through FY 2024, which includes \$30,000 retained by BPA annually for realty services, and IDFG confirms that this will suffice for its administrative and pre-acquisition needs in FY 2020 through FY 2024.

If the above terms, conditions, and amounts correctly expresses our understanding, please execute the Letter where indicated below and return it to me.

Sincerely,

(b) (6)

SCOTT G. ARMENTROUT
Vice President, Environment, Fish and Wildlife

Acknowledged and Agreed:
Idaho Department of Fish and Game

(b) (6)

By: 
Name: Michael Pearson
Chief of Administration

Date:

24 Sep 2019