

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY RENEWAL GRANT

SERIAL NUMBER IDI 036856

1. A right-of-way (ROW) grant is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

2. Nature of Interest:

a. By this instrument, the holder:

Rock Creek Hydro., LLC
Gordon Fulton
5915 Hwy 93
Mackay, ID 83251

receives a right to construct, operate, maintain and terminate a hydro. power plant, appurtenant facilities and a power line, located on public lands described as follows:

Boise Meridian, Idaho
T. 9 N., R. 22 E.,
sec. 5, SENW.

- b. The right-of-way or permit area reserved herein contains 0.40 acre, more or less, and is approximately 100 feet long and 100 feet wide, and 350 feet long and 20 feet wide.
- c. This instrument shall terminate on December 31, 2047, 30 years from the effective date of the grant, unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. This instrument may be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. **Rental:**

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer **unless specifically exempted from such payment by regulation.** Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with the comparable commercial practices.

4. **Terms and Conditions:**

- a. This grant is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulation parts 2800 and 2880.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within **90** days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph(1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) **A & B**, dated **October 2017**, attached hereto, are incorporated into and made part of the grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

Exhibit A: Stipulations

- The Holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the ROW within the authorized limits of the ROW.
- The Holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of public lands under this grant or permit.
- The authorized officer may suspend or terminate in whole, or in part, any notice to proceed which has been issued when, in his judgment, conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.
- 90 days prior to expiration or relinquishment of the ROW, the Holder shall contact the authorized officer to arrange a joint inspection of the ROW. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the Holder's commencement of any termination activities.

be held for termination and the grantee would be liable for all reclamation costs.

Best Management Practices

The following best management practices will be applied to all construction activities and/or maintenance activities associated with project implementation and long-term operation of the ROW, as appropriate:

- The work window for construction to minimize effects to terrestrial wildlife is from July 15 through March 1. All construction is anticipated to be completed between fall and early spring.
- Prior to construction, the project area will be flagged to identify the following: (1) equipment entry and exit points; (2) road and stream crossing alignments; (3) staging, storage, and stockpile areas; (4) no-spray areas and buffers for herbicides use (e.g. streamside and riparian areas).
- Construction spill prevention and control will be in accordance with *The Catalog of Stormwater BMP, Idaho Department of Environmental Quality, for Idaho Cities and Counties* (IDEQ 2005) BMP 8: *Spill prevention and control*.
- Contractors will be required to have a spill containment kit of appropriate size for the equipment used at the construction site. If spills of hazardous materials (including petroleum products) occur on site in excess of 25 gallons, the site supervisor shall immediately notify Idaho Department of Environmental Quality and then BLM, in that order.
- Construction equipment and materials staging, including refueling areas, will be identified prior to initiation of project activity, and will occur away from streams (150 feet minimum distance). All possible steps will be taken to minimize the possibility of machine lubricants entering the stream (i.e., equipment will be leak free prior to arrival on site and inspected daily, and absorbent pads and booms will be on site and ready for use).
- All equipment will be pressure washed to remove any excess oil, grease, or weed seeds before arriving at the work site.
- All project work will cease during heavy precipitation events (>1.6-inches in 24 hours [5-YR, 24-HR Storm Event]) in order to minimize resource damage. Project work will not occur until ground is sufficiently dry that wheeled equipment does not leave ruts with depth greater than 4-inches. Additionally, ground disturbing activities will not occur during wet conditions if use of the equipment causes ruts greater than 4-inches in depth (i.e. during or immediately following rain events).
- Sequence or schedule work to reduce exposed bare soil to wind erosion. Water may be used to control dust.
- Any waste liquids generated at the staging areas will be temporarily stored under cover on an impervious surface such as tarpaulins until such time they can be properly transported to and treated at an approved facility.
- Heavy equipment will be selected (when possible) and operated in a manner that minimizes adverse effects to the environment (e.g., minimally-sized, low pressure tires, minimal hard turn paths for tracked vehicles, temporary mats or plates within wet areas or sensitive soils).
- Access to the construction site will occur on existing BLM roads.
- Complete earthwork (including drilling, excavation, dredging, filling and compacting) as quickly as possible.
- All construction materials must come from outside of the construction site, and cannot be

procured from BLM administered lands, unless approval is given by the authorized officer (Field Office Manager or his/her representative). The exceptions to this requirement are mineral materials (riprap, fill, gravel) that were procured with a valid BLM permit.

- Holder will ensure that adequate sanitation facilities are provided on site during construction, in accordance with 29 CFR 1910.141(c)(1)(i).
- Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery would be made by the authorized officer or his/her representative to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder would be responsible for the cost of evaluation and any decision as to proper mitigation measures would be made by the authorized officer after consulting with the holder.
- Pursuant to 43 CFR 10.4(g), the holder of this authorization must immediately notify the authorized officer by telephone, with written confirmation, upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), the holder must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.
- Vegetation may be grubbed only from areas where permanent ground alteration will occur. Vegetation is to be cut at ground level and root wads retained where temporary clearing occurs.
- Each area requiring revegetation will be replanted during the first fall season following the end of construction in order to take advantage of the seasonal moisture regime. A BLM approved seed mix will be used to achieve establishment and erosion control objectives, preferably comprised of forb, grass, or shrub species native to the project area or region and appropriate to the site. Non-native or invasive species will not be used. No fertilizer will be applied. Short-term stabilization measures may include the use of weed-free certified straw, jute matting, and other similar techniques.
- The project area will be surveyed for weed infestations by BLM personnel prior to project implementation. Heavy equipment will avoid entering those areas, where practical, to reduce the potential for the spread of weed species.
- All access road improvement work will be done within the existing road prisms on BLM administered land. Placement of culverts, should it be necessary, will follow established BLM guidelines.
- Construction and/or maintenance in upland sites will be done so as to keep soil, grass, shrub and woody vegetation disturbance to a minimum. The upland construction sites will be reseeded with a BLM approved seed mix.

Required Design Features

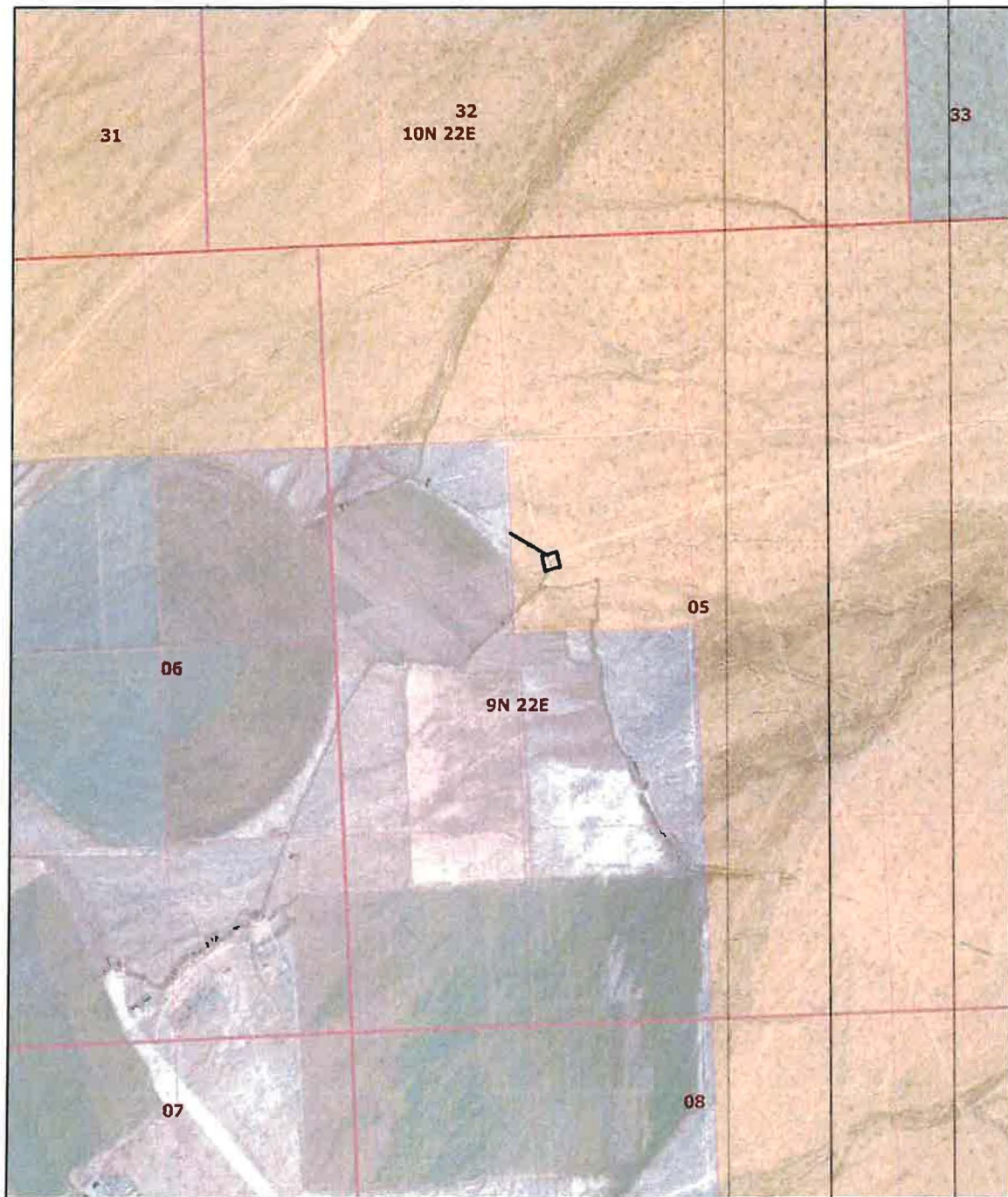
The following Required Design Features, as recommended in Appendix C of the Idaho and Southwestern Montana Greater Sage-Grouse Approved Resource Management Plan Amendment (BLM, 2015) will be implemented during construction and operation of the hydropower facility:

- Solicit and consider expertise and ideas from local landowners, working groups, and other federal, state, county, and private organizations during development of projects.
- No repeated or sustained behavioral disturbance (e.g., visual, noise over 10 dbA at lek,

etc.) to lekking birds from 6:00 pm to 9:00 am within 2 miles (3.2 km) of leks during the lekking season.

- Avoid mechanized anthropogenic disturbance, in nesting habitat during the nesting season when implementing: 1) fuels/vegetation/habitat restoration management projects, 2) infrastructure construction or maintenance, 3) geophysical exploration activities; 4) organized motorized recreational events.
- Avoid mechanized anthropogenic disturbance during the winter, in wintering areas when implementing: 1) fuels/vegetation/habitat restoration management projects, 2) infrastructure construction or maintenance, 3) geophysical exploration activities; 4) organized motorized recreational events.
- Utilize available plant species based on their adaptation to the site when developing seed mixes. (Lambert 2005; VegSpec).
- Utilize the warmer component of a species' current range when selecting native species for restoration when available (Kramer and Havens 2009).
- Above-ground disturbance areas will be seeded with a BLM approved seed mix comprised of perennial vegetation.
- Place infrastructure in already disturbed locations where the habitat has not been fully restored.
- Co-locate linear facilities within one mile of existing linear facilities.
- Consider co-locating powerlines, flowlines and pipelines under or immediately adjacent to a road or adjacent to other pipelines first, before considering co-locating with other ROW.
- Restrict the construction of tall facilities and fences to the minimum number and amount needed.
- Use free standing structures where possible, to limit the use of guy wires. Where guy wires are necessary and appropriate, bird collision diverters will be used if doing so would not cause a human safety risk.
- Place new utility developments (power lines, pipelines, etc.) and transportation routes in existing utility or transportation corridors.
- Construction and development activities should conform to seasonal restrictions.
- Utilize existing roads, or realignments of existing routes to the extent possible.
- Address post reclamation management in reclamation plan such that goals and objectives are to protect and improve sage-grouse habitat needs.
- Restore disturbed areas at final reclamation to the pre-disturbance landforms and desired plant community.

Exhibit B: Rock Creek Power Plant and Power Line Location

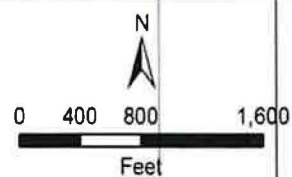


Legend

- Power Plant 100'x100'
- Power Line 350'x20'
- Townships
- Sections
- Aliquots

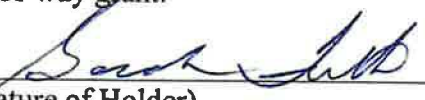
Surface Management Agency

- Bureau of Land Management
- Private
- Forest Service



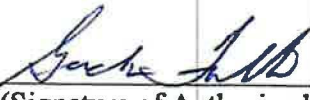
No warranty is made by the Bureau of Land Management (BLM). The accuracy, reliability, or completeness of these data for individual use or aggregate use with other data is not guaranteed. Map date: October 2017

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant.


(Signature of Holder)

(Title)

11-27-2017
(Date)

 Lee Park Creek Holdings LLC
(Signature of Authorized Officer)

Owner
(Title)

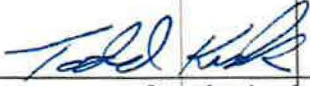
(Effective Date of Grant)

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant.

(Signature of Holder)

(Title)

(Date)



(Signature of Authorized Officer)

TODD KUCK
CHALLIS FIELD MANAGER

(Title)

12-4-2017

(Effective Date of Grant)

Nelson, Dan

From: Nelson, Dan
Sent: Thursday, May 13, 2021 1:13 PM
To: 'gordon fulton'
Subject: RE: Conditional Use Permit for Powerhouse

Gordon,

There wasn't anything to be sorry for. I wasn't sure if you mailed it or not, and I didn't want to miss it.

Thank you so much for this.

Dan Nelson

From: gordon fulton [mailto:tailingart@yahoo.com]
Sent: Thursday, May 13, 2021 11:48 AM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Subject: Re: Conditional Use Permit for Powerhouse

Dan;

Sorry for the delay. Been gone for a couple of days.

Cheers!
Gordon

On Thursday, May 13, 2021, 09:44:04 AM MDT, Nelson, Dan <dan.nelson@idwr.idaho.gov> wrote:

Hello Gordon,

I haven't received the email with the conditional use permit for the powerhouse, and I didn't want to miss you before you left for Alaska. It seems as though things get lost in the email more than they do with regular mail.

I am just finishing up a couple of loose ends, and I will present the field report to my supervisor next week. If you decide to send it by regular mail, please let me know, so I can keep an eye out for it.

Thank you for help.

Daniel Nelson

Water Right Analyst 3

Idaho Department of Water Resources

Telephone (208) 287-4856

Fax (208) 287-6700 (attn: Dan Nelson)