

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE OFFICE OF THE ACTING ASSISTANT SECRETARY OF THE AIR FORCE FOR
ENERGY, INSTALLATIONS, AND ENVIRONMENT

AND

366th FIGHTER WING
MOUNTAIN HOME AIR FORCE BASE

AND

THE IDAHO WATER RESOURCE BOARD

AND

IDAHO OFFICE OF THE GOVERNOR

FOR

POTENTIAL WATER RESILIENCE PROJECT IN THE MOUNTAIN HOME PLATEAU
REGION

F1AF2E-21133-001

This is a memorandum of understanding (MOU) between the Department of the Air Force (DAF), through the Air Force Office of Energy Assurance (OEA), on behalf of the Office of the Acting Assistant Secretary of the Air Force for Energy, Installations, and Environment, the 366th Fighter Wing, Mountain Home Air Force Base (MHAFB), Idaho Office of the Governor and the Idaho Water Resource Board (IWRB), each a “Party” and collectively referred to as the “Parties.”

1. BACKGROUND:

Given that the regional Mountain Home aquifer has been steadily declining at a rate of two feet per year, the State of Idaho (State), desires to sustainably manage available water resources and maximize their economic benefit. The 2019 Idaho State Legislature passed and approved Senate Joint Memorial 104, which states the Legislature’s support of the construction of a new water supply pipeline to MHAFB to bring water from the Snake River to the base. In 2019, the Idaho State Legislature appropriated \$20M into the Water Management Account, which can be used for the Mountain Home Air Force Base pipeline. The 2021 Idaho State Legislature appropriated an additional \$50M into the Water Management Account, providing sufficient funds to move forward.

A solution and component of a regional strategy is for the State to provide a pump station and pipeline conveyance system to deliver water from the Snake River to the MHAFB property boundary. Once constructed and delivering water to the MHAFB, the IWRB will have secured senior priority water rights from the Snake River. The IWRB has proposed connecting the Snake River pipeline to MHAFB to deliver the senior priority water rights held by the IWRB. Should the project be funded and constructed by the IWRB, once construction is complete, the State intends to transfer or gift the pipeline to the DAF which will then hold title and assume operations and maintenance responsibilities and associated costs for the pipeline. The IWRB will continue to hold the Snake River water rights. MHAFB does not have an active water Utility Services Contract (USC) or Intergovernmental Support Agreement (IGSA), but it may be determined at a future time that a USC or IGSA would be needed to deliver water via the pipeline to the MHAFB property boundary. Any adopted solution must be consistent with federal and state statutory requirements applicable to the DAF and IWRB, including the requirements relating to budgetary scoring.

The Snake River surface water would serve as an additional water source and the DAF would supplement groundwater use with Snake River water. The DAF intends to preserve and exercise its existing groundwater rights' capability to draw from on-base wells to retain access to groundwater and its right to engage in water conservation programs as desired.

2. PURPOSE:

- a) The Parties seek to establish an MOU with the intent of achieving reduced and/or shared costs and reductions in risk by finding solutions to improve water resilience. The Parties will engage in alignment of execution strategies, transaction approaches, and other miscellaneous scope items associated with the project concept.
- b) The Parties agree to develop a clear set of conditions to ensure that both Parties' decision to proceed with a water resilience project is mutually supportive and in concert with the other Party.
- c) The DAF will preserve and exercise the existing groundwater rights at MHAFB and the existing capability to draw from onsite wells. The DAF will also preserve the right to implement water conservation measures or other water-reducing techniques.

3. UNDERSTANDINGS OF THE PARTIES:

- a) The DAF will investigate potential authorities to comply with executive agency requirements including, but not limited to, 40 U. S. C. § 501 (Services for executive agencies) and relevant environmental statutes and requirements, including the National Environmental Policy Act (NEPA), 42 U. S. C. § 4321, et seq. The DAF will research and identify potential authorities to accept the transfer including but not limited to: 10 U.S.C. § 2608 - Acceptance of contributions for defense programs, projects, and activities, Defense Cooperation Account, 10 U.S.C. § 2663 - Land acquisition authorities and 10 U.S.C § 2601 - General gift funds.

- b) The IWRB will pursue funding sources, including, but not limited to funds available in the Water Management Account, Idaho Code § 42-1760, to construct an intake pumping station and pipeline, estimated at \$27M, to deliver surface water from Snake River to MHAFB.
- c) The State of Idaho intends to transfer or gift the intake pumping station and pipeline to the DAF, which will then hold title and assume operations and maintenance responsibilities and associated costs for the pipeline. The IWRB will continue to hold the Snake River water rights.
- d) The DAF will pursue funding sources including, but not limited to, the Energy Resilience and Conservation Investment Program (ERCIP) to fund design and construction for a new water treatment plant (WTP) to process the surface water from the Snake River. If Parties determine that the project scope items are in the best interest of all Parties, Parties may coordinate project efforts by sharing construction and design plans, as well as details of environmental studies and/or lease transactions.
- e) With funding secured, the DAF will construct a new WTP located on MHAFB, estimated to cost \$49.3M, to process the incoming Snake River surface water. MHAFB will utilize surface water provided by the Snake River pumping station and pipeline to operate the WTP.
- f) The Parties will develop a strategy that clearly outlines roles and responsibilities for the operations and maintenance of the pipeline prior to a final decision to undertake a water resilience project.
- g) Each Party will implement its own scoping, analysis, and approval process, in consultation with the other Parties as required to assure overall consistency in analysis. Upon completion of approvals, the Parties agree to collaborate as may be useful or necessary to assure that the separate projects function together, particularly as may be required to allow effective interconnection of the pipeline with the WTP.
- h) Future obligations and expenses of each Party shall be through separate, future agreements and contracts and not through this MOU. The Parties acknowledge the DAF shall at no time be obligated for payment of fees, tariffs, capital recovery charges, etc. associated with construction of an intake pumping station and pipeline to deliver surface water from Snake River to MHAFB; and the State shall at no time be obligated with charges associated with construction for the WTP.

4. **PERSONNEL:**

Each Party is responsible for all costs of its personnel, including pay and benefits, support and travel. Each Party is responsible for supervision and management of its personnel.

5. GENERAL PROVISIONS:

5.1. POINTS OF CONTACT: The following are the points of contact that will be used by the Parties to communicate in implementations of this MOU. Each Party may change its point of contact upon reasonable notice to other Parties.

5.1.1. OEA (on behalf of the Office of the Acting Assistant Secretary of the Air Force for Energy, Installations, and Environment):

Ms. Brittany Angle
Chief, Project Development Division

5.1.2. MHAFB:

Mr. Andrew Mendoza
Deputy Base Civil Engineer

5.1.3. IWRB:

Brian Patton
Executive Officer, Idaho Water Resource Board

5.2. CORRESPONDENCE: All correspondence to be sent and notices to be given pursuant to this MOU will be addressed, if to OEA, to –

2530 Crystal Drive, 8th Floor, Arlington, VA 22202

And, if to MHAFB, to –

366CES/CD, 1030 Liberator St. Mountain Home AFB ID 83648

And, if to IWRB, to –

PO Box 83720, Boise, ID 83720-0098

5.3. FUNDS AND MANPOWER. This MOU neither documents nor provides for the exchange of funds or manpower between the Parties, nor does it make any commitment of funds or resources. No provision in this MOU will be interpreted to require obligation or payment of funds.

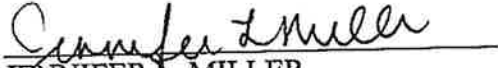
5.4. MODIFICATION OF MOU: This MOU may only be modified by the written agreement of the Parties, duly signed by their authorized representatives. This MOU will be reviewed no less often than at the mid-point of its term and around the anniversary of its effective date in its entirety.

5.5. DISPUTES: Any disputes relating to this MOU will, subject to any applicable law, Executive order, directive, or instruction, be resolved by consultation between the Parties.

- 5.6. **TERMINATION OF UNDERSTANDING:** The Parties acknowledge and agree that each Party will have the right to terminate the negotiation of an agreement for any reason or no reason and that no Party owes a duty to negotiate an agreement. The MOU may be terminated by either Party by giving at least 180 days written notice to the other Party.
- 5.7. **TRANSFERABILITY:** This MOU is not transferable except with the written consent of the Parties.
- 5.8. **ENTIRE UNDERSTANDING:** It is expressly understood and agreed that this MOU embodies the entire understanding between the Parties regarding the MOU's subject matter.
- 5.9. **EFFECTIVE DATE:** This MOU takes effect beginning on the day after the last Party signs.
- 5.10. **EXPIRATION DATE:** This MOU expires two (2) years from the effective date unless renewed by all Parties. Additional reviews may take place as changing conditions or circumstances require.
6. **FINANCIAL DETAILS:** This MOU does not document nor provide for the exchange of funds or manpower between the Parties nor does it make any commitment of funds or resources.
7. **COMPETITION:** Nothing in this MOU provides the Parties with any preference, advantage or otherwise in furtherance or pursuit of any engagement outside the scope of this MOU, nor in any respect limits the options of any Party with respect to the subject matter of this MOU or any other project or undertaking. In order to avoid any appearance of a conflict of interest, the Parties may set limits on the level of assistance or cooperation any Party provides the other.

APPROVED:

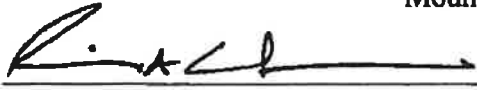
Office of the Acting Assistant Secretary of the Air Force
for Energy, Installations, and Environment


JENNIFER L. MILLER

Acting Assistant Secretary of the Air Force
(Energy, Installations, and Environment)

Date: 13 May 2021

Mountain Home Air Force Base



RICHARD A. GOODMAN

Colonel

Commander, 366 Fighter Wing (ACC)

Date: 10 May 2021



Idaho Water Resources Board (IWRB)

Jeff Raybould

Chairman

Date: May 7, 2021

Idaho Office of the Governor



Brad Little
Governor

Date: 5/10/21



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Four Rivers Field Office
3948 Development Avenue
Boise, Idaho 83705



In Reply Refer To:
IDI-38314/ 2800 (ID111)

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

DECISION

Randy Broesch	:	
Idaho Water Resources Board	:	Right-of-Way Grant
322 E. Front Street, Suite 39431	:	
Boise, Idaho 83702	:	

RIGHT-OF-WAY GRANT IDI-38314 ISSUED

Enclosed is an original copy of your right-of-way (ROW) grant, serial number IDI-38314, which authorizes the right to construct, operate, maintain, and terminate a water pump station and intake structure, associated access roads, and a 20 to 24 inch water pipeline (A sustainable Water Supply System for Mountain Home Air Force Base).

NOTE: Stipulation 4.i. requires that you notify our office prior to construction. The Holder shall not initiate any construction or other surface disturbing activities on the right-of-way without prior written authorization of the authorized officer. Such authorization shall be a written Notice to Proceed (Form 2800-15) issued by the authorized officer. The Notice to Proceed will only be issued after the Holder submits a final approved Plan of Development (POD). Any Notice to Proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.

Appeal Procedures

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations at 43 CFR 2801.10 and 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is

required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed in this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Sincerely,

A handwritten signature in blue ink that reads "Amanda Hoffman". The signature is written in a cursive, flowing style.

Amanda L. Hoffman
Manager,
Morley Nelson Snake River Birds of Prey
National Conservation Area

2 Enclosures

- 1 - Right-of-Way Grant, IDI-38314
- 2 - Form 1842-1

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

SERIAL NUMBER IDI-38314

1. A right-of-way 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:

IDAHO WATER RESOURCES BOARD
322 E. FRONT STREET, SUITE 648
BOISE, IDAHO 83702

receives a right to construct, operate, use, maintain, and terminate A WATER PUMP STATION AND INTAKE STRUCTURE, ASSOCIATED ACCESS ROADS, AND A 20 TO 24 INCH WATER PIPELINE (A Sustainable Water Supply System for Mountain Home Air force Base) on public lands described as follows:

Boise Meridian, Idaho Elmore County

T. 4 S., R. 4 E.,

section 13, S1/2SE1/4;
section 22, SE1/4SW1/4, NE1/4SE1/4, and S1/2SE1/4;
section 23, lots 1 thru 4, and N1/2SW1/4;
section 24, NW1/4NE1/4, N1/2NW1/4, and SW1/4NW1/4;
section 27, NW1/4NE1/4, N1/2NW1/4, and SW1/4NW1/4;
section 28, SE1/4NE1/4 and E1/2SE1/2;
section 33, E1/2E1/2.

T. 4 S., R. 5 E.,

section 8, SESE;
section 9, NESW and S1/2SW1/4;
section 15, E1/2E1/2;
section 17, lots 1 thru 6;
section 18, lots 5, 7, and 8, S1/2NE1/4, NE1/4SW1/4, and NW1/4SE1/4.

T. 5 S., R. 4 E.,

section 4, lot 1, SE1/4NE1/4, NE1/4SE1/4, and SW1/4SE1/4;
section 9, W1/2E1/2;
section 21, NW1/4SE1/4, and SE1/4NE1/4;
section 22, lot 4.

b. The right-of-way area granted herein is 75 feet wide, approximately 76,032 feet or 14.4 miles in length and contains 131 acres, more or less.

This grant also authorizes a short term right-of-way during the construction period herein 100 feet wide, approximately 76,032 feet or 14.4 miles in length and contains 174.55 acres, more or less.

- c. This instrument shall terminate on December 31, 2048, 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. At the discretion of the authorized officer this instrument may be renewed. If renewed, the right-of-way 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: EXEMPT

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 comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the Holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 182 days, as directed by the authorized officer. (As directed by the Authorized Officer and identified in the Plan of Development).
- c. Each grant issued 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 granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The map set forth in Exhibits A – Location Map, dated June 21, 2018, attached hereto, is incorporated into and made a part of this 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 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.

General Terms

- g. The Holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the ROW within the authorized limits of the ROW.

- h. Holder's liability coverage is provided through a self-funded liability program administered by the Idaho State Office of Insurance Management. Limits of liability are \$500,000 Combined Single Limits, which amount is Holder's limit of liability under the Idaho Tort Claims Act, and this Right of Way. Evidence of financial responsibility will be provided upon request and will consist of a Certificate of Financial Responsibility.
- i. The Holder shall not initiate any construction or other surface disturbing activities on the right-of-way without prior written authorization of the authorized officer. Such authorization shall be a written Notice to Proceed (Form 2800-15) issued by the authorized officer. The Notice to Proceed will only be issued after the Holder submits a final approved Plan of Development (POD). Any Notice to Proceed shall authorize construction or use only as therein expressly stated and only for the particular location or use therein described.
- k. There is reserved to the authorized officer, the right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant.
- l. The Holder shall notify the authorized officer of any change of mailing address within 30 days of such change.
- m. Right-of-way shall be maintained in a sanitary condition at all times; waste materials within the right-of-way shall be disposed of promptly at an appropriate waste disposal site. 'Waste' means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
- n. If any emergency repair activity (here understood to be a sudden, unexpected or impending situation that may cause injury, loss of life, and damage to property) results in disturbance outside a previously disturbed area and/or the existing ROW boundary, the Holder will notify the authorized officer within 3 days of the occurrence. Upon review, the authorized officer may conclude the emergency repair activity is a substantial deviation (as defined in 43 CFR 2801.5). Substantial deviations require an amendment.
- o. The Holder shall protect all survey monuments found within the ROW. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the Holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management survey monuments or references are obliterated during Holder's operations, the Holder shall secure the services of a registered land surveyor or Bureau cadastral surveyor to restore the disturbed monument and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands of the United States, latest edition. The Holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the Holder shall be responsible for the survey cost.

- p. The Holder shall permit free and unrestricted public access upon the ROW for all lawful purposes except for those specific areas designated as restricted by the authorized officer to protect the public, wildlife, livestock, or facilities constructed within the ROW.
- q. No signs or advertising devices shall be placed on the ROW or on adjacent public lands, except those posted by or at the direction of the authorized officer.

Construction Plans & Operation and Maintenance

- r. The Holder shall construct, operate, and maintain the facilities, improvements, and structures within this ROW in strict conformity with the Plan of Development (POD) which will be approved prior to the issuance of the Notice to Proceed and any construction activities. The POD is made part of the grant. Any relocation, additional construction, or use that is not in accord with the approved POD, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete ROW grant, including all stipulations and approved POD, shall be made available to the Authorized Officer on the ROW area during construction, operation, and termination. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
- s. Specific sites as identified by the authorized officer (e.g., archaeological sites, areas with threatened and endangered species, or fragile watersheds) where construction equipment and vehicles are not allowed shall be clearly marked onsite by the Holder before any construction or surface disturbing activities begin. The Holder shall be responsible for assuring that construction personnel are well trained to recognize these markers and understand the equipment movement restrictions involved.
- t. No construction or maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 3 inches deep, the soil shall be deemed too wet to adequately support construction equipment.
- u. Holder shall remove only the minimum amount of vegetation and/or topsoil necessary for the construction and/or maintenance of structures and facilities.
- v. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.
- w. The Holder shall furnish and apply water or other means satisfactory to the authorized officer for dust control.
- x. Holder shall limit excavation to the areas of construction. All off-site borrow areas must be approved in writing by the authorized officer in advance of excavation. All waste material resulting from construction or use of the site by Holder shall be removed from the site. All waste disposal sites on public land must be approved in writing by the authorized officer in advance of use.
- y. Construction holes left open overnight shall be covered. Covers shall be secured in place and shall be strong enough to prevent livestock or wildlife from falling through and into a hole.

Access

- z. Construction and/or maintenance-related traffic shall be restricted to routes approved by the authorized officer. New access roads or cross-country vehicle travel will not be permitted unless prior written approval is given by the authorized officer. Authorized roads used by the Holder shall be rehabilitated or maintained when construction activities are complete.**
- aa. If snow removal from the road is undertaken, equipment used for snow removal operations shall be equipped with shoes to keep the blade 2 inches off the road surface. Holder shall take special precautions where the surface of the ground is uneven and at drainage crossings to ensure that equipment blades do not destroy vegetation.**

Hazardous Materials and Toxic Substances

- bb. Holder shall comply with the applicable Federal and State Laws and regulations concerning the use of pesticides (i.e. insecticides, herbicides, fungicides, rodenticide, and other similar substances) in all activities/operations under this grant. Pesticides shall be used only in accordance with their registered uses and within the limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Pesticides shall not be permanently stored on public lands authorized for use under this grant. Applicator(s) shall hold a current applicator's license or be under the direct supervision of a licensed applicator.**
- cc. The Holder shall comply with all applicable Federal, State and local laws and regulations, existing or hereafter enacted or promulgated, with regard to any Hazardous Material, as defined in this paragraph, that will be used, produced, transported or stored on or within the ROW or any of the ROW facilities, or used in the construction, operation, maintenance or termination of the ROW or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended, (hereinafter "CERCLA") and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended, (hereinafter "RCRA") and its regulations. The term hazardous material also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, 42 U. S. C. § 2011 et seq., as amended. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA section 101(14), 42 U.S.C. § 9601(14), nor does the term include natural gas.**
- dd. Coverage for Holder's liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.) is provided through a self-funded liability program administered by the Idaho State Office of Insurance Management. Limits of liability are \$500,000 Combined Single Limits, which amount is Holder's limit of liability under the Idaho Tort Claims Act, and this Right of Way. Evidence of financial responsibility will be provided upon request and will consist of a Certificate of Financial Responsibility.**

Fire Prevention and Control

- ee. When performing construction and maintenance (including emergency repairs) activities during the "closed" fire season (May 10 – October 20), as set by Idaho State Law, Title 38-115, or during any other closed fire season prescribed by the BLM Idaho State Director, the Holder, including those working on their behalf, shall equip at least one on-site vehicle with firefighting equipment, including, but not limited to, fire suppression hand tools (i.e. shovels, rakes, Pulaski's, etc.), a 16-20 pound fire extinguisher, and a sufficient supply of water for initial attack, with a mechanism to effectively spray the water (i.e. backpack pumps, watersprayer, etc.).
- ff. During conditions of extreme fire danger or when the State of Idaho and/or the BLM Idaho State Director issues a fire restriction order, operations shall be limited or suspended in specific areas, or additional measures may be required by the authorized officer.
- gg. In accordance with 43 CFR 2805.12(d) (or subsequent revisions), the Holder shall do everything reasonable to prevent wildfires on or in the immediate vicinity of the ROW. The Holder will immediately report fires to the BLM authorized officer or Fire Dispatch 800-974-2373 and take all necessary fire suppression actions, when safe to do so, with their personnel and equipment on any fires they cause to ignite.
- hh. The Holder shall report to the Fire Investigator or BLM Incident Commander and shall not enter into the origin area on BLM fires unless given permission to do so.
- ii. The Holder will collaborate and cooperate with the BLM in its efforts to investigate, suppress and respond to all future wildland fires. The duty to "collaborate" and "cooperate" includes, but is not limited to, the following duties regardless of whether BLM is on the scene:
 - i. The duty to provide the BLM (authorized officer or Fire Dispatch 800-974-2373) with reasonable and timely notice concerning all wildland fires involving the Holder's facilities, or discovered during routine operations.
 - ii. The duty to share factual information with the BLM concerning the wildland fires, including but not limited to the names of Holder's employees with knowledge of the incident; and to allow employees to be interviewed by BLM's investigators regarding factual information relating to a wildland fire.
 - iii. The duty to reasonably account for Holder's actions taken at the scene of a wildland fire.
 - iv. The duty to minimize disturbance of potential evidence located on the scene; to properly handle and preserve any evidence collected; to not engage in any destructive testing without BLM's consent; and to make all evidence available to the BLM in a rapid and timely manner.
 - v. The duty to not hamper the BLM investigation of origin and cause of the wildland fire; and to reasonably assist BLM's investigation at the scene.
 - vi. The duty to provide information concerning the construction, maintenance and/or repairs of any of Holder's facilities located at or adjacent to a wildland fire.
 - vii. The duty, during BLM fire suppression efforts: to defer to and follow the instructions of the BLM's incident commander regarding activities within the boundaries of the wildland fire and checking in and out of the wildland fire; and to recognize BLM's primary authority over the scene.

Cultural

- jj.** Pursuant to 43 CFR 10, the Holder of this authorization must immediately notify the authorized officer, by telephone, with written confirmation, immediately 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 until notified to proceed by the authorized officer. The BLM authorized officer will determine avoidance, protection or mitigation measures in consultation with the Holder, Idaho State Historical Preservation Office, and affected Tribes. Costs associated with the discovery, evaluation, protection or mitigation of the discovery shall be the responsibility of the Holder.
- kk.** Any cultural and/or paleontological resource (historic or prehistoric site or object, or fossil) discovered by the Holder, or any persons 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 will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation and mitigation, and any decision as to proper avoidance, protection or mitigation measures will be made by the authorized officer after consulting with the Holder and others under Section 106 of the National Historic Preservation Act.

Avian Protection

- ll.** If proposed operations and maintenance activities are located within one mile of bald or golden eagle nests, the Holder shall coordinate with the BLM and the USFWS to determine the likelihood of disturbance and any appropriate measures necessary to comply with the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.).
- mm.** Operations and maintenance activities shall be conducted within the ROW in order to avoid and/or minimize take of migratory birds as defined in the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. § 703 et seq.) as amended. If any ground disturbing activities must occur during the nesting season (e.g., soil disturbance or vegetation removal), the Holder shall coordinate with the BLM and USFWS to determine appropriate measures to comply with the MBTA. At a minimum, the Holder shall consider conducting ground disturbance and vegetation removal either prior to or following the nesting season to avoid take during the nesting season.

Plants

- nn.** The Holder shall be responsible for weed control, including noxious weeds and non-native invasive plants that result from construction, use, or maintenance authorized in the Holder's ROW grant. The Holder must coordinate with the authorized officer and/or local authorities for acceptable weed control measures (within limits imposed in the grant stipulations) prior to implementing weed treatments. If herbicides are to be used for weed control, the applicator(s) shall hold a

current State of Idaho applicator's license or be under the direct supervision of a licensed applicator.

- oo. The Holder is responsible for ensuring the undercarriages of equipment and/or vehicles used within the ROW are free of all soil and plant material prior to operating on public lands to reduce the establishment of new invasive, non-native species and/or the spread of existing species to new areas.

Special Stipulations

- pp. To avoid potential impacts, seasonal limitations on all construction activities within the confines of Snake River Canyon shall be implemented from January 1 through July 31 to avoid nesting raptors and migratory bird species during their breeding season.
- qq. In compliance with the Migratory Bird Treaty Act (MBTA), construction and rehabilitation activities are not allowed during the migratory bird nesting season April 1 – June 30. The authorized officer may waive this restriction, with a notice in writing, only if a qualified biologist conducts a survey to determine the presence of nesting birds near the project location, and determines that construction activities would not impact migratory birds.
- rr. The Holder shall perform pre-construction site surveys to determine the presence/absence of occupied burrowing owl nests in March and April in order to prevent conflicts during construction, and will observe a 250-foot buffer zone around all identified occupied nests.
- ss. All construction activities will avoid playas occupied by Davis Peppergrass Element Occurrence 64 and areas immediately adjacent to those playas to eliminate the potential for disturbance. This includes activities such as driving and staging construction equipment and supplies within or immediately adjacent to the playas.
- tt. All affected grazing permittees will be notified when construction is scheduled to begin. All potential hazards to livestock will be fenced or contained.
- uu. All existing improvements (e.g., fences, gates, and bar ditches) in the Project area will be repaired to pre-construction conditions. Any fence lines needing to be cut will first be tied to H-braces and openings will be protected as necessary during construction in order to prevent the escape of livestock. A temporary closure will be installed the same day the fence is cut. Following reclamation, the fence will be reconstructed to BLM specifications.
- vv. A revegetation plan, including information about native plant seed mixtures, watering requirements, etc. shall be developed, approved by the authorized officer, and implemented to rehabilitate the landscape using native plants and replacing native topsoil, to the extent practicable. Seeding shall be repeated if a satisfactory stand is not obtained as determined by the authorizing officer upon evaluation after the 2nd growing season.

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

IDAHO WATER RESOURCES BOARD



Signature of Holder

EXECUTIVE OFFICER,
IDAHO WATER RESOURCES BOARD

Title

21 - SEP - 2018

Date

BUREAU OF LAND MANAGEMENT



Signature of Authorized Officer

Manager, Morley Nelson Snake River Birds
of Prey National Conservation Area

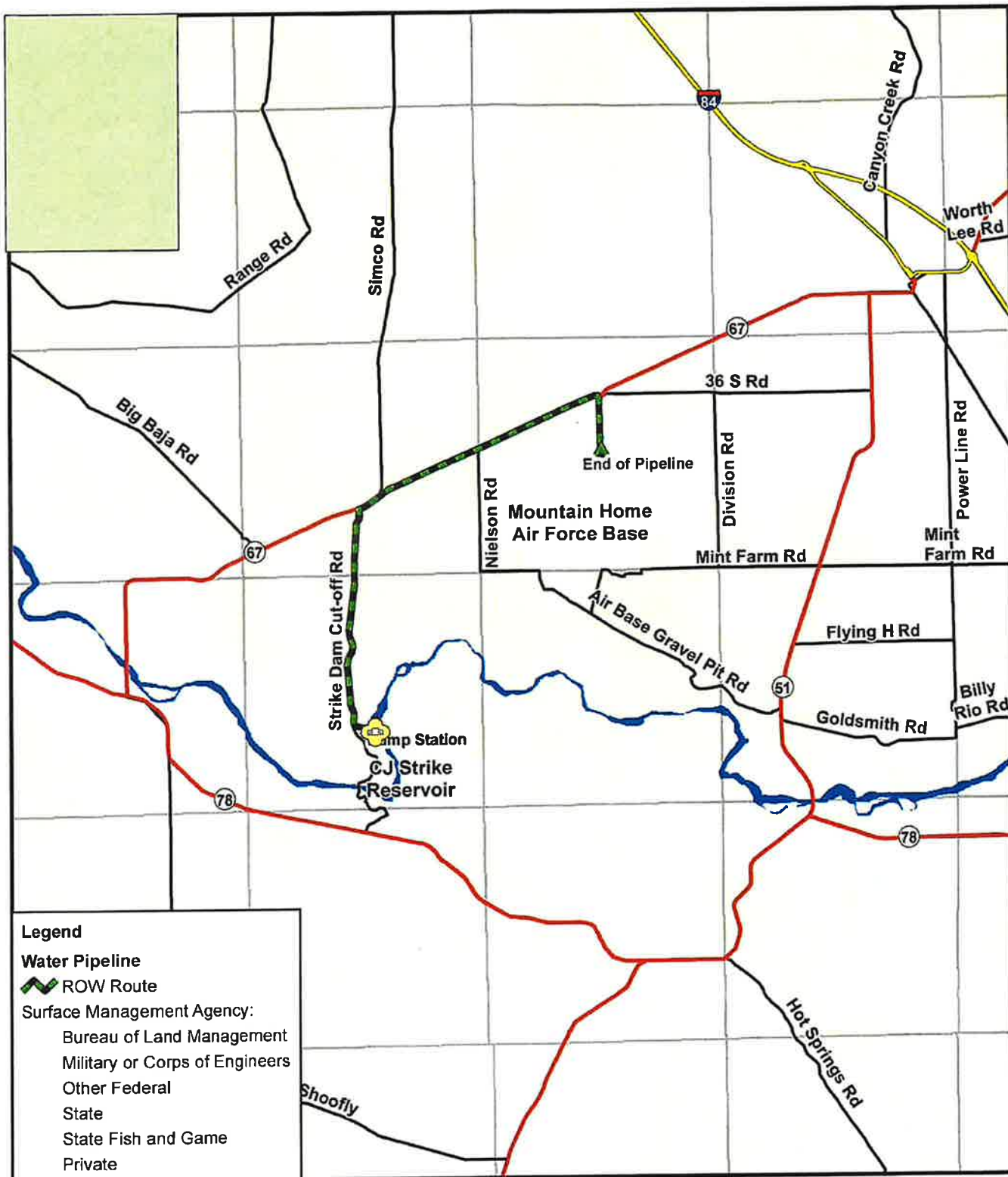
Title

10-16-18

Effective Date of Grant

Exhibit A

IDI-38314 Idaho Water Resource Board MHAFB Water Pipeline ROW



U.S. Department of the Interior
Bureau of Land Management, Idaho
Boise District, Four Rivers Field Office
Map date: August 30, 2018



1:225,806
0 1 2 3 Miles



No warranty is made by the Bureau of Land Management.
The accuracy, reliability, or completeness of these data for
individual use or aggregate use with other data is not guaranteed.
This map cannot be made Section 508 compliant.
For help with its data or information, please contact the
BLM Idaho State Office webmaster at (208) 373-4000.