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DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

March 7, 2022

1. Matter being protested

Transfer No. 85695 for PacifiCorp (involving water rights 11-00248, 11-00249, 11-00250, and 11-00251)

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

6. Basis of protest (including statement of facts and law upon which the protest is based).

On November 22, 2021, Application for Transfer No. 85695 was filed by PacifiCorp. ("applicant") for Dry Canyon Storage Project a proposed hydroelectric project. Transfer No. 85695 seeks to transfer water under existing water rights for Power Use (6,000 cfs) to add Points of Diversions (PODs) the Places of Use (POUs) such that water rights 11-00248, 11-00249, 11-00250, 11-00251, along with Utah Water Right 23-03929 are used to generate power by moving water from a new Upper Reservoir and a new Lower Reservoir area. The transfer seeks to utilize 6000 cfs differently, including using approximately 19,203 AF for the initial fill of the upper (3,150 AF) and lower (16,053 AF) reservoirs to create storage water for the "closed system" where water is transferred back and forth from the upper and lower reservoirs. The new Upper Reservoir is proposed to be located in the Dry Canyon area east of Mud Lake (on federal land). The Lower Reservoir is proposed to be within the Mud Lake high ground area (1,390 acre surface area in size). The water will be transported by three 22 foot underground pipes with six turbines and pumps located within the pumphouse. The application states the PODs and POUs may be located elsewhere depending on FERC process of approval.

The Bureau of Land Management ("BLM") is generally favorable toward new energy projects, as domestic energy production is in the national interest. The Upper Reservoir is proposed to be constructed entirely on BLM land. The applicant is not authorized to construct a reservoir nor to impound water upon federal land proposed under this application. The applicant does not have legal access to federal lands for the purpose of constructing the upper reservoir, nor to disturb federal land for the installation of underground piping. The applicant has not filed a right-of-way application with BLM.

POUs for storage at new upper reservoir that entirely describe BLM land:
T15S, R45E, S07, NWNE, SWNE, SENW, NESW, SESW, NWSE, and SWSE;
T15S, R45E, S18, NENE, NWNE, SWNE, NENW, and SENW.

Route of new water pipelines that entirely describes BLM land:
T15S, R44E, S13, Lot 4 (SENE), NWNE, SENE, and SWNE.
T15S, R45E, S18, Lot 2 (SWNW), Lot 2 (SENW), and SENW.

Route of power transmission lines that propose to disturb and cross federal lands in various places (see attached maps).

Unauthorized use of federal land is a prohibited act (43 CFR §2808.10(a)). A water right also cannot be established in trespass (See e.g., *In RE General Determination of Rights to Use of Surface and Ground Waters of Payette River,* 107 Idaho 221, 687 P.2d 1348, 1353 (1984); citing, *Lemmon v. Hardy,* 95 Idaho 778, 519 P.2d 1168 (1974); *Jones v. McIntire,* 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.,* 56 Idaho 507, 55 P.2d 1314 (1936); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey,* 33 Idaho 56, 190 P. 73 (1920); *Bassett v. Swenson,* 51 Idaho 256, 5 P.2d 722 (1931)).

In the Innovative Mitigation Solutions case (37-22852), the application for permit was rejected by IDWR because "there is no information in the record demonstrating the Applicant has legal access to the property necessary to operate the project proposed in Application 37-22852, or authority to exercise imminent domain authority to obtain such access. Protestants are entitled to judgment as a matter of law that Application 37-22852 was not filed in good faith. See IDAPA 37.03.08.45.01.c.i."

Whereas this is an application for water transfer and not an application for water permit, the applicant cannot seek new lands under its existing water rights via a transfer without first complying with legal access requirements for the new lands. The applicant has not filed any applications for right-of-way with BLM and therefore has not demonstrated that it is seeking legal access.

Although no ROW application has been filed and no NEPA analysis has begun for the project, BLM would likely have similar resource concerns as those identified by the State of Idaho in comments filed with FERC for Preliminary Permit P-15240 (see attached Permit Application Comments dated 17 December 2021). BLM's Resource concerns cannot be <u>fully</u> identified prior to commencement of NEPA analysis. BLM would also likely have Sage Grouse habitat concerns as the project proposes to disturb lands located within a Sage Grouse Conservation Management Area. In reviewing the application, BLM may also have fishery concerns. Bear River is home to four endemic species of fish that exist only in Bear River area: Bear Lake Whitefish, Bonneville Cisco, Bonneville Whitefish, and Bear Lake Sculpin Fish. The proposed project would affect fish habitat with temperature changes, current changes, and habitat impacts. Since no NEPA analysis is available for the project, the transfer does not propose any conditions that would be required for mitigation <u>IF</u> the project were approved.

The application argues that the proposed beneficial use of the prior decrees is for the entire flow in Mud Lake and Bear River Lake. The language in the application for water permit appears to indicate that PacifiCorp holds storage rights for all, the entirety, of Bear Lake and Mud Lake with no acre-foot quantity limits. In a typical review of a transfer application, it is my understanding that IDWR will first determine the extent of the existing beneficial use, identify what quantity is available for transfer purposes, and whether the proposal constitutes an enlargement. It is also my understanding that in the pending Bear River Basin Adjudication, IDWR will determine pursuant to I.C. 42-1427 whether to include uniform descriptions for any <u>undefined elements</u> for surface water rights, ground water rights, and water rights which include storage. The proposed application appears to argue that IDWR lacks authority to allocate water and that this authority resides with PacifiCorp pursuant to its prior decrees. No prior

decree can unilaterally authorize future substantive changes that may be proposed in the future, nor divest IDWR of its authority to allocate water.

There is no development period after approval of a transfer like there is after issuance of an approved permit, therefore there is no time period available to complete the federal authorization process prior to final approval of a transfer. For an application for water permit, any permit approval could be conditioned by precluding the diversion of water until federal approvals had been obtained during the development period. With an application for transfer, there is no development period to allow for processing and completion of federal land use authorizations. It does not appear that a transfer could be approved until and unless BLM issues right-of-way grants for the proposed use of federal land. At a minimum, processing of the transfer would need to be stayed pending federal approvals, as a transfer is a permanent change to the water right, and there can be no use made of federal land without federal approval. That being said, BLM looks forward to working with PacifiCorp on their project proposal.

7. What would resolve your protest?

1. Withdraw the application; or

2. IDWR stays the transfer application until final FERC approval and BLM Right-of-Way approval for legal access to federal land managed by BLM, and;

a) Ensure the following limiting conditions are included on any future transfer approval after federal approvals are obtained:

i) "This right does not grant any right-of-way or easement across the land of another.";

ii) Conditions arising from any approved NEPA for this project shall be included as conditions in any approved transfer; and

iii) BLM reserves the right to propose additional limiting language as new developments come up through the project processing process.

I hereby, acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 7th day of March 2022,

Protestant

Fredric W. Price, Water Rights Specialist
Protestant's Representative

Attachments:
♦Maps prepared by BLM for illustrative purposes.
♦Master Title Plats: T14S, R45E; T15S, R44E; and T15S, R45E

FOR DEPARTMENT USE ONLY

Received by _____ Date _____

Fee Paid $25.00 Date 3/7/22 Receipted by KM Receipt # C112093

CERTIFICATE OF SERVICE

I certify that on March 7, 2022, I served a true and correct copy of the **Protest of Transfer No. 85695** with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Shelley Keen, Water Allocations Chief
Idaho Department of Water Resources
Idaho State Office
Water Management Division,
322 East Front Street, Ste. 648
Boise, ID 83702-7371

Copies to:

James Cefalo, Regional Manager
Idaho Department of Water Resources
Eastern Regional Office
900 N Skyline Dr., Ste. A
Idaho Falls, ID 83402-1700

PacifiCorp
1407 W North Temple, Ste 110
Salt Lake City, UT 84116
ATTN:
Mark Sturtevant, VP Renewable Resources

Christopher H. Meyers
GIVENS PURSLEY LLP
601 W Bannock St
Boise, Idaho 83702
REPRESENTING: PacifiCorp

Karen Kraus, Natural Resource Specialist
Danny Miller, Realty Specialist
U.S.D.I., BLM
Pocatello Field Office
4350 Cliffs Dr.
Pocatello, ID 83204-2105

SANDRA McCREA
Person Serving Documents (print name)

Signature of Person Serving Documents

IDAHO GOVERNOR'S OFFICE OF ENERGY & MINERAL RESOURCES

BRAD LITTLE
Governor

JOHN CHATBURN
Administrator

304 N. 8th Street, Suite 250, P.O. Box 83720
Boise, Idaho 83720-0199

(208) 332-1660
FAX (208) 332-1661

PRELIMINARY PERMIT APPLICATION COMMENTS

Dry Canyon Pumped Storage Project, FERC No. 15240

Submitted by the Idaho Governor's Office of Energy and Mineral Resources

17 December 2021

Thank you for the opportunity to comment on PacifiCorp's Preliminary Permit Application to study the feasibility of the Dry Canyon Pumped Storage Project (Project). The following comments are developed in coordination with the Idaho Department of Fish and Game, the Idaho Governor's Office of Species Conservation, the Idaho Department of Environmental Quality, the Idaho Department of Parks and Recreation, the Idaho Department of Water Resources, and the Idaho Governor's Office of Energy and Mineral Resources (OEMR). OEMR submits these comments on behalf of the State of Idaho pursuant to its responsibility to coordinate all state comments involving energy resources in accordance with Executive Order 2020-17.

The following comments are submitted by the Idaho Department of Fish and Game (IDFG) and the Governor's Office of Species Conservation (OSC):

IDFG's mission is to preserve, protect, perpetuate, and manage Idaho's fish and wildlife resources for the public interest. OSC is dedicated to planning, coordinating, and implementing the State's actions to preserve, protect, and restore species listed as candidate, threatened, and endangered under the federal Endangered Species Act (ESA). IDFG and OSC are providing technical information to OEMR to inform decision-making by permitting authorities (e.g., BLM and FERC) and provide recommendations to avoid, minimize, or mitigate adverse effects on wildlife and associated recreation resources. Conserving wildlife resources through the review process is critical to Idaho's public interest, noting wildlife provide significant recreation opportunities and economic activity. IDFG and OSC have identified the following priority wildlife resources that might potentially be affected by the proposed Project thus warranting additional impact analyses.

Sage-grouse

The State of Idaho currently uses the recommendation the State made during the 2018 sage-grouse plan amendment process conducted by the Bureau of Land Management. Our recommendations are based on the Management Alignment Alternative from that planning process and the State of Idaho Sage-Steppe Mitigation Principles document. At this time the State uses this as guidance when state agencies are analyzing projects that have a nexus with

sage-grouse. The State regularly engages in collaborative efforts with stakeholders and federal agencies to provide input on management actions within or adjacent to sage-grouse habitat.

The recommendations are based on a management continuum strategy for sage-grouse conservation through rules associated with Conservation Areas and mapped Habitat Management Areas (HMAs). Priority HMAs have the most restrictive management approach and provide a high level of conservation focus on improving sage-grouse habitats, populations and connectivity. Important HMAs provide intermediate flexibility but maintain a conservation mindset. General HMAs are the least restrictive and therefore provide greater flexibility for multiple use activities. The Priority and Important HMAs in Idaho accounted for approximately 86% of the known leks or breeding display areas with 96% of the male grouse counted at leks in 2021 in Idaho. These areas harbor the majority of the State's sage-grouse population.

On federally managed lands, the State of Idaho recommends that development of infrastructure authorized in areas designated as Priority HMA is prohibited, but limited exceptions are permissible in certain scenarios. Any new infrastructure must first be deemed to be of significant high value benefit to meet critical needs for the State of Idaho. Development within Important HMAs is permissible, but subject to certain criteria that must be met. The guidance has incorporated a set of adaptive management responses if habitat or population numbers reach certain thresholds. The Southern Conservation Area (SCA) Important HMA within the Project area is currently operating under the Priority HMA ruleset since engaging a Hard Population Trigger because the sage-grouse population within the SCA Priority HMA has decreased more than 20% compared to the 2011 population baseline. Due to this trigger, based on the BLM 2015 sage-grouse Approved Resource Management Plan Amendment and the State's current policy guidance, the SCA Important HMA is operating under a Hard Population Trigger and must adhere to all management actions associated with the Priority HMA.

The following list includes information on how the proposed Project relates to sage-grouse habitat within the Project area.

- Greater Sage-grouse Habitat Management Areas (HMA) – The project area outlined in the Dry Canyon Preliminary Permit application is within the Southern Conservation Area and overlaps with HMAs classified as Priority and Important. The proposed Upper Reservoir is in Priority HMA; the proposed transmission line is in Important and Priority HMAs (Figure 1).
- Leks – The proposed transmission line would be within 0.75 miles and 1.5 miles of 2 occupied leks and nearly pass through 2 undetermined leks that had grouse in 1999.
- Nesting & Brood Rearing – The proposed Upper Reservoir and associated infrastructure (e.g., switch yard and transmission line) is within sage-grouse nesting and brood-rearing habitat on the Bear Lake Plateau.
- Winter Use – The proposed Upper Reservoir and associated infrastructure is within sage-grouse wintering grounds on the Bear Lake Plateau.
- Movements – Data from marked birds has shown that sage-grouse use the entire Bear Lake Plateau, including the areas of proposed Upper Reservoir and associated infrastructure, during all seasons and move between preferred habitats for lekking, nesting, brood-rearing, and overwintering (Cardinal 2015; Figure 2).
- The State recommends the Applicant consider the following actions as it studies the feasibility of the Project:

- Analyze the potential for the new development to reasonably be sited outside of Priority Habitat.
- Analyze how Project variables will directly and indirectly affect sage-grouse seasonal habitat.
- Avoid surface-disturbing activities in Priority Habitat unless the new infrastructure is deemed a significant high-value benefit to meet critical needs for the State of Idaho. Analyze how and why this Project is a high-value benefit to meet critical needs for the State of Idaho.
- Analyze the current population trend for sage-grouse within the SCA and whether SCA is engaging the adaptive management triggers. Analyze whether the Project or its design features cause a decline in sage-grouse populations through direct and indirect impacts within SCA.
- Consult with the State of Idaho Technical and Policy Teams to determine if the proposed Project meets the exemption criteria for Priority Habitat. The Technical Team is made up of state and federal agencies including IDFG, OSC, OEMR, and BLM whose primary responsibilities stemming from the federal sage-grouse land use plans and the State of Idaho sage-grouse plan include reviewing proposed infrastructure developments, exceptions, and variances to the project screening criteria that are contained within the plans. The Technical Team then provides its recommendation to the Policy Team who is made up of state and federal agency leadership. The Project proponent is brought in as a participant for the review process.
- Implement avoidance and minimization measures first and then if all impacts cannot be ameliorated, offsite compensatory mitigation should be analyzed.
- Site new infrastructure related to energy development (hydro facilities) at least 3.1 miles away from occupied leks.
- Site new transmission lines at least 2 miles from occupied leks.
- Collocation with existing infrastructure is preferred and should be analyzed.
- Analyze collision risk. If it is deemed moderate or high in certain areas, install bird flight diverters on fencing and overhead power lines.
- Analyze how the project will utilize existing and/or new roads.
- Analyze how above-ground disturbance areas will be rehabilitated. Establish perennial vegetation to meet the needs of sage-grouse within sage-grouse habitat.
- Analyze placing new infrastructure in already disturbed locations.
- Analyze how raptors and corvids using the new infrastructure as nesting substrate or perching platforms will affect sage-grouse behavior and survivorship.
- Analyze reducing the amount of repeated or sustained behavioral noise disturbance from facilities between March 15th and May 15th from 6 p.m. to 9 a.m. within 2 miles of occupied leks.

Big Game (Mule deer)

The application's proposed Project area includes the Bear Lake Plateau, which comprises the most important winter habitat for mule deer in eastern Idaho and supports the largest mule deer herd in eastern Idaho. Within the Bear Lake Plateau, Dry Canyon is one of the most important areas for wintering mule deer because of its unique topography, aspect, and remoteness. Survey data collected by IDFG staff indicate that 6,000-8,000 mule deer utilize the Bear Lake Plateau on an annual basis. This mule deer herd, and the proposed Project area, lie within one of only five Priority Areas in the entire state IDFG identified for the Department of Interior's Secretarial Order 3362 - Improving Habitat Quality in Western Big-Game Winter Range and Migration Corridors. Additionally, this mule deer herd is impacted by summer habitat loss and significant vehicle mortality during fall and spring migration at Rocky Point on Highway 30.

The following list includes information on how the proposed Project relates to mule deer within the Project area.

- Economic Significance of Mule Deer – The Bear Lake Plateau mule deer herd has significant economic value to the state of Idaho. In 2016, more than 4,000 mule deer hunters visited Game Management Unit (GMU) 76. These hunters spent more than 22,700 days hunting for mule deer and over $2.4 million on supplies (e.g., gas, food, lodging, etc.). Because of this mule deer herd's importance to local economies and to promote driver safety, IDFG and its partners have spent $1.2 million in the initial phase of a mule deer crossing structure project in cooperation with the Idaho Transportation Department (ITD) to secure conservation easements on 1,800 acres of private lands just north of the proposed Project area and in the vicinity of Highway 30. ITD has $5.5 million dedicated to this project and is scheduled to initiate construction in 2025.
- Seasonal Migration Routes – The proposed Upper Reservoir falls entirely within high-use migration habitat and also lies within the single largest migratory stopover habitat for migrating mule deer on the Bear Lake Plateau as identified via Brownian Bridge Movement modeling by IDFG (Figure 3).
- Critical Terminal Winter Range – The steep, western faces of the ridges that are oriented north to south along Mud Lake and Bear Lake, including those of Dry Canyon, support the highest densities of wintering mule deer on Bear Lake Plateau, particularly during severe winters when mule deer are most vulnerable (IDFG unpublished data; Figure 4).
- Hunting Opportunity and Success – The proposed Project occurs within IDFG's GMU 76. Within this GMU, IDFG offers numerous hunting and trapping opportunities for big game, upland game, and furbearer. For mule deer, general archery-only and general any-weapon opportunity is provided. The archery-only season has season dates of 8/30 – 9/30 while the any-weapon opportunity runs from 10/10 – 10/24. From 2010 – 2018, average hunter success was 34% and 13% for any-weapon and archery-only seasons, respectively. However, hunter success for 2019 and 2020 declined to 21% and 8% for any-weapon and archery-only seasons, respectively. In response to recent harsh winters that reduced mule deer abundance, IDFG has reduced hunter opportunity in GMU 76 by eliminating antlerless hunting opportunity. This change coupled with reduced deer abundance likely explain a reduction in hunter success rates in recent years.
- IDFG recommends the Applicant consider the following actions for mule deer as it studies the feasibility of the Project:
    - Analyze how Project variables will directly and indirectly affect mule deer seasonal use and habitat availability.

- Analyze Project needs in terms of infrastructure such as roads, facilities and reservoirs in relation to existing roads, and the requirement for new infrastructure. Reducing new infrastructure will help avoid impacts.
- Analyze the effects of repeated or sustained anthropogenic disturbance from facilities and employees during crucial winter months so that avoidance and minimization techniques are built into Project plans.

Wetlands, Waterfowl, and Water Birds

Wetlands and riparian habitat associated with Bear Lake provide important habitat for a variety of wildlife, most notably migratory waterfowl, waterbirds, and Neotropical migratory landbirds, as well as amphibians and foraging herbivores. The wetlands, which are managed by the Bear Lake NWR, provide nesting habitat for important conservation focus species such as Trumpeter Swan, American Bittern, White-faced Ibis, Franklin's Gull, California Gull, Caspian Tern, and Clark's Grebe. It is one of only six locations in the state where White-faced Ibis nest, and one of only five where Franklin's Gull nest. Wetlands, wet meadows, and managed pasture provide foraging habitat for White-faced Ibis and American Bittern, and nesting, foraging and staging habitat for Sandhill Crane (IDFG 2017).

- Water Bird Species of Greatest Conservation Need (SGCN) present in the proposed Project area – Tier 2: American Bittern, American White Pelican, California Gull, Caspian Tern, Clark's Grebe, Trumpeter Swan, Western Grebe, and White-faced Ibis. Tier 3: Common Nighthawk, Franklin's Gull, Great Gray Owl, Ring-billed gull, and Sandhill Crane.
- Waterfowl present in the proposed Project area– American Coot, American Wigeon, Blue-winged Teal, Bufflehead, Canada Goose, Canvasback, Cinnamon Teal, Gadwall, Green-winged Teal, Lesser Scaup, Mallard, Northern Pintail, Northern Shoveler, Redhead, and Ruddy Duck.
- IDFG recommends the Applicant consider the following actions for wetlands, waterfowl, and water birds as it studies the feasibility of the Project:
    - Analyze how Project variables will directly and indirectly affect seasonal water bird and waterfowl use and habitat availability.
    - Fully describe how the portion of the Mud Lake Regulation Reservoir within the Project footprint will be used and describe how the proposed alterations will change how water birds and waterfowl use the area.
    - Describe existing conditions of the wetlands as it relates to water bird and waterfowl habitat and compare to proposed habitat conditions of the proposed lower reservoir.

Pygmy Rabbit

The pygmy rabbit is a Tier 2 SGCN and a BLM Sensitive Species of Special Concern in Idaho. Pygmy rabbits have been documented on Bear Lake Plateau at more than 500 locations with active burrows (Wackenhut 2007). This is the densest occurrence of pygmy rabbit burrows in Southeast Idaho. Pygmy rabbits utilize the Bear Lake Plateau year-round relying on the intact sagebrush community for burrows, kit-rearing, cover and feed. With relatively small home ranges, reduction of connectivity of sagebrush may displace pygmy rabbits.

- IDFG recommends the Applicant consider the following actions for pygmy rabbit as it studies the feasibility of the Project:
    - Analyze how Project variables will directly and indirectly affect pygmy rabbit seasonal use and habitat.
    - Limit the loss of sagebrush habitat
    - Ensure connectivity of sagebrush is maintained to allow movement and cover for pygmy rabbits.

Monarch (SGCN Tier 3)

The monarch is a Tier 3 SGCN and a US Endangered Species Act Candidate Species. Monarchs utilize the Bear Lake NWR and have been observed breeding in close proximity. Monarch butterflies have seen a drastic decrease in wintering populations and the USFWS have recently announced the monarch is warranted for listing under the Endangered Species Act, but precluded by higher priorities. The Bear Lake NWR provides monarchs with milkweed and pollinating resources that aid in long distance migration. The milkweed that grows within the Project boundary is vital to the successful reproduction of monarchs.

- IDFG recommends the Applicant consider the following actions for monarch as it studies the feasibility of the Project:
    - Analyze how Project variables will directly and indirectly affect monarch seasonal use and habitat.
    - Minimize the loss of milkweed plants as monarchs must have this resource to reproduce.
    - Minimize the loss to pollinating resources through mowing, herbicide application or destruction. Provide additional nectar resources where possible.

Fisheries

Construction of the proposed Lower Reservoir is proposed to take place in Bear Lake Marsh, which may create the potential for expansion of warmwater fish (Smallmouth Bass, Yellow Perch, Walleye) habitat. Currently, the marsh does not support perennial habitat for those species, but it could if the habitat is created through the proposed Project. Bear Lake itself doesn't support warmwater fish, which are nonnative predators, but if warmwater habitat in the marsh is created, it could serve as a source population for warmwater fish that could affect fishes in Bear Lake. Nonnative predators proximate to Bear Lake would be a concern for endemic species in Bear Lake.

- IDFG recommends the Applicant consider the following actions for fisheries as it studies the feasibility of the Project:
    - Thoroughly define how the lower reservoir will be managed, particularly in relation to drain/fill cycles and capacity, and standing pool estimates for both the upper and lower reservoirs.

Literature Cited

Cardinal, Casey J., "Factors Influencing the Ecology of Greater Sage-Grouse Inhabiting the Bear Lake Plateau and Valley, Idaho and Utah" (2015). *All Graduate Theses and Dissertations*. 4579. https://digitalcommons.usu.edu/etd/4579

Idaho Department of Fish and Game. 2017. Idaho State Wildlife Action Plan, 2015. Boise (ID): Idaho Department of Fish and Game. Grant No.: F14AF01068 Amendment #1. Available from: http://fishandgame.idaho.gov/. Sponsored by the US Fish and Wildlife Service, Wildlife and Sport Fish Restoration Program.

Wackenhut, M. 2008. Bear Lake Plateau Pygmy Rabbit Survey, 2006-2007. Boise (ID): Idaho Department of Fish and Game. Challenge Cost Share Agreement No: DLA060128, Sponsored by the U.S. Department of Interior, Bureau of Land Management.

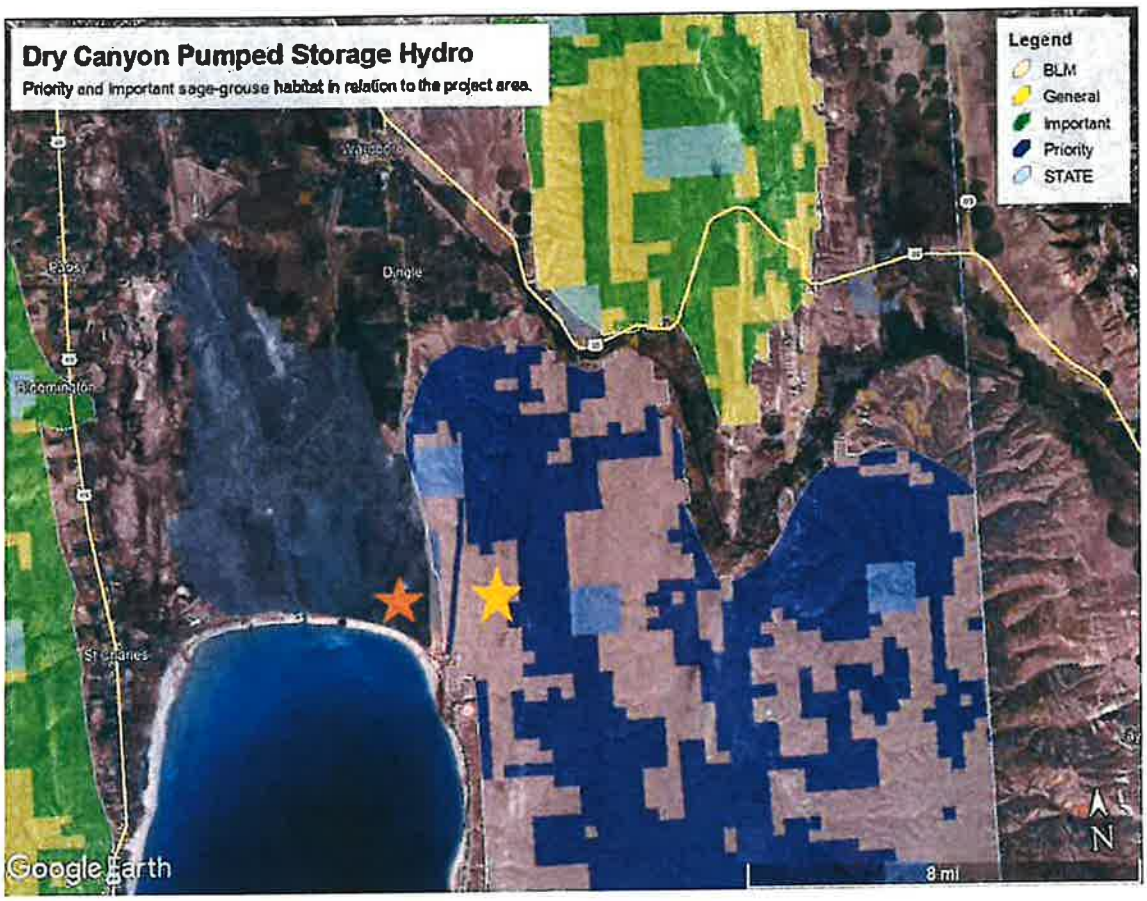


Figure 1. Priority and Important Habitat Management Areas for sage-grouse in relation to the proposed Project. The location of the proposed Upper Reservoir is indicated by the yellow star, and the proposed Lower Reservoir is indicated by the orange star.

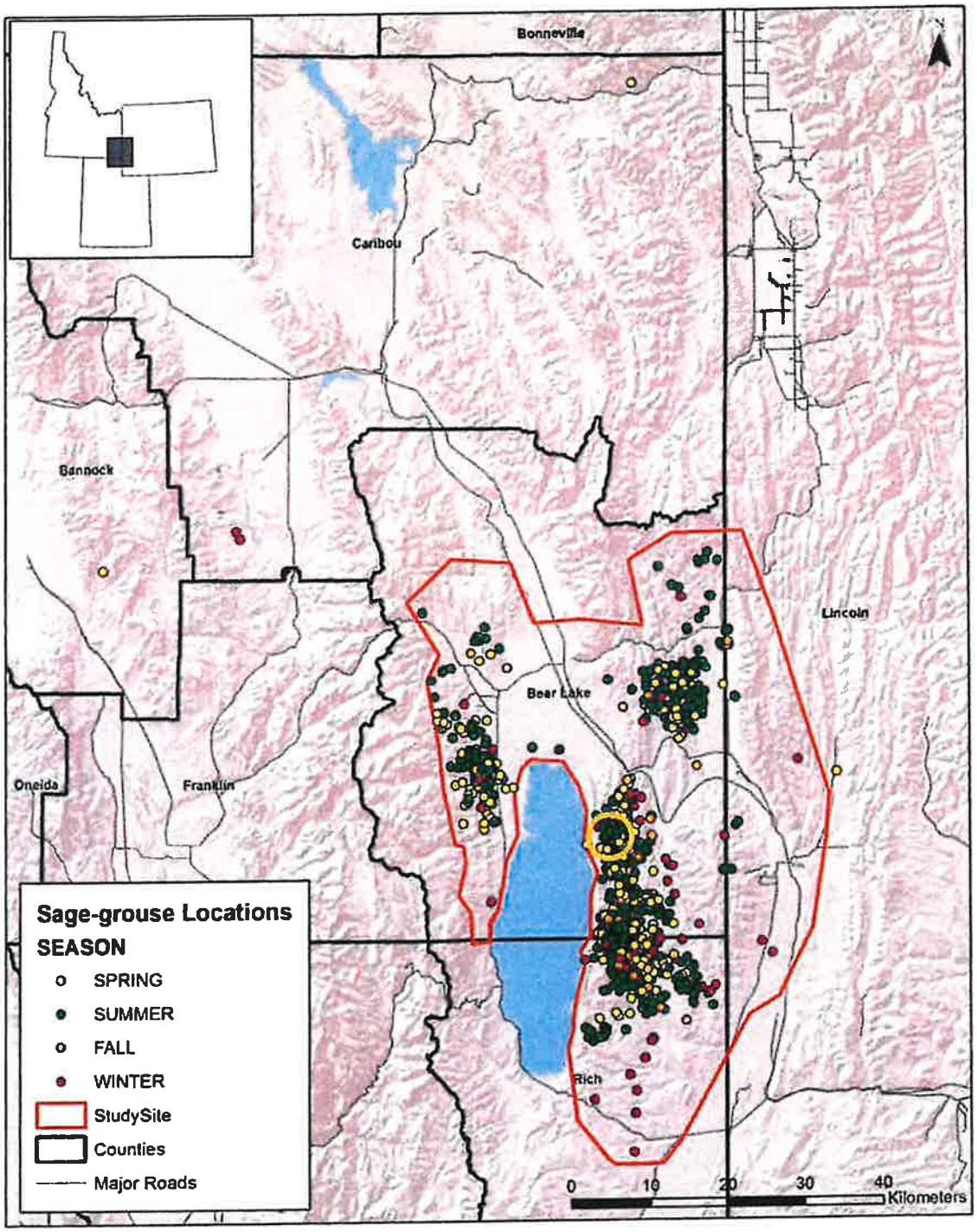


Figure 2. Greater sage-grouse recorded locations in relation to the proposed Project in 2010-2012, Idaho-Utah-Wyoming, USA (Cardinal 2015). The location of Dry Canyon is indicated by the yellow circle.

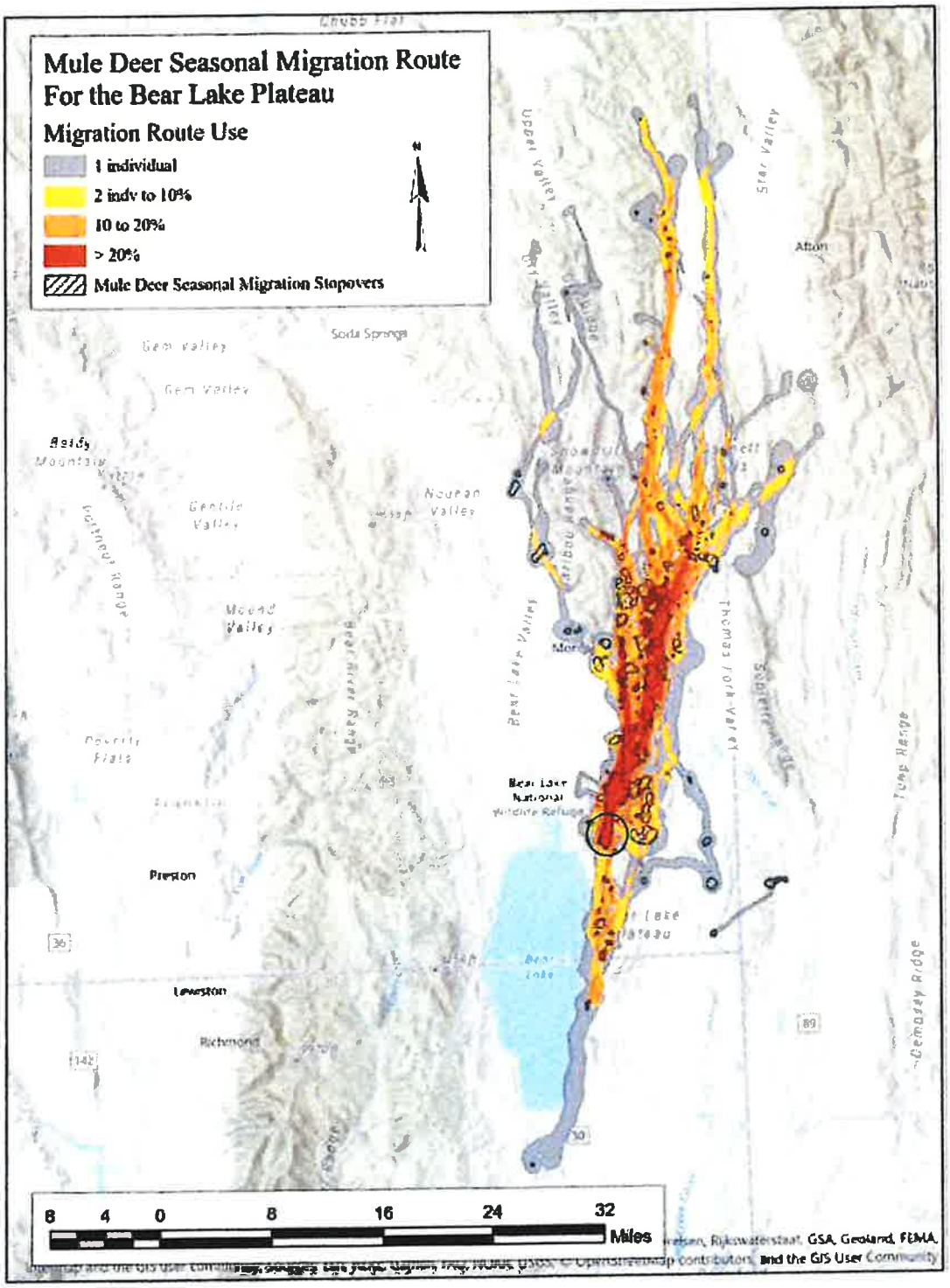


Figure 3. Mule Deer Seasonal Migration Route in relation to the proposed Project. Based on 28 GPS-collared individuals from 2018-2020. The location of Dry Canyon is indicated by the black circle.

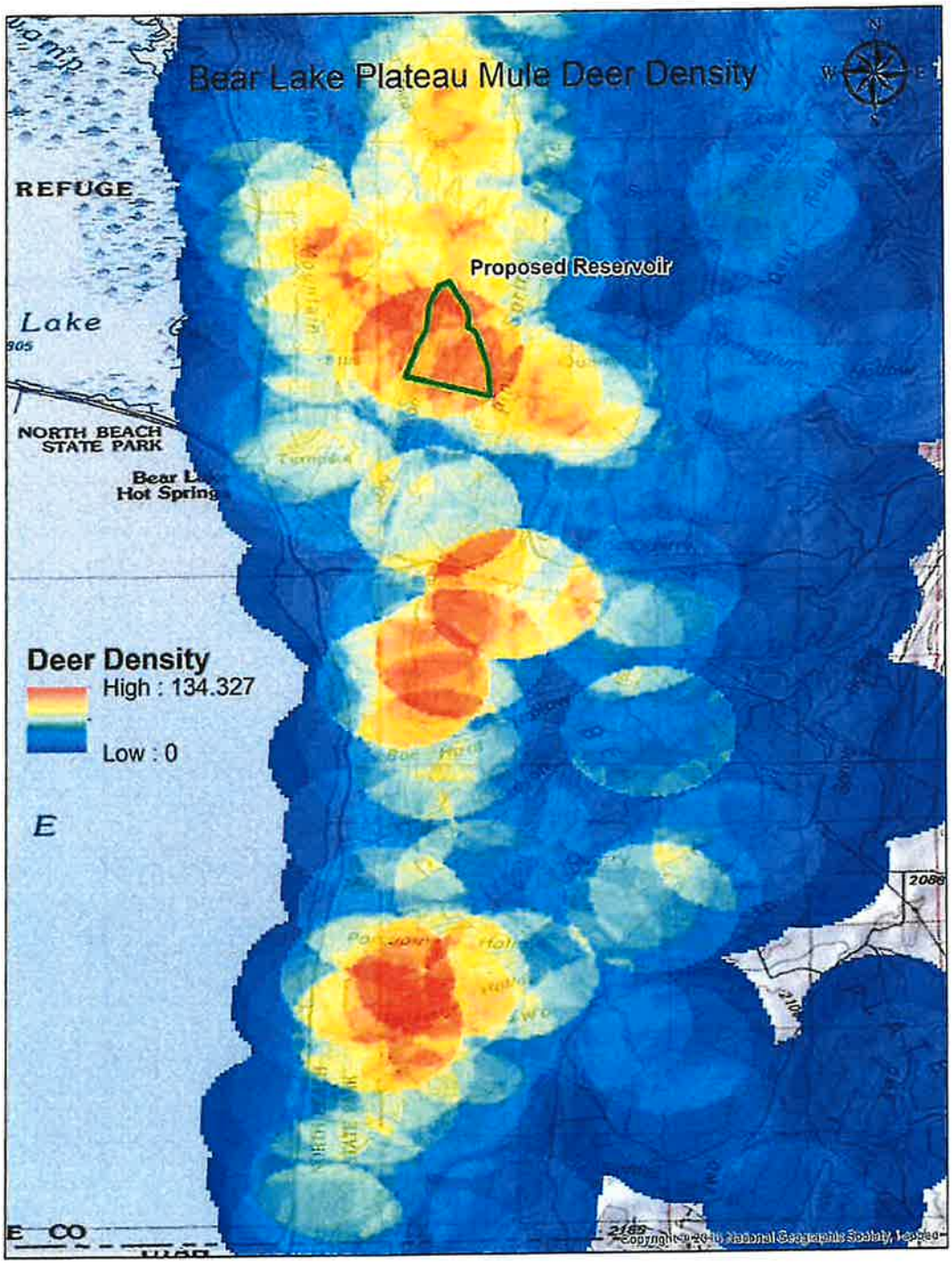


Figure 4. Mule deer density (deer/km^2) at critical terminal winter range in relation to the proposed Project, observed during helicopter surveys in 2019.

The following comments were submitted by the Idaho Department of Parks and Recreation (IDPR):

IDPR is a duly established executive department of the State of Idaho. Idaho Code §§ 67-2402(1) and -4222(a). IDPR, acting under the supervision of the Parks and Recreation Board, carries our recreation policies and programs of the State of Idaho. Idaho Code §§ 67-4221 and -422. IDPR is authorized by state statute to prepare and keep current a "Statewide Comprehensive Outdoor Recreation Plan" referred to as "SCORP," for the protection and maintenance of areas of scenic beauty, recreational utility, historical, archeological, or scientific interest for the enjoyment of the people. Idaho Code §§67-4219 and -4223(8). Consistent with these authorities, IDPR participates in hydropower licensing proceedings to further the public interest in recreational, scenic, and historic/archeological values.

This project is in Bear Lake County, Idaho and would be next to the North Beach Unit of Bear Lake State Park. This project could impact recreation access and the viewshed within the North Beach area. IDPR needs to ensure that the proper studies are conducted to protect the interests of the public in relation to the recreation access and scenic beauty if the license is issued. Because of these concerns, IDPR will be requesting a motion to intervene.

The following comments were submitted by the Idaho Department of Environmental Quality (DEQ):

DEQ is tasked with implementing the State of Idaho's surface water quality standards and ensuring that waters of the State meet the Federal Clean Water Act's goals of "fishable and swimmable" wherever those uses are deemed attainable. To accomplish these goals, DEQ monitors, assesses, and where applicable, publishes and implements plans to control both point and nonpoint sources of pollution in waterbodies not meeting standards as well as ensuring Idaho's high- quality waters remain so. In addition, DEQ has been an active member of the current Environmental Coordination Committee which has been tasked with implementing the 2002 Settlement Agreement and subsequent FERC license for PacifiCorp's Bear River Hydroelectric Project. A primary focus of the Settlement Agreement and the ECC (in concert with other ECC members and stakeholders in the basin) is to implement projects focused on maintaining and/or restoring Bonneville Cutthroat Trout and improving water quality across the Bear River watershed in Idaho. These activities are reviewed and implemented with an eye to fulfilling the previously mentioned goals of the Clean Water Act which DEQ administers. It is with that spirit of collaboration and cooperation that DEQ submits the following comments:

p. 10 Section 1.6 – DEQ is encouraged that the "proposed Project seeks to provide additional public recreation and environmental protection and enhancement benefits". DEQ agrees that mitigation opportunities from resources (both financial and technical) that may become available from the development and operation of this project are certainly in the public interest. In our experience, PacifiCorp has a proven track record in the watershed of providing and managing mitigation funding for the betterment of fisheries, water quality and recreation. Should this project come to fruition, DEQ looks forward to working with the applicant and other stakeholders in the basin to further DEQ's mission as well as to solve long held water quantity and quality issues that persist in the Bear River watershed.

p. 12 Section 2.1.4 *Water Quality* – DEQ has compiled a reference list of projects related to studies of water quality in and around Mud Lake/Bear Lake since the early 1980's. In addition, DEQ and other partnering entities (Bear Lake Watch, Bear Lake Regional Commission, PacifiCorp, Idaho Department of Fish and Game, Utah DEQ, Utah State University, and the USGS, among others) have monitored water quality in and around Mud Lake and Bear Lake for over 20 years. DEQ is more than willing to collaborate with PacifiCorp as they prepare their discussion of resources and potential impacts. This analysis may well inform essential study plans and information needs should this project proceed to a Preliminary Application Document.

The following comments were submitted by the Idaho Department of Water Resources (IDWR):

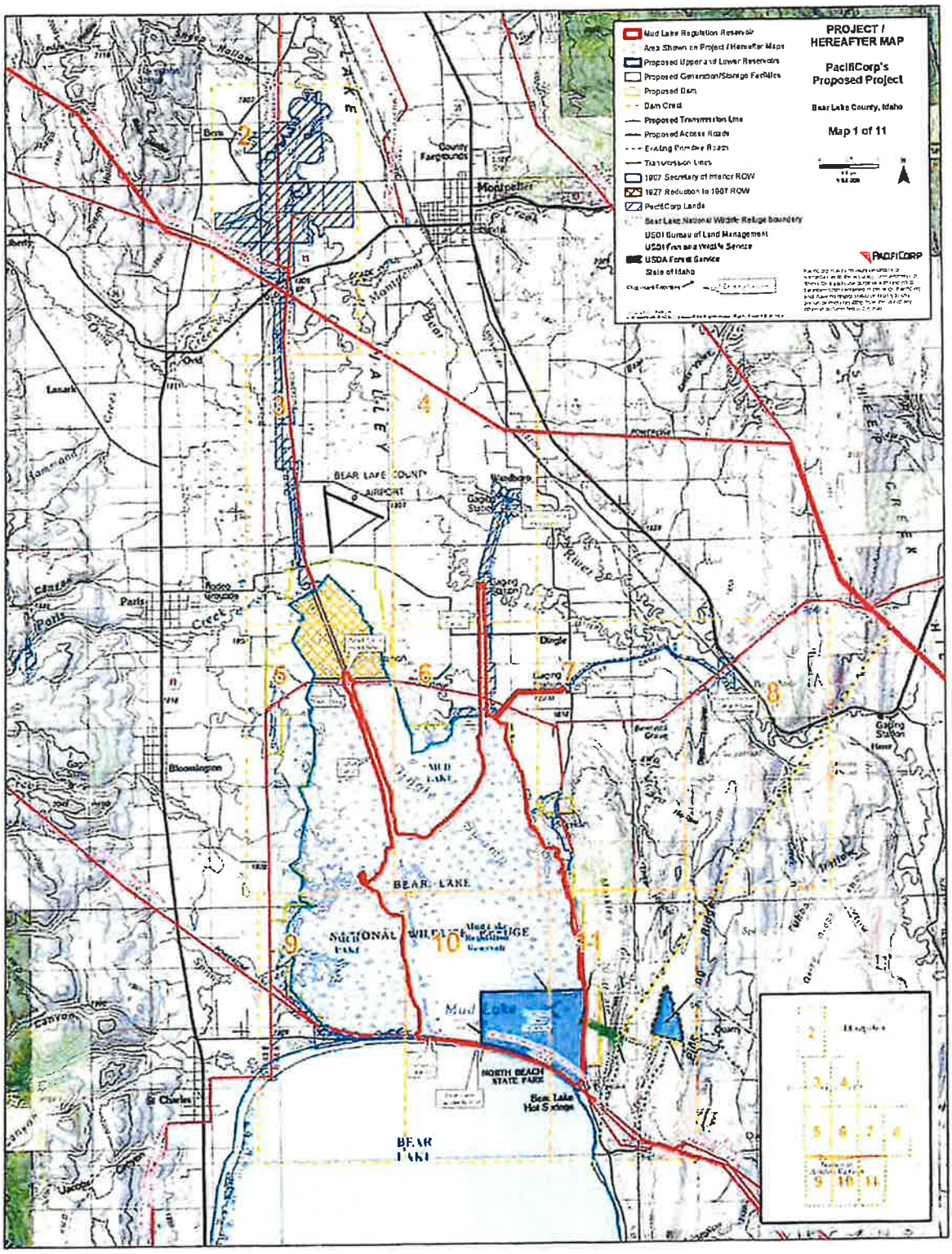
The applicant, PacifiCorp, is aware that they need approvals for water rights, and they have already begun working through that process with IDWR. Based on the information provided, the applicant also needs to obtain IDWR approval for the construction of the dam.

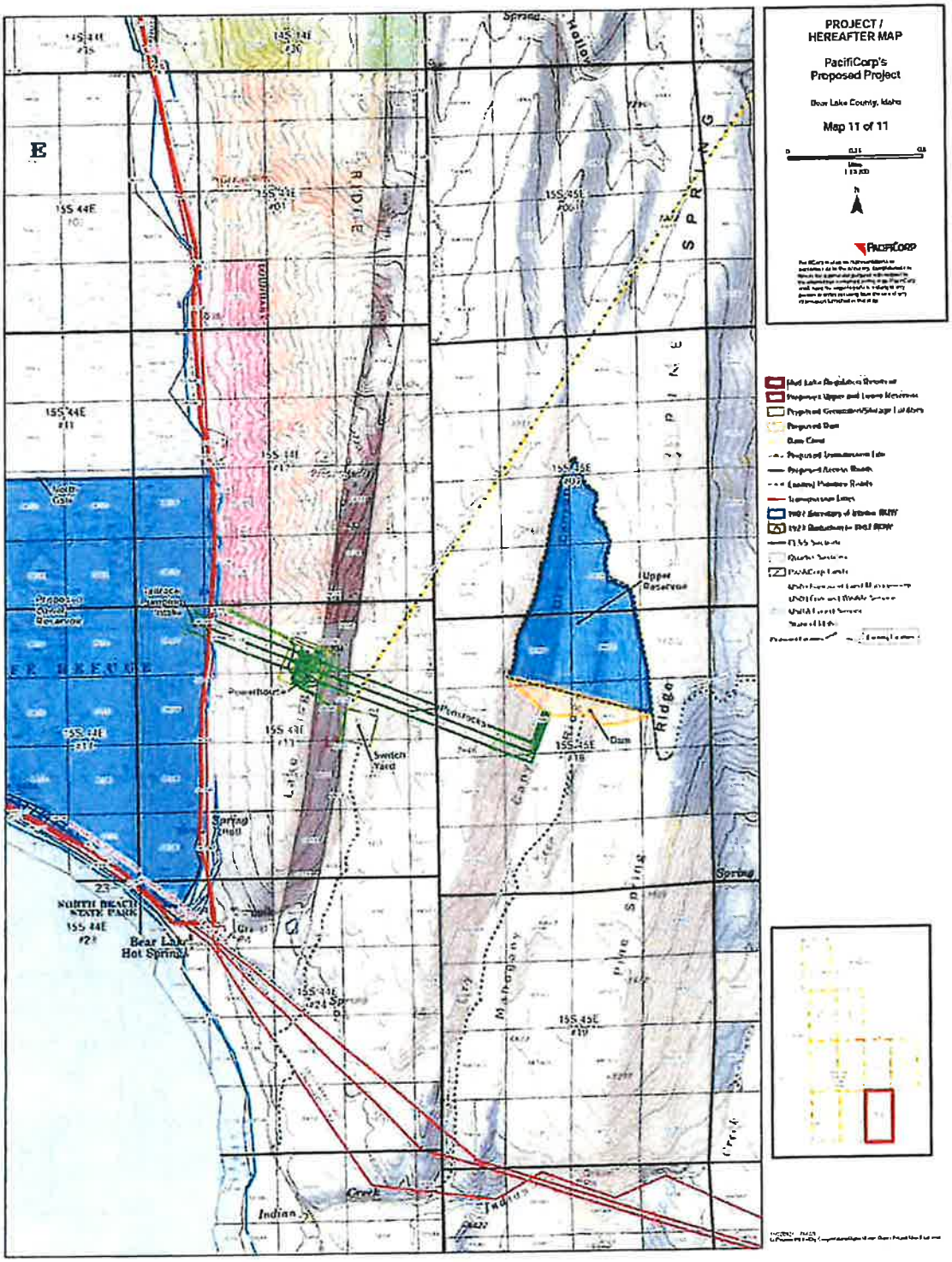
The IDWR Dam Safety Program requests copy(s) of all design information and related engineering reports sent to FERC by the applicant regarding the proposed project located in Bear Lake County, Idaho.

The State of Idaho appreciates the opportunity to submit these comments. Please feel free to contact me should you have any questions or need clarification.

Sincerely,

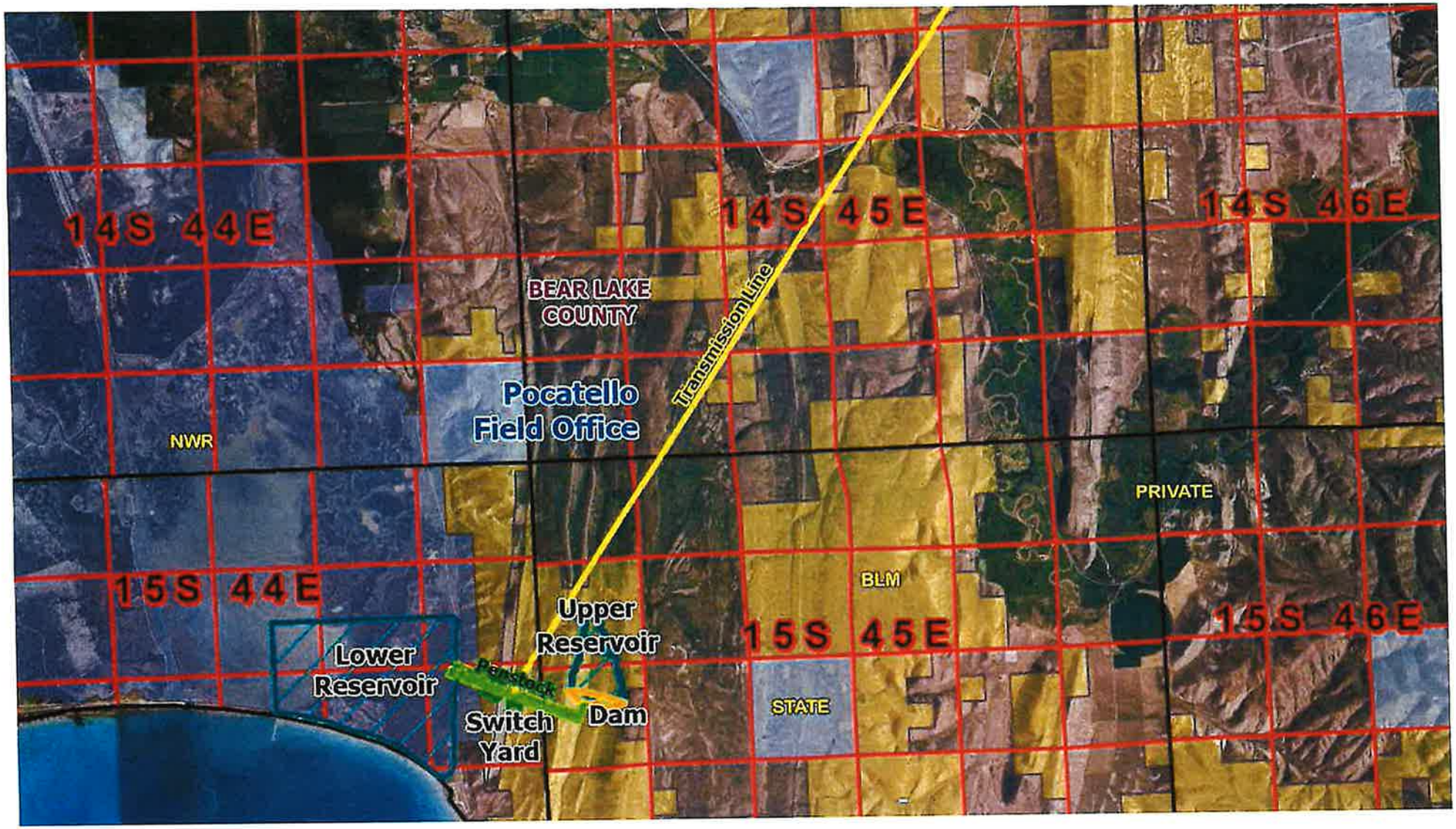
John Chatburn
(208) 332-1671


PROJECT / HEREAFTER MAP
PacifiCorp's Proposed Project
Bear Lake County, Idaho
Map 1 of 11
Mud Lake Regulation Reservoir
Area Shown on Project / Hereafter Maps
Proposed Upper and Lower Reservoirs
Proposed Generation/Storage Facilities
Proposed Dam
Dam Crest
Proposed Transmission Line
Proposed Access Roads
Existing Primitive Roads
Transmission Lines
1907 Secretary of Interior ROW
1927 Reduction to 1907 ROW
PacifiCorp Lands
Bear Lake National Wildlife Refuge boundary
USDI Bureau of Land Management
USDI Fish and Wildlife Service
USDA Forest Service
State of Idaho
PACIFICORP
Montpelier
Bloomington
Paris
Dingle
Lanark
BEAR LAKE COUNTY AIRPORT
BEAR LAKE
NATIONAL WILDLIFE REFUGE
Mud Lake
NORTH BEACH STATE PARK
Bear Lake Hot Springs
St Charles
Canyon
Creek
River


PROJECT / HEREAFTER MAP
PacifiCorp's Proposed Project
Bear Lake County, Idaho
Map 11 of 11
PACIFICORP
Upper Reservoir
Powerhouse
Penstocks
Switch Yard
Dam
Lake Fork
Canyon
Ridge
Mahogany
Pine Spring
Spring
Indian
Creek
Bear Lake Hot Springs
NORTH BEACH STATE PARK
Proposed Upper Reservoir
Proposed Lower Reservoir
Proposed Dam
Dam Crest
Proposed Transmission Line
Proposed Access Roads
Existing Powerline Roads
Transmission Lines
PacifiCorp Lands

Transfer 85695 (11-00248, 11-00249, 11-00250, 11-00251), PacifiCorp

New POD and POU on BLM land – Proposed Upper Reservoir, Powerhouse, Switch Yard, Penstocks, and Transmission Line.



Transfer 85695 (11-00248, 11-00249, 11-00250, 11-00251), PacifiCorp

New POD and POU on BLM land – Proposed Upper Reservoir, Powerhouse, Switch Yard, Penstocks, and Transmission Line.

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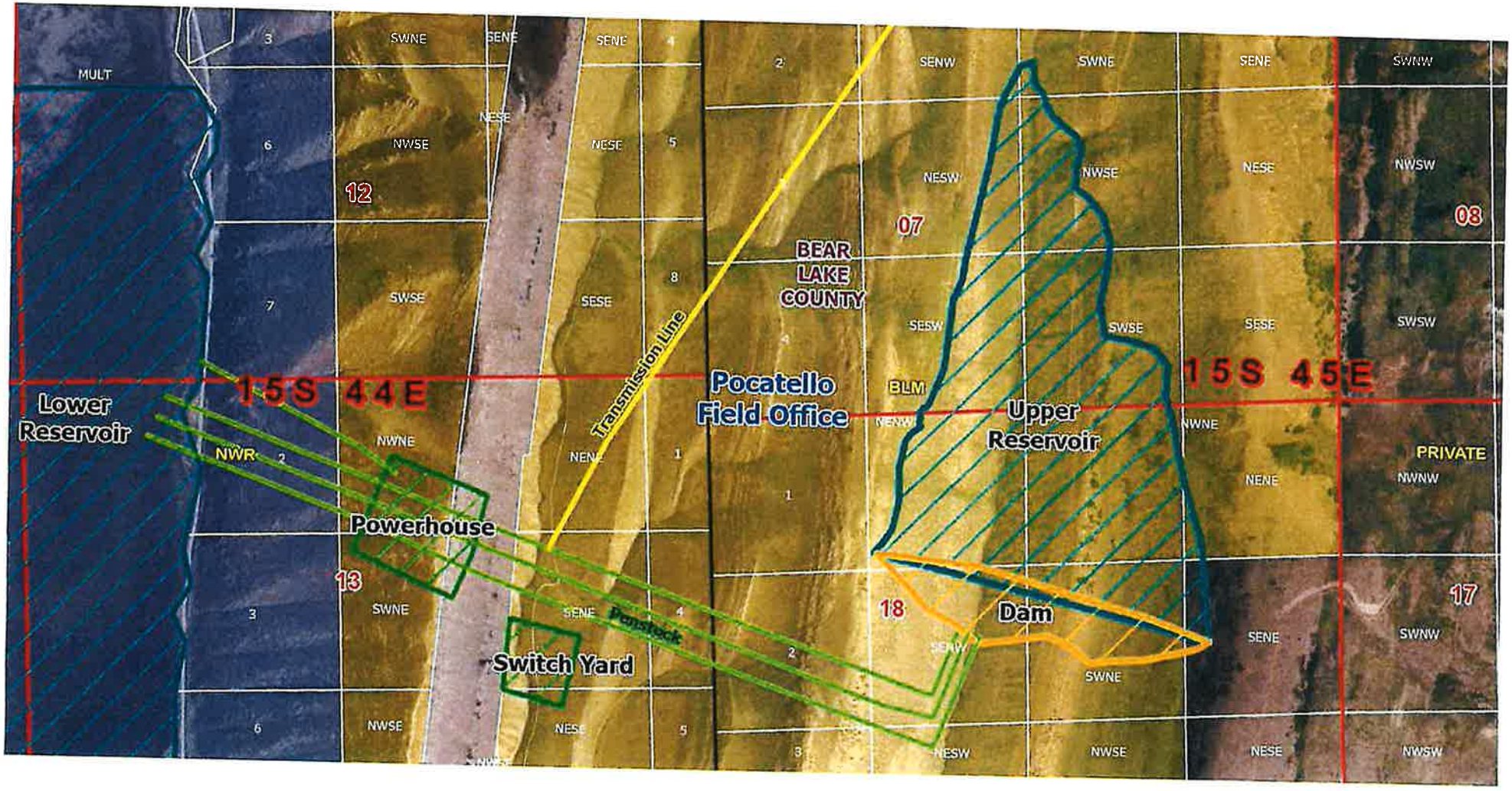
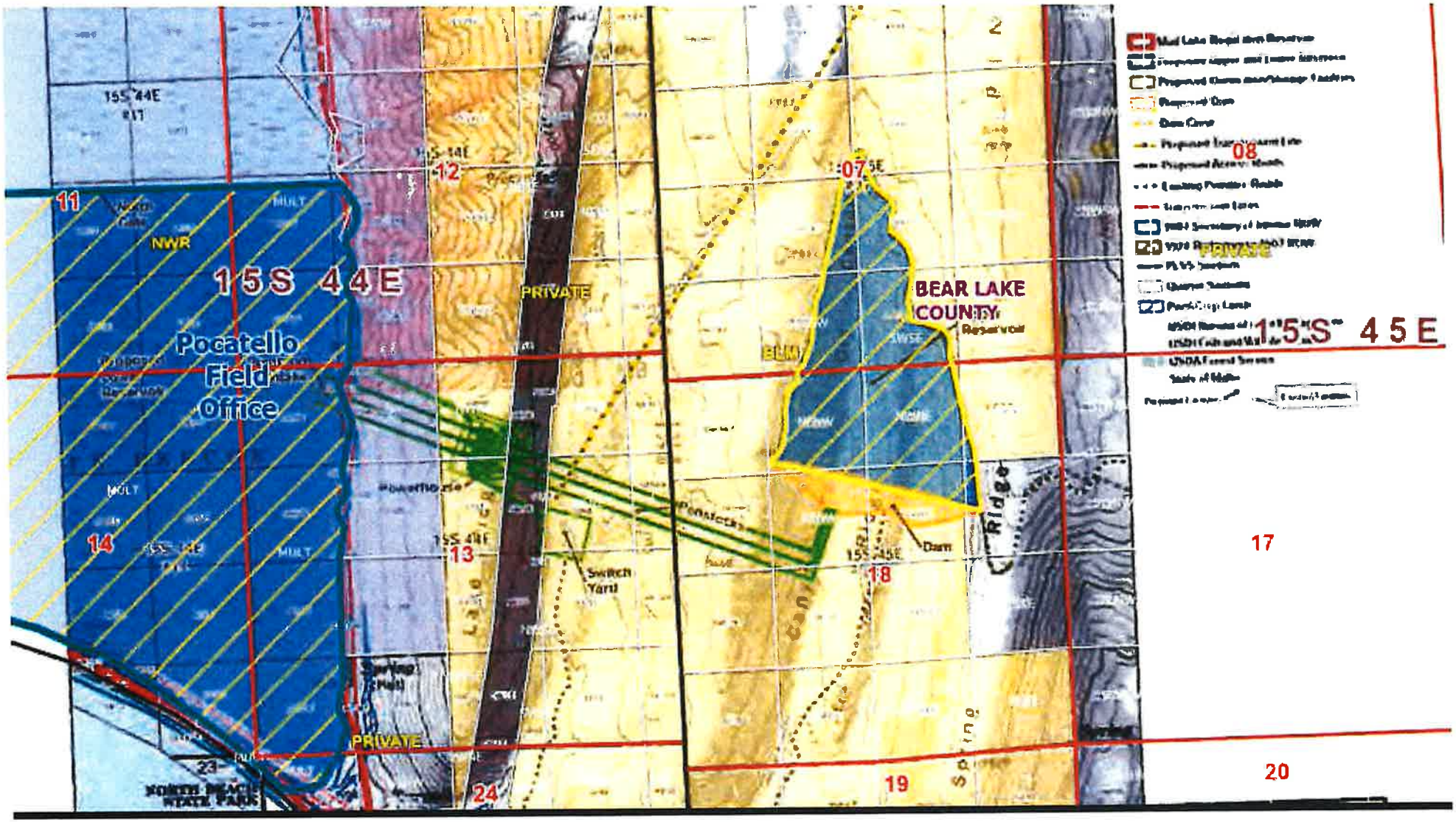


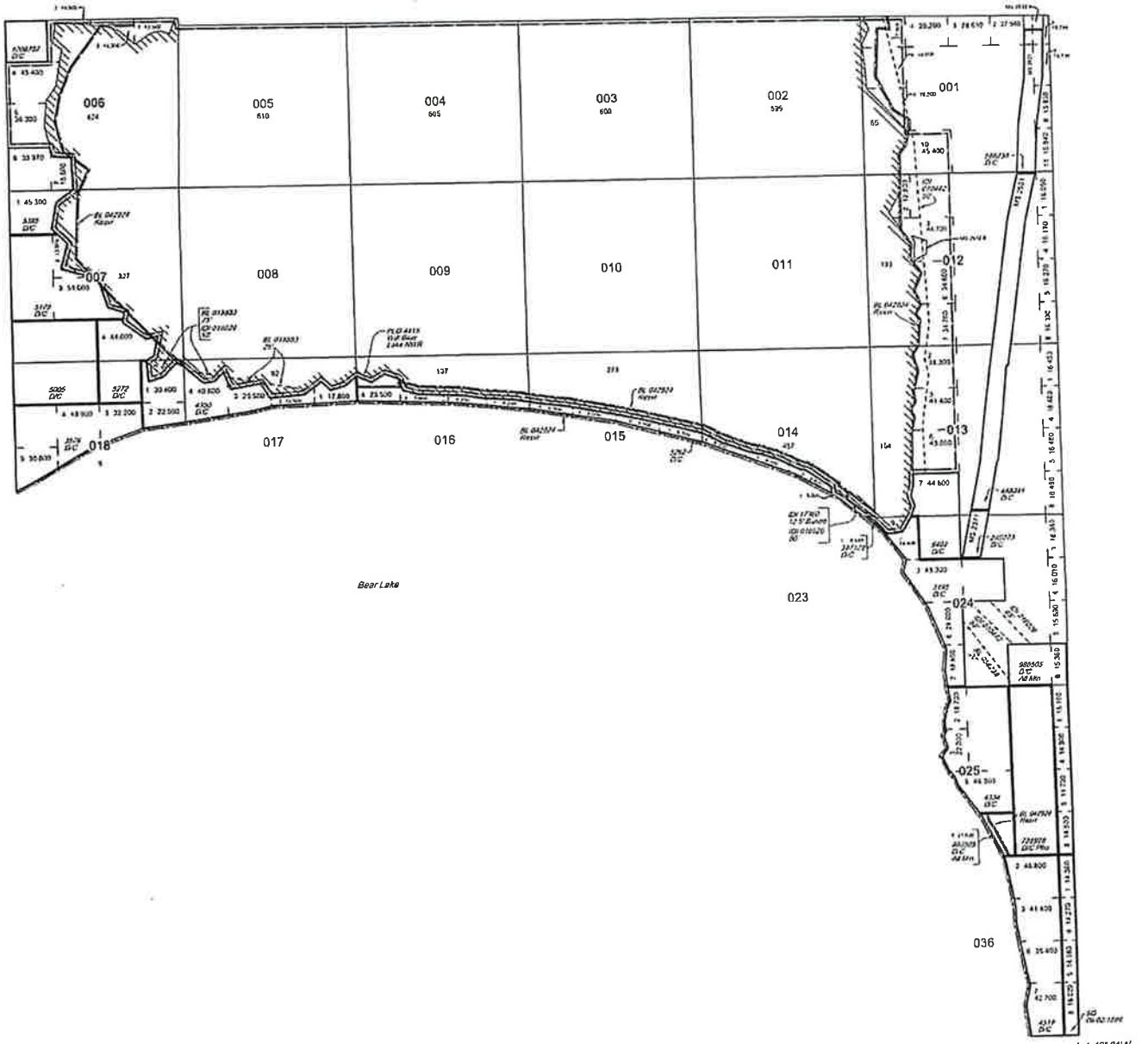

15S 44E
Pocatello Field Office
NWR
PRIVATE
BEAR LAKE COUNTY
Reservoir
15S 45E
11
12
07
08
14
13
18
17
19
20
24
23
Dam
Switch Yard
Spring
PRIVATE

PARTIALLY SURVEYED TOWNSHIP 15 SOUTH RANGE 44 EAST OF THE BOISE MERIDIAN, IDAHO

Protraction Diagram No 104 approved 04/06/1967

BEAR LAKE COUNTY 007

IDAHO FALLS DISTRICT SEC 15



STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MT PLAT

INDEX TO SEGREGATED TRACTS				
RESURVEY				ORIGINAL SURVEY
TRACT NO	T.	R.	SEC.	SUBDIVISION

FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LAND REFER TO INDEX OF MISCELLANEOUS DOCUMENTS

FILE NAME:	IDAS150S044EMP100000.dwg
CONVERTED TIFF:	12/27/2011 BY: JCB
LAST UPDATED:	12/27/2011 BY: JCB
GAGE #1:	GAGE #2:
POSTED TO PUBLIC RECORDS:	January 5, 2012
BY:	
PUBLIC LAND SURVEY SYSTEM (PLSS)	
BLM GCDB ACQUIRED:	04/26/2005
OTHER:	N/A
PROJECTED COORDINATE SYSTEM:	UTM ZONE 12N, NAD 1983
NOTES:	
USE PLATS:	

Boise Mer.
T. 15 S.
R. 44 E.

U.S. Bureau of Land Management - Idaho State Office
1387 S. Vinnell Way Boise, Idaho 83709
(208) 373-4000

SCALE in chains

SCALE in feet

SCALE in meters

NORTH

DISCLAIMER:

This plat is only a graphic display of the Bureau of Land Management's (BLM) Record of Title and township survey data. Records hereon do not reflect title changes which may have been affected by lateral movements of river or other bodies of water. Refer to cadastral surveys for official information.

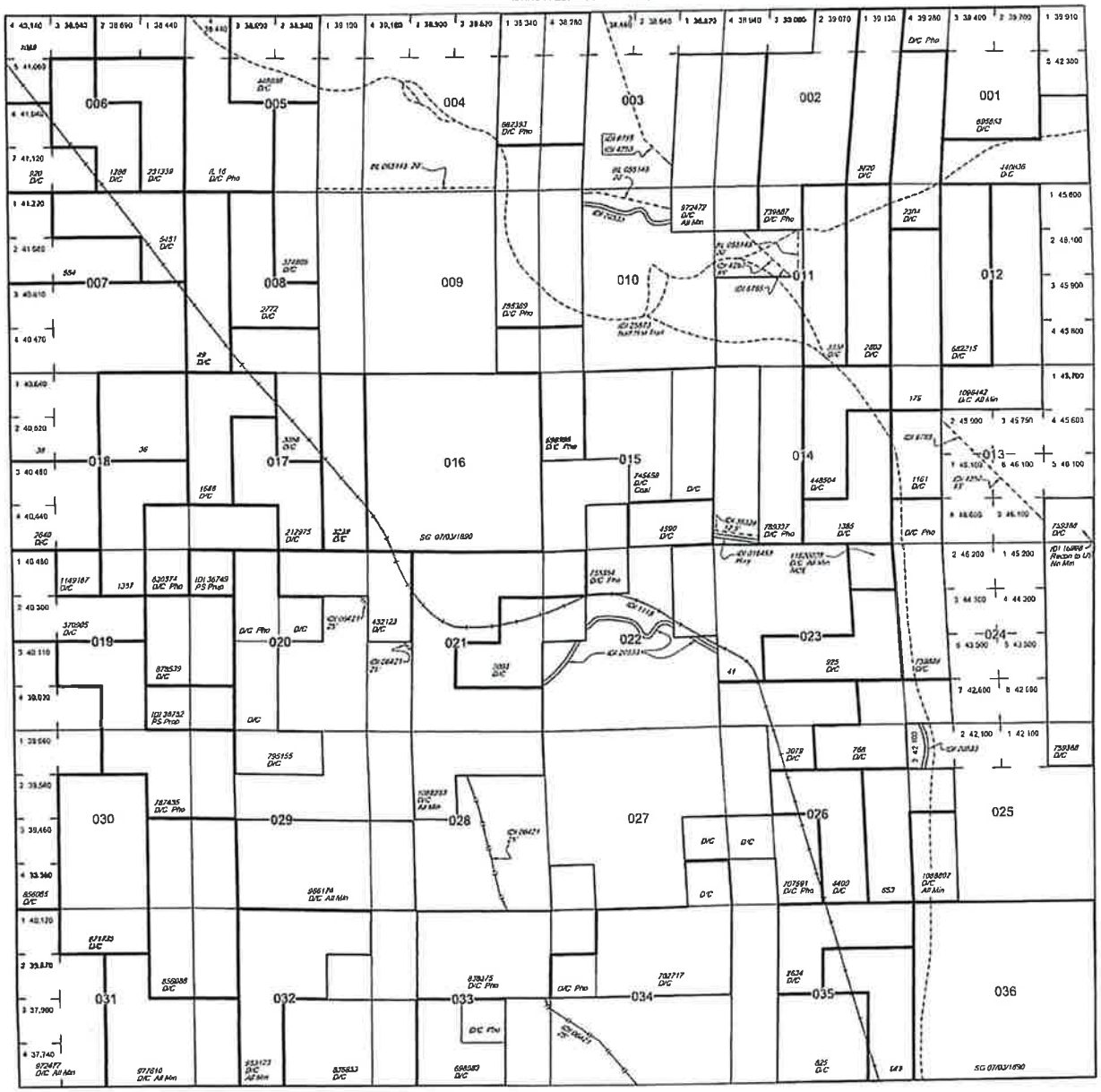
The notations shown on withdrawals represent the last action taken but may not be the effective date. See the historical index for the date of original withdrawal order.

No warranty is made by the Bureau of Land Management. The accuracy, reliability or completeness of these data for individual use or aggregate use with other data is not guaranteed.

TOWNSHIP 14 SOUTH RANGE 45 EAST OF THE BOISE MERIDIAN, IDAHO

BEAR LAKE COUNTY 007

IDAHO FALLS DISTRICT SEC 15



STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MT PLAT

INDEX TO SEGREGATED TRACTS				
RESURVEY	ORIGINAL SURVEY			
TRACT NO	T	R	SEC	SUBDIVISION

IDI 16998 PX WD Recon to US NOE until Order issues
Sec 13: SESE

IDI 25873 Nail Hist Trail
Historical information only, does not denote public access

FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LAND REFER TO INDEX OF MISCELLANEOUS DOCUMENTS

FILE REF:	
CONVERTED TIFF: 02/13/2017	BY: DWB
LAST UPDATED: 12/29/2010	BY: JCB
GA/OC #1:	GA/OC #2:
POSTED TO PUBLIC RECORDS:	December 31, 2010
BY:	
PLSS/LAND SURVEY SYSTEM (PLSS):	
BLM GCDB ACQUIRED:	04/26/2005
OTHER:	N/A
PROJECTED COORDINATE SYSTEM:	UTM ZONE 12N, NAD 1983
NOTES:	
USE PLATS:	

U.S. Bureau of Land Management - Idaho State Office
1387 S. Vinnell Way Boise, Idaho 83709
(208) 373-4000

SCALE in chains

SCALE in feet

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NORTH

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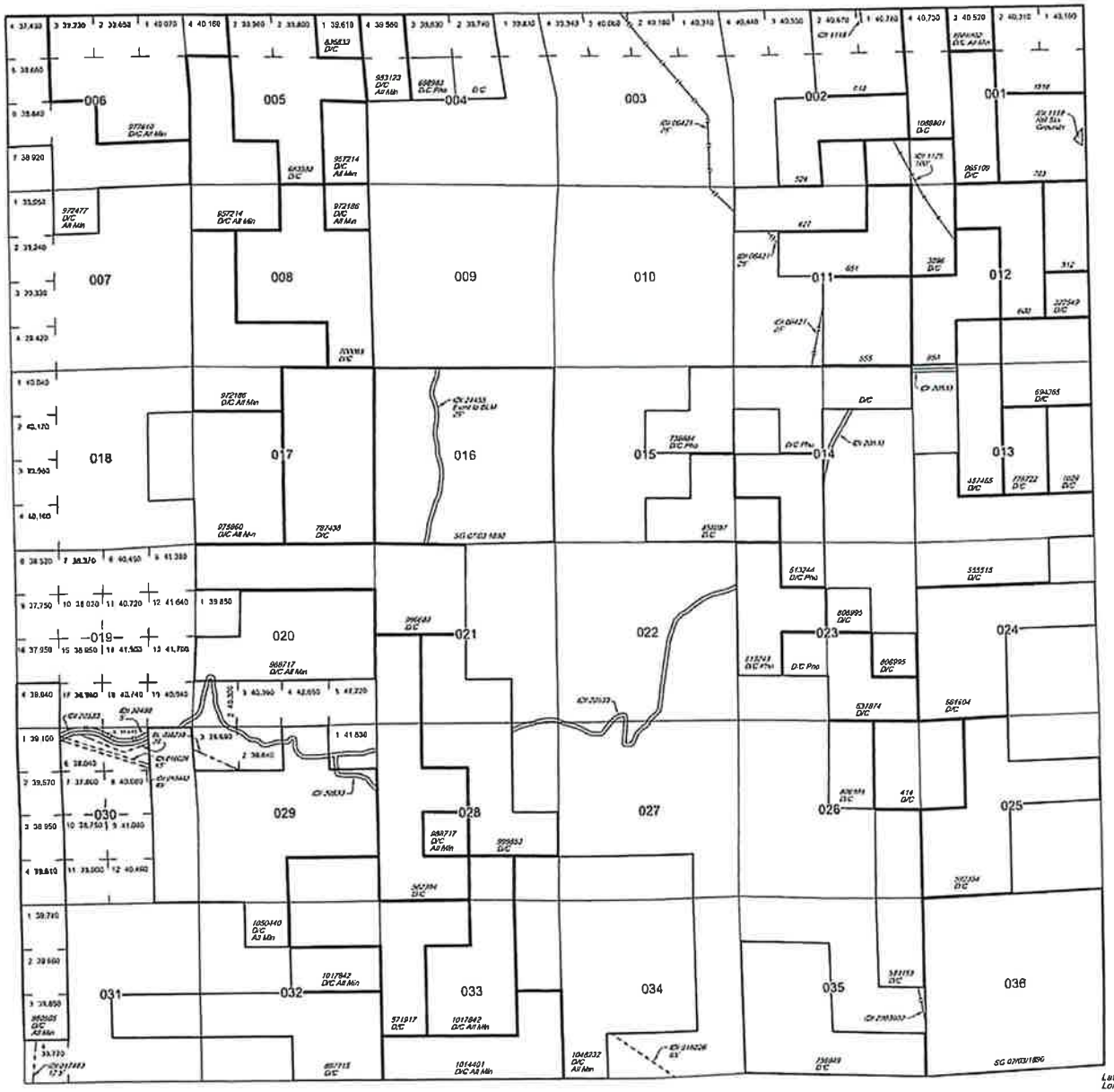
Boise Mer.
T. 14 S
R. 45 E

TOWNSHIP 15 SOUTH RANGE 45 EAST OF THE BOISE MERIDIAN, IDAHO

BEAR LAKE COUNTY 007

IDAHO FALLS DISTRICT SEC 15



Lat. 42° 04' N
Long. 111° 05' W

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MT PLAT

INDEX TO SEGREGATED TRACTS				
MES SURVEY	ORIGINAL SURVEY			
TRACT NO	T	R	SEC	SUBDIVISION

FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LAND REFER TO INDEX OF MISCELLANEOUS DOCUMENTS

FILE REF:	
CORRECTED TO:	12/27/2011 BY: JCB
LAST UPDATED:	12/27/2011 BY: JCB
GAIOC #1:	GAIOC #2:
POSTED TO PUBLIC RECORDS:	December 27, 2011
BY:	
PUBLIC LAND SURVEY SYSTEM (PLSS)	
BLM GCDB ACQUIRED:	04/26/2005
OTHER:	N/A
PROJECTED COORDINATE SYSTEM:	UTM ZONE 12N NAD 1983
NOTES:	
USE PLATS:	

U.S. Bureau of Land Management - Idaho State Office
1387 S. Vinnell Way Boise, Idaho 83709
(208) 373-4000

SCALE in chains

SCALE in feet

SCALE in meters

NORTH

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Idaho Map
T. 15 S
R. 45 E