

**Notice of Exempt Hydropower Use  
Pursuant to Idaho Code §42-201(9)**

- 1) Name, Address, Telephone number, and email of the person or entity operating the canal or conduit:** Campbell's Ferry Ranch, LLC, Douglas A. Tims, Government Affairs Manager, HC 83 Box 8023, Cascade, ID 83611, 208-344-7119, doug@rivertraveler.com.
- 2) List the water right(s) authorizing the diversion of water from a natural watercourse into the canal or conduit:** Water Right 77-04088.
- 3) Describe the exempt hydropower use by providing the following items:**
  - a) Description of the location of the exempt hydropower use and the point where water is diverted from the natural water source:**
    - i) Map - Exhibit A to Campbell's Ferry Conservation and Scenic Easement Deed, Pages 24-26.
    - ii) Legal Description - Part I Property Description of Campbell's Ferry Conservation and Scenic Easement Deed, Page 3.
    - iii) Point of Diversion from natural water source - Exhibit A, Item 7 Campbell's Ferry Conservation and Scenic Easement Deed, pages 24-26.
  - b) Maximum rate of flow in cfs that will be used in the power plant:**
    - i) May 1 to May 30 and October 1 to November 30 each year: 0.06 cfs (2 nozzles).
    - ii) May 31 to September 30 each year: 0.123cfs (4 nozzles).
  - c) Maximum power output in kilowatts that will be produced by the power plant:** 1.1kw
  - d) The days and months the power plant will be in operation:** May 1 to November 30 each year
- 4) Attach a copy of the government document(s) authorizing the hydropower project:** The following federal government documents authorize the construction, maintenance, and operation of the microhydropower project at Campbell's Ferry—(i) Part III G. of Campbell's Ferry Conservation and Scenic Easement Deed, dated August 12, 2019 Page 9; and (ii) June 3, 2020 letter notification from the Federal Energy Regulatory Commission that "the Campbell's Ferry Micro-Hydro Unit Meets the Qualifying Conduit Hydropower Facility Criteria" under the Federal Power Act, 16 U.S.C. § 823a (2018).

- 5) The notice must be signed and dated by an authorized agent for the person or entity operating the canal or conduit: This notice is signed and dated below by Douglas A. Tims for Campbell's Ferry, LLC.
- 6) Certify that the incidental use of water for hydropower generation meets all the requirements of Idaho Code § 42-201(9): I hereby certify that the incidental use of water for hydropower generation meets all the requirements of Idaho Code § 42-201(9).

Douglas A. Tims, Government Affairs Manager, Campbell's Ferry Ranch, LLC

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|-------------------------------|----------------|
| <u><i>Douglas A. Tims</i></u> | <u>6-29-20</u> |
| Signature                     | Date           |

# # #

**FEDERAL ENERGY REGULATORY COMMISSION**  
Washington, D.C. 20426

**OFFICE OF ENERGY PROJECTS**

Docket No. CD20-4-000 – Idaho  
Campbell's Ferry Micro-Hydro Unit  
Campbell's Ferry Ranch, LLC

VIA FERC Service

June 3, 2020

Mr. Austin W. Jensen  
Holland & Hart LLP  
555 Seventeenth Street, Suite 3200  
Denver, CO 80202

Subject: Notification that the Campbell's Ferry Micro-Hydro Unit Meets the Qualifying  
Conduit Hydropower Facility Criteria

Dear Mr. Jensen:

On April 15, 2020, Campbell's Ferry Ranch, LLC, filed a notice of intent, pursuant to section 30(a) of the Federal Power Act (FPA), 16 U.S.C. § 823a (2018), to construct a qualifying conduit hydropower facility, the Campbell's Ferry Micro-Hydro Unit, to be located along an existing irrigation pipeline on your property near Dixie, Idaho County, Idaho.

On April 16, 2020, Commission staff issued a public notice that preliminarily determined that the project met the statutory criteria for a qualifying conduit hydropower facility, and thus was not required to be licensed under Part I of the FPA. The notice established a 30-day period for entities to contest whether the project met the criteria. The State of Idaho, on behalf of the Idaho Department of Environmental Quality and the Idaho Water Resource Board, filed a notice of intervention on May 15, 2020, without contesting the proposed project's qualifications or providing comments.<sup>1</sup> No other interventions or comments were filed. Accordingly, by operation of FPA section 30(a), the Campbell's Ferry Micro-Hydro Unit is deemed to meet the qualifying conduit hydropower facility criteria, and is not required to be licensed under Part I of the FPA. Qualifying conduit hydropower facilities remain subject to other applicable federal, state, and local laws and regulations.

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<sup>1</sup> Under Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, these entities became parties to the proceeding upon the filing of their interventions. 18 C.F.R. § 385.214(a)(2) (2019).

If you have any questions, please contact Christopher Chaney at (202) 502-6778 or [Christopher.Chaney@ferc.gov](mailto:Christopher.Chaney@ferc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Houff". The signature is written in a cursive, flowing style.

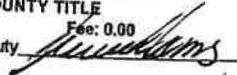
Kelly Houff  
Chief, Engineering Resources Branch  
Division of Hydropower Administration  
and Compliance

**Accommodation Recording**

**WHEN RECORDED MAIL TO:**

USDA - Forest Service  
Northern Regional Office-Lands  
26 Fort Missoula Road  
Missoula, MT 59804

**Instrument # 519520**

IDAHO COUNTY, IDAHO,  
8-12-2019 01:07:23 PM No. of Pages: 28  
Recorded for : IDAHO COUNTY TITLE  
KATHY M. ACKERMAN Fee: 0.00  
Ex-Officio Recorder Deputy 

**CONSERVATION and SCENIC EASEMENT DEED**

**THIS CONSERVATION and SCENIC EASEMENT DEED** is made this 12<sup>th</sup> day of August, 2019, by and between Campbell's Ferry Ranch, LLC, whose mailing address is Campbell's Ferry Ranch, c/o Brad Janoush, 1661 W. Shoreline Dr. Ste. 200, Boise, ID 83702, hereinafter called the "**GRANTOR**" and the **UNITED STATES OF AMERICA**, by and through the Secretary of Agriculture, **GRANTEE**, hereinafter called the "**UNITED STATES**."

**WITNESSETH:**

**WHEREAS**, Grantor is the owner of certain real property (the "Property") located in Idaho County, Idaho, more particularly described in Part I, below, and located within the boundaries of the Payette National Forest, the Salmon Wild and Scenic River, and the Frank Church-River of No Return Wilderness; and

**WHEREAS**, Grantor is successor in interest to the Trust for Public Lands which conveyed to the United States those certain real property interests in that Deed of Conservation and Scenic Easement dated March 6, 1989, and recorded on March 9, 1989, as Instrument No. 346471, Official Records of Idaho County, Idaho, and is referred to hereinafter as the "Original Easement"; and

**WHEREAS**, Grantor and the United States desire to modify the terms imposed by the Original Easement on the Property through a donation by the Grantor and upon recordation this Deed shall extinguish and replace the Original Easement in its entirety; and

**WHEREAS**, the Wild and Scenic Rivers Act of October 2, 1968 (P.L. 90-542, 82 Stat. 906, as amended; 16 U.S.C. 1271 (note) 1271-1287), provided for the establishment of a Wild and Scenic Rivers System, and designated portions of the Salmon River in the State of Idaho as a component of the National Wild and Scenic Rivers System to be administered by the Secretary of Agriculture as part of the National Forest System; and

**WHEREAS**, the Wilderness Act of September 3, 1964 (P.L. 88-577; 78 Stat. 890; 16 U.S.C. 1121 (note), 1131-1136) and the Central Idaho Wilderness Act of July 23, 1980 (P.L. 96-312, 94 Stat. 848) provided for the establishment of the River of No Return Wilderness, and

designated the federal lands and interests in lands as a part of the National Wilderness Preservation System to be administered by the Secretary of Agriculture as part of the National Forest System; and

**WHEREAS**, the Idaho Wilderness Water Resources Protection Act of July 25, 2014 (P.L. 113-136; 128 Stat. 1739) provided for the authorization and continued use of qualifying pre-existing water diversion, transport and storage facilities located on National Forest System land in the Frank Church-River of No Return; and

**WHEREAS**, the Property was included in the State of Idaho inventory of historical resources in 1971 (10 IH 252), was recognized by the Idaho Heritage Trust during the 1990 Idaho Centennial, is currently recognized on the National Register of Historic Places and represents: a significant historic resource as the location of pioneer activities and settlement on the Salmon River; a historic migration route known as the Three Blaze Trail leading to the historic mining activity at Thunder Mountain; a historic transportation method known as Campbell's Ferry; and includes a structure commonly known as the Zaunmiller Cabin, all of which are significant in the history and culture of Idaho County, the State of Idaho, and the United States of America; and

**WHEREAS**, the Property possesses significant natural, scenic, open-space, fish and wildlife, historic, cultural, and other similar values, referred to hereinafter as "**Conservation Values**" of the Property, which Conservation Values are of great importance to both Grantor and the United States.

**WHEREAS**, Grantor and the United States have the common purpose of preserving and protecting the Conservation Values in perpetuity and preventing the development or commercialization of the Property for any purpose or in any manner that would conflict with the Conservation Values; and

**WHEREAS**, Grantor intends to convey to the United States the right to preserve and protect the Conservation Values of the Property in perpetuity; and

**WHEREAS**, the Forest Service has the authority to acquire this Conservation and Scenic Easement under the Wild and Scenic Rivers Act of October 2, 1968 (P.L. 90-542, 82 Stat. 906, as amended; 16 U.S.C. 1271 (note) 1271-1287), the Central Idaho Wilderness act of July 23, 1980 (P.L. 96-312, 94 Stat. 848), the Department of Agriculture Organic Act of August 3, 1956 (P.L. 84-979, 70 Stat. 1032; 7 U.S.C. 428a); and to accept a donation of interests in land pursuant to the Act of Congress of October 2, 1968 (82 Stat. 2743; 16 U.S.C. 1277) and the Act of October 10, 1978 (92 Stat. 1065; 7 U.S.C. 2269).

**NOW THEREFORE**, Grantor, does hereby voluntarily donate, grant and convey in perpetuity, with general warranty of title, unto the United States and its assigns, all right, title and interest in the land described in Part I below, except those rights and interests specifically reserved by Grantor in Part III below, and including those affirmative obligations of Grantor in Part IV below. This Conservation and Scenic Easement shall be enforceable by the United States and its assigns in interest and is referred to hereinafter as the "Conservation Easement."

The provisions of this Easement deed will supersede the provisions of the Original Easement with respect to any future questions regarding the respective rights of Grantor and the United States.

The acquiring agency is the Forest Service, United States Department of Agriculture.

#### **PART I - PROPERTY DESCRIPTION**

Homestead Entry Survey No. 706, located approximately in Protraction Blocks 41, 42, 43 and 44 (formerly described as approximately in Section 35), Township 25 North, Range 9 East, Boise Meridian, Idaho County, Idaho, more particularly described as follows:

BEGINNING at corner No. 1, from which U.S. Location Monument No. 693, bears N. 83°02' W., 2979.24 feet (45.14 chains) distant;

THENCE N. 3°53' E., 742.50 feet (11.25 chains) to Corner No. 2;

THENCE N. 22°29' W., 288.42 feet (4.37 chains) to Corner No. 3, a meander corner on the left bank of Salmon River at the line of ordinary high water;

THENCE upstream with the meanders of the left bank of Salmon River, at the line of ordinary high water, the following 5 courses and distances:

1. N. 21°46' E., 504.24 feet (7.64 chains);
2. N. 13°31' E., 700.92 feet (10.62 chains);
3. N. 4°59' W., 308.88 feet (4.68 chains);
4. N. 3°14' W., 386.76 feet (5.86 chains);
5. N. 46°46' E., 33.66 feet (0.51 chains) to Corner No. 4, a meander corner on the left bank of Salmon River at the line of ordinary high water;

THENCE N. 73°46' E., 197.34 feet (2.99 chains) to Corner No. 5;

THENCE S. 75°14' E., 785.40 feet (11.90 chains) to Corner No. 6;

THENCE S. 27°17' E., 1615.68 feet (24.48 chains) to Corner No. 7;

THENCE S. 32°16' W., 793.32 feet (12.02 chains) to Corner No. 8;

THENCE S. 67°56' W., 1657.26 feet (25.11 chains) to Corner No. 1, the POINT OF BEGINNING

Containing 85.19 acres more or less.

#### **SUBJECT TO:**

A 16 foot wide public trail easement (Chamberlain Trail) and 50 foot wide bridge site described in the Right of Way Deed, including the terms and conditions thereof, by and between Joe Zaunmiller and Frances Zaunmiller, his wife, and R. S. Edwards (Mortgagee), Grantors, and The United States of America, Grantee, recorded December 12, 1955, under Instrument No. 186178, Book 89 page 202, records of Idaho County, Idaho.

## **PART II – PURPOSE AND BASELINE DOCUMENTATION**

### **A. PURPOSE**

It is the purpose of this Conservation Easement to:

1. Assure that the Property's natural, scenic, open-space, fish and wildlife, historic, cultural, and other similar values (collectively the Conservation Values) be maintained forever.
2. Prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property.
3. Preserve the unique historic and cultural resources of Campbell's Ferry for future generations.
4. Provide visitors with the historic context of Campbell's Ferry.
5. Provide public access to the interpretation of the historic structures on the Property.
6. Mitigate the potential for vandalism to the historic buildings by providing for Grantor's use and maintenance of the Property.

The period of historic significance for the Property is the operation of the Ferry, 1898-1956.

Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purposes of this Conservation Easement as are expressly reserved in Section III, below.

To accomplish the above-stated purposes of this Easement, the United States is acquiring all rights of Grantor in the Property, including the rights to subdivide and partition the Property, except those rights specifically reserved by Grantor in Part III below which have been determined to be consistent with the purposes of this Conservation Easement.

### **B. BASELINE DOCUMENTATION**

The uses of the Property that existed as of the date of grant of this Conservation Easement and that are documented in Exhibit A, incorporated by this reference, and in the Baseline Documentation may continue where reasonably incident to the rights reserved by Grantor in Part III below. Exhibit A and the Baseline Documentation dated August 7, 2019, which is on file at the offices of the Nez Perce – Clearwater National Forests in Kamiah, Idaho, also depict the general location of structures, facilities, and land uses existing on the Property as of the date of this Conservation Easement. Both parties collectively agree that the Baseline Documentation and Exhibit A, which are intended to serve as an objective information baseline for monitoring compliance with the terms of this grant, provide an accurate representation of the Property at the time of this grant as confirmed by both parties in Exhibit B, incorporated by this reference.

### PART III - RESERVATIONS OF RIGHTS BY GRANTOR

The following rights in the Property are reserved by Grantor:

- A. Title. The right to retain record title to the Property and to convey title to the interests reserved herein, subject to the rights owned by the United States.
- B. Enjoyment. The right to quiet enjoyment of the reserved rights in the Property subject to public rights of access provided in this Conservation Easement and pre-existing public rights of access.
- C. Recreation. The right to use the Property for personal recreation and enjoyment by Grantor and its visitors for hunting, fishing, camping, picnicking, and similar recreational uses, provided such uses shall not be commercial in nature. Such uses shall not interfere with public rights of access. No new structures or improvements are authorized for such uses.
- D. Airstrip (Exhibit A, #3). The right to use, and maintain the existing aircraft grass landing strip known as the "airstrip" for private non-commercial purposes Grantor will control its private use of the airstrip under terms and conditions established by Grantor. The airstrip may not be improved by lighting or surfacing such as asphalt pavement. At no time will the airstrip be open to general public or commercial aviation. Grantor may at its discretion choose to allow the United States, including the US Postal Service, to use the airstrip. The airstrip is open for *bona fide* emergency landings without the prior consent of Grantor. The airstrip may be maintained and mowed using the farm tractor and lawn mowers. Maintenance can include removal of dirt and rocks (Exhibit A, #37) to maintain the existing airstrip profile with a smooth natural surface, turnaround and parking area. Grantor may trim or fall trees on or around the airstrip that are a safety hazard to aircraft upon written approval by the United States, which approval may not be unreasonably withheld. Airstrip may include a wind sock and a mailbox (Exhibit A, #36 and #39).
- E. Buildings.
  - 1) Occupy and Use. The right to occupy, use, and maintain the existing buildings identified below in Paragraph E.5 and Exhibit A. Use of the buildings shall be limited to secondary residential, recreation, maintenance, repair, restoration, or temporary caretaking. All uses are for only a reasonable period of time each year which is intended to mean ten months or less per year (March through December), and said uses are associated with Grantor's reserved rights. The Grantor may store personal property in the existing buildings on a year-round basis. The current condition of the buildings is recorded in the Baseline Documentation.
  - 2) Maintenance. Maintenance will be consistent with the preservation treatment as described in "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings". Maintenance of improvements that do not in any

perceptible way change the existing improvements as documented in the Baseline Documentation and that utilize the same material, color, style, size and location can be exercised by Grantor as normal maintenance and without prior approval from the authorized Forest Service official.

- 3) Approval Needed for Certain Repairs or Improvements. The right to repair, restore, reconstruct, or alter any improvements reserved herein may not exceed the stated dimensions and may not be exercised without the prior written approval of the authorized Forest Service official. At least ninety (90) days in advance, Grantor shall submit plans showing conformance to the design requirements specified herein to the Forest Service for review and approval consistent with notice provisions at VI.K. The authorized Forest Service official shall promptly consult with the Idaho State Historic Preservation Office. The authorized Forest Service official, with consultation from the Idaho State Historic Preservation Office, shall approve repair, restoration, reconstruction, or alteration of only those improvements expressly allowed by this Conservation Easement upon determination that location, size, design, building materials, colors, landscaping, and vegetative screening of such improvements are compatible with the requirements stated herein, the Conservation Values and Purposes, and "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings", issued and as may be amended from time-to-time by the Secretary of the United States Department of Interior (the Secretary's Standards).
- 4) Reconstruction. In the event of destruction or damage, the buildings may be reconstructed pursuant to the provisions herein; however, the building may be required to be relocated away from the historical context in order to protect the integrity of the remaining historical structures. The new site will be mutually agreed to by Grantor and the authorized Forest Service official, in consultation with the Idaho State Historic Preservation Office.
- 5) Building List. The buildings, their exterior dimensions, and uses are as follows:
  - a) The Zaunmiller Cabin (aka Cook Cabin, aka Wisner Cabin) (Exhibit A, #12): This is a historic cabin built in 1906, with interpretative signage, displays and historical furnishings, and with certain single family guestroom accommodations. This cabin's footprint is 870 square feet (18 ft. x 32 ft. log structure with 23.5 ft. x 12.5 ft. back room of dimensional lumber), and 19 feet in height above the natural ground level to ridgeline. It includes a 216 square feet (12 ft. x 18 ft.) porch that is covered with a lean-to roof. An outdoor fire ring may be maintained south of the cabin as documented in the Baseline Documentation (Exhibit A, #41). A log seating area south of the cabin as documented in the Baseline Documentation may be maintained for public use during history tours and docent talks (Exhibit A, #41). The kitchen and living room shall be open to the public when accompanied by the landowners or their representatives and shall be maintained in a manner consistent with the historic

general appearance of 1906-1956 as documented in the National Historic Register Listing incorporated into the Baseline Documentation. Interior walls of the living room will be used to display historic photos, vignettes of the pioneers who lived there and related artifacts. Public entry may be subject to restrictions mutually agreed upon between Grantor and the United States as reasonably designed for the protection and maintenance of the historic artifacts and structure. The back bedroom and two upstairs bedrooms may be used for temporary lodging for non-commercial guests and visitors. An area of approximately one-half acre in size surrounding the cabin may be irrigated and mowed for green space and fire protection.

- b) The Blacksmith Shop (Exhibit A, #17): This 416 square foot (16 ft. x 26 ft.) and 15 feet in height above the natural ground level structure shall be used to display historic artifacts from the property such as components of the ferry, weather station, and other items. Modern tools and equipment are not to be stored in this structure. There is no residential provision in this structure. Public access is allowed in this structure to view the historic artifacts and interpretive displays.
- c) The "Blue Room" Outhouse (Exhibit A, #15): Francis Zaunmiller painted the outhouse blue in 1975 and it has become part of the lore and story of her ownership that is being interpreted on the Property. Although the blue color falls outside of the documented Period of Significance the continued use of the blue color is permitted. This 55 square foot (10 ft. 8 in. x 5 ft. 1 in.) and 8 feet in height above the natural ground level structure may be relocated as necessary within 30 feet of its Baseline documented location and not within view of the Salmon River. Public use of this outhouse is permitted.
- d) The Chicken House and Spring House (Exhibit A, #9 and #10): The 256 square foot (16 ft. x 16 ft.) and 17 feet in height above the natural ground level Chicken House structure and the 224 square foot (14 ft. x 16 ft.) and 10 feet in height above the natural ground level Spring House structure, may be used for storage. The Chicken House may also be used for raising chickens. There is no residential provision in these structures. No right of public access is associated with these structures.
- e) The Barn with Tack Room and Corral (Exhibit A, #11): This 1408 square foot (44 ft. x 32 ft.) and 26 feet 6 inches in height above the natural ground level Barn structure and an attached 275 square foot (11 ft. x 25 ft. 6 in.) Tack Room shall be used as a storage and shop facility to facilitate the work necessary for the maintenance and preservation of the Property, including parking of a farm tractor, lawn mowers, secure storage of a back-up generator, fuel, tools, materials and supplies. There is no residential provision in this structure. A wooden corral not to exceed 6,400 square feet (80 ft. x 80 ft.) may be built and maintained on the north side of the barn for use as temporary confinement of stock and stock visiting the Property. Photos from the 1950s will guide the

design and materials of the corral. Public access to this structure and use of the corral is by permission of the landowners. A 22 square foot outhouse (4 ft. 8 in. x 4 ft. 8 in.) and 8 feet in height is northeast of the barn (Exhibit A, #16).

- f) Potato Shed / Cellar (Exhibit A, #14): This 100 square foot (10 ft. x 10 ft. and up to 6 ft. in height) sod roof structure may site a micro-hydro facility to be used to generate electrical power. Use of micro-hydro must be in conformance with State water rights. There is no residential provision in this structure. There is no right of public access to this structure.
  - g) The "John Crowe" Cabin (Exhibit A, #13): This is a single family recreational dwelling not considered to be a historical structure and not subject to the Secretary's Standards. The current allowable footprint is 535 square feet (16 ft. 5 in. x 32 ft. 7 in.) and 17 feet in height above the natural ground level to ridgeline. A 32 square feet (4 ft. x 8 ft.) porch and steps are attached to the north wall and a 49 square feet (6 ft. 6 in. x 7 ft. 4 in.) porch and steps are attached to the south wall. A 36 square feet (6 ft. x 6 ft.) exterior roofless shower stall is attached to the east wall. The associated septic system and drain field adequate to dispose of the waste water and sewage shall comply with applicable State and local regulations for sanitation and water pollution control. All pipelines shall be underground. An air cooling unit may be added to the exterior of the cabin with equipment placed out of view from the Salmon River, trails, and public visitors. An area of approximately one-half acre in size surrounding the cabin may be maintained, irrigated and mowed for green space, fire protection, garden, flower beds, and trees for shade and visual screening. An area of approximately 1702 square feet (23 ft. x 74 ft.) has been leveled and is shown on Exhibit A, # 31 as the Crowe Cabin Terrace. An outdoor fire ring may be placed and maintained south of the cabin within the Terrace. Personal pets (dogs or cats) may be kept as long as they do not threaten public use of the Property or the Conservation Values. No right of public access is associated with the Crowe Cabin; the cabin and the surrounding one-half acre may be posted accordingly. A portable outdoor gas grill may be used at the cabin.
  - h) Wood Storage Shed (Exhibit A, #33): this 72 square foot (12 ft. x 6 ft.) and 10 feet in height above natural ground level lies east of the Crowe Cabin as shown in Exhibit A. This wood shed can be utilized for firewood storage and be made of wood material with open sides and non-reflective metal roof material pursuant to the Building Standards.
- 6) Building Standards. Standards that shall apply to all buildings:
- a) Siding. The buildings will be native stone, log, log-sided, rough-sawn lumber, wood sided, board and batten, or approved wood substitute.
  - b) Roofs. Roofs will be wood, composite, wood appearing concrete fabrication, or non-reflective metal. Existing reflective metal roofs shall be replaced with non-

reflective materials at time of replacement. Color shall be as described below. The potato shed/cellar is an exception and has a sod roof.

- c) Exterior Colors. Exterior colors will conform to selected earth-tone colors contained in Munsell's Soil Color chart or equivalent approved by the authorized Forest Service official.
  - d) Exterior Lighting. Exterior lighting sources utilizing full cut-off fixtures with the light source fully shielded are permitted. Full cut-off fixtures means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted. Shielding material shall be constructed of natural wood or other non-reflective material. The bulb or source of light shall not exceed 150 watts.
- F. Tents. The right to use tents, such as backpacking tents or hunting wall tents, for temporary periods of no longer than 14 days unless authorized by the authorized Forest Service official. Use of tent flooring or platform structures is prohibited.
- G. Water System and Hydropower. The right to use a Water and Micro-Hydro System if it is consistent with State water rights to provide: fire protection for the structures and Property; domestic water consumption; irrigation of a garden, an orchard, and green space around the structures; and for electricity production. A penstock (sluice gate) structure may be constructed near the highest elevation point on the Property where water from the existing diversion ditch off of Trout Creek enters the Property as shown on Exhibit A. If consistent with state water rights, the water may be collected in a settling pond not to exceed 144 square feet (12 ft. x 12 ft.) and in two 1,600 gallon tanks located at the top of the airstrip runway (Exhibit A, #7). Said tanks must not be visible from the Salmon River or the Chamberlain (aka Three Blazes) Trail or Grantor must implement approved mitigation measures to prevent them being visible. Water may be diverted from the penstock via storage tank and pipe to the micro-hydro facility (within the potato shed / cellar, Exhibit A, #14) for power production and via ditch or pipe (Exhibit A, #8) to the two cabins for domestic use. All pipe and wiring must be located underground with any ground disturbance naturalized to hide them from view. Water pipes may be laid to provide irrigation and fire protection for the area around all structures and throughout the orchard and pasture to provide green space for fire protection. Pipe and sprinklers may be set to provide fire protection to the structures, with an auxiliary water input valve placed near the Blacksmith shop for emergency supplementation from the Salmon River via pump and hose.
- H. Well. The right to drill a well for domestic use and fire protection when approved in advance by the authorized Forest Service official. A well must comply with State and local regulations.

- I. Building Utilities. The right to construct, reconstruct, and maintain utilities to the Crowe Cabin (water, sewer, electric via the micro-hydro, generator, solar, and battery backups) and electric to the Zaunmiller Cabin and Barn as shown on Exhibit A or when approved in advance by the authorized Forest Service official. All newly constructed utilities will be underground, except as provided in the following:
- 1) Solar Panels (Exhibit A, #19 & #26). The right for structures to house solar panels. The right to maintain an existing solar panel structure as shown on Exhibit A within a 6 ft. x 16 ft. x 8 ft. footprint. The right to construct, reconstruct or maintain an expansion solar panel structure as shown on Exhibit A within a 6 ft. x 32 ft. x 8 ft. footprint. Solar structure will be hidden with vegetative screening from public view.
  - 2) Alternative Energy Sources. The right to replace existing utilities with an alternative energy source that is approved in advance in writing by the authorized Forest Service official provided that the alternative energy source will not significantly impair or interfere with the Conservation Values.
- J. Refuse Management. The right to accumulate trash or debris prior to disposal in an area screened from public view.
- K. Fuel Storage. The right to store fuel in an above-ground containers approved for fuel storage to accommodate non-commercial residential use. Storage containers shall not exceed 110 gallons for diesel fuel and 110 gallons for gasoline. The containers must be placed in the barn (Exhibit A, #11) or visually screened with wooden fencing or other appropriate materials acceptable to the authorized officer. Storage of propane shall not exceed 180 gallons. The propane tanks may be placed on the north and east sides of the Crowe Cabin (Exhibit A, #13) or in the barn. Up to two tanks not to exceed 50 gallons of the total allowed propane storage may be used for the Zaunmiller Cabin (Exhibit A, #12).
- L. Orchard. The right to propagate a fruit and nut orchard for non-commercial personal use and historic representation. Trimming and treatment of the fruit or nut trees is allowed. The orchard trees may be fenced with small individual fences to prevent damage to the trees from wildlife or livestock. Fencing material may be wire or natural materials with metal or natural posts. The orchard trees are located within the irrigated grass areas defined as the area encompassed by the Crowe Cabin, Blacksmith Shop, Spring House and Barn as shown in Exhibit A.
- M. Gardens (Exhibit A, #21). The right to maintain a 520 square foot (26 ft. x 20 ft.) fenced garden and a 60 square foot (6 ft. x 10 ft.) fenced garden area. Fencing material can be made of wood or metal to prevent damage from wildlife or stock.
- N. Timber. The limited right to use timber on the Property including cutting naturally dead or down (not girdled or human killed) trees for firewood and domestic uses; for maintenance of the buildings; and to eliminate direct safety hazards to existing structures, trails, or the airstrip. Dead or naturally downed trees may be milled with a portable Alaskan Chainsaw Mill to produce lumber for approved maintenance and preservation work. Any other vegetation manipulation must be approved in advance in writing by the authorized Forest

Service official who must consider the need for fuel reduction and defensible space for wildfire versus thinning or harvesting timber that could negatively affect the value of the real property rights held by the United States.

- O. Shrubs and Grass. The right to water, mow, trim, or remove shrubs and grass within the one-half acre area around the Crowe Cabin and areas around the Zaunmiller Cabin, the other historic structures, the orchard, and the airstrip to allow for better protection of the historic properties in relation to the fire activity and frequency. The right to mow, trim or remove shrubs and grass and minor ditch work to maintain the existing diversion ditches.
- P. Livestock. The limited right to have livestock on the Property; livestock shall be limited to non-commercial use of up to six head total of horses, mules or llamas, and occasional, temporary use from visitors with horses, mules or llamas. Livestock shall be non-resident. The grazing, feeding or watering of livestock shall be done in a manner which does not degrade water quality or result in soil erosion. Weed-free feed is required.
- Q. Road and River Access (Exhibit A, #34). The right to use and maintain a primitive dirt road through the Property as shown on Exhibit A from the boat landing near the bridge to the buildings and airstrip. The road surface shall be natural dirt and vegetation and width shall be less than 6 feet in general with wide spots and junctions not to exceed 9 feet in width as documented in the Baseline Documentation. The road to the boat landing may be improved to provide safer access to the landing upon written approval by the authorized Forest Service Official. No other roads shall be established on the Property.
- R. Motorized Equipment. The right to use mechanical or motor / motorized vehicles and equipment is limited to one farm tractor with farming attachments, chainsaws, lawnmowers, trimmer, carpentry tools, hand mowers and maintenance hand tools. Such shall be stored in the barn. An airplane or helicopter is also considered motorized and may be associated with the private airstrip on the Property.
- S. Bell (Exhibit A, #29). The right to site and maintain a farm bell and sign on the trail coming up from the River. The accompanying sign shall acknowledge the right of public access as well as the private property rights. Wording of the sign shall be approved by the authorized Forest Service officer.
- T. Antennas and Satellite Dishes (Exhibit A, #18). The right to have up to 3 external electronic signal reception antennas/satellite dishes on the Property that are used for residential use, that are less than 36 inches in diameter, are located out of public view or are adequately screened, and are approved in advance by the authorized Forest Service official.
- U. Water Rights. The right to retain all existing water rights appurtenant to the Property such as water from Trout Creek in accordance with Water Right No. 77-4088 which indicates a priority date of 07/29/1927 as filed with the Idaho Department of Water Resources or any subsequently obtained water right.

- V. Irrigation. The right to maintain all existing irrigation facilities, as shown on Exhibit A, #8, in their current location, capacity, and configuration. Water is delivered to the Property through two ditches from a diversion on Trout Creek (which is located on adjoining National Forest System lands within the Frank Church – River of No Return Wilderness and the diversion ditches are authorized under authority of P.L. 113-136 and a Forest Service special use permit that expires on 12/31/2046 with the potential to be reissued). The lower ditch divides into three ditches providing water to the Crowe Cabin, orchard, garden and Zaunmiller Cabin. The upper ditch provides water to the settling pond, two holding tanks, the landing strip and providing water for flood irrigation of the landing strip area and meadow south of the landing strip. Diversion Ditches are shown on Exhibit A, #5. The authorized Forest Service official must approve in advance any changes or additions to the existing irrigation systems and associated facilities. Grantor will maintain the flow of water in the existing ditch past the Zaunmiller Cabin due to its prominence in the historical record of the Property and frequent mention by Frances Zaunmiller Wisner in her writings.
- W. Ingress and Egress. The right of ingress and egress from the Property by airstrip, trail, and the River within the constraints of the Salmon River Management Plan.
- X. Signage. The right to post the following signs on the Property:
- 1) A sign at the bell on the trail coming up from the River of a size not greater than two feet by two feet, to identify private property with right of public access (see III.S above).
  - 2) Six interpretive signs regarding the history and ecology of the Property, each of a size not greater than three feet by five feet (Exhibit A, #27).
  - 3) Signs on each building describing its origin and purpose, each of a size not greater than ten inches by twelve inches.
  - 4) Signs indicating no public entry to the Crowe Cabin, Barn, and Potato Shed, each of a size not greater than ten inches by twelve inches.
  - 5) A sign indicating a private airstrip, of a size not greater than ten inches by twelve inches.
  - 6) Trail signs of the same size and type used by the Forest Service to indicate location of the Chamberlain (aka Three Blaze) Trail and the trail to the Ferry Site (Exhibit A, #28).
  - 7) Sign indicating direction to the Property on the east end of the bridge. Sign will be no greater than ten inches by twelve inches (Exhibit A, #28).
  - 8) One property identification sign not to exceed two feet by two feet.
  - 9) Such additional signs as approved in writing by the authorized Forest Service Official.
- Y. Borrow Pit (Exhibit A, #35). The right to use the existing borrow pit (25 ft. x 35 ft. and maximum of 8 ft. deep) until exhausted in the defined dimension. The pit was established for fill material for the septic field and water lines.
- Z. Ferry Cable (Exhibit A, #30) and Ferry Replica. The right to display the historic ferry cable for interpretive purposes. The right to display a replica of the historic ferry, to be constructed at such a scale as to be located inside the Blacksmith Shop. The ferry replica

would be designed in consultation with the Idaho State Historic Preservation Officer and approved by the authorized Forest Service official.

#### **PART IV – AFFIRMATIVE OBLIGATIONS OF GRANTOR**

In the exercise of any right reserved in Part III above, the affirmative obligations of Grantor include, but are not necessarily limited to, the following:

- A. Payment of all real property and other taxes on the Property.
- B. Preservation of the contributing elements of the National Register of Historic Places listing: the Campbell's Ferry Trail, Cook/Zaunmiller/Wisner Cabin, Blacksmith Shop, Potato Shed, Airstrip, Barn, Spring House, Chicken House, Orchard, and Irrigation Ditches, as shown in Exhibit A and in a manner consistent with the purposes of this Conservation Easement, "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings", and the Preservation and Maintenance Plan - Campbell's Ferry Ranch dated 2012 and included as an exhibit to the Baseline Documentation. In the event that Grantor fails to preserve the structures, the United States has the right, but not the obligation, to enter the Property and undertake by itself or through its agents such work as necessary to bring the structures into compliance, in which case Grantor shall be liable for the costs of such work.
- C. Maintenance and costs associated with the maintenance of the Chamberlain (aka Three Blaze) Trail, as shown on Exhibit A as the Public Access Trail (Exhibit A, #40), and the trail that accesses the Ferry Landing. Maintenance activities may include, but are not limited to: removal of fallen logs, removal of rocks, clearing of brush, cleaning of drainage structures, and completing tread work in accordance with National Trail Standards as directed in Forest Service Handbook 2309.18 Chapter 20. The Chamberlain Trail will be maintained as Trail Class 3 with Design Parameters for Pack and Saddle. The Ferry Landing Access Trail will be maintained as Trail Class 2 with Design Parameters for Hiker/Pedestrian. Maintenance activities associated with the trail will be reviewed and approved by authorized Forest Service officer on an annual basis, prior to implementation.
- D. Provision and maintenance of educational and interpretive signage and features in the historic buildings as detailed in the Interpretive Plan in the Baseline Documentation.
- E. Treatment and control of noxious weeds.

#### **PART V - EXPRESS PROHIBITIONS**

It is the intent of this Conservation Easement that all of Grantor's rights and uses in the land are specifically and affirmatively stated in Part III, and all remaining interests are conveyed to the United States.

For purposes of clarity and without limiting the rights of the United States acquired under this deed, it is understood by Grantor that the following actions and uses of the Property are prohibited. This is not an exclusive list of prohibited activities, but is provided to clarify the intent of this Conservation Easement that certain common activities shall be prohibited. The failure to list a particular use or activity in this section shall not be construed to allow such use unless rights thereto have been expressly reserved by Grantor in Part III.

A. Subdivision. Division, subdivision, or *de facto* subdivision of the Property through sales, long-term leases, or otherwise, for any purpose. The terms and conditions of this Conservation Easement shall apply to the Property as a whole, and the Property shall not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate. All development rights, except the use of the existing structures as reserved in Section III, that are now or hereafter allocated to, implied, reserved, or inherent in the Property are terminated and extinguished, and may not be used or transferred to any other property.

B. Occupancy. Any year-round residential use of the Property or the existing structures for any purpose whatsoever. In this regard, Grantor may be requested by the United States to provide proof of Grantor's, or Grantor's caretakers, permanent residence elsewhere.

C. Commercial Use. Operation of any commercial business or professional activities. Specifically and not exhaustively, under no circumstances shall commercial use of the airstrip or outfitting and guiding operations, retreat for commercial lodging, meals or camping be permitted on the Property. Prohibition of professional activities is not meant to prohibit Grantor or caretaker from writing or producing other media materials intended to promote the preservation of the Conservation Values of the Property.

D. Manufacturing and Mining. Manufacturing, industrial, mining or drilling operations, except drilling for a water well as provided for in Part III, above.

E. Minerals. Exploration, development, or extraction or other related activity of oil, gas, or minerals.

F. Grading and Excavation. Grading, excavating, or other permanent changes to the topography of the land or existing patterns of water drainage, including filling, excavating, dredging, mining, drilling or removal of topsoil, sand, gravel, rock, minerals or other materials, specifically and not exhaustively excepting ordinary maintenance of the airstrip, irrigation ditches, water lines, septic field, existing structure foundations, existing trails, existing roads, garden or borrow pit to the extent that the right is expressly reserved in Part III, above

G. New Construction. Construction, relocation, erection or placement of any new buildings or structures or improvements of any kind.

H. Demolition. Any demolition, removal, or razing of any existing structures or their facades. Changes to the buildings are addressed in Part III, above.

I. Mobile or Modular Structures. Placement of residential trailers, mobile homes, manufactured homes, modular buildings, yurts, or other such semi-permanent structures for dwelling or otherwise on any part of the Property except as reserved in Part III, above.

J. Vehicle Storage. Use or storage of recreation vehicles and equipment such as motor homes, travel trailers, campers, boats, snowmobiles, all-terrain vehicles, etc.

K. Refuse. Placing or allowing the dumping or accumulation of refuse, trash, ashes, garbage, debris, inoperable or unserviceable equipment, other unsightly or offensive materials, hazardous or toxic wastes and materials, except as specifically provided for in Part III, above. Notwithstanding anything in this Conservation Easement to the contrary, this prohibition does not make the United States an owner of the property, nor does it permit the United States to control any use of the Property which may result in the storage, dumping or disposal of hazardous or toxic materials by Grantor; provided, however, that the United States may bring an action to protect the Conservation Values in accordance with this Conservation Easement. This prohibition does not impose liability on the United States, nor shall the United States be construed as having liability as a "responsible party" under federal or state statutes.

L. Hazardous Substance Disposal. Disposal or unlawful storage of hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601 et. seq.

M. Antennas. The placement of towers, antennas, electronic receivers, satellite dishes, or similar equipment or structures that are not specifically reserved in Part III, above.

N. Signs. Placement of signs, billboards, or advertising devices, excepting the signs specifically provided for in Part III, above. All other signs are prohibited unless approved in writing in advance by the authorized Forest Service official.

O. Timber. Harvesting timber or the removal, destruction or cutting of live trees or plants, except as provided in Part III, above.

P. Motor Vehicles. The use of motor/motorized vehicles or equipment, except as provided in Part III, above.

Q. Farming. The planting of trees (other than the orchard fruit or nut trees) or crops or any farming, ranching or grazing activity, except as provided in Part III, above.

R. Archaeology. Archaeological or paleontological explorations except those conducted by the United States or as authorized by a permit from the Secretary of Agriculture or his/her duly authorized representative. All specimens or materials of archaeological or paleontological interest found on the Property shall be the property of the United States.

## **PART VI - GENERAL PROVISIONS**

A. Terms. The term "Grantor" shall apply to the present Grantor and to all heirs, successors or assigns. The term "United States" includes the Secretary of Agriculture, acting by and through the Forest Service, and any authorized agents or assigns. The term "authorized Forest Service official" is defined as the District Ranger who administers the conservation easements in this segment of the Salmon Wild and Scenic River, or such other authorized officer of the Forest Service as may be designated.

B. Public Access. The public has the right of access to and across the Property, the right to enter the historic structures as expressly provided in Part III, and said public access is subject to the express prohibitions to public access detailed in Part III, above. The United States holds separate public access rights in the Property as described in the right of way deed recorded December 12, 1955, in Book 89, Page 202, Office of the Recorder of Idaho County, Idaho.

C. Entry and Access. Representatives and agents of the United States may make entry upon the Property to administer this Conservation Easement, to manage the rights of the United States, to inspect for violations and record inspections, and to take enforcement or remedial actions as authorized herein. However, any inspection of the Property to determine compliance with the above terms and conditions or applicable Federal, State, and local laws, regulations, and ordinances shall, where possible, be at a date and time mutually acceptable to Grantor and the United States. Agreement as to a mutually acceptable date and time shall not be unreasonably withheld.

D. Monitoring. With the consent of Grantor, the United States may designate another entity to perform the monitoring required in the terms of this Conservation Easement, such entity may be another government agency, land trust, conservation organization with the appropriate expertise in management of conservation and scenic easements consistent with the terms and conditions of this Conservation Easement.

E. Non-reserved Rights. All rights and interests in the Property not expressly and specifically reserved by Grantor in this Conservation Easement are deemed to be acquired by the United States, and uses of the Property not specifically reserved are deemed to be prohibited. This Conservation Easement is conveyed subject to all outstanding rights of record as of the date of conveyance.

F. Sale or Mortgage. Nothing in this Conservation Easement shall prevent Grantor from selling or mortgaging the Property, subject to the rights acquired herein by the United States.

G. Enforcement. The United States may prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require and enforce the restoration of such structures, areas or features of the Property that may be impaired, interfered with, or damaged by any inconsistent activity or use.

H. Ambiguities. The provisions of this Conservation Easement are enforceable in law or equity by the United States or its assigns. Grantor and the United States agree that any ambiguities regarding the terms and conditions of this Conservation Easement shall be resolved in a manner which best effects the Conservation Values and the continuation of existing uses as defined in the public laws cited in this Conservation Easement. Also in resolving ambiguities, the Grantor shall bear the burden of proof establishing that any proposed use is reserved under the terms of this instrument.

I. Surveying. The United States is authorized, but not obligated, to survey or otherwise delineate boundaries of the Property or any part thereof and, at the discretion of the United States, to monument and maintain corners. The United States shall have the right to make surveys, plats, take photographs, and prepare such other documentation as may be necessary or desirable to administer the provisions of this Conservation Easement. Any such map, plat, or other suitable document may be recorded at the discretion of the United States in the land records of the county wherein the Property is located.

J. Hazardous Substances. Grantor is liable for the costs associated with the cleanup of hazardous substances, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and similar state or federal laws for which they would otherwise ordinarily be liable. Further, Grantor shall hold the United States and agencies and instrumentalities thereof harmless from liability under said statutes, and indemnify the United States for all costs relating to cleanup, including attorney fees, of hazardous substances which were released prior to the effective date of this Conservation Easement, and for all releases caused or contributed to by Grantor, its agents, or successors in interests subsequent to the date of this Conservation Easement, but not for costs for cleanup of hazardous substances which are released by agencies and instrumentalities of the United States in the course of engaging in activities that are authorized by this Conservation Easement. This clause may be enforced by the United States in a court of competent jurisdiction. Nothing in this paragraph shall be deemed to affect Grantor's rights or abilities to perform any clean-up of hazardous substances required by any government agency or to imply a right or duty on the part of the United States to independently initiate a clean-up of hazardous substances on the Property under CERCLA or any similar law or regulation.

K. Notices; Approvals. Grantor shall not undertake or permit any activity requiring prior approval by the authorized Forest Service official without first having notified and received approval from the authorized Forest Service official as provided herein. This is to afford the United States an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of the Conservation Easement. Whenever notice is required, Grantor shall notify the Forest Service in writing not less than ninety (90) days prior to the date Grantor intends to undertake the activity in question. The notice shall inform the authorized Forest Service official of all aspects of the proposed activity, including design, materials, or equipment to be used, dates and duration, and any other relevant information regarding the proposed activity in sufficient detail to permit the United States to make an informed judgment as to its consistency with the purpose of the Conservation Easement.

Notice shall be sent by registered or certified mail, return receipt requested, to the office of the authorized official.

L. Extinguishment. The fact that any use of the Property that is not expressly reserved to Grantor thus deemed prohibited or any other use as determined to be inconsistent with the purpose of this Conservation Easement, may become greatly more economically valuable than the reserved uses, or that neighboring properties may in the future be put entirely to uses that are not permitted hereunder, has been considered by Grantor in granting this Conservation Easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Conservation Easement, and it is the intent of both Grantor and the United States that there are no changed circumstances justifying the modification of this Conservation Easement. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of the Conservation Easement or be considered grounds for its modification, termination or extinguishment. Provided that nothing in this paragraph shall prevent the United States from acquiring through donation, purchase or exchange rights reserved under this Conservation Easement.

M. Remedies. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, the parties shall meet together to discuss the dispute and attempt resolution. The Express Prohibitions set forth in Part V are in conflict with the Conservation Values of this Conservation Easement. In the event that the United States and Grantor cannot resolve any dispute hereunder, the provisions of this Conservation Easement are enforceable by the United States or its assigns, through all remedies available at law or in equity.

1. Notice of Violation. If the Grantee determines that a violation of the terms of this Conservation Easement has occurred or that a violation is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cure the violation within the timeframe specified by the Grantee, at least thirty (30) days, after receipt of notice thereof from the Grantee, or fails to continue diligently to cure such violation until finally cured, Grantee may seek injunctive relief as set forth herein.
2. Injunctive Relief. Grantor agrees that a violation of the terms of the Conservation Easement constitutes irreparable harm. In the event of a violation, the Grantee, in the sole judgment of the Grantee, may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
3. Damages. Grantee shall be entitled to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without

limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

4. **Emergency Enforcement.** If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property or to prevent a material breach or extinguishment of the Conservation Easement, the Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.
5. **Scope of Relief.** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. The parties agree that Grantee's remedies at law for any violation of the terms of this Conservation Easement may be inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
6. **Costs of Enforcement.** In any action, suit or other proceeding undertaken to enforce the provisions of this Conservation Easement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses including attorneys' and experts' fees as allowed by law, and if such prevailing party recovers judgment in any action or proceeding, such costs and expenses shall be included as part of the judgment. In addition, in the event the Grantee prevails in any such action that results in an order directing Grantor to undertake restoration, then Grantor shall bear all costs thereof.
7. **Grantee's Discretion.** Enforcement of the terms of this Conservation Easement shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. The failure of Grantee to discover a violation or to take immediate legal action shall not be deemed or construed to be a waiver of the Grantee's rights nor bar Grantee from taking such action at a later time.
8. **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed the Conservation Easement. In full knowledge of the provisions of this Conservation Easement, Grantor hereby waives any claim or defenses it may have against Grantee

or its successor in interest under or pertaining to the Conservation Easement based upon waiver, laches, estoppel, adverse possession, or prescription.

9. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; provided, that Grantor shall notify the Grantee of such change in the Property and any emergency actions taken by Grantor.

N. Costs Incident of Ownership. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantee shall have no obligation for the upkeep or maintenance of the Property. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor; provided, that nothing in this section shall prohibit Grantor from recording a deed of trust against the Property to secure Grantor's indebtedness as long as such deed of trust shall remain subordinate to this Conservation Easement.

1. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish the Grantee with satisfactory evidence of payment upon request. Grantee shall have no obligation to pay any taxes levied on or assessed against the Property.
2. Indemnification. Grantor shall hold harmless, indemnify, and defend the Grantee and its officers, employees, agents, and contractors, its successors and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, fines, costs, losses, damages, expenses, causes of action, claims, demands, or judgments of any kind or nature arising from the past, present, and future acts or omissions of Grantor or its employees, agents, contractors, or lessees, (collectively "Grantor et al."), including, without limitation, reasonable attorney and expert fees, arising from or in any way connected with Grantor et al.'s use, occupancy, or operations on the Property which has already resulted or does hereafter result in: (1) violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the Property; (2) judgments, claims or demands of any kind against the Indemnified Parties unless due solely to the willful misconduct of any of the Indemnified Parties; (3) costs, expenses, or damages of any kind against the Indemnified Parties unless due solely to the willful misconduct of any of the Indemnified Parties; (4) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the

negligence or willful misconduct of any of the Indemnified Parties; (5) the breach by Grantor et al. of any of its obligations set forth in this Conservation Easement; (6) the existence or administration of this Conservation Easement; and (7) the existence or release or threatened release off, on, into, or under the Property of any solid or hazardous waste(s), substance or other contaminants as they are now and may hereafter be defined under any local, state and federal statute, law or regulation; (8) activities by which solid waste or hazardous substances or waste, as defined by federal or state laws are generated, released, stored, used or otherwise disposed of on the Property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (9) natural resource damages as defined by federal or state law. Grantor's obligations under this section shall not apply with respect to any such hazardous waste, substance or other contaminants released on the Property by Grantee or Grantee's representatives or agents.

O. Running with the Land; Assignment of Interest. This Conservation Easement is an interest in real property and runs with the land in perpetuity. Grantor may transfer the remaining rights in the Property subject to the terms and conditions of this Conservation Easement. Grantor agrees to incorporate the terms and conditions of this Conservation Easement in any deed or other legal instrument by which it divests itself of any remaining interests or a right of use in all or a portion of the Property, including, without limitation, a mortgage, and to attach a copy of this Conservation Easement to any such instrument. Grantor further agrees to give written notice to the United States of the transfer of any remaining rights or interests to the Property at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of the Grantor, by acceptance of a deed, or other document purporting to convey any remaining interest in all or any portion of the Property, shall be deemed to have consented to, reaffirmed, and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement. If the United States assigns its interest under this Conservation Easement, the United States shall provide Grantor written notice of such intention and shall allow Grantor to comment and suggest an appropriate assignee.

#### **PART VII - ADDITIONAL PROVISIONS.**

A. Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States of America and the State of Idaho.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of protecting the Conservation Values and the purposes of this Conservation Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions and purposes of this Conservation Easement, and/or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein.

E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

F. Joint Obligation. The obligations imposed by this Conservation Easement upon Grantor shall be joint and several.

G. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the Grantor and all of that Grantor's heirs, successors and assigns, and the Grantee and all of its assigns and successors.

H. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. Captions. The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

J. Perpetual Duration. This Conservation Easement shall constitute a covenant and servitude running with the land in perpetuity. Every provision of this Conservation Easement that applies to Grantor or Grantee shall also apply to such party's respective agents, heirs, executors, administrators, assigns and all other successors as their interests may appear.

**ATTACHED EXHIBITS.** The following exhibits are attached to and incorporated into this Conservation Easement:

- Exhibit A: Property Survey Maps and List of Existing Improvements
- Exhibit B: Acknowledgement of the Baseline Documentation

TO HAVE AND TO HOLD, the herein described estate in land and rights unto the United States, and its assigns, forever. The rights conveyed herein shall run with the Property and constitute a perpetual servitude thereon. Grantor covenants for itself and its successors in interest that it will warrant and defend forever unto the United States the quiet and peaceable use and enjoyment of this interest in land against all claims and demands.

IN WITNESS WHEREOF, Grantor has hereunto subscribed its name on the day and year first above written.

GRANTOR:

CAMPBELL'S FERRY RANCH, LLC

Douglas A. Tims  
DOUGLAS A. TIMS, Government Affairs Manager

ACKNOWLEDGMENT

STATE OF Idaho )  
 )ss.  
County of Idaho )

On this 12<sup>th</sup> day of August, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared DOUGLAS A. TIMS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the individual who executed the within and foregoing instrument as the Government Affairs Manager of Campbell's Ferry Ranch, LLC, the Limited Liability Corporation therein named, and acknowledged to me that such corporation executed the same.

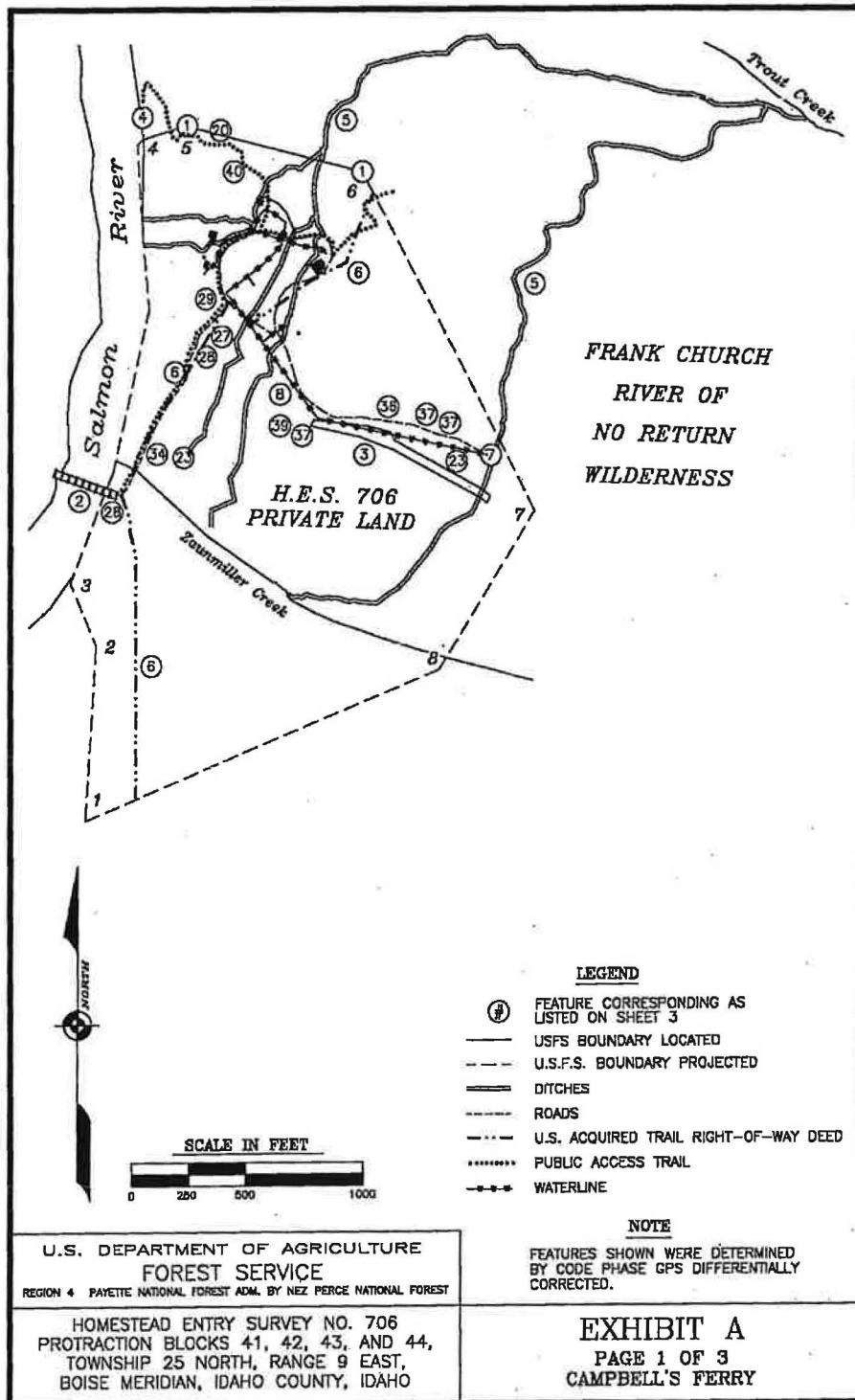
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

TRACI A. FREI  
COMMISSION NO. 43668  
NOTARY PUBLIC  
STATE OF IDAHO

Traci A. Frei  
Name (Printed) Traci A. Frei  
Notary Public for the State of Idaho  
Residing in Grangeville  
My Commission Expires 2/1/2023

Approved as to Consideration, Description, and Conditions

By: [Signature] Date: 01 August 2019



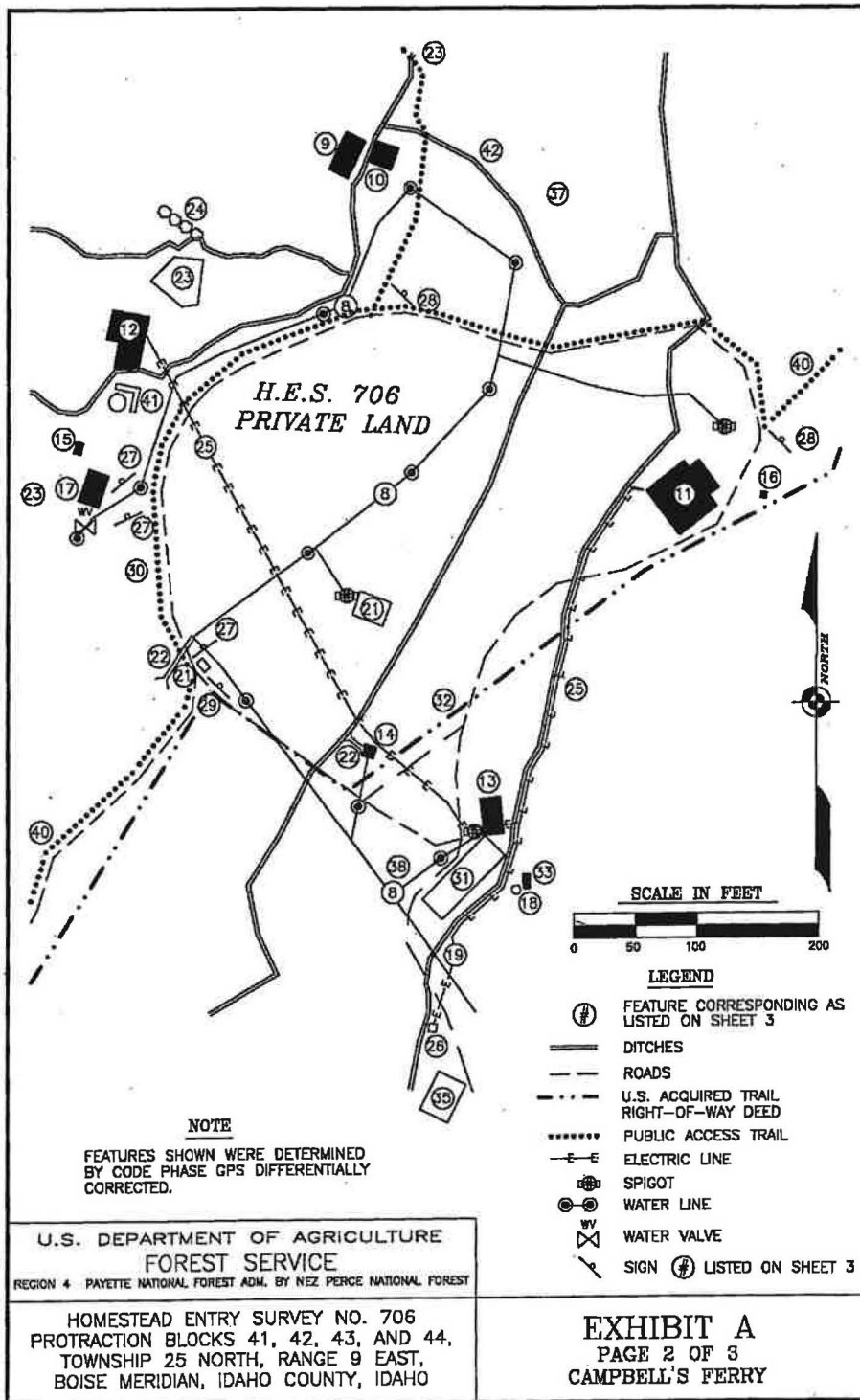


**EXHIBIT A – Page 3 of 3**  
**LIST OF EXISTING IMPROVEMENTS**

Improvement number corresponds to feature on Pages 1 and 2. (Conservation Easement Reference)

- |                                                                                                                                                |                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| 1. Survey Monuments                                                                                                                            | 22. Drain Line                                                |
| 2. Bridge                                                                                                                                      | 23. Old Dump Areas                                            |
| 3. Airstrip (III. D.)                                                                                                                          | 24. Rock Wall                                                 |
| 4. Ferry Landing (outside of Conservation Easement)                                                                                            | 25. Electric Line (III. I.)                                   |
| 5. Water Diversion Ditches (III. V.)                                                                                                           | 26. Solar Panel Expansion Site (III. I. 1)                    |
| 6. U.S. Acquired Trail Right-Of-Way (Part I.)                                                                                                  | 27. Interpretive Signs (III. X. 2.)                           |
| 7. Tanks and Settling Pond – Two 1600-gallon tanks & 12ft x 12ft settling pond (III. G.)                                                       | 28. Direction Signs (III. X. 6 and 7)                         |
| 8. Water Line - buried (III. G.)                                                                                                               | 29. Farm Bell and Direction Sign (III. S.)                    |
| 9. Chicken House – 16ft x 16ft & 17ft high (III. E. 5. d)                                                                                      | 30. Ferry Cable (III. Z.)                                     |
| 10. Spring House – 14ft x 16ft & 10ft high (III. E. 5. d)                                                                                      | 31. Crowe Cabin Terrace – 23ft x 74ft (III. E. 5. g)          |
| 11. Barn with Tack Room – 44ft x 32ft & 26ft 6in high barn & 11ft x 25ft 6in tack room (III. E. 5. e)                                          | 32. Grave – Rose Cook                                         |
| 12. Zaunmiller Cabin -18ft x 32ft & 19ft high log structure & 23.5ft x 12.5ft lumber addition & 12ft x 18ft porch (III. E. 5. a)               | 33. Wood Storage Shed – 12ft x 6ft & 10ft high (III. E. 5. h) |
| 13. John Crowe Cabin – 16ft 5in x 32ft 7in & 17ft high, 4ft x 8ft north porch, 6ft 6in x 7ft 4in south porch & 6ft x 6ft shower (III. E. 5. g) | 34. Primitive Roads (III. Q.)                                 |
| 14. Potato Shed – 10ft x 10ft & height of 1ft to 6ft (III. E. 5. f)                                                                            | 35. Borrow Pit - 25ft x 35ft x 8ft (III. Y.)                  |
| 15. “Blue Room” Outhouse – 10ft 8in x 5ft 1in & 8ft high (III. E. 5. c)                                                                        | 36. Mail Box (III. D.)                                        |
| 16. Barn Outhouse – 4ft 8in x 4ft 8in & 8ft high (III. E. 5. e)                                                                                | 37. Rock Pile (III. D.)                                       |
| 17. Blacksmith Shop – 16ft x 26ft & 15ft high (III. E. 5. b)                                                                                   | 38. Septic System (III. E. 5. g)                              |
| 18. Satellite Dishes (III. T.)                                                                                                                 | 39. Wind Sock (III. D.)                                       |
| 19. Solar Panels – existing (III. I. 1)                                                                                                        | 40. Public Access Trails (IV. C.)                             |
| 20. Grave – Norman Wolfe                                                                                                                       | 41. Walnut Tree, Log Seating Area and Fire Pit (III. E. 5. a) |
| 21. Fenced Gardens – 26ft x 20ft & 6ft x 10ft (III. M.)                                                                                        | 42. Dry Diversion Ditch                                       |

## **EXHIBIT B**

### **ACKNOWLEDGEMENT OF THE BASELINE DOCUMENTATION**

Grantor and Grantee acknowledge that each has been provided a copy and has read the Baseline Documentation Report dated August 7, 2019, and that the Documentation accurately reflects the condition of the Property subject to the Conservation Easement as of this date.

The Baseline Documentation Report Includes the Following Attachments:

- A. Maps
  - 1) Nez Perce/Payette National Forest Visitor Map
  - 2) Topographic Map
  - 3) Legislative Format Map
  - 4) Aerial Image
  - 5) Plat of Homestead Entry Survey No. 706
- B. Land Description Verification
- C. Historic Register Nomination and Certification
- D. Conservation Easement with Exhibit A and Exhibit B
- E. Photographs with Logs
  - 1) 1978
  - 2) 2012
  - 3) 2018
- F. Title Policy and Supporting Documents
- G. Water Rights Information
- H. Idaho Wilderness Water Resources Protection Act, Public Law 113-136
- I. Special Use Permit SAL\_911\_01 authorizing the existing water transmission system on National Forest System Lands
- J. Preservation and Maintenance Plan - Campbell's Ferry Ranch dated 2012
- K. The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings
- L. Campbell's Ferry Interpretive Plan dated 2018
- M. Forest Service Handbook 2309.18, Chapter 20 – Trails Management Handbook
- N. Certificate of Possession, FS 5400-37 signed September 25, 2018
- O. Wild and Scenic Rivers Act, Public Law 90-542
- P. Homestead Entry Documents

[Signature Page Follows]

**GRANTOR:**

**CAMPBELL'S FERRY RANCH, LLC**

  
DOUGLAS A. TIMS, Government Affairs Manager

**GRANTEE:**

**THE UNITED STATES OF AMERICA**

By:   
JOSEPH G. ALEXANDER  
Director, Recreation, Minerals, Lands, Heritage, and Wilderness  
Northern Region  
USDA Forest Service



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

July 6, 2020

MURRAY D FELDMAN  
C/O HOLLAND & HART  
PO BOX 2527  
BOISE ID 83701-2527

Re: Exempt Hydropower Use

Dear Hydropower User:

The Department acknowledges the receipt of notice of exempt hydropower use for Campbell's Ferry Micro-Hydro Unit located at Township 25N, Range 09E, Section 35. The submitted notice states Water Rights 77-4088 authorizing the diversion of water are associated with this hydropower use. The maximum rate of flow in cubic feet per second will be 0.06 (May 1 to May 30 & October 1 to November 30) and 0.123 cfs (May 31 to September 30), the maximum power output in kilowatts will be 1.1, and the days and months the power plant will be in operation will be from May 1 to November 30.

The current owner of this water right is Douglas Tims. This exemption notice was filed under the name of Campbell's Ferry Ranch. Notice of Change in Water Right ownership forms are available on the Department's website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov) if you would like to update the ownership of this right. I have enclosed a copy of the water right report

If you have any questions please feel free to contact me at (208) 287-4942. Thank you.

Sincerely,

Jean Hersley  
Technical Records Specialist

c: Douglas Tims

JUL 02 2020

DEPARTMENT OF  
WATER RESOURCES

**Murray D. Feldman**  
Partner  
Phone (208) 342-5000  
Fax (208) 343-8869  
mfeldman@hollandhart.com

June 30, 2020

Idaho Department of Water Resources  
P.O. Box 83720  
Boise, ID 83720-0098

Re: Notice of Exempt Hydropower Use Pursuant to Idaho Code § 42-201(9)  
Campbell's Ferry Ranch, LLC  
Water Right No. 77-04088

Dear IDWR:

I enclose the Notice of Exempt Hydropower Use Pursuant to Idaho Code § 42-201(9) for Campbell's Ferry Ranch, LLC and Water Right No. 77-4088.

Also enclosed are the attachment to this notice, which includes:

1. Exhibit A to Campbell's Ferry Conservation and Scenic Easement Deed (pages 24-26);
2. Part I – Property Description of Campbell's Ferry Conservation and Scenic Easement Deed (page 3);
3. Campbell's Ferry Conservation and Scenic Easement Deed, Exhibit A, Item 7 (pages 24-26);
4. Part III G., Campbell's Ferry Conservation and Scenic Easement Deed (Aug. 12, 2019), page 9; and
5. June 3, 2020 letter from Federal Energy Regulatory Commission to Austin W. Jensen, Holland & Hart LLP re: Campbell's Ferry Micro-Hydro Unit Meets the Qualifying Conduit Hydropower Facility Criteria under the Federal Power Act.

Items 1 through 4 above are contained within the single copy of the Campbell's Ferry Conservation and Scenic Easement Deed (Aug. 12, 2019) included with the Notice.





To Campbell's Ferry's knowledge, there is no water district or watermaster in the area of Campbell's Ferry, and thus this notice to IDWR is the only notice required under Idaho Code §42-201(9) as there is no watermaster to provide notice to.

If you have any questions about the enclosed notice or these items, please let me know. Thank you for your assistance with these items.

Sincerely,

HOLLAND & HART<sup>LLP</sup>

Murray D. Feldman

MDF:cd

Enclosures

cc: Douglas A. Tims, Campbell's Ferry, LLC (w/enclosures)

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