

**Appendix E. Transfer of Title of United States Ownership
Interests in Cross Cut Diversion Dam and Canal, and the
Teton Wells, to the Fremont-Madison Irrigation District;
May 5, 2003, letter to Ms. Suzi Neitzel, Deputy State
Historical Preservation Officer.**

properties. Reclamation and the SHPO agree that mitigation of the adverse effect of the proposed title transfer can be accomplished by means of photo-documentation of the historic properties that are included in the transfer. It is the SHPO and Reclamation's position that because of the very high quality of the historical narrative and photos in Sagebrush Consultants Class III report, that report can serve as adequate mitigation for the proposed title transfer. Accordingly, the SHPO has requested 4 X 6 inch, black and white, 35mm prints of each photograph that accompanied the site records for this project, housed in an archival sleeve. One set of the bound photographs is enclosed with this letter.

In conjunction with the 35 mm prints being submitted with this letter, we are enclosing a copy of a memorandum of agreement (MOA), required under 36 CFR 800.6 for resolving adverse effects. The MOA states Reclamation's commitment to the mitigation as agreed to by our respective offices. If you find the document to be satisfactory, please sign it and return a copy to Reclamation. You may direct any questions about the agreement to Ray Leicht at 208-334-9438.

Sincerely,

JERROLD D. GREGG

Jerrold D. Gregg
Area Manager

Enclosures

bc: PN-3248 (Green)
SRA-6300 (Ketchum), SRA-6324 (Bauman), SRA-2000 (McClendon), SRA-6310 (Daniel)
SRA-6116 (Leicht)
(w/o encls to each above)

WBR:RLeicht:earellano:5/2/03:208-334-9438:SRA-6116
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**Appendix F. Memorandum of Agreement with the Idaho
State Historic Preservation Officer**



Our mission: to educate through the identification, preservation, and interpretation of Idaho's cultural heritage.

Dirk Kempthorne
Governor of Idaho

Steve Guerber
Director

Administration
1109 Main Street, Suite 250
Boise, Idaho 83702-5642
Office: (208) 334-2682
Fax: (208) 334-2774

Archaeological Survey
210 Main Street
Boise, Idaho 83702-7264
Office: (208) 334-3847
Fax: (208) 334-2775

Capitol Education Center
Statehouse/P.O. Box 83720
Boise, ID 83720 0001
Office: (208) 334-5174

Historical Museum and Education Programs
610 North Julia Davis Drive
Boise, Idaho 83702-7695
Office: (208) 334-2120
Fax: (208) 334-4059

Historic Preservation Office
210 Main Street
Boise, Idaho 83702-7264
Office: (208) 334-3861
Fax: (208) 334-2775

Historic Sites Office
2445 Old Penitentiary Road
Boise, Idaho 83712-8254
Office: (208) 334-2844
Fax: (208) 334-3225

Historical Collections and Genealogical Collections
450 North Fourth Street
Boise, Idaho 83702-6027
Office: (208) 334-3356/7
Fax: (208) 334-3198

Oral History
450 North Fourth Street
Boise, Idaho 83702-6027
Office: (208) 334-3863
Fax: (208) 334-3198

Memberships and Outreach and Development
1109 Main Street, Suite 250
Boise, Idaho 83702-5642
Office: (208) 334-3986
Fax: (208) 334-2774

Publications
450 North Fourth Street
Boise, Idaho 83702-6027
Office: (208) 334-3428
Fax: (208) 334-3198

State Archives/Manuscripts
2205 Old Penitentiary Road
Boise, Idaho 83712-8250
Office: (208) 334-2620
Fax: (208) 334-2626

BUREAU OF RECLAMATION
SNAKE RIVER AREA OFFICE
BOISE, IDAHO
RECEIVED

June 25, 2003

JUN 27 03

TO	DATE	TIME	BY
FROM			
FILED			

Mr. Jerrold D. Gregg
Area Manager
Bureau of Reclamation
Snake River Area Office
214 Broadway Ave.
Boise, Idaho 83702-7298

RE: Section 106 Review of the Transfer of Title of United States Ownership Interests in Cross Cut Diversion Dam and Canal and the Teton Wells to the Fremont-Madison Irrigation District

Dear Mr. Gregg:

Thank you for consulting with us on the title transfer of the Cross Cut Diversion Dam and Canal and the Teton Wells from the United States (Bureau of Reclamation) to the Fremont-Madison Irrigation District. We also appreciate receiving the historical report by Sagebrush Consultants, LLC, Ogden, Utah. The report easily meets the Secretary of the Interior's Standards and provides an excellent historical overview of the general area and of the Cross Cut project.

After reviewing the report, we agree with the National Register evaluations presented in Table 3 on page 55. The table shows that 23 sites associated with the canal are *eligible* for the National Register of Historic Places under Criteria A and C. It also shows that 29 sites associated with the canal and a historic trash scatter (TS-1) are *not eligible* for the National Register.

Following 36CFR800.5, transferring the eligible properties to a non-federal entity is an *adverse effect*. Rather than imposing protective covenants, Bureau of Reclamation has opted to mitigate the effects by fully documenting the irrigation system.

As we discussed in consultation, the historical report, the site records, and 35mm black and white prints, all completed by Sagebrush and submitted to our office, meet the documentation requirements for mitigation as outlined in the Memorandum of Agreement between Bureau of Reclamation and our office (enclosed). Therefore, no further documentation or review of this undertaking is required.



Jerrold D. Gregg
June 25, 2003
page 2

We appreciate your cooperation. If you have any questions, please feel free to contact me at 208-334-3847.

Sincerely,

Susan Pengilly Neitzel
Deputy SHPO and
Compliance Coordinator

cc: Ray Leicht, Archaeologist, Bureau of Reclamation

MEMORANDUM OF AGREEMENT

TRANSFER OF TITLE OF RECLAMATION INTERESTS IN SELECTED IRRIGATION AND DRAINAGE FACILITIES TO FREMONT MADISON IRRIGATION DISTRICT

Whereas, the Bureau of Reclamation (Reclamation), Pacific Northwest Region, Snake River Area Office, proposes to transfer to Fremont Madison Irrigation District (FMID) Reclamation's interest in segments of the FMID irrigation system and associated easements and fee title lands;

Whereas, the FMID irrigation system has been determined eligible to the National Register of Historic Places as a linear resource or district, and the segments subject to transfer are contributing elements to that linear resource or district;

Whereas, the proposed transfer of title will have an adverse effect upon the historic resource due to loss of protection of Federal law;

Whereas, the Idaho State Historic Preservation Officer (SHPO) has been consulted pursuant to the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and has reviewed the proposed undertaking to consider feasible and prudent alternatives and means to minimize or satisfactorily mitigate the adverse effect;

Whereas, the Advisory Council on Historic Preservation (Council) has been notified of the adverse effect and has determined they do not need to participate in the consultation;

NOW, THEREFORE, Reclamation and the Idaho SHPO agree that the undertaking shall be implemented in accordance with the following stipulation in order to mitigate the adverse effect of the undertaking on the historic property, and to meet Reclamation's responsibilities under Section 106 of the National Historic Preservation Act.

STIPULATIONS

1. **Treatment.** Reclamation will complete the following action:

The report entitled "*A Cultural Resources Survey and Evaluation of the Cross Cut Diversion and Teton Wells*," prepared for Reclamation by Sagebrush Consultants, will serve as mitigation for the proposed title transfer. Accordingly, in addition to the final survey report, Reclamation will provide the SHPO with 4 X 6 inch black and white 35 mm prints of each photograph that accompanied the site records prepared by Sagebrush Consultants for the cultural resources survey.

2. **Amendment** If a signatory determines the terms of the MOA cannot be met or that a change is necessary to meet the requirements of the law, that signatory will immediately request that the consulting parties consider an amendment or addendum. Any necessary amendment or addendum will be executed as defined in the 36 CFR 800 regulations.

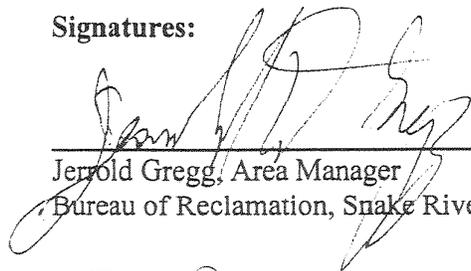
3. **Dispute Resolution** If a dispute arises regarding implementation of the MOA, Reclamation will consult with the objecting party to resolve the dispute. If the dispute cannot be resolved, comments will be requested from the Council, as defined in 36 CFR 800.

4. **Suspension and Termination** Either party to this MOA may suspend it by written notice to the other consulting party. Additional consultations will then occur in an effort to resolve any issues and to re-implement the MOA in amended form. This agreement may be terminated by mutual agreement of the signatories at any time upon written notification of those parties. Failure to carry out the terms of this MOA requires Reclamation to comply with Section 106 in accordance with 36 CFR 800.3-800.6 for this undertaking.

5. **Effective Period** This MOA shall be effective upon its execution by the last signatory and shall remain in effect, unless terminated, suspended, or amended, until June 1, 2003.

Execution of this MOA by Reclamation and the SHPO evidences that Reclamation has afforded the SHPO and Council a reasonable opportunity to comment pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, on the transfer of title to FMID of Reclamation's interests in selected irrigation and drainage facilities. Satisfaction of the stipulations of the MOA indicates that Reclamation has taken into account and mitigated the adverse effects of the project upon affected historic properties.

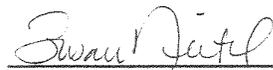
Signatures:



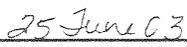
Jerrold Gregg, Area Manager
Bureau of Reclamation, Snake River Area Office



Date



Susan Neitzel, Deputy SHPO
Idaho State Historic Preservation Office



Date

**Appendix G. ESA-related Correspondence with the U.S.
Fish and Wildlife Service and the National Marine Fisheries
Service**

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DEC 6 2001

Mr. Robert Lohn
Regional Administrator
National Marine Fisheries Service
Northwest Region
7600 Sand Point Way N.E. Building 1
Seattle, Washington 98115-0070

Subject: Request for List of Threatened or Endangered Species Requiring Consideration
7 of the Endangered Species Act for the Potential Transfer of Title of Certain Facilities from
the United States to the Fremont-Madison Irrigation District

Dear Mr. Lohn:

Bureau of Reclamation (Reclamation) is writing to request National Marine Fisheries Service provide us with a current list of listed and proposed species for the proposed area and/or which may be affected by the potential transfer of title of certain facilities to Fremont-Madison Irrigation District. Fremont-Madison Irrigation District (FMID) has indicated that they will seek Congressional authority for Reclamation to transfer ownership interests in the Cross Cut Diversion Dam and Cross Cut Canal, and the Teton Exchange Wells, including all well and water right permits (IDWR permit number 22-7022) to them. These facilities are located either on or near the Henrys Fork of the Snake River and the Teton River in Fremont and Madison Counties, Idaho. The area of concern is bounded by Township 6 North, Range 39 East and Township 9 North, Range 44 East.

The facilities consist of:

Cross Cut Diversion Dam located on the Henrys Fork	
Constructed	1938
Type	Concrete, gravity weir, Ogee, overflow
Structural Ht.	17 ft.
Hydraulic Ht.	10 ft.
Weir Crest Length	355 ft.
Total Length	457 ft.
Crest Elev.	5040.5 ft.
Headworks	2 (left and right abutments)

Cross Cut Canal Headworks Cable operated radial gate,
gasoline engine operator

Last Chance Canal Headworks (Private) Cable Operated radial gate,
Manual operated

Cross Cut Canal	
Length	6.6 miles
Capacity	591 cfs at headworks 759 cfs below North Branch Canal
Reaches	North Branch check and turnout Middle Branch check and turnout South Branch check and turnout

Other

Numerous checks, crossings, bridges,
and flumes

FMID has fully discharged their repayment obligation for these facilities. Additionally, there are no water rights associated with the diversion and canal. The well permit consists of the following five wells plus the right to develop 40 additional wells together with all of Reclamation's water right interests associated with the permit.

Teton Exchange Wells

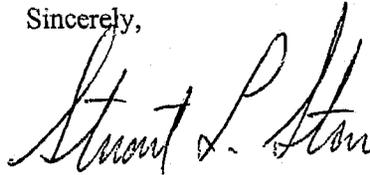
Well #1	Beaver Dick	9500 gpm	685 ft depth
Well #2	Salem Well	7500 gpm	394 ft depth
Well #3	Golf Course	4300 gpm	426 ft depth
Well #4	Egin Well	7500 gpm	503 ft depth
Well #5	Fisher Well	8500 gpm	410 ft depth

FMID has a 25 year contract for the lease of the five wells with Reclamation. The contract has renewal rights and a right to convert to a repayment contract under subsection 9(d) of the Reclamation Project Act of 1939. This allows that once any monetary obligation for the construction of the wells is fulfilled, the wells can be transferred to the district.

Reclamation has entered into a Memorandum of Agreement (MOA) with FMID for the purpose of cooperating in a joint effort to evaluate the environmental impacts, and other factors of concern associated with the proposed transfer. FMID will prepare analyses required for the transfer and Reclamation will be fully responsible for appropriate National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) compliance. Therefore, to initiate the compliance process we request that you provide us with a current list of listed and proposed species for this area and/or which may be affected by this action.

If you have any questions, concerns, or wish to meet with us in regard to this matter please contact, Dick Bauman, Environmental Specialist, at (307) 739-8765, or Chris Ketchum, Resource Manager, at (208) 678-0461, extension 34.

Sincerely,



Stuart L. Stanger
Deputy Area Manager

Identical Letter Sent To:

Mr. Robert Ruesink
U.S. Fish & Wildlife Service
Snake River Basin Office
1387 South Vinnell Way, Room 368
Boise, Idaho 83709

cc: Fremont- Madison Irrigation District, P.O. Box 15, St. Anthony, Idaho 83445

bc: SRA-1000 (Gregg), SRA-6343 (Bauman), PN-1000 (McDonald), PN-1150 (Carr),
PN-3248 (Green), PN-3000 (Beckmann), PN-6500 (McClendon), PN-3030 (Rigby)

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SRA-6300
ENV-7.00

DEC 14 2001

Mr. Brian Brown
Assistant Regional Administrator
for Hydropower Programs
National Marine Fisheries Service
525 NE Oregon Street, Suite 500
Portland OR 98232

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Subject: Amending paragraph to letter dated December 6, 2001, Requesting List of Threatened or Endangered Species Requiring Consideration Under Sec. 7 of the Endangered Species Act for the Potential Transfer of Title of Certain Facilities from the United States to the Fremont-Madison Irrigation District

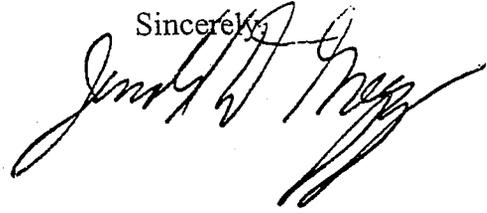
Dear Mr. Brown:

On December 6, 2001, Bureau of Reclamation sent a letter to your agency requesting a List of Threatened or Endangered Species Requiring Consideration Under Sec. 7 of the Endangered Species Act for the Potential Transfer of Title of Certain Facilities from the United States to the Fremont-Madison Irrigation District.

Please amend the aforementioned letter, by replacing paragraph 2 on page 2 with the following:

FMID and Reclamation executed a 25 year "Agreement between the United States and The Fremont-Madison Irrigation District for use of wells, pumps, motors and appurtenant facilities," dated September 17, 1977, for the use of the five wells. The contract has renewal rights and a right to convert to a repayment contract under subsection 9(d) of the Reclamation Project Act of 1939, and therefore has certain renewal and other rights under the Act of July 2, 1956. This allows that once any monetary obligation for the construction of the wells is fulfilled, the wells can be transferred to the district if appropriately authorized by Congress.

The Bureau of Reclamation cannot transfer title without Congressional authority. We apologize for any inconvenience this may have caused. If you have any questions, concerns, or wish to meet with me in regard to this matter, please contact me at (208) 334-1460 or Stuart L. Stanger, Deputy Area Manager at (208) 678-0461, extension 15.

Sincerely,


Jerrold Gregg
Snake River Area Manager

Identical Letter Sent To:

Mr. Robert Ruesink
U.S. Fish & Wildlife Service
Snake River Basin Office
1387 South Vinnell Way, Room 368
Boise, Idaho 83709

cc: Fremont- Madison Irrigation District, P.O. Box 15, St. Anthony, Idaho 83445
Robert Lohn, Regional Administrator, National Marine Fisheries Service, Northwest Region,
7600 Sand Point Way N.E. Building 1, Seattle Washington 98115-0070

bc: SRA-2000 (Stanger), SRA-6343 (Bauman), PN-1000 (McDonald), PN-1150 (Carr),
PN-3248 (Green), PN-6500 (McClendon), PN-3030 (Rigby)

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE

Idaho Habitat Branch
 10215 Emerald St., Suite 180
 Boise, ID 83704

December 20, 2001

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MEMORANDUM FOR: Stuart L. Stanger, Deputy Area Manager, US DO
 Reclamations, Snake River Area Office, Burley ID

FROM: Charley Rains, National Marine Fisheries Service

SUBJECT: Threatened and Endangered Species under National Marine Fisheries Service Jurisdiction in the Henrys Fork of the Snake River and Teton River within the Snake River Basin.

PROJECT: Potential title transfer of facilities to Fremont-Madison Irrigation District: Cross Cut Diversion Dam, Cross Cut Canal, and Teton Exchange Wells.

Charley Rains

This Memorandum responds to your December 6, 2001 letter requesting a list of Endangered Species Act (ESA) species under the jurisdiction of the National Marine Fisheries Service (NMFS) for the Potential title transfer of facilities to Fremont-Madison Irrigation District the facilities includes: Cross Cut Diversion Dam, Cross Cut Canal, and Teton Exchange Wells.

Henrys Fork of the Snake River and Teton River are above dams or longstanding, naturally impassable barriers. Because of this, there are no Endangered Species Act (ESA) species under the jurisdiction of the National Marine Fisheries Service within these drainages. Also, because of these barriers, the Henrys Fork of the Snake River and Teton River are not designated as Critical Habitat for any listed anadromous fish species. This memo responds only to anadromous fish listings under NMFS's jurisdiction. The U.S. Fish and Wildlife Service should be contacted regarding species under its jurisdiction.

Charley Rains
 (208) 378-5686
 National Fire Plan Biologist
 National Marine Fisheries Service
 10215 W. Emerald, Suite 180
 Boise, ID 83704



ESA Listed Species Under NMFS Jurisdiction

None

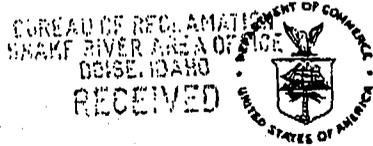
cc: B. Ruesink - USFWS
BFO - File Copy

Address for

Stuart L. Stanger, Deputy Area Manager,
US DOI, Bureau of Reclamations
Snake River Area Office
1339 Hansen Ave.
Burley ID 83318-1821

Address for cc:

Bob Ruesink
Supervisor, U.S. Fish and Wildlife Service
Snake River Basin Office
1387 S. Vinnell Way, Room 368
Boise, ID 83709



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UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 525 NE Oregon Street
 PORTLAND, OREGON 97232-2737

F/NWR5

March 19, 2002

1000
1001

Stuart L. Stanger
 US Bureau of Reclamation
 Snake River East Area Office
 1359 Hansen Avenue
 Burley, ID 83318

RE: Fremont-Madison wellfield title transfer, species list for consultation

Dear Mr. Stanger:

This letter responds to your December, 6, 2001 request for a list of species to be considered in consultation on the subject action. This letter also clarifies and supercedes a December 20, 2001 letter from National Marine Fisheries Service (NMFS) that incorrectly stated that because the proposed action area is outside of the critical habitat of species under our jurisdiction we have no interest in the action. Because streamflow conditions within listed species' critical habitat affects those species, any action which may affect streamflow conditions within critical habitat may also affect listed species. Critical habitat for listed Columbia basin anadromous fish extends from the upstream limits of accessible tributary streams and headwater lakes to the Columbia River estuary and nearshore ocean plume. To the extent that your proposed action may affect streamflow conditions in the Snake River, it may affect all of the listed species in the Snake and Columbia rivers listed below.

- Snake River (SR) spring/summer chinook salmon (*Oncorhynchus tshawytscha*; listed as threatened on April 22, 1992 [57 Federal Register {FR} 14653]); critical habitat designated on December 28, 1993 [58 FR 68543], and revised on October 25, 1999 [64 FR 57399]
- Snake River (SR) fall chinook salmon (*O. tshawytscha*; listed as threatened on April 22, 1992 [57 FR 14653]); critical habitat designated on December 28, 1993 [58 FR 68543]
- Upper Columbia River (UCR) spring chinook salmon (*O. tshawytscha*; listed as endangered on March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Upper Willamette River (UWR) chinook salmon (*O. tshawytscha*; listed as threatened on March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764]



- Lower Columbia River (LCR) chinook salmon (*O. tshawytscha*; listed as threatened on March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Snake River (SR) steelhead (*O. mykiss*; listed as threatened on August 18, 1997 [62 FR 43937]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Upper Columbia River (UCR) steelhead (*O. mykiss*; listed as endangered on August 18, 1997 [62 FR 43937]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Middle Columbia River (MCR) steelhead (*O. mykiss*; listed as threatened on March 25, 1999 [64 FR 14517]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Upper Willamette River (UWR) steelhead (*O. mykiss*; listed as threatened on March 25, 1999 [64 FR 14517]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Lower Columbia River (LCR) steelhead (*O. mykiss*; listed as threatened on March 19, 1998 [63 FR 13347]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Columbia River (CR) chum salmon (*O. keta*; listed as threatened on March 25, 1999 [64 FR 14508]); critical habitat designated on February 16, 2000 [65 FR 7764]
- Snake River (SR) sockeye salmon (*O. nerka*; listed as endangered on November 20, 1991 [56 FR 58619]); critical habitat designated on December 28, 1993 [58 FR 68543]

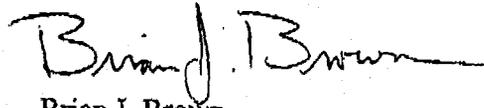
To complete consultation on this project the U.S. Bureau of Reclamation should provide a written determination of whether this proposed action is likely to adversely affect the above listed species and submit all information used to support that conclusion. In the event you determine that the proposed action is not likely to adversely affect the listed species, we would review all relevant information regarding the likely effects of your proposed action to determine if we could concur. If we concur, then we would provide you with a written concurrence letter, thereby completing consultation as per 50 CFR 402.13 Informal Consultation.

If we could not concur with your "not likely to adversely affect" conclusion, or if you conclude that adverse effects are likely, then formal consultation would be required (50 CFR 402.12).

NMFS' primary concern in this consultation is the extent to which title transfer would affect the availability of water during the juvenile salmon outmigration season (April - August). As title transfers are permanent, their effects would be permanent. Accordingly, we need to ensure that such title transfers not foreclose opportunities to secure sources of water for USBR's flow augmentation program.

Please send all further correspondence regarding this action to the attention of Rich Domingue, 503-231-6858, at this office.

Sincerely,

A handwritten signature in black ink that reads "Brian J. Brown". The signature is written in a cursive style with a long horizontal flourish at the end.

Brian J. Brown
Assistant Regional Administrator
Hydro Program

cc: Jerrold Gregg ✓



United States Department of the Interior
FISH AND WILDLIFE SERVICE

Snake River Basin Office, Columbia River Basin Ecological
1387 South Vinnell Way, Room 368
Boise, Idaho 83709

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Return to me

Memorandum

To: Area Manager, Snake River Area Office - East, Bureau of Reclamation, Burley, Idaho (Attention: Chris Ketchum)

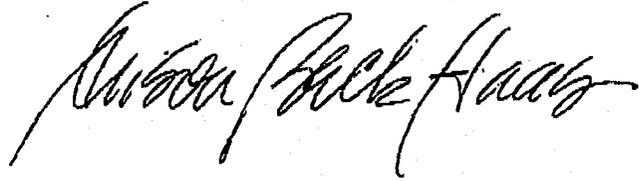
From: *ACTING* Supervisor, Snake River Basin Office, Fish and Wildlife Service, Boise, Idaho

Subject: Transfer of Title of Facilities to the Fremont-Madison Irrigation District --
Fremont and Madison Counties, Idaho -- Species List
File #1008.0220 1-4-02-SP-541

The U. S. Fish and Wildlife Service (Service) is providing you with a list of endangered, threatened, proposed, and/or candidate species which may be present in the area of the proposed transfer of title of certain facilities from the Bureau of Reclamation to the Fremont-Madison Irrigation District, Fremont and Madison Counties, Idaho. The list fulfills requirements for a species list under Section 7(c) of the Endangered Species Act of 1973 (Act), as amended. If the project decision is not made within 180 days of this letter, regulations require that you request an updated list. Please refer to the number shown on the list (Enclosure) in all correspondence and reports.

Section 7 of the Act requires Federal agencies to assure that their actions are not likely to jeopardize the continued existence of endangered or threatened species. Federal funding, permitting, or land use management decisions are considered to be Federal actions subject to Section 7. If the proposed action may affect a listed species, consultation with the Service is required. Formal consultation must be initiated for any project that is likely to adversely affect a threatened or endangered species. If a project involves a major construction activity and may affect listed species, Federal agencies are required to prepare a Biological Assessment. If a proposed species is likely to be jeopardized by a Federal action, regulations require a conference between the Federal agency and the Service.

If you need any further information, please contact Deb Mignogno of our Eastern Idaho sub-office at (208) 237-6975. Thank you for your continued interest in endangered species conservation.

A handwritten signature in black ink, appearing to read "Alison Beck Hayes". The signature is written in a cursive, flowing style.

Attachments

cc: FWS-FS, Chubbuck (Mignogno)

ATTACHMENT

LISTED AND PROPOSED ENDANGERED AND THREATENED
SPECIES, AND CANDIDATE SPECIES THAT MAY OCCUR
WITHIN THE AREA OF THE TRANSFER OF TITLE OF FACILITIES FROM THE BUREAU
OF RECLAMATION TO THE FREMONT-MADISON IRRIGATION DISTRICT
SP #1-4-02-SP-541

LISTED SPECIES

COMMENTS

Bald eagle (LT)
(*Haliaeetus leucocephalus*)

Wintering area/nesting area

Whooping crane (XN)
(*Crus americana*)

Experimental/Non-
essential population

Ute ladies'-tresses (LT)
(*Spiranthes diluvialis*)

PROPOSED SPECIES

None

CANDIDATE SPECIES

Yellow-billed cuckoo (C)
(*Coccyzus americanus*)

GENERAL COMMENTS

- LE - Listed endangered
- LT - Listed threatened
- XN - Experimental/non-essential population
- PT - Proposed threatened
- C - Candidate

UTR LADIES'-TRESSES (*Spiranthes diluvialis*) has the potential to occur in wetland and riparian areas including springs, wet meadows, and river meanders. The plant is known to occur at sites ranging from 1,500 to 7,000 feet in elevation. This species generally flowers from mid-July through September, and can be identified definitively only at that time. The orchid can remain dormant for several years; therefore, we suggest surveys for the orchid be scheduled for sequential years. The species may be adversely affected by modification of riparian and wetland habitats associated with livestock grazing, vegetation removal, excavation, construction for residential or commercial purposes, stream channelization, hydroelectric development and operation, and actions that alter hydrology.

WHOOPIING CRANE (*Grus americana*) – is listed as endangered in the contiguous United States, except where it is listed as a nonessential experimental population. The geographic areas where the nonessential experimental populations can be found include Idaho and the western half of Wyoming. Federal action agencies are required to confer with the Service if their actions are likely to jeopardize the continued existence of whooping cranes; or you have the option of conferring with the Service regardless of your determination.

CANDIDATE SPECIES that appear on the Enclosure have no protection under the Act, but are included for your early planning consideration. Candidate species could be proposed or listed during the project planning period, and would then be covered under Section 7 of the Act. The Service advises an evaluation of potential effects on candidate species that may occur in the project area.

YELLOW-BILLED CUCKOO (*Coccyzus americanus*) is a candidate species. On July 24, 2001 the U.S. Fish and Wildlife Service published its finding that the yellow-billed cuckoo warrants protection under the Endangered Species Act but is precluded from listing by other priorities. Yellow-billed cuckoos in the West are overwhelmingly associated with relatively expansive stands of mature cottonwood-willow forests. They appear to be dependent on the combination of a dense willow understory for nesting, a cottonwood overstory for foraging and large patches of habitat in excess of 20 ha. The species will occupy a variety of marginal habitats, particularly at the edges of their range, but is not known to use non-native vegetation in the majority of its range. The species should be considered when actions involve habitat that is now, or was historically, suitable for yellow-billed cuckoos.

SENDER'S NAME
MAIL ROOM
RECEIVED

SEP -2 04



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

10008
2000

August 31, 2004

Jerrold D. Gregg
US Bureau of Reclamation
Snake River Area Office
230 Collins Road
Boise, ID 83702-4520

RE: Informal Consultation on the Fremont-Madison Title Transfer, Request for Concurrence and Request for Comments on the Draft Environmental Assessment of May 2004.
NOAA Fisheries Consultation No. 2004/00846.

Dear Mr. Gregg:

This letter responds to your May 27, 2004, letter requesting the National Marine Fisheries Service's (NOAA Fisheries) concurrence with your "not likely to adversely affect" determination regarding anadromous fish species listed under the Endangered Species Act (ESA) for the proposed action of transferring the title and other U.S. Government interests in specific lands, facilities, and water rights associated with the Cross Cut Diversion Dam, Cross Cut Canal, the Teton Exchange Wells, and Idaho water right permit # 22-7022 for additional undrilled wells. NOAA Fisheries concurs with your determination.

The species considered in this consultation are listed below:

- Snake River (SR) spring/summer chinook salmon (*Oncorhynchus tshawytscha*; listed as threatened on April 22, 1992 [57 Federal Register {FR} 14653]); critical habitat designated on December 28, 1993 [58 FR 68543], and revised on October 25, 1999 [64 FR 57399].
- Snake River (SR) fall chinook salmon (*O. tshawytscha*; listed as threatened on April 22, 1992 [57 FR 14653]); critical habitat designated on December 28, 1993 [58 FR 68543].
- Upper Columbia River (UCR) spring chinook salmon (*O. tshawytscha*; listed as endangered on March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.
- Upper Willamette River (UWR) chinook salmon (*O. tshawytscha*; listed as threatened on March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.



- Lower Columbia River (LCR) chinook salmon (*O. tshawytscha*; listed as threatened on March 24, 1999 [64 FR 14308]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.
- Snake River (SR) steelhead (*O. mykiss*; listed as threatened on August 18, 1997 [62 FR 43937]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.
- Upper Columbia River (UCR) steelhead (*O. mykiss*; listed as endangered on August 18, 1997 [62 FR 43937]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.
- Middle Columbia River (MCR) steelhead (*O. mykiss*; listed as threatened on March 25, 1999 [64 FR 14517]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.
- Upper Willamette River (UWR) steelhead (*O. mykiss*; listed as threatened on March 25, 1999 [64 FR 14517]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.
- Lower Columbia River (LCR) steelhead (*O. mykiss*; listed as threatened on March 19, 1998 [63 FR 13347]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.
- Columbia River (CR) chum salmon (*O. keta*; listed as threatened on March 25, 1999 [64 FR 14508]); critical habitat designated on February 16, 2000 [65 FR 7764], but vacated by court order on April 30, 2002.
- Snake River (SR) sockeye salmon (*O. nerka*; listed as endangered on November 20, 1991 [56 FR 58619]); critical habitat designated on December 28, 1993 [58 FR 68543].

In reviewing water resource proposals in areas outside of occupied salmon and steelhead habitats, our principal concern is the potential effect of the action on hydrologic conditions (e.g., flows and water quality) in occupied habitat. For the action under consideration, occupied habitat in the Snake River downstream from Hells Canyon Dam and the Columbia River downstream from its confluence with the Snake River is the area of interest – termed action area in our regulations implementing the ESA.

As described in the Draft Environmental Assessment of May 2004 (DEA) for this proposed action, the facilities, water rights, and permits you propose to transfer to the Fremont-Madison Irrigation District (FMID) are part of the U.S. Bureau of Reclamation's (USBR) Minidoka and Teton Basin projects. NOAA Fisheries has previously consulted on the effects of USBR's operation and maintenance of these and 9 other projects in the Upper Snake River Basin (May 1999, March 2001, and March 2003). Through those consultations, the adverse effects of project

operations were mitigated within the limits of USBR discretion through a Snake River streamflow augmentation program. The program aims to provide up to 427,000 acre-feet of water from storage and natural flow water rights that have been acquired or reassigned by USBR for that purpose. The program is designed to benefit ESA-listed Snake River fall chinook salmon by increasing streamflows and thereby fish survival during their annual seaward migration. This mitigation effort would continue under the proposed action.

However, the proposed action includes the potential development of 5 to 8 additional wells under Idaho water right permit #22-7022, with a potential production of an additional 50,000 acre-feet of groundwater above current withdrawals. Your analysis shows that, during low water years, this additional ground water development would have the potential to reduce flows in the Snake River near Lewisville, Idaho, by up to about 8,000 acre-feet per annum (DEA Figure 21), and that flow reductions further downstream at Milner Dam would be considerably smaller and less frequent (about 5% of the modeled months showed a flow reduction, August 14, 2004, addendum, revised page 35) with very occasional episodes of higher depletions. Your analysis also shows that streamflow depletions at Milner Dam would occur primarily during the months of February through June. The largest depletions were associated with the aggregation of storage deficits from prior years reducing system discharge during subsequent flood control drafting operations. These effects would negligibly reduce streamflows in the Snake River during the spring juvenile outmigration (e.g. Snake River spring chinook salmon and Snake River steelhead) and would be unlikely to affect Snake River flows during the juvenile fall chinook salmon outmigration season (June 21 through August 31).

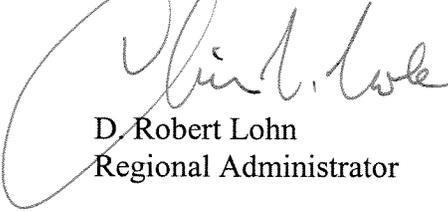
In accordance with a Memorandum of Agreement between FMID and the Twin Falls and North Side canal companies (DEA Appendix C), any new well development would need to demonstrate no impact on the interests of the downstream canal companies and other irrigation water users to the satisfaction of the Idaho Department of Water Resources. Thus the potential for adverse impacts to streamflows in currently occupied habitats downstream from Hells Canyon Dam as a result of the proposed action appears to be quite small, with the largest effects most likely to occur during periods of higher runoff.

We conclude that even if this small hydrologic effect propagates downstream from Milner Dam unattenuated by intervening water developments and uses, it would have a negligible adverse effect on anadromous fish survival downstream from Hells Canyon Dam, the upstream limit of currently occupied habitat. For this reason, NOAA Fisheries concurs with your “not likely to adversely affect” determination.

The USBR must reinitiate the ESA consultation if new information becomes available or circumstances occur that may affect listed species or their critical habitat in a manner or to an extent not previously considered, or a new species is listed or critical habitat is designated that may be affected by the proposed action.

This concludes informal consultation on the proposed action described in the Draft Biological Assessment. We respectfully decline to comment on the DEA. If you have any questions regarding this letter, please contact Rich Domingue, Hydropower Division, at 503-231-6858.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Robert Lohn". The signature is written in a cursive style with a large, sweeping initial "D" that loops around the first part of the name.

D. Robert Lohn
Regional Administrator

Appendix H. Letters to and Meetings with Tribal Governments

1998

April 28, 1998 Letter to the Chairman of the Fort Hall Business Council, Shoshone-Bannock Tribes, regarding Reclamation's transfer of title initiative

1999

January 28, 1999 Letter to the Chairman of the Fort Hall Business Council, Shoshone-Bannock Tribes, regarding transfer of title activities associated with Reclamation facilities within the State of Idaho.

September 9, 1999 Letter to the Chairman, Shoshone-Paiute Tribal Council, Duck Valley Reservation, requesting a meeting to discuss Reclamation initiatives that included Fremont-Madison Title Transfer.

2001

August 10, 2001 Letter requesting meeting with the Fort Hall Business Council, Shoshone-Bannock Tribes, to discuss Reclamation programs and activities.

September 19, 2001 Letter to the Chairman of the Fort Hall Business Council, Shoshone-Bannock Tribes, confirming postponement of meeting scheduled for September 21, 2001, due to the tragic national incident and associated security and travel issues.

November 19, 2001 Meeting with the Fort Hall Business Council, Shoshone-Bannock Tribes, to discuss Reclamation programs and activities including title transfer.

December 18, 2001 Letter to the Chairman of the Fort Hall Business Council, Shoshone-Bannock Tribes, regarding the proposed title transfer of Cross Cut Diversion Dam, Cross Cut Canal, and Teton Exchange Wells to Fremont-Madison Irrigation District.

December 18, 2001 Letter to the Chairman of the Northwestern Band of the Shoshone Nation regarding the proposed title transfer of Cross Cut Diversion Dam, Cross Cut Canal, and Teton Exchange Wells to Fremont-Madison Irrigation District.

Appendix H

2002

- January 8, 2002 Letter to the Chairman of the Fort Hall Business Council, Shoshone-Bannock Tribes, summarizing the November 19, 2001, meeting.
- February 1, 2002 Meeting with the Shoshone-Paiute Tribal Council, Shoshone-Paiute Tribes of the Duck Valley Reservation.
- February 25, 2002 Meeting with staff of the Shoshone-Bannock Tribes at which proposed Fremont-Madison Irrigation District Title Transfer was discussed.
- April 10, 2002 Letter to the Chairman of the Shoshone-Paiute Tribal Council, Duck Valley Reservation, summarizing the February 1, 2002, meeting.

2003

- February 21, 2003 Letter to the Chairman of the Shoshone-Paiute Tribal Council, Duck Valley Reservation, requesting a meeting to discuss Reclamation programs and activities.
- March 11, 2003 Meeting with staff of the Shoshone-Bannock Tribes at which title transfer was discussed.
- April 2, 2003 Meeting with the Shoshone-Paiute Tribal Council, Shoshone-Paiute Tribes, Duck Valley Reservation, to discuss Reclamation programs and activities.
- April 22, 2003 Summary of April 2, 2003, meeting with the Tribal Council, Shoshone-Paiute Tribes, Duck Valley Reservation, with enclosure, the Summary of Programs and Activities, Spring 2003.
- April 22, 2003 Letter to the Chairman of the Fort Hall Business Council, Shoshone-Bannock Tribes, confirming an April 30, 2003, meeting.
- April 28, 2003 Letter to the Chairman of the Natural Resource Committee of the Nez Perce Tribe requesting a meeting to discuss Reclamation programs and activities.
- April 30, 2003 Meeting with the Fort Hall Business Council, Shoshone-Bannock Tribes.
- June 3, 2003 Meeting with the Nez Perce Tribe Natural Resource Committee to discuss various Reclamation programs and activities.

June 19, 2003 Letter summarizing April 30, 2003, meeting with the Fort Hall Business Council, Commission members and staff of the Shoshone-Bannock Tribes.

June 19, 2003 Letter to the Chairman of the Burns Paiute Tribe General Council requesting meeting to discuss Reclamation programs and activities, including title transfer.

2004

May 25, 2004 Letter to the Chairman of the Fort Hall Business Council of the Shoshone- Bannock Tribes, requesting comments on the Draft Environmental Assessment

May 25, 2004 Letter to the Chairwoman of the Northwestern Band of the Shoshone Nation Tribal Council, requesting comments on the Draft Environmental Assessment

May 25, 2004 Letter to the Chairman of the Nez Perce Tribal Executive Committee, requesting comments on the Draft Environmental Assessment

Appendix I. Public Comment Letters and Responses



Idaho Water Users Association, Inc.

LWD-5.00
GF

205 N. 10th St., Suite 530 • BOISE, IDAHO 83702
OFFICE - 208-344-6690 • FAX - 208-344-2744
E-MAIL - iwua@iwua.org
WEBSITE - www.iwua.org

BUREAU OF RECLAMATION
OFFICIAL FILE COPY

June 7, 2004 JUN 09 '04

TO	BY	DATE
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HAROLD MOHLMAN
President
KEITH ERIKSON
1st Vice President
REX BARRIE
2nd Vice President
NORMAN M. SEMANKO
Executive Director &
General Counsel
GAYLE L. BATT
Assistant Director

Attn: Mike Relf
Bureau of Reclamation
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706

DIRECTORS
KEITH ERIKSON
Rexburg - District 1
RONALD CARLSON
Firth - District 2
TERRELL SORENSEN
American Falls - District 3
DAN DARRINGTON
Burley - District 4
DAN SHEWMAKER
Kimberly - District 5
BERWYN MUSSMANN
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Dingle - District 8
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Tendoy - District 9
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Caldwell - District 13
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JIM HUDSON
Post Falls - District 15
HAROLD MOHLMAN
Rupert - District 16
LYNN CARLQUIST
Hazelton - District 17
DEAN STEVENSON
Paul - District 18
SCOTT BREEDING
Hazelton - At-Large
BILLY R. THOMPSON
Rupert - At-Large
DAVE SHAW
Boise - Associate
TOM MICHALEK
Coeur d'Alene - Associate

Dear Mr. Relf:

This letter is provided on behalf of the Idaho Water Users Association (IWUA) in support of the proposed action (Alternative B) of title transfer, as described in the Fremont-Madison Conveyance Act (Public Law 108-85, enacted on September 30, 2003). IWUA represents more than 300 irrigation districts, canal companies, ground water districts, water districts, municipalities, public water suppliers, hydropower interests, aquaculture companies, agri-businesses, professional firms and individuals, all dedicated to the wise and efficient development and use of our water resources. IWUA members deliver water to approximately 2.5 million acres of irrigated land. IWUA is proud to count Fremont-Madison Irrigation District (FMID) among its members.

IWUA has strongly supported title transfers for its members, including Burley Irrigation District, Nampa & Meridian Irrigation District, and American Falls Reservoir District #2. We urge you to support the proposed action Alternative B for FMID.

IWUA adopted the attached resolution at its Annual Conference in January 2003 expressing support for the FMID title transfer. IWUA supports the efforts of FMID to acquire full title of the facilities where requested and feel that they can efficiently and effectively manage such facilities. Thank you for your time and consideration in this matter.

COMMITTEE CHAIRS
TED DIEHL
Legislative
KEITH ERIKSON
Resolutions
RANDY BINGHAM
Education
LARRY PENNINGTON
Water Quality
VINCE ALBERDI
Nominating & Awards
JOHN ANDERSON
Rural/Urban Affairs

NWRA DELEGATES
NORMAN M. SEMANKO
NWRA Director
Federal Affairs Committee
DALE SWENSEN
NWRA Director
ROGER D. LING
Policy Committee

Sincerely,

Norman M. Semanko
Executive Director &
General Counsel

Enclosure

RESOLUTION NO. 2002-14
FREMONT-MADISON IRRIGATION DISTRICT TITLE TRANSFER

WHEREAS, Fremont-Madison Irrigation District (Fremont-Madison) is involved in a process to obtain the transfer of the legal title of portions of certain physical facilities used by Fremont-Madison, namely: the Cross Cut Diversion Dam, the Cross Cut Canal, the five (5) developed wells drilled pursuant to Idaho Water Permit 22-07022 and the assignment of said permit, all of which property rights are presently held by the United States, Bureau of Reclamation (Bureau); and

WHEREAS, Fremont-Madison is also working with the Bureau to complete the administrative process for the title transfer and is drafting a bill to convey the said facilities to Fremont-Madison for introduction in the Congress of the United States; and

WHEREAS, Fremont-Madison has controlled, managed, operated, and maintained the said facilities with permission and direction from the Bureau at all times since they were constructed.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports Fremont-Madison in their effort to acquire legal title from the United States to the Cross Cut Division Dam, the Cross Cut Canal, the five (5) wells developed under Permit 22-07022, together with the right to further develop wells under Permit 22-07022, but only pursuant to a plan which mitigates for injury of all irrigation water users and which is approved by the Idaho Department of Water Resources.

Responses to Greater Yellowstone Coalition Letter

- 1-1 The Council on Environmental Quality regulations for implementing NEPA require that alternatives be considered where they are unresolved conflicts concerning alternative uses of available resources. In this case, the proposed Federal action implements the provisions of the Conveyance Act. Alternatives (other than the required No Action alternative) that would not implement the Conveyance Act were eliminated during the scoping process as unreasonable.
- 1-2 Reclamation recognizes there are numerous conceivable alternatives that include title transfer for various combinations of facilities. However, the Conveyance Act requires that all identified facilities be transferred. Our analysis indicates that transferring ownership of the requested facilities will not create a physical impact to the environment, violate treaty rights, unduly affect economically disadvantaged populations, or adversely disrupt the local or regional economies. Therefore, considering alternative combinations of wells, canal, or diversion facilities is not needed for the purpose of understanding the impacts caused by the implementation of the project.
- 1-3 The Secretary has not yet transferred title for the requested facilities. Section 6 of the Conveyance Act says, “Prior to conveyance the Secretary shall complete all environmental reviews and analyses as set forth in the Memorandum of Agreement referenced in section 3(a).” Section 3(a) specifically refers to transfer analysis and documentation.

The Conveyance Act requires the Secretary to transfer the described facilities. Before Reclamation can take action to implement this law, it first must complete the NEPA process. This environmental assessment precedes the transfer of title; the transfer of title is contingent on either a finding of no significant impact or a full environmental impact statement and record of decision.

