



The Nature Conservancy in Idaho
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Boise, ID 83702

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October 28, 2022

RECEIVED

Oct 28, 2022

DEPARTMENT OF
WATER RESOURCES

State of Idaho Department of Water Resources
Eastern Regional Office
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

RE: Application of Transfer of Water right number 86951 and 86942 in the Name of Rohn R Nelson and Lori A. Nelson

To whom it may concern:

The Nature Conservancy (TNC) is the holder of the 2017 conservation easement on the Pratt Creek Ranch that includes Wimpey Creek, which is designated as critical habitat for Snake River spring/summer Chinook salmon pursuant to the Endangered Species Act. The easement was partially funded by the Bonneville Power Administration (BPA) to fulfill BPA's mitigation responsibilities under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839b(h), and the Endangered Species Act, 16 U.S.C. §§ 1531-1544 for the Federal Columbia River Power System dams. A copy of the recorded conservation easement is attached for your reference.

The water right transfer application numbers 86951 and 86942 will directly impact the conservation values described above that the conservation easement was intended to protect. We respect the rights of property owners to amend their water rights, but changing the point of diversion and conveyance system will, directly impact the local public interest (as set forth in Idaho Code § 42-240(5)) of the natural systems of Wimpey Creek and the anadromous fish spawning and rearing habitat that it supports and the likely diversion and use of more water than originally permitted (as set forth in Idaho Code § 42-211).

TNC is an international non-profit organization dedicated to protecting the lands and waters on which all life depends. Our work in Idaho has been successful at achieving lasting benefits to natural systems and local economies by partnering with working landscapes that include ranches, rangelands, and forests. We have been working in the Upper Salmon Basin for the last three decades and with the Upper Salmon Basin Watershed Program (USBWP) to develop collaborative solutions within the community to manage water resources to promote economic viability and to protect natural communities, open space, and critical anadromous fish habitat.

The purpose of the Conservation Easement is to preserve and protect in perpetuity the following conservation values that benefit the people of Lemhi County, and the people of the State of Idaho. These include maintaining and preserving watershed functions, water quality and quantity in the Lemhi River, Pratt Creek, Wilson Creek, and Wimpey Creek which is important spawning and rearing habitat for native anadromous and resident fish including Chinook salmon, steelhead trout, bull trout, and cutthroat trout. The property also supports functioning riparian and wetland ecosystems and associated native flora and fauna that represent important local biodiversity and provides unfragmented open space corridors for the unimpaired passage of wildlife. Collectively, the natural communities protected by the conservation easement provide habitat for native wildlife species including, resident and anadromous salmonids, raptors, waterfowl, elk, deer, sage grouse, moose, as well as many species of common and rare plants and animals.

Tributaries to the Lemhi River are important refuge habitat for these fish, especially in the summer months when the Lemhi is low and warm. The cooler waters of tributaries like Wimpey Creek are critical for these fish and the habitat on Wimpey Creek has been protected and improved by the conservation easement by allowing fish the ability to survive those warm temperature months. Since the conservation easement was created, TNC has been working with the owner to implement the water management practices to augment flows when irrigation demand and low natural in-stream flows could otherwise prevent sufficient flow in Wimpey Creek for migration, spawning and rearing of steelhead, trout, salmon, and bull trout. Further, 2017-18 stream and riparian corridor restoration projects completed on Wimpey Creek by Trout Unlimited (and funded by the Idaho Governor's Office of Species Conservation, Pacific Coast Salmon Recovery Fund, and BPA, improved stream conditions and floodplain connectivity to support spawning and rearing habitat for anadromous fish.

The actions outlined in transfer applications 86951 and 86942 will change the place of use and point of diversion (POD) of water from Wimpey Creek and negatively impact connectivity of this important anadromous fish spawning habitat. Further, changes to the POD and conveyance system will reduce stream flows in Wimpey Creek during the summer months in an already water-strapped creek and will require additional CFS to effectively deliver the prescribed water right to the place of use due to evaporative and infiltrative losses in the much longer open ditch conveyance system.

It should also be noted that the applicants, Rohn R Nelson and Lori A. Nelson do not own the water rights (74-210A, and 74.734A) that they have applied to transfer. According to the water right reports on the IDRW webpage, these water rights are owned by Ronald E Beyers. The parties are apparently involved in a legal dispute over the water rights, and any transfer application over disputed rights and filed by a party who is not the owner of record may be premature.

The impacts of these proposed actions in transfer application 86951 and 86942 will undermine decades of collaborative work that the local community and partners have done to improve natural systems and to reconnect important spawning and rearing tributaries for anadromous fish. We respectfully request that IDWR consider the information contained in this letter as it considers the subject transfer applications.

Thank you,



Dusty Perkins
Land Stewardship Manager

dusty.perkins@tnc.org

Cell: (208) 859-7137

nature.org/Idaho

The Nature Conservancy
Idaho Chapter

Mailing Address:

PO Box 2770
Hailey, ID 83333

Physical Address:

950 W. Bannock St. Suite 210
Boise, Idaho 83702



Instrument # 0000305062 # Pages: 51
LEMHI COUNTY, Idaho
Apr 20, 2017 12:04 PM Fee: \$ 160.00
For: Alliance Title - Salmon Office
TERRI J. MORTON, Recorder

When recorded, return to:
The Nature Conservancy
Legal Department
559 East South Temple
Salt Lake City, UT 84102

AT219086

DEED OF CONSERVATION AND RESTORATION EASEMENT

Lemhi River (Pratt Creek Ranch) Idaho

THIS DEED OF CONSERVATION AND RESTORATION EASEMENT ("Conservation Easement") is made this 15 day of April, 2017 by and between PRATT CREEK RANCH Limited Partnership, an Idaho Limited Partnership, its successors and assigns, whose address is 178 Pratt Creek Road, Salmon, ID 83467 ("Grantor") and THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, its successors and assigns, whose principal address is 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203 (the "Grantee" or "Conservancy"), each hereinafter individually, "Party" or collectively "Parties", and the UNITED STATES OF AMERICA, acting by and through the United States Department of Energy, Bonneville Power Administration ("BPA"), an intended third party beneficiary of this Conservation Easement.

RECITALS

- A. Grantor owns real property in Lemhi County, Idaho, which is legally described in Exhibit A and shown for reference purposes on Exhibit B ("Property Map"), together with all appurtenances thereto, including the water rights listed on Exhibit A ("Water Rights") (collectively, as the "Property").
- B. The Property consists of approximately 2,316 acres, composed primarily of prime farmland, sagebrush steppe rangeland, Lemhi River tributaries including Pratt Creek, Wilson Creek and Wimpey Creek, and associated riparian areas and wetlands, and associated Development Areas all of which are shown on Exhibit B and further documented in the Baseline Documentation Report.
- C. All waters of the Salmon River drainage, including the Lemhi River and its tributaries, portions of which are located on the Property, were designated as critical habitat for Snake River spring/summer Chinook salmon on December 28, 1993 (Fed. Reg., Vol. 58, No. 68545) pursuant to the Endangered Species Act, which listed spring/summer Chinook salmon as threatened on April 22, 1992 (Fed. Reg. Vol. 58, No. 78). The Conservancy entered into a Memorandum of Agreement on April 4, 2017 with BPA under which BPA agreed to provide the funding toward this Conservation Easement to fulfill BPA's mitigation responsibilities under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839b(h), and the Endangered Species Act, 16 U.S.C. §§ 1531-1544 for the Federal Columbia River Power System dams. In return, the



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DEED OF CONSERVATION AND RESTORATION EASEMENT

Lemhi River (Pratt Creek Ranch) Idaho

THIS DEED OF CONSERVATION AND RESTORATION EASEMENT ("Conservation Easement") is made this 19 day of April, 2017 by and between PRATT CREEK RANCH Limited Partnership, an Idaho Limited Partnership, its successors and assigns, whose address is 178 Pratt Creek Road, Salmon, ID 83467 ("Grantor") and THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, its successors and assigns, whose principal address is 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203 (the "Grantee" or "Conservancy"), each hereinafter individually, "Party" or collectively "Parties", and the UNITED STATES OF AMERICA, acting by and through the United States Department of Energy, Bonneville Power Administration ("BPA"), an intended third party beneficiary of this Conservation Easement.

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- B. The Property consists of approximately 2,316 acres, composed primarily of prime farmland, sagebrush steppe rangeland, Lemhi River tributaries including Pratt Creek, Wilson Creek and Wimpey Creek, and associated riparian areas and wetlands, and associated Development Areas all of which are shown on Exhibit B and further documented in the Baseline Documentation Report.
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DEED OF CONSERVATION AND RESTORATION EASEMENT

Lemhi River (Pratt Creek Ranch) Idaho

THIS DEED OF CONSERVATION AND RESTORATION EASEMENT ("**Conservation Easement**") is made this ____ day of _____, 2017 by and between PRATT CREEK RANCH Limited Partnership, an Idaho Limited Partnership, its successors and assigns, whose address is 178 Pratt Creek Road, Salmon, ID 83467 ("**Grantor**") and THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, its successors and assigns, whose principal address is 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203 (the "**Grantee**" or "**Conservancy**"), each hereinafter individually, "**Party**" or collectively "**Parties**", and the UNITED STATES OF AMERICA, acting by and through the United States Department of Energy, Bonneville Power Administration ("**BPA**"), an intended third party beneficiary of this Conservation Easement.

RECITALS

- A. Grantor owns real property in Lemhi County, Idaho, which is legally described in **Exhibit A** and shown for reference purposes on **Exhibit B ("Property Map")**, together with all appurtenances thereto, including the water rights listed on **Exhibit A ("Water Rights")** (collectively, as the "**Property**").
- B. The Property consists of approximately 2,316 acres, composed primarily of prime farmland, sagebrush steppe rangeland, Lemhi River tributaries including Pratt Creek, Wilson Creek and Wimpey Creek, and associated riparian areas and wetlands, and associated Development Areas all of which are shown on **Exhibit B** and further documented in the Baseline Documentation Report.
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United States of America, and its assigns, is herein granted a third party right of enforcement, entry, and inspection.

D. As fee owner of the Property, Grantor owns the affirmative rights to identify, preserve, and protect forever the existing features and values of the Property. Grantor intends that the Conservation Values be preserved and maintained, pursuant to the terms and conditions of the conservation easement established by this Conservation Easement.

E. The State of Idaho has recognized the public importance and validity of conservation easements by enactment of Idaho Uniform Conservation Easement Act, Idaho Code Sections 55-2101 to 55-2109.

F. The Conservancy is a District of Columbia nonprofit corporation described in Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code, organized to protect and conserve natural areas and ecologically significant land for scientific, charitable, and educational purposes; is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code, qualified to acquire and hold conservation easements; and is a qualified "holder" under Idaho Code Section 55-2101(2)(b).

G. To accomplish the Conservation Purposes (as defined in Paragraph 1 below), Grantor desires to convey to the Conservancy and the Conservancy desires to obtain from Grantor a conservation easement that restricts the uses of the Property and that grants rights to the Conservancy in order to preserve, protect, identify, monitor, enhance, and restore in perpetuity the Conservation Values, as defined in Paragraph 2.

GRANT OF EASEMENT

NOW THEREFORE, Grantor for and in consideration of the recitals set forth above, the mutual covenants, terms, conditions, and restrictions contained in this document, and the funding provided by BPA in the amount of \$2,435,000.00 in hand paid, the receipt and sufficiency of which are acknowledged, hereby voluntarily grants, bargains, sells and conveys to the Conservancy, and its successors and assigns, and the Conservancy hereby accepts, a perpetual conservation and restoration easement ("**Conservation Easement**") in, on, over, under, upon and across the Property, situated in Lemhi County, State of Idaho, together with rights of entry and access, legally described in Exhibit A and shown in Exhibit B. This Conservation Easement is created pursuant to the laws of the State of Idaho, and in particular, Idaho Code Sections 55-2101 to 55-2109. For the same consideration cited above, Grantor also hereby grants, bargains, sells and conveys to the United States of America and its assigns a third party right of enforcement, entry and inspection.

The Parties and BPA intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend its terms and conditions, set forth below, to create equitable servitudes and covenants running with the land, binding upon Grantor's successors and assigns for the benefit of the Conservancy as Grantee and the United States of America and its assigns as holder of certain third party rights. BPA is the acquiring agency having jurisdiction and control over these third

party rights.

TERMS AND CONDITIONS

1. PURPOSES. It is the purpose of the Conservation Easement to preserve and protect in perpetuity and, in the event of their degradation or destruction, to enhance and restore the Conservation Values of the Property identified in Paragraph 2 below. In achieving these purposes (the “**Conservation Purposes**”), it is the intent of the Conservation Easement to permit the continuation of such uses of the Property as may be conducted consistent with the Conservation Values protected herein.
2. CONSERVATION VALUES. The Property possesses significant “**Conservation Values**,” including, but not limited to natural, scenic, open space, hydrologic, ecological, scientific, and recreational values that are all of great importance to the Grantor, the Conservancy, the people of Lemhi County, and the people of the State of Idaho, in accordance with the Idaho Uniform Conservation Easement Act, Idaho Code Sections 55-2101 to 55-2109. Pursuant to the Act, the particular Conservation Values intended to be preserved and protected for the public benefit under this Conservation Easement include, without limitation, watershed functions of maintaining water quality and quantity in the Lemhi River, Pratt Creek, Wilson Creek, and Wimpey Creek; spawning and rearing habitat for native anadromous and resident fish including, Chinook salmon, steelhead trout, bull trout, and cutthroat trout; functioning riparian ecosystems and associated native flora and fauna; functioning wetland ecosystems and associated native flora and fauna; and unfragmented open space corridors for the relatively unimpaired passage of wildlife, and natural communities that provide habitat for native wildlife species including, without limitation, resident and anadromous salmonids, raptors, waterfowl, elk, deer, moose and many species of common and rare plants and animals, as well as habitat for sage grouse.
3. BASELINE DOCUMENTATION REPORT. The parties acknowledge that a Baseline Documentation Report (the “**Report**”) of the Property has been prepared and that the Report has been approved in writing by the Conservancy, BPA and Grantor. That approval is acknowledged in Exhibit H. Copies of the Report are on file with Grantor, the Conservancy, and BPA at their respective addresses for notices set forth in Paragraph 13. By executing this Conservation Easement, the parties agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time of this grant and of the historical uses of the Property and which Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Easement. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical or biological condition of the Property, the parties shall not be foreclosed from utilizing any and all other relevant documents, surveys, or other evidence or information to assist in the resolution of the controversy.
4. THE CONSERVANCY’S RIGHTS. In order to accomplish the Conservation Purposes, the rights and interests that are granted and conveyed to the Conservancy by this Conservation Easement include, but are not limited to, the following:

A. Preserve, Protect and Restore. The Conservancy may preserve, protect, identify, monitor, enhance, and restore in perpetuity the Conservation Values.

B. Entry and Access Rights. The Conservancy is, by this Conservation Easement, granted rights of access to enter upon the Property, using appurtenant easements and rights of way, if any, and may enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, to study and make scientific observations of the Property and of natural elements and ecosystems and other features of the Property, to determine whether Grantor's activities are in compliance with the terms of this Conservation Easement and to take all actions deemed necessary by the Conservancy to preserve, protect, identify, monitor, enhance, and restore in perpetuity the Conservation Values. Except in cases in which the Conservancy determines that immediate entry is required to prevent, terminate, or mitigate a violation of the Conservation Easement or to preserve or protect the Conservation Values, such entry will be upon giving notice to Grantor at least seven (7) days in advance of such entry, as described in Paragraph 13, and will not unreasonably interfere with Grantor's use and quiet enjoyment of the Property. In the event the Conservancy determines that immediate entry is required, the Conservancy shall make reasonable efforts to contact Grantor prior to entry, but such notice shall not be a prerequisite to entry.

C. Enforcement. The Conservancy may prevent any activity on or use of the Property that is inconsistent with the Conservation Purposes and may enforce the restoration of such areas or features of the Property that might be damaged by any inconsistent activity or use.

D. Additional Actions. The Conservancy may, but is not obligated to, employ the use of pesticides, herbicides or other biocides or any other means, including grazing of cattle or other animals, to control noxious weeds if, as reasonably determined by the Conservancy, grazing has been ineffective or has been reduced to a level that fails to control such weeds; provided, however, that such use shall be with the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned, or delayed.

E. Fencing of Natural Zone. The Conservancy may, but is not obligated to, at its own expense, install fencing in the Natural Zone as designated on the Property Map, where, in the sole opinion of the Conservancy, such fencing is advisable in order to protect the Conservation Values and achieve the Conservation Purposes.

F. Water Rights. If Grantor fails to retain and maintain the right to use all of the Water Rights associated with the Property, or the Water Rights are otherwise subject to a threat of abandonment or forfeiture, the Conservancy may, after providing 90 days' written notice to Grantor, enter upon the Property and undertake actions reasonably necessary to maintain the validity of the Water Rights.

5. PERMITTED USES OF THE PROPERTY. Grantor and the Conservancy intend that this Conservation Easement shall confine the uses of the Property to the multiple conservation and agricultural uses of fish habitat, open space, scenic, conservation, plant and wildlife habitat, farming and ranching, in accordance with the terms and conditions of this Conservation Easement, and to such other incidental uses as are expressly permitted in this Conservation Easement. Except as

prohibited or otherwise limited by Paragraph 6 and by Grantor reserves the right to use and enjoy the Property in any manner that is consistent with the Conservation Purposes. In that regard, the uses set forth in this Paragraph 5, though not an exhaustive list of consistent permitted uses, are consistent with this Conservation Easement and shall not be precluded, prevented, or limited by this Conservation Easement, except as follows: (a) as provided in Paragraph 6; (b) in those instances in which prior approval by the Conservancy is required under this Conservation Easement; and (c) in those instances in which any action or practice is or becomes inconsistent with the Conservation Purposes, diminishes or impairs the Conservation Values or otherwise violates this Conservation Easement.

A. Ranching and Agricultural Activities and Natural Zone. The Parties divided the Property into zones and areas, as designated on the Property Map, each with distinct permitted uses and prohibitions. As further defined below, within the Ranching Areas and Agricultural Areas designated on the Property Map, Grantor may conduct farming, grazing, pasturing, and watering of livestock for commercial, personal, or habitat management purposes, and other activities reasonably incidental thereto ("**Ranching and Agricultural Activities**") solely as follows and in compliance with the terms and conditions of this Conservation Easement:

(i) Ranching Areas. Those portions of the Property depicted on the Property Map as the "Ranching Areas" may be used for commercial grazing, pasturing, and watering of cattle, horses and other domestic livestock typically found in the geographical area of the Property. The Ranching Areas may not be converted to row crops, drained, cultivated or tilled. Grantor may not install new center pivots, wheel lines, or other irrigation systems in the Ranching Areas, as depicted in the Report, except as approved in advance by the Conservancy under a management or restoration plan as described in Paragraph G of this Section. Uses within the Ranching Areas shall be: (a) conducted in a manner that maintains or improves, and does not impair or diminish, the Conservation Values of the Property as documented in this Conservation Easement and the Report; (b) is consistent with the Conservation Values and using the applicable best agricultural practices as defined by the Natural Resources Conservation Service or similar United States governmental agency at that point in time and as applied in the general geographic area of the Property; and (c) in compliance with all applicable laws, rules, and regulations.

(ii) Agricultural Areas. Those portions of the Property depicted on the Property Map as the "Agricultural Areas" may be used for planting, cultivating, growing and harvesting of alfalfa, grass hay, barley, oats and other similar crops or grazing of domestic livestock provided such uses are conducted in a manner that (a) maintains or improves, but does not impair or diminish, the conditions of the Property as documented in the Report; (b) is consistent with the Conservation Values and using the applicable best agricultural practices as defined by the Natural Resources Conservation Service or similar United States governmental agency at that point in time and as applied in the general geographic area of the Property; and (c) is in compliance with all applicable laws, rules, and regulations. Grazing of domestic livestock is allowed within the Agricultural Areas and is not subject to the Grazing Plan described in Paragraph 5.A. (iii) below.

(iii) Natural Zone. Except in compliance with a grazing plan to be developed and agreed to by the parties prior to livestock grazing occurring within the Natural Zone ("**Grazing Plan**"), Ranching and Agricultural Activities shall not be conducted within the Natural Zone shown

on the Property Map and further documented in the Report. The Natural Zone is comprised of wetland habitat and an associated sedge meadow, riparian habitat, and sage brush steppe habitat. Irrigation may be used in the Natural Zone only in compliance with the Grazing Plan. The Natural Zone may not be converted to row crops, cultivated or tilled. The Natural Zone includes the area within thirty (30) feet of the ordinary high water mark on both sides of Wilson Creek; within fifty (50) feet of the ordinary high water mark on both sides of Wimpey Creek; within one hundred (100) feet of the ordinary high water mark on both sides of Pratt Creek; and other areas as shown on the Property Map.

The purpose of the Grazing Plan is to maintain or improve the ecological conditions of the Natural Zone. The Grazing Plan shall prescribe the grazing use objectives, the utilization measures in Animal Unit Months, and the percent of annual forage production allocated to domestic livestock. The Grazing plan will also provide a pasture rotation and resting schedule, and a monitoring schedule. The Grazing Plan shall include a map of the Property describing pastures. Fences, water gaps, and any other improvements related to the Ranching and Agricultural Activities are also documented in the Report. The Grazing Plan shall be reviewed annually by the Conservancy, as part of the annual easement monitoring process, and modified as necessary to address ecological conditions. If the Parties cannot agree on the modifications, the existing Grazing Plan will remain in effect with respect to those portions of the Natural Zone beyond those areas within thirty (30) feet of the ordinary high water mark on both sides of Wilson Creek; within fifty (50) feet of the ordinary high water mark on both sides of Wimpey Creek; within one hundred (100) feet of the ordinary high water mark on both sides of Pratt Creek ("**the Buffer Zones**"), and no grazing shall be permitted within the Buffer Zones. Grazing within the Buffer Zones shall not occur unless and until a Grazing Plan is agreed upon for the entire Natural Zone. In the event of any inconsistencies between the terms of the Grazing Plan and the terms of this Conservation Easement, the terms of this Conservation Easement shall control.

If fencing is constructed to limit livestock access to or within the Natural Zone, Grantor shall maintain such fencing (including fencing installed by the Conservancy pursuant to Paragraph 4(E)), regardless of whether or not the livestock are owned by Grantor, Grantor's lessee, or an adjoining public land permittee.

(iv) Irrigation Water. Expansion or modification of the Water Rights on the Property must follow the Waterway and Habitat Conservation Agreement (Paragraph 5(G)) and is subject to prior written approval of the Conservancy and BPA as provided herein and that such actions will not adversely affect the Conservation Values. Subject to these restrictions and all other terms of this Conservation Easement, Grantor shall otherwise have all rights to use and enjoy the water resources on the Property as permitted under state and federal laws and water agreements.

(v) Fertilizers, Pesticides, Herbicides, and other Biocides. Use of fertilizers, pesticides, herbicides, and other biocides associated with the Ranching and Agricultural Activities, and in quantities consistent with such Ranching and Agricultural Activities, are permitted in the Ranching Areas and Agricultural Areas, provided such use is in compliance with all applicable laws, rules, and regulations and manufacturers' label instructions. Herbicides may be applied on the Property for the control of non-native noxious weeds as required by Idaho law and in compliance with all applicable laws, rules, and regulations. Herbicides, pesticides and other biocides may be

applied in the Natural Zone to control invasive species as part of a Grazing Plan or waterway enhancement and restoration activities as described in Paragraph G. Fertilizer may be used in the Natural Zone only in compliance with the Grazing Plan. Aerial spraying of any fertilizer, pesticide, herbicide or biocide is prohibited.

B. Development on the Property is prohibited except as follows.

(i) Farmstead Area One. Grantor may occupy and use the twenty-two-acre Farmstead Area One which is legally described in Exhibit E and shown in Surveyor's Map (Exhibit E.1), and identified on the Property Map (Exhibit B), and the existing improvements located therein for single-family occupancy by Grantor and Grantor's family and guests or by a ranch hand and his or her family, and other uses incidental to such single-family occupancy. Grantor may repair, replace and/or relocate existing structures, and construct new non-residential agricultural structures and a maximum of one new single-family residential structure, anywhere within the Farmstead Area One without further permission from the Conservancy, provided that such activity is otherwise in compliance with the terms of this Conservation Easement, that the total footprint of all structures within Farmstead Area One does not exceed 23,000 total square feet, with no individual residential structure exceeding a footprint of 3,000 square feet, and no individual non-residential agricultural structure exceeding a footprint of 5,000 square feet, and that any replacement structures are used for the same or reasonably similar purposes as the original structure. Notwithstanding any other provision herein, new structures must be set back a minimum of 50 (fifty) feet from the ordinary high water mark of any creek, stream, natural watercourse or wetland, and the establishment of any infrastructure associated with livestock calving and/or winter feeding operations shall not be within 100 (one hundred) feet of the ordinary high water mark of any creek, stream, natural watercourse or wetland. In order to monitor compliance with square footage requirements, Grantor shall provide design plans with square footage amounts to the Conservancy prior to commencing construction on any structure(s).

(ii) Farmstead Area Two. Grantor may occupy and use the eight-acre Farmstead Area Two which is legally described in Exhibit F and shown in Surveyor's Map (Exhibit F.1), and identified on the Property Map (Exhibit B) and the existing improvements located therein for single-family occupancy by Grantor and Grantor's family and guests or by a ranch hand and his or her family, and other uses incidental to such single-family occupancy. Within the Farmstead Area Two, Grantor may construct one additional single-family residence not to exceed a footprint of 3,000 square feet for use by Grantor and Grantor's family and guests or by a ranch hand and his or her family, and other uses incidental to such single-family occupancy. Grantor may repair, replace and/or relocate existing structures anywhere within the Farmstead Area Two without further permission from the Conservancy, provided that such activity is otherwise in compliance with the terms of this Conservation Easement, that the footprint of all structures within Farmstead Area Two does not exceed 10,500 total square feet, with no single structure exceeding a footprint of 3,000 square feet, and that any replacement structures are used for the same or reasonably similar purposes as the original structure. Notwithstanding any other provision herein, new structures must be set back a minimum of 50 (fifty) feet from the ordinary high water mark of any creek, stream, natural watercourse or wetland, and the establishment of any infrastructure associated with calving and/or winter feeding operations shall not be within 100 (one hundred) feet of the ordinary high water mark of any creek, stream, natural watercourse or wetland. In order to monitor compliance

with square footage requirements, Grantor shall provide design plans with square footage amounts to the Conservancy prior to commencing construction on any structure(s).

(iii) Hay Barn. In addition to the structures permitted in Farmstead Areas One and Two, Grantor may construct one non-residential hay barn structure not to exceed a footprint of 10,000 square feet within either of the two Farmstead Areas. The allowable square footage in such Farmstead Area shall increase by the total square footage of the constructed hay barn. Once the hay barn is constructed, it may be repaired, replaced and/or relocated within its Farmstead Area, but the right to build such a hay barn structure on the other Farmstead Area shall be extinguished.

(iv) Residential Area One. Grantor may occupy and use the three-acre Residential Area One which is legally described in Exhibit D and shown in Surveyor's Map (Exhibit D.1), and identified on the Property Map (Exhibit B) and the existing improvements located therein for single-family occupancy by Grantor and Grantor's family and guests or by a ranch hand and his or her family, and other uses incidental to such single-family occupancy. Grantor may repair, replace and/or relocate existing structures anywhere within the Residential Area One without further permission from the Conservancy, provided that such activity is otherwise in compliance with the terms of this Conservation Easement, that the footprint of all structures does not exceed 4,000 total square feet within Residential Area One, with no single structure exceeding a footprint of 3,000 square feet, and that any replacement structures are used for the same or reasonably similar purposes as the original structure. In order to monitor compliance with square footage requirements, Grantor shall provide design plans with square footage amounts to the Conservancy prior to commencing construction on any structure(s).

Grantor may use the Residential Area One for day use as an artists' retreat for commercial purposes provided that such commercial use does not diminish or impair the Conservation Values.

(v) Residential Area Two.

(a) Establishment of Residential Area Two. During Grantor's ownership of the Property Grantor shall have the right, during the lifetime of Eric Paul Moulton, to construct a single family residence of no more than 3,000 square feet substantially similar in quality to the existing residential structure in Residential Area One as shown in the Report, on a rectangular two (2) acre parcel located anywhere within the Building Zone designated on the Property Map (Exhibit B) which shall be known as Residential Area Two. This right is not assignable and does not transfer. Once designated by construction of the residence, the Residential Area Two shall remain fixed and Grantor shall have a licensed surveyor survey and mark the Residential Area Two boundaries and provide a survey map to the Conservancy, along with an executed Notice of Exercise in the form attached hereto as Exhibit G to be appended to the Report and to the Conservation Easement and recorded in the records of Lemhi County, Idaho. Once designated, the Residential Area Two shall remain fixed and thereafter, the Building Zone shall be extinguished. In the event Residential Area Two is not designated as set forth above prior to the death of Eric Paul Moulton, the Building Zone shall be extinguished and Grantor shall have no right to establish Residential Area Two. TNC will record a Notice of Exercise/Extinguishment in the records of Lemhi County, Idaho.

(b) Rights of Grantor after establishment of Residential Area Two. Within the Residential Area Two, Grantor may construct a single-family residence for use by Grantor and Grantor's family and guests or by a ranch hand and his or her family, and other uses incidental to such single-family occupancy. Once constructed, Grantor may repair, replace and/or relocate existing structures anywhere within the Residential Area Two without further permission from the Conservancy, provided that such activity is otherwise in compliance with the terms of this Conservation Easement, that the footprint of all structures within Residential Area Two does not exceed 4,000 total square feet, with no single structure exceeding a footprint of 3,000 square feet, and that any replacement structures are used for the same or reasonably similar purposes as the original structure as shown in the Report. In order to monitor compliance with square footage requirements, Grantor shall provide design plans with square footage amounts to the Conservancy prior to commencing construction on any structure(s).

Throughout the remainder of this Conservation Easement, the Farmstead Area One, Residential Area One, Farmstead Area Two, and Residential Area Two may be collectively referred to as the **"Development Areas."**

(vi) Gardens and Landscaping. Grantor may plow, disk, cultivate plant, sow, irrigate, install, and maintain gardens, beehives, non-commercial orchards, and landscaping in the Development Areas. Beehives are also permitted in the Agricultural Areas. No beehives are permitted in the Natural Zone or Ranching Areas.

(vii) Fertilizers, Pesticides, Herbicides, and other Biocides. Fertilizers, pesticides, herbicides, and other biocides associated with the permitted activities within the Development Areas, and in quantities consistent with such permitted activities, are permitted in the Development Areas, if in compliance with all applicable laws, rules, and regulations and manufacturers' label instructions, provided, however, aerial spraying is prohibited. No other pesticides, herbicides, fertilizers, or biocides may be applied in the Development Areas.

(viii) Utilities. Grantor may construct, repair, or replace all necessary utilities required for single-family occupancy, including septic systems, leach fields, electrical and/or propane lines, and domestic water wells provided such utilities are located entirely within the Development Areas or within existing road corridors. To the extent such construction is required to occur outside the Development Areas or existing road corridors, Grantor shall obtain the Conservancy's review and written approval, not to be unreasonably withheld, before commencing construction activities. All leach fields and septic systems shall be located such that wetlands and streams are protected from seepage and runoff and shall comply with all applicable federal, state and local laws and regulations. Power lines that aren't identified in the Report shall be installed underground unless otherwise approved by the Conservancy and BPA, whose approval cannot be unreasonably withheld.

C. Commercial Uses. Subject to all other terms of this Conservation Easement, certain commercial uses are allowed including (i) continuation of the permitted Ranching and Agricultural Activities; (ii) the use of Residential Area One as a commercial artists' retreat; and (iii) such commercial activities that are conducted in a manner consistent with Section 170(h) of the United

States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto, are consistent with the Conservation Purposes, and do not materially diminish or impair the Conservation Values.

D. Maintenance, Repair and Replacement.

(i) Agricultural, Non-residential Improvements and Facilities. Grantor may maintain, repair, and replace farming, ranching and non-residential improvements, including irrigation ditches and water facilities, which exist on the Property and are identified in the Report, including those within the Natural Zone as are documented in the Report, as of the date of the grant of this Conservation Easement in the same location and to the same or more efficient design specifications. Grantor may maintain, repair, relocate, and/or replace irrigation ditches and water facilities used to deliver irrigation water to areas where Ranching and Agricultural Activities currently occur (as described in the Report), provided that any replaced or relocated irrigation ditches do not cross the Natural Zone unless approved in advance by the Conservancy as part of the Waterway and Habitat Conservation Agreement as described in Paragraph 5.G below.

The Parties acknowledge that at the time of the grant of this Conservation Easement, as part of a grant agreement with Idaho Department of Environmental Quality, an existing feedlot, corrals, loafing sheds and other agricultural structures adjacent to Farmstead Area Two, are being removed and the area restored to improve water quality and riparian habitat at Wimpey Creek. Two existing structures identified in the Report as the wooden granary and calving barn may be used and maintained in their current locations as non-residential agricultural structures, but if they are removed, the granary and cow barn may be rebuilt in Farmstead Area Two in compliance with the terms of Paragraph 5.B(ii) but may not be rebuilt in their current locations. For as long as the granary and cow barn are in their current locations, they may not be used for the storage or use of Hazardous Materials as defined in Paragraph 17.E. below.

(ii) Fences, Gates, and Stackyards. Fences and gates may be built, repaired or replaced on the Property as reasonably necessary for Ranching and Agricultural Activities. To allow for wildlife movement on those portions of the Property outside the Development Areas, all new or replaced fences must be wildlife friendly (a) with no more than four rails or four strands of wire; (b) the bottom wire or rail must be smooth wire and no less than 18 inches from the ground as measured at the post; (c) for property boundary fences and fences around or within the Natural Zone, the top wire or rail must be smooth wire and no more than 42 inches above the ground as measured at the post; (d) and the distance between the two top wires or rails must be at least 12 inches; or an alternative wildlife friendly design may be approved by the Conservancy in its sole discretion.

For fences other than boundary fences and those around or within the Natural Zone: (v) the top wire or rail must be no more than 42 inches above the ground as measured at the post; (w) such fences shall have no more than four rails or four strands of wire; (x) the bottom wire or rail must be smooth wire and no less than 18 inches from the ground as measured at the post; (y) and the distance between the two top wires or rails must be smooth wire at least 12 inches; (z) and such fences must include a wildlife friendly crossing section at least every 300 feet in which the top wire or rail must be no more than 42 inches above the ground as measured at the post; or an alternative wildlife friendly design may be approved by the Conservancy in its sole discretion.

If the Conservancy identifies key wildlife movement areas crossed by such fences, the Conservancy reserves the right to require the Grantor to lower the top wire or rail to 42 inches above the ground as measured at the post for such areas.

- Hot wire fences are permitted provided they conform to the provisions above.
- Woven wire fences are prohibited.
- Jack fences may be used provided they have no more than a total of one top rail, two side rails and one "rub" rail on the opposite side of the two side rails, they conform to all other provisions above, and that side rails and wire are not used in the same span of a jack fence. "X" bracing is allowed for jack fences at not more than one "X" brace every 100 feet.

Notwithstanding the above, new wildlife-impenetrable fences may be built, repaired and replaced around and within the Development Areas for purposes of, including but not limited to, protecting hay and landscaping from elk or deer depredation.

A maximum of four hay stackyards may be placed on the Property, and such hay stackyards may be fenced to prohibit wildlife and livestock access, provided, however, that such fenced stackyards are no greater than one acre each, and that no hay stackyards are permitted in the Natural Zone or Ranching Areas. If fencing is constructed to limit livestock access to or within the Natural Zone, Grantor shall maintain such fencing for the life of the fence (including fencing installed by the Conservancy pursuant to Paragraph 4(E)), regardless of whether or not the livestock are owned by Grantor, Grantor's lessee or an adjoining public land permittee.

(iii) Roads, Bridges, and Trails. Except as set forth in this Paragraph, the construction, reconstruction, or replacement of any roads, bridges, and trails is prohibited. Grantor may maintain roads, bridges, and trails that exist on the Property as of the date of the grant of this Conservation Easement at the levels of improvement for each that exist as of the date of this Conservation Easement as are documented in the Report. Grantor may construct and maintain new roads, bridges, and trails, and may realign existing roads and trails, on the Property, provided that: (a) such realigned or new roads, bridges, and trails shall be reasonably necessary for the permitted Ranching and Agricultural Activities; or (b) such new roads, bridges and trails are permitted under the **Waterway and Habitat Conservation Agreement** described in Paragraph G below; or (c) such new roads and bridges, if constructed on the Property, shall be reasonably necessary to access the permitted Development Areas (including access by emergency vehicles in a manner required by any law, rule or regulation as a condition to permits or approvals related to construction permitted on the Property under the terms of this Conservation Easement). In all cases, Grantor shall first obtain the Conservancy's written approval and BPA as provided herein, which shall not be unreasonably withheld, conditioned, or delayed, for the construction of such realigned or new roads and trails. No new roads, bridges, and trails shall be constructed within the Natural Zone except, with the prior written consent of the Conservancy, as reasonably necessary to access fish screens or irrigation delivery systems constructed within the Natural Zone to improve fish passage or improve flows in Pratt Creek, Wilson Creek, and Wimpey Creek. With the prior written consent of the Conservancy, Grantor may replace the road connecting the westernmost hayfields across Warm Springs Creek as described in the Report.

E. Fishing and Hunting. The Property may be used for non-commercial hunting and fishing, provided that such activities are conducted in compliance with all applicable laws, rules, and regulations. Stocking ponds on the Property with fish is prohibited unless authorized in writing specifically for the Property by the Idaho Department of Fish and Game. In addition, in controlling predatory and problem animals Grantor shall comply with all applicable laws and use selective and humane control techniques, including, where practicable, non-lethal deterrents and management, which shall be limited in their effectiveness to specific individual animals that have caused damage to livestock and other property. Trapping is prohibited except for trapping of household pest animals within the Farmstead Areas.

F. Passive Recreational Uses. Grantor may conduct passive recreational activities on the Property, including, but not limited to, bird watching, hiking, non-commercial camping, horseback riding, and picnicking. Golf courses or ranges, commercial or hobby airstrips or helicopter pads, motocross tracks, or any other recreational development or activity inconsistent with the Conservation Values is prohibited on the Property.

G. Waterway and Habitat Conservation Agreement. An integral part of this Conservation Easement, and the basis for BPA providing the consideration for it, is restoration and enhancement of habitat for resident and anadromous fish in the Lemhi River tributaries of Pratt Creek, Wimpey Creek and lower Warm Springs Creek and for wildlife using the Property. The Grantor agrees to the following: 1) reduce irrigation withdrawal out of Pratt Creek in order to maintain a minimum flow of at least one and one half (1.5) cubic feet per second, 2) install fish screens in all unscreened diversions, and 3) otherwise comply with the Pratt Creek Flow Agreement detailed in the Waterway and Habitat Conservation Agreement. To that end, Grantor and the Conservancy have, as of the date of the grant of this Conservation Easement, entered into a Waterway and Habitat Conservation Agreement that details habitat and waterway enhancement and restoration activities and outcomes on the Property. Water conservation practices and other related water conservation activities, including installation of facilities, implemented under this Conservation Easement and the Waterway and Habitat Conservation Agreement shall not be modified, nor any facilities removed, except upon prior written approval of the Conservancy and BPA as provided herein, which approval shall not be unreasonably withheld, delayed, or conditioned.

H. Signs. Grantor may erect a reasonable number of signs or other appropriate markers not to exceed dimensions of four feet (4') by eight feet (8') in a prominent location on the Property, visible from a public road, which identify farming, ranching or open space activities on the Property and/or which state that no trespassing or no hunting is allowed on the Property.

I. Questionable Activities. If any question exists regarding whether historic, current, or new practices or activities are permitted or would be inconsistent with the Conservation Purposes or would diminish or impair the Conservation Values, Grantor shall notify the Conservancy in writing and obtain the Conservancy's written approval, not to be unreasonably withheld, prior to engaging in such practices or activities.

6. PROHIBITED USES OF THE PROPERTY. Any activity on or use of the Property that is inconsistent with the Conservation Purposes (including, without limitation, any activity or use that

diminishes or impairs the Conservation Values) is prohibited. Though not an exhaustive list of prohibited uses, none of the uses described in this Paragraph 6 shall be made of the Property.

A. No Subdivision. The legal or de facto division, subdivision, or partitioning of the Property is prohibited. Notwithstanding the fact that, as of the date of recording of this Conservation Easement, the Property might be composed of separate legal parcels, 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; it being expressly agreed that neither Grantor nor Grantor's personal representative, heirs, successors, or assigns shall sell, transfer, or otherwise convey any portion of the Property that constitutes less than the entire Property. The existence of any separate legal parcels, if any, as of the date of this grant shall not be interpreted to permit any use or activity on an individual legal parcel that would not have been permitted on such individual legal parcel under the terms and conditions of this Conservation Easement as applied to the Property as a whole. Subject to the remainder of this Paragraph 6. A., ownership of the Property may be held in the form of undivided interests as tenants in common, whether by choice or by operation of any applicable laws, but no owner of an undivided interest in the Property shall have the right to have the Property partitioned in kind, whether pursuant to Idaho statute or otherwise.

B. No Non-Agricultural, Non-Ranching Commercial Uses. The establishment of any commercial or industrial uses on the Property, other than the continuation of the permitted Ranching and Agricultural Activities described in Paragraph 5.A., is prohibited. Examples of prohibited commercial or industrial uses include, but are not limited to: (1) the establishment or maintenance of any commercial feedlots, which are defined as any area bounded by permanent fence or walls where domestic livestock are grouped together for intensive feeding for an extended period of time; (2) the planting and cultivation of commercial orchards; (3) the planting and cultivation of commercial vineyards; (4) the establishment or maintenance of any commercial greenhouses or plant nurseries; (5) the establishment or maintenance of any dairies; (6) the establishment of any apartment buildings or other multi-family dwellings; (7) the establishment of any overnight lodging business, day lodge, dude ranch, guiding, hunting or fishing service, restaurant or other eating establishment; (8) ranching or farming of naturalized native animal species, or animals for purposes of fur production; and (9) game farming, fish farms, or dog kennels.

The above prohibition is not intended to disallow a residential home office located on the Property as long as the business conducted out of that home office does not involve any of the above prohibited uses.

Notwithstanding the above prohibition, upon prior written request from Grantor, the Conservancy may permit certain other activities which may be interpreted as commercial, but which are determined by the Conservancy (a) to be consistent with the Conservation Purposes of this Conservation Easement; (b) not to adversely impact the Conservation Values; and (c) not to require or result in additional development or improvements to be undertaken on the Property other than development or improvements currently permitted by this Conservation Easement.

C. No Use or Transfer Of Development Rights. Except as expressly permitted by the terms of Paragraph 21, the exercise of any development rights associated with the Property is

prohibited, including, without limitation, the construction or placement of any residential or other buildings, golf courses, camping accommodations, boat ramps, bridges, mobile homes, house-trailers, permanent tent facilities, yurts, quonset huts or similar structures, underground tanks, or billboards, signs, or other advertising, and/or other structures or improvements, street lights, utility structures or lines, sewer systems or lines.

Except as expressly permitted by the terms of Paragraph 21 t, all development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property are terminated and extinguished and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described or to any other property adjacent or otherwise nor used for the purpose of calculating permissible lot yield of the Property or any other property; provided, however, that, with prior written permission of the Conservancy, this Paragraph 6. C. shall not preclude such transfer of development rights resulting from the destruction or demolition of any new or existing residential or agricultural buildings on the Property.

D. No Natural Resource Development. The exploration for or extraction of minerals, gas, hydrocarbons, soils, sands, gravel, or rock, or any other material on or below the surface of the Property is prohibited. Grantor shall not grant any rights to any minerals, oil, gas, or hydrocarbons, including exploration or extraction rights in or to the Property, and Grantor shall not grant any right of access to the Property to conduct exploration or extraction activities for minerals, oil, gas, or hydrocarbons, or other substances on any other property. Notwithstanding the above, Grantor may utilize a small backhoe or excavator to extract sand and gravel for incidental use in Agricultural Activities and for road maintenance and repair purposes on the Property from the Gravel Pit described and shown in the Report, provided that the Gravel Pit does not exceed an area larger than 1.5 acres and provided that such use is non-commercial and that the Gravel Pit is promptly reclaimed and revegetated when it is no longer being actively used.

E. No Hazardous Materials. The use, dumping, storage, release, or other disposal of non-compostable refuse, sewer sludge, or toxic or Hazardous Materials or agrichemicals is prohibited, except use and storage of reasonable amounts for the allowed uses described in Paragraph 5.A. (v).

F. No Alteration of Natural Water Courses; No Degradation of Water Quality. Except pursuant to Paragraph 5.G. or otherwise previously approved by the Conservancy in writing, the manipulation or alteration of any natural water course, wetland, streambank, shoreline, vernal pool or other waterbody, and the expansion or modification of water rights or water facilities, is prohibited. Activities or uses detrimental to water quality, including, but not limited to, degradation or pollution of any surface or subsurface waters, are prohibited, except as expressly permitted under the terms of the Conservation Easement or as reasonably incidental to the uses permitted pursuant to Paragraph 5 above.

G. Water Development. Development of new water rights and water facilities is allowed only in connection with the uses specifically allowed under this Conservation Easement.

H. Vehicles. The use of any motorized and non-motorized vehicles, including snowmobiles and bicycles, off roads and trails is prohibited, except: (i) as reasonably necessary to

conduct the Ranching and Agricultural Activities, (ii) within the Development Areas, or (iii) as reasonably necessary for property management and maintenance activities.

I. Limitations On Plowing, Disking, Alteration of Topography. Except as allowed under the provisions of Paragraph 5.A in connection with: (i) Ranching and Agricultural Activities; (ii) uses limited to the Development Areas; (iii) repair, maintenance, and grading of existing roads and trails or the construction of new roads as described in Paragraph 5.D.(iii) of this Conservation Easement; and (iv) pursuant to the Waterway and Habitat Conservation Agreement for wetlands or native plant restoration and enhancement activities, the plowing, disking, cultivation, ripping, planting, sowing, or any change in the topography of the Property through the placement on the Property of soils, land fill, dredging spoils, or other materials, or any other conversion or disturbance of the Property is prohibited. Except pursuant to Paragraph 5.A construction of new ponds is prohibited.

J. Inconsistent or Adverse Actions. Any action or practice that is or becomes inconsistent with the Conservation Purposes or that diminishes or impairs the Conservation Values is strictly prohibited.

K. No Junk Yards. The storage or disassembly of inoperable automobiles, machinery, equipment, trucks, and similar items for purposes of storage, sale, or rental of space for any such purpose is prohibited.

L. No Destruction Of Native Vegetation. Except as reasonably necessary to the activities allowed in Paragraph 5 above, the removal, cutting or destruction of native vegetation is prohibited.

M. Conservancy's Trademark. Grantor shall not use the Conservancy's printed name and/or logo in any manner except upon prior written approval of the Conservancy, which may be denied in its sole discretion.

N. No Introduction of Non Native Plant or Animal Species. The intentional seeding, planting, or introduction of non-native plant species is prohibited except within the Development Areas and the Agricultural Areas. The introduction of non-native animal species is also prohibited, except for livestock permitted as part of the Ranching and Agricultural Activities, and domesticated animals and pets.

O. No Extinguishment. In executing this Conservation Easement, Grantor has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and the Conservancy that any such changes shall not be deemed to be circumstances justifying the termination, extinguishment, or modification of this Conservation Easement. In addition, the inability of Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination, extinguishment, or modification.

7. REMEDIES.

A. Notice of Violation; Corrective Action. If the Conservancy or Grantor becomes aware of a violation or breach, or a threatened violation or breach, of the terms of this Conservation Easement by one or the other of them, the Conservancy or Grantor shall give written notice of such violation or breach to the other party ("**Violating Party**"). If the Violating Party fails to cure the violation within thirty (30) days after receipt of such written notice from the Conservancy or Grantor ("**Conforming Party**"), or under circumstances where the violation cannot reasonably be cured within a thirty (30)-day period, fails to begin curing such violation within the thirty (30)-day period or fails to continue diligently to cure such violation until finally cured, the Conforming Party shall have all remedies available at law or in equity to enforce the terms of this Conservation Easement, including, without limitation, the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity (regardless of whether the costs of restoration exceed the value of the Property), to pay monetary amounts which, if not paid, could result in extinguishment, modification, non-enforcement or impairment of this Conservation Easement, and/or to recover any additional damages arising from the violation. The Conforming Party's rights under this Paragraph apply equally to actual or threatened violations and breaches of the terms of this Conservation Easement. The Violating Party agrees that the Conforming Party's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Conforming Party shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which the Conforming Party 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. The remedies described in this Paragraph 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. 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' fees, 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, any costs of restoration shall be borne by Grantor if Grantor is responsible for any damage.

C. Emergency Enforcement. If the Conservancy, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values or to prevent breach or extinguishment of the Conservation Easement, the Conservancy may pursue its remedies under this Paragraph 7 without prior notice to Grantor and without waiting for the cure period to expire. In the event the Conservancy determines that emergency enforcement is required, the Conservancy shall make a reasonable effort to notify Grantor, but such notice shall not be a prerequisite to pursuing its remedies.

D. The Conservancy's Discretion. Enforcement by the Conservancy of the terms and provisions of this Conservation Easement shall be at the sole discretion of the Conservancy, and the failure of the Conservancy to discover a violation or to take action under this Paragraph 7 shall not

be deemed or construed to be a waiver of the Conservancy's rights under this Conservation Easement with respect to such violation in the event of any subsequent breach. In no event shall any delay or omission by the Conservancy in exercising any right or remedy constitute an impairment of or a waiver of such right or remedy.

E. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Conservancy to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including fire, flood, storm, drought, and earth movement. Furthermore, should Grantor undertake specific activities to enhance or restore certain Conservation Values and those activities result in an adverse impact to other Conservation Values, then such activities shall not be considered violations of the Conservation Easement, provided that Grantor shall have obtained the Conservancy's approval prior to commencing such activities.

8. ASSIGNMENT. The Conservancy may, in the Conservancy's sole discretion, assign this Conservation Easement to another non-profit land conservation organization or BPA, provided that: (a) Grantor is given written notice of the Conservancy's intent to assign this Conservation Easement; and (b) any assignment shall be made only to an organization qualified, at the time of assignment, as an eligible donee under Internal Revenue Code Section 170(h)(3) or its successor or under any regulations issued thereunder, and such organization shall be an entity qualified at the time of assignment to hold a conservation easement under Idaho law. Any assignment of this Conservation Easement to a governmental agency other than BPA is subject to Grantor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

9. RUNNING WITH THE LAND. The parties intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend its terms and conditions to create equitable servitudes and covenants running with the land, binding upon Grantor's successors and assigns for the benefit of the Conservancy as the holder of the Conservation Easement and the United States as holder of third party rights. Grantor agrees that transfer by Grantor of any interest in the Property shall be in accordance with the terms of Paragraph 21.

10. REPRESENTATIONS AND WARRANTIES.

A. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws as defined in Paragraph 17(e) below. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, any noncompliance or alleged noncompliance with, or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as defined in Paragraph 17(e) below.

Moreover, Grantor hereby promises to hold harmless and indemnify the Conservancy and the United States against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath, or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property.

Grantor's indemnification obligation will not be affected by any authorizations provided by the Conservancy or the United States to the Grantor with respect to the Property or any restoration activities carried out by the Conservancy at the Property; provided, however, that the Conservancy is responsible for any Hazardous Materials contributed after this date to the Property by the Conservancy.

B. State of Title. Grantor hereby warrants and covenants to the Conservancy and the United States of America and their respective successors and assigns that: the Grantor is lawfully seized and possessed of the Property in fee simple with a good and lawful right to grant the same, including a good and lawful right to grant this Conservation Easement; the Property is free and clear of any and all encumbrances and restrictions except those specifically set forth in Exhibit C; that the Conservancy shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement; that Grantor shall at the request of the Conservancy execute or obtain any reasonable further assurances as to title to the Property; and that Grantor will forever warrant title to the Property and defend the Conservancy against all persons who claim a lawful interest in the Property, except for persons who claim interests under the exceptions described in Exhibit C.

C. Compliance with Laws. Grantor represents and warrants that Grantor has not received notice of and has no knowledge of any material violation of any federal, state, county, or other governmental or quasi-governmental statute, ordinance, rule, regulation, law, or administrative or judicial order with respect to the Property.

D. No Litigation. Grantor represents and warrants that except as previously disclosed to the Conservancy in writing, there is no action, suit, or proceeding that is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

E. Authority to Execute Conservation Easement. The person or persons executing this Conservation Easement on behalf of the Conservancy represent and warrant that the execution of this Conservation Easement has been duly authorized by the Conservancy. The person or persons executing this Conservation Easement on behalf of Grantor represent and warrant that the execution of this Conservation Easement has been duly authorized by Grantor.

11. COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. 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 and agrees that the Conservancy shall have no duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions on the Property, or the protection of Grantor, the public, or any third parties from risks relating to conditions on the Property. Grantor agrees to pay before delinquency any and all real property taxes and assessments levied on the Property and agrees that Grantor shall keep the Conservancy's interest in the Property free of any liens, including those arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall be solely responsible for any costs related to the maintenance of general liability insurance covering Grantor's acts on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use reserved by Grantor and permitted by

this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, rules, regulations, and requirements. If more than one person or entity constitutes Grantor, the obligations of each and all of them under this Conservation Easement shall be joint and several.

12. INDEMNIFICATION.

A. By Grantor. Notwithstanding any other provision of this Conservation Easement to the contrary, Grantor agrees to indemnify, defend, and hold the Conservancy and the United States, including, without limitation, the Conservancy's members, directors, officers, employees, agents, and contractors, and its successors and assigns (collectively, the "**Indemnified Parties**"), harmless from and against any costs, liabilities, penalties, damages, claims (whether based on negligence or strict liability), or expenses (including reasonable attorneys' fees) and litigation costs that the Indemnified Parties may suffer or incur as a result of or arising out of: (a) the activities of Grantor on the Property; (b) the inaccuracy of any representation or warranty made by Grantor; (c) any breach of this Conservation Easement; (d) any 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 to the negligence of any of the Indemnified Parties. Without limiting the foregoing, Grantor shall indemnify, defend, and hold harmless the Indemnified Parties for all of the following:

i. Approvals. Any claim, liability, damage, or expense suffered or incurred by or threatened against the Conservancy by Grantor or any other person related to any approvals requested by Grantor, whether given or withheld by the Conservancy under this Conservation Easement, except as such claim, liability, damage, or expense is the result of the Conservancy's unreasonableness, gross negligence or intentional misconduct.

ii. Taxes. Any real property taxes, insurance, utilities, or assessments that are levied against the Property, including those for which exemption cannot be obtained, or any other costs of maintaining the Property.

iii. Hazardous Materials. Any Hazardous Materials, present, alleged to be present, or otherwise connected in any way to the Property, whether by, on, or after the date of this Conservation Easement.

B. By the Conservancy. The Conservancy shall hold harmless and indemnify Grantor from and against all liabilities, claims, penalties, costs, demands, or judgments, including reasonable attorneys' fees and costs of defense, arising from or related to injury to or death of any person or physical damage to property resulting from any act or omission related to or occurring on or about the Property, provided such acts or omissions relate to the Conservancy's duties and obligations under this Conservation Easement.

13. NOTICE; APPROVAL.

A. Notice for Entry. Where notice to Grantor of the Conservancy's entry or BPA's entry pursuant to Paragraph 23 upon the Property is required under this Conservation Easement, the

Conservancy or BPA shall notify any of the persons constituting Grantor or their authorized agents by telephone or in person or by written notice in the manner described in Paragraph 13(C) prior to such entry.

B. Approval Request. Except as provided in Paragraph 13(A), whenever express agreement or consent is required by this Conservation Easement, the initiating party shall give written notice, in the manner described in Paragraph 13(C), and detailed information to the other party. The receiving party shall review the proposed activity and notify the initiating party within thirty (30) days after receipt of notice of any objections to such activity. Any objections by a party shall be based upon its opinion that the proposed activity is inconsistent with the terms of this Conservation Easement.

C. Written Notices. Any written notice called for in this Conservation Easement, or changes to the Grazing Plan and Water and Habitat Agreement, shall be delivered to the appropriate party or parties: (1) in person; (2) by certified mail, return receipt requested, postage prepaid; (3) by facsimile with the original deposited with the United States Post office, postage prepaid on the same date as sent by facsimile; or (4) by next-business-day delivery through a reputable overnight courier that guarantees next-business-day delivery and provides a receipt. Notices shall be addressed to the appropriate party or parties at the following address:

To the Conservancy: The Nature Conservancy
Boise Office
950 W. Bannock St. Ste 210
Boise, ID 83702
Fax: 208-343-8826

with a copy to:

The Nature Conservancy
Legal Department
559 East South Temple
Salt Lake City, UT 84102
Fax: 801 531-1009

To Grantor: Pratt Creek Ranch LP
178 Pratt Creek Road
Salmon, ID 83467

To BPA: The Bonneville Power Administration
Real Property Services Tract ID: UPLER-WL-7
P.O. Box 3621
Portland, OR 97208-3621
Fax: (503) 230-5571

Either party may, from time to time, by written notice to the other, designate a different address that shall be substituted for the relevant address or addresses set forth above. Notice is deemed to be given upon receipt.

D. Subsequent Activities. Permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.

14. SEVERABILITY AND ENFORCEABILITY. The terms and purposes of this Conservation Easement are intended to be perpetual. If any provision or purpose of the Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions and purposes of the Conservation Easement, and the application of such provision or purpose to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

15. CONDEMNATION. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Grantor and the Conservancy shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Conservancy's and Grantor's interests at the time of this Conservation Easement is recorded (as provided in Treas. Reg. Section 1.170A-14(g)(6)(I)), it being expressly agreed that this Conservation Easement constitutes a compensable property right. All expenses incurred by Grantor and the Conservancy in such action shall be paid out of their respective recovered proceeds, and the Conservancy shall then promptly remit the balance to BPA.

16. EXTINGUISHMENT. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. In the event that this Conservation Easement is involuntarily terminated and proceeds result from such involuntary termination, Parties acknowledge that BPA is entitled to the proceeds, if any, in the proportionate value of the conservation easement to the property as a whole, which is 31%. This 31% proportionate value applies whether termination occurs in whole or in part. BPA shall be entitled to 31% less the value to the property due to any improvements made by the Grantor (if such improvements were allowed under the terms of this Conservation Easement) and less the actual costs the Conservancy incurs as a result of termination.

17. INTERPRETATION.

A. Intent. It is the parties' intent to preserve the condition of the Property and each of the Conservation Purposes, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Conservation Easement shall be construed to effectuate the Conservation Purposes and to allow Grantor's use and enjoyment of the Property to the extent consistent with those Conservation Purposes. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Conservation Easement

and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the State of Idaho, the county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

B. Governing Law. This Conservation Easement shall be interpreted in accordance with the laws of the State of Idaho.

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

D. No Hazardous Materials Liability. Notwithstanding any other provision of this Conservation Easement to the contrary, nothing in this Conservation Easement shall be construed such that it creates in or gives to the Conservancy or BPA: (1) the obligations or liabilities of an "owner" or "operator" as those words are defined and used in Environmental Laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 et seq.) ("CERCLA"); (2) the obligations or liabilities of a person described in 42 USC Section 9607(a)(3); (3) the obligations of a responsible person under any applicable Environmental Law; (4) any obligation to investigate or remediate any Hazardous Materials, as defined below, associated with the Property; or (5) any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

E. Definitions.

(1) The terms "**Grantor**" and "**Conservancy**," wherever used in this Conservation Easement, and any pronouns used in place thereof, shall mean and include, respectively, Grantor and Grantor's personal representatives, heirs, devisees, personal representatives, and assigns, and all other successors as their interest may appear and the Conservancy and its successors and assigns.

(2) The term "**Hazardous Materials**" includes, without limitation, any of the following wastes, materials, chemicals, or other substances (whether in the form of liquids, solids, or gases, and whether or not airborne) which are ignitable, reactive, corrosive, toxic, or radioactive, or which are deemed to be pollutants, contaminants, or hazardous or toxic substances under or pursuant to, or which are to any extent regulated by or under or form the basis of liability under any statute, regulation, rule, ordinance, order, or requirement concerning such wastes, materials, chemicals, or other substances (in each case, an "**Environmental Law**"), including, but not limited to, petroleum-based products and any material containing or producing any polychlorinated biphenyl, dioxin, or asbestos, as well as any biocide, herbicide, insecticide, or other agrichemical, at any level that may (a) constitute a present or potential threat to human health, safety, welfare, or the environment, (b) exceed any applicable or relevant and appropriate cleanup standard, or (c) cause any person to incur any investigation, removal, remediation, maintenance, abatement, or other cleanup expense; it being understood that such Environmental Laws include, but are not limited to

CERCLA, as defined above; the Hazardous Materials Transportation Act (49 USC Sections 6901 et seq.); similar Idaho state environmental laws; and any rule, regulation, or other promulgation adopted under any of the foregoing laws.

18. SUBSEQUENT LIENS ON PROPERTY. No provision of this Conservation Easement should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing must, at all times, be subordinated to this Conservation Easement by means of a subordination document acceptable to the Conservancy in the Conservancy's sole discretion.

19. RE-RECORDING. The Conservancy is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement, and Grantor agrees to execute any such instruments if necessary.

20. ACCESS. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or use the Property or any portion of the Property where no such right existed in the public immediately prior to the execution of this Conservation Easement. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities might diminish or impair the Conservation Values.

21. SUBSEQUENT TRANSFERS AND LEASES.

A. Fee Title. Grantor may transfer the Property in its entirety, but not in any portion less than its entirety. Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement or reference thereto, and a **Successors' Acceptance of the Habitat and Water Way Agreement and Grazing Plan (Exhibit J)**, will be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests either the fee simple title or a possessory interest (including, but not limited to, any leases) of the Property; and Grantor further agrees to notify the Conservancy of any pending transfer (including, without limitation, leases) at least forty five (45) days in advance of the transfer. Leasing all or any portion of the Property for a period of five (5) or more years is subject to prior written approval by the Conservancy, which approval shall not be unreasonably withheld, conditioned, or delayed. The failure of Grantor to comply with this Paragraph 21.A. shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an 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.

B. Water Rights. Grantor may transfer the Water Rights separately from the underlying fee title to the Property, or encumber the Water Rights, only when the transfer or encumbrance is to the Idaho State Water Resource Board or other state or federal entity, or other qualified entity, for conservation purposes and after obtaining the prior written consent of the Conservancy.

22. AMENDMENT. If circumstances arise under which an amendment to or modification of this Conservation Easement might be appropriate, the Conservancy, Grantor and BPA may by written agreement amend this Conservation Easement, provided that no amendment shall be made

that will adversely affect the qualification of this Conservation Easement or the status of the Conservancy as a qualified holder under any applicable laws, including the IRS Code or Idaho statute. Amendments may be made only when the Purpose of the Conservation Easement when the effect of the amendment is to benefit, or least cause no material harm to or material interference with the Conservation Values (for example, amending the Conservation Easement to place further restrictions on the use of or activities on the Property). The Parties may not use amendments to impliedly terminate the Conservation Easement or remove any portion of the Property from its terms. Any such amendment shall be consistent with the protection of the conservation and preservation of the Conservation Values of the Property and the Conservation Purposes of this Conservation Easement; shall not affect its perpetual duration; and shall not permit any private benefit to any person or entity without proportionate benefit to the Conservancy, in accordance with rules and regulations governing 501(c) non-profit organizations and the Conservancy's internal policies and procedures. Any amendment requires BPA's consent, which consent shall not be unreasonably withheld. BPA shall indicate its consent by acknowledged acceptance of the amendment. Any such amendment shall be recorded in the land records of Lemhi County, Idaho. Nothing in this paragraph shall require either party to agree to any amendment or to consult or negotiate regarding any amendment.

23. RIGHTS OF UNITED STATES OF AMERICA. Regarding the right of enforcement, entry, and inspection held by the United States of America, the Bonneville Power Administration, U.S. Department of Energy, is the acquiring federal agency.

A. Enforcement. If the Conservancy fails to enforce the terms of this Conservation Easement, or any plan or agreement developed as a condition of this Conservation Easement, BPA may, after providing the Conservancy with written notice and a reasonable time to respond (not less than 30 days except in cases of emergency), exercise all of the rights and remedies herein provided to the Conservancy and is entitled to all of the indemnifications herein provided to the Conservancy. If the Conservancy and BPA jointly exercise the rights and remedies of the Conservation Easement, then the Conservancy and BPA will work cooperatively to apportion the costs of enforcement in accordance with the efforts of each.

B. Entry and Inspection. BPA may, in a reasonable manner and at reasonable times, enter and inspect the easement area to determine compliance with the terms of the Conservation Easement. Except in cases of emergency, BPA will give Grantor and the Conservancy notice at least seven (7) days in advance of such entry, in the manner provided for in Paragraph 13, and will not unreasonably interfere with Grantor's use and quiet enjoyment of the Property. The Conservancy may accompany BPA on any such non-emergency entry. In the event that BPA determines that an immediate entry is required because of non-enforcement by the Conservancy, BPA shall make reasonable efforts to contact Grantor and the Conservancy prior to entry, but such notice shall not be a prerequisite to entry.

24. MERGER OF TITLE. Should the Conservancy in the future acquire fee title to Property such that the Conservation Easement is merged into fee title and extinguished, TNC will assign to the United States of America and its assigns at no cost this Conservation Easement or grant a conservation easement(s) similar to (and at least as protective of the Conservation Values and as restrictive in prohibited uses as) as this Deed of Conservation Easement.

25. ENTIRE AGREEMENT. This Conservation Easement, together with the attached exhibits and schedules, if any, and any documents incorporated herein by reference, constitutes the entire agreement of the parties with respect to the subject matter of this Conservation Easement and supersedes all prior agreements and understandings of the parties.

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

Exhibit A:	Legal Description of the Property and Water Rights
Exhibit B:	Property Map
Exhibit C:	Encumbrances and Restrictions on Title
Exhibit D, D.1:	Residential Area One and Surveyor's Map
Exhibit E, E.1:	Farmstead Area One and Surveyor's Map
Exhibit F, F.1:	Farmstead Area Two and Surveyor's Map
Exhibit G:	Notice of Exercise of Reserved Development Right Under Deed of Conservation Easement
Exhibit H:	Acknowledgment of Baseline Documentation Report, Grazing Plan, and Waterway and Habitat Agreement
Exhibit I:	Successors' Acceptance of the Habitat and Water Way Agreement and Grazing Plan
Exhibit J:	Biological Justification for Acquisition
Exhibit K:	Shade Target Monitoring

Remainder of this page intentionally blank.

IN WITNESS WHEREOF, the parties have executed this Conservation Easement as of the date first written above.

GRANTOR:

PRATT CREEK RANCH Limited Partnership, an Idaho limited partnership


Phil F. Moulton
General Partner

ACCEPTED BY THE CONSERVANCY:

THE NATURE CONSERVANCY,
a District of Columbia nonprofit corporation


Lou Lunte
Deputy State Director

ACCEPTED BY THE UNITED STATES OF AMERICA:


Luke Arant
Supervisory Realty Specialist
Bonneville Power Administration

*****ACKNOWLEDGMENTS TO FOLLOW*****

ACKNOWLEDGMENT

STATE OF Idaho)
) ss.
COUNTY OF Lemhi)

The foregoing instrument was acknowledged before me this 18th day of April, 2017,
by Phil E. Maulton and _____ known or identified to me to be the
General Partner of Pratt Creek Ranch Limited Partnership, an Idaho limited partnership, and
acknowledged to me that such general partner executed the same.



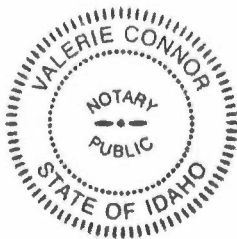
Heidi Simmer
Notary Public
Resides: Salmon

My commission expires: 5/19/21

ACKNOWLEDGMENT

STATE OF Idaho)
) ss.
COUNTY OF Ada)

The foregoing instrument was acknowledged before me this 17 day of April, 2017,
by Lou Lunte and _____ known or identified to me to be the
Deputy State Director of The Nature Conservancy, a District of Columbia nonprofit corporation,
and acknowledged to me that he executed the same.



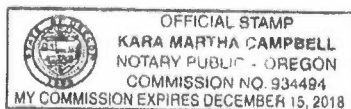
Valerie Connor
Notary Public

My commission expires: June 10, 2020

ACKNOWLEDGMENT

STATE OF Oregon)
) ss.
COUNTY OF Multnomah)

The foregoing instrument was acknowledged before me this 14th day of April, 2017,
by Luke Arand and _____ known or identified to me to be the
Supervisory Realty Specialist of the United States of America, Bonneville Power Administration, and
acknowledged to me that he executed the same.



Kara Martha Campbell
Notary Public

My commission expires: 12/15/18

EXHIBIT A
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

LEGAL DESCRIPTION OF THE PROPERTY AND WATER RIGHTS

Township 20 North, Range 23 East, Boise Meridian, Lemhi County, ID

SECTION 1: ALL SUBJECT TO ANY RIGHTS OF THE PUBLIC IN THAT CERTAIN RIGHT-OF-WAY KNOWN AS PRATT CREEK ROAD;

SECTION 2: THE NORTH HALF;

SECTION 3: LOT 1 AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER, EXCEPTING THEREFROM ANY PORTION OF PARCELS B & C IDENTIFIED ON THAT CERTAIN LOT LINE ADJUSTMENT PLAT RECORDED AS INSTRUMENT NUMBER 297724 IN THE RECORDS OF SAID COUNTY LYING WITHIN SAID SECTION 3, SUBJECT TO THAT CERTAIN PUBLIC RIGHT-OF-WAY KNOWN AS LEMHI ROAD.

Township 20 North, Range 24 East, Boise Meridian, Lemhi County, ID

SECTION 6: ALL, EXCEPT THE SOUTHEAST QUARTER THEREOF, SUBJECT TO ANY RIGHTS OF THE PUBLIC IN THAT CERTAIN RIGHT-OF-WAY KNOWN AS PRATT CREEK ROAD;

SECTION 7: THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER;

SECTION 8: THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL: BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE EAST ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 1320 FEET MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH ALONG THE EAST LINE THEREOF, A DISTANCE OF 1200 FEET; THENCE WEST, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 165 FEET; THENCE IN A SOUTHWESTERLY DIRECTION TO THE POINT OF BEGINNING.

Township 21 North, Range 23 East, Boise Meridian, Lemhi County, ID.

SECTION 34: THE EAST HALF OF THE SOUTHEAST QUARTER, EXCEPTING THEREFROM ANY PORTION OF PARCELS B & C IDENTIFIED ON THAT CERTAIN LOT LINE ADJUSTMENT PLAT RECORDED AS INSTRUMENT NUMBER 297724 IN THE RECORDS OF SAID COUNTY LYING WITHIN SAID SECTION 34, SUBJECT TO THAT CERTAIN 30 FOOT WIDE ACCESS EASEMENT WHICH IS DEPICTED AND DESCRIBED ON SAID PLAT, AND SUBJECT TO ANY RIGHTS OF THE PUBLIC IN THAT CERTAIN

RIGHT-OF-WAY KNOWN AS WIMPEY CREEK ROAD AND THAT CERTAIN RIGHT-OF-WAY KNOWN AS SKINNER RANCH ROAD;

SECTION 35: THE SOUTH HALF, EXCEPTING THEREFROM THAT CERTAIN 15.08 ACRE PARCEL LYING NORTH OF WIMPEY CREEK WHICH IS IDENTIFIED ON THAT CERTAIN LOT SPLIT PLAT RECORDED AS INSTRUMENT NUMBER 277377 ON PAGE 86 IN BOOK 9 IN THE RECORDS OF SAID COUNTY, SUBJECT TO ANY RIGHTS OF THE PUBLIC IN THAT CERTAIN RIGHT-OF-WAY KNOWN AS WIMPEY CREEK ROAD;

SECTION 36: THE SOUTH HALF OF THE SOUTH HALF.

Township 21 North, Range 24 East, Boise Meridian, Lemhi County, ID.

SECTION 31: THE SOUTH HALF, EXCEPT THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, AND EXCEPT THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, SUBJECT TO ANY RIGHTS OF THE PUBLIC IN THAT CERTAIN RIGHT-OF-WAY KNOWN AS PRATT CREEK ROAD.

WATER RIGHTS:

Table 1: Water Rights

Basin	Sequence	Diversion	Priority Date	Diversion Rate (cfs)	Total Acres	Source	Tributary of
74	193	PR-3	5/1/1888	1.4	60	Pratt Creek	Lemhi River
74	194	PR-3	5/1/1888	2.5	216	Pratt Creek	Lemhi River
74	195	PR-3	2/1/1892	0.5	113	Pratt Creek	Lemhi River
74	196	PR-2	5/1/1888	1.3	188	Pratt Creek	Lemhi River
74	197	PR-3	5/1/1888	4	265.3	Pratt Creek	Lemhi River
74	230		5/1/1888	0.52	26	Pratt Creek (POD at Warm Springs)	Lemhi River
74	530	PR-3	3/8/1909	1.6	216	Pratt Creek	Lemhi River
74	753	PR-3	10/22/1898	1.75	113	Pratt Creek	Lemhi River
74	754	PR-3	1/26/1914	0.8	40	Pratt Creek	Lemhi River
74	757	PR-3	10/22/1898	1.29	264	Pratt Creek	Lemhi River
74	1857		2/5/1920	0.36	17	Pratt Creek	Lemhi River
74	2019		4/17/1907	0.88	24	Pratt Creek	Lemhi River
74	2119	PR-1	2/16/1911	3.06	162	Pratt Creek	Lemhi River
74	744		5/1/1888	0.62	30	Springs	Pratt Creek
74	229		5/1/1900	1.8	72	Warm Springs Creek	Pratt Creek
Pratt Creek Totals				22.3	1806.3		
74	16031		5/1/1900	1.1	32.3	Wimpey Creek	Lemhi River
74	15874		05/01/1900	0.22	6.6	Wimpey Creek	Lemhi River
Total Irrigation Rights				23.62	1845.2		

EXHIBIT B
To of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

EXHIBIT B1 - PROPERTY MAP

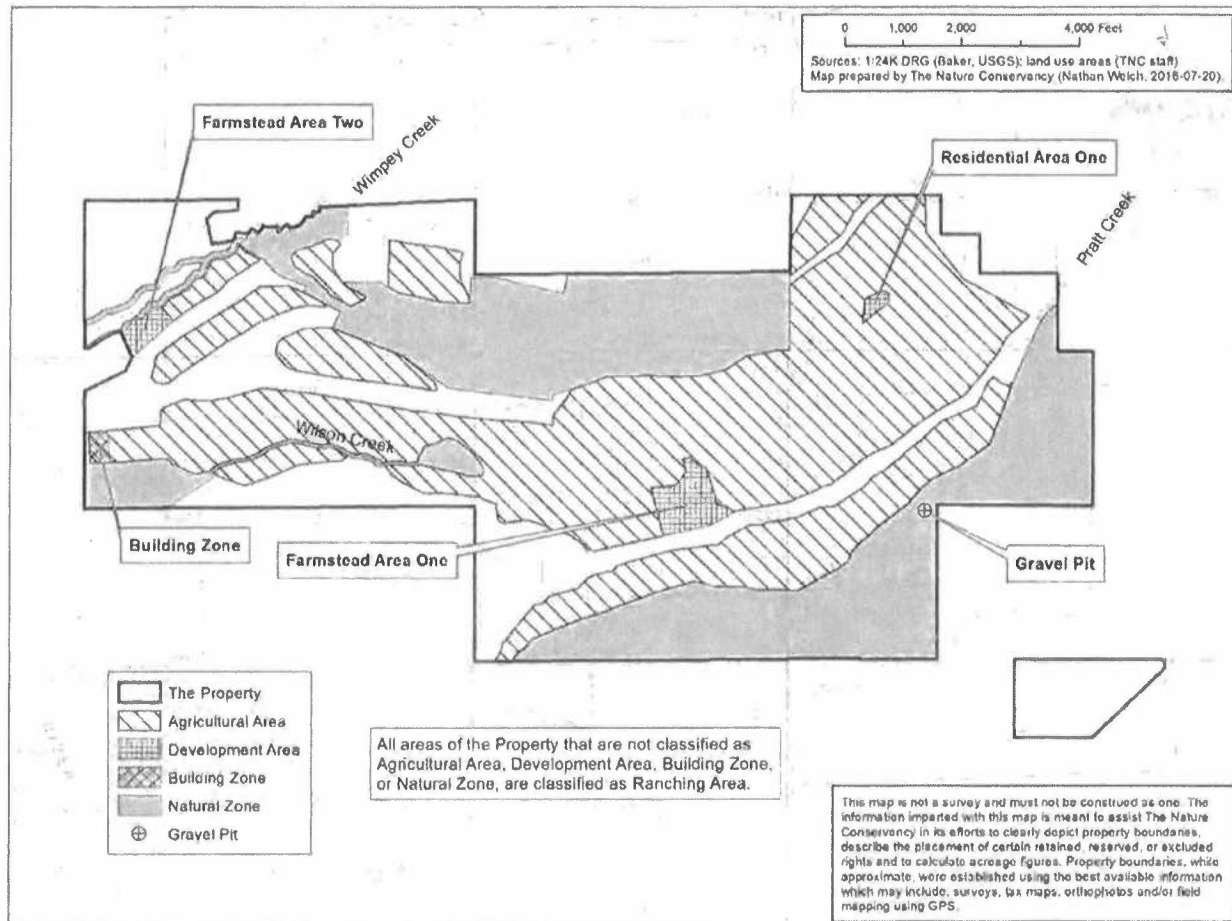


EXHIBIT B2 – PROPERTY MAP SHOWING WATERWAYS

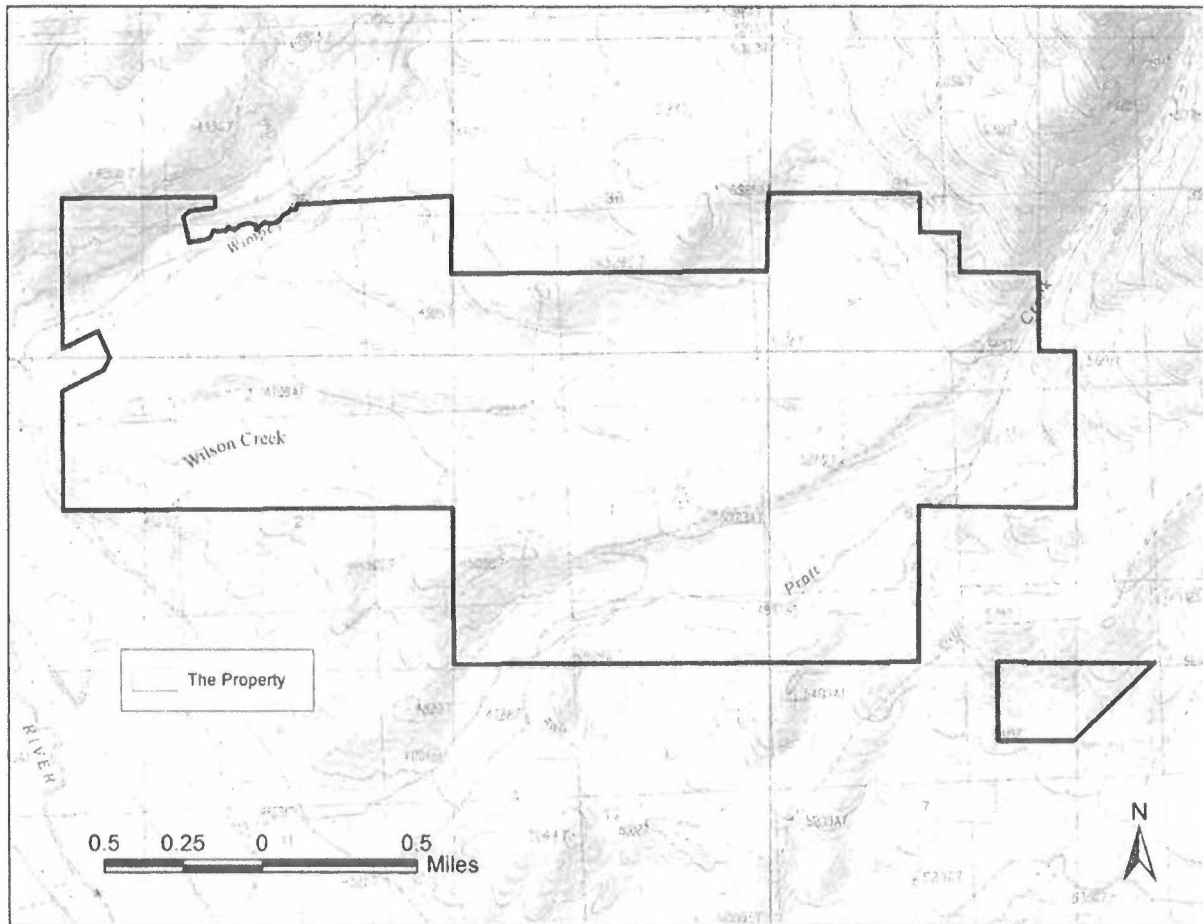


EXHIBIT C
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

ENCUMBRANCES AND RESTRICTIONS ON TITLE

Easement

Granted to: N/A

Purpose: 50' easement for ingress and egress

Recorded: March 15, 2005

Instrument No.: Book 8, Page 28 Note – there is no easement document to review; only a Lot Split Plat

Declaration of Restrictions and Easements

By and Between: Ruby L. Skinner, Trustee of the Skinner Family Trust, and David Barry Wagner, a married man

Purpose: Power Line Easement

Recorded: June 17, 2008

Instrument No.: 276514

Survey

Recorded: October 27, 2014

Instrument No.: 297724

Easement

Granted to: State of Idaho for the use and benefit of the Idaho Fish and Game Commission

Purpose: fish Screen & Fish Bypass

Recorded: October 13, 2016

Instrument No. 303498

EXHIBIT D and D.1
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

Legal Description of Residential Area One and Surveyor's Map

EXHIBIT "D"



WADE SURVEYING

Global Positioning Service

Land Surveying and Planning

402 Van Dreff St.

Salmon, Idaho 83467



Phone: (208)-756-3070

September 23, 2015

3.17 Acres Parcel

A parcel of land located in the SW1/4 of Section 31, T. 21 N., R. 24 E., Boise Meridian, Lemhi County, Idaho, more particularly described as follows.

Commencing at the SW Corner of said Section 31 from which the W 1/4 Corner of said section bears N 00°53'28" E 2638.75 ft., the Basis Of Bearing of this description, run thence N 58°05'28" E a distance of 1491.16 ft. to the POINT OF BEGINNING:

Thence N 43°37'20" E a distance of 118.02 ft.;

Thence N 67°15'38" E a distance of 385.84 ft.;

Thence S 04°09'58" E a distance of 222.45 ft.;

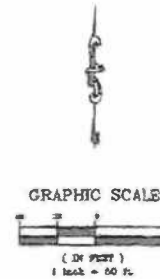
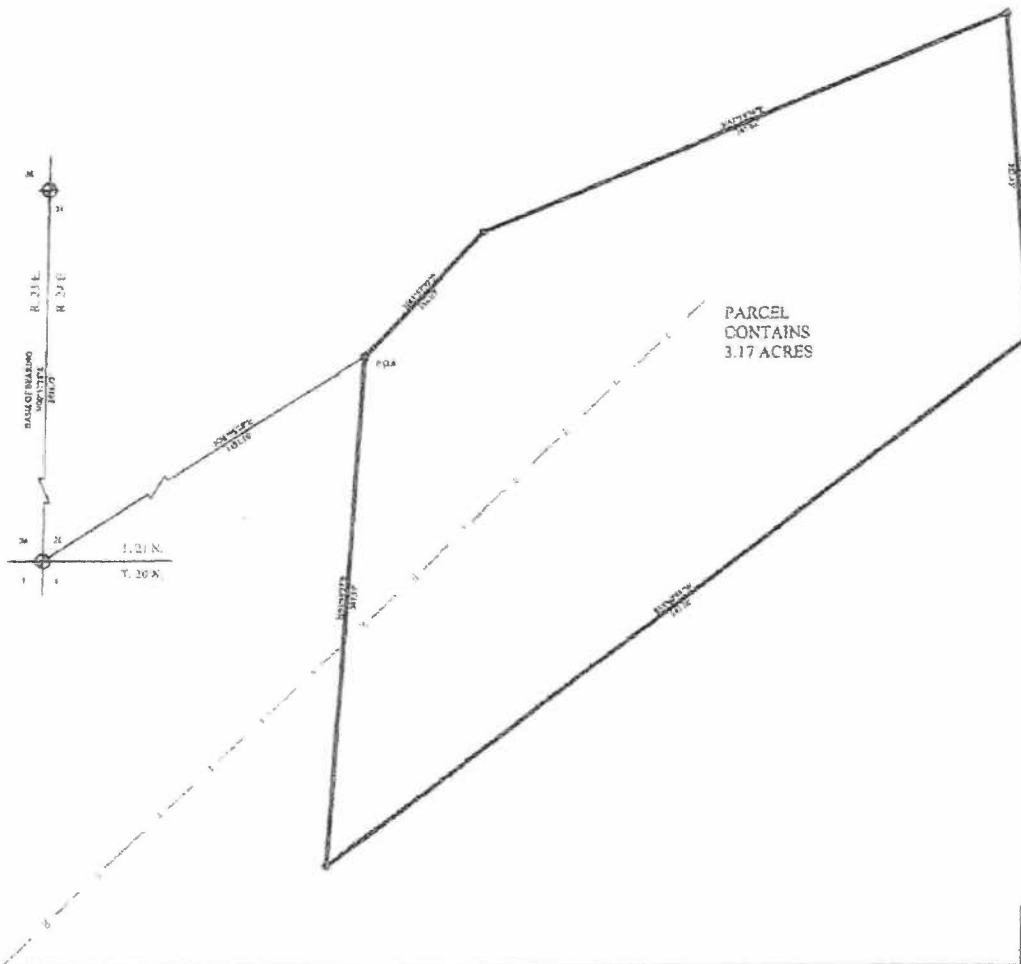
Thence S 53°02'41" W a distance of 597.28 ft.;

Thence N 03°56'27" E a distance of 347.19 ft. to the POINT OF BEGINNING

Parcel Contains 3.17 Acres
See Exhibit "H"



INFORMATIONAL DRAWING
 LOCATED IN THE SW1/4 OF SECTION 31, T. 21 N., R. 24 E.,
 BOISE MERIDIAN, LEMHI COUNTY, IDAHO



LEGEND

- SECTION CONTROL
- 28" 24° 28' 24" WITH A YELLOW PLASTIC CAP MARKED WITH PLS 3000
- OVERHEAD POWER LINE
- POINT OF BEGINNING

1/4	SEC	T	R
☒	31	21N	24E

	FOR
	PRATT CREEK RANCH LIMITED
	DATE: 8-23-2015 DRAWN/CHK BY: ERL/RY
	PROJECT: UTZON/PRATT CREEK RANCH
	DWG NAME: PRATT CREEK RANCH/DWG
SURVEY: T20/21E 2-31S	
LEGAL: SECTION 31, T20/21E 2-31S	
WADE SURVEYING	
GLOBAL POSITIONING SERVICE	
LAND SURVEYING IN ILLINOIS	
470 VAN DERBY, SALT LAKE, UTAH 84143	
PHONE: 801-464-1234	

EXHIBIT E and E.1
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

Legal Description of Farmstead Area One and Surveyor's Map

EXHIBIT E



WADE SURVEYING
Global Positioning Service
Land Surveying and Planning
402 Van Dreff St.
Salmon, Idaho 83467



Phone: (208)-756-3070

September 23, 2015

22.40 Acres Parcel

A parcel of land located in the E1/2 of Section 1, T. 20 N., R. 23 E., Boise Meridian, Lemhi County, Idaho, more particularly described as follows.

Commencing at the NE Corner of said Section 1 from which the NW Corner of said section bears S 89°31'36" W 5361.54 ft., the Basis Of Bearing of this description, run thence S 41°44'22" W a distance of 2400.41 ft. to the POINT OF BEGINNING;

Thence S 55°45'48" E a distance of 392.92 ft.;

Thence S 24°16'46" E a distance of 777.25 ft.;

Thence S 60°18'12" W a distance of 422.43 ft.;

Thence S 77°25'29" W a distance of 827.77 ft.;

Thence N 08°34'19" E a distance of 916.99 ft.;

Thence N 32°41'56" E a distance of 416.70 ft.;

Thence N 69°54'53" E a distance of 179.55 ft. to the POINT OF BEGINNING.

Parcel Contains 22.40 Acres



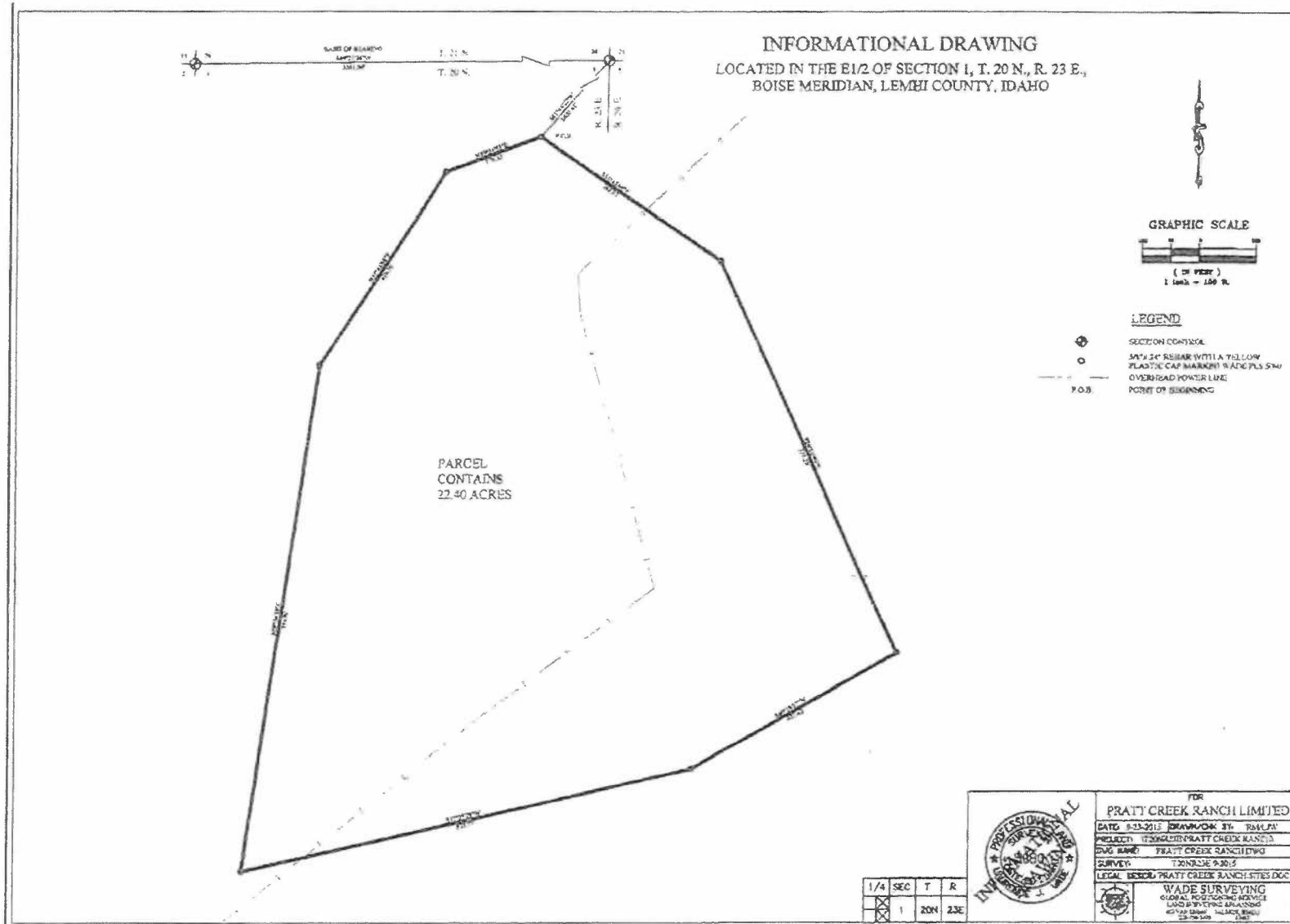


EXHIBIT F and F.1
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

Legal Description of Farmstead Area Two and Surveyor's Map



WADE SURVEYING
Global Positioning Service
Land Surveying and Planning
402 Van Drell St.
Salmon, Idaho 83467



Phone: (208)-756-3070

September 30, 2015

8.45 Acres Parcel

A parcel of land located in Section 3, T. 20 N., R. 23 E., and in Sections 34 and Section 35, T. 21 N., R. 23 E., Boise Meridian, Lemhi County, Idaho, more particularly described as follows:

Commencing at the SW Corner of said Section 35 from which the SE Corner of said section bears S 89°59'21" E 5246.75 ft., the Basis Of Bearing of this description, run thence N 12°49'13" E a distance of 698.32 ft. to the POINT OF BEGINNING;

Thence S 43°32'56" W a distance of 970.69 ft. to the southeasterly corner of Parcel "C" as shown on Inst. No. 297724;

Thence N 23°28'31" W along the easterly boundary of said parcel a distance of 440.81 ft. to the northeasterly corner of said parcel;

Thence N 50°52'59" E a distance of 457.35 ft.;

Thence N 68°27'28" E a distance of 435.72 ft.;

Thence N 52°47'46" E a distance of 328.13 ft.;

Thence S 25°38'11" E a distance of 243.55 ft.;

Thence S 65°35'52" W a distance of 310.18 ft. to the POINT OF BEGINNING.

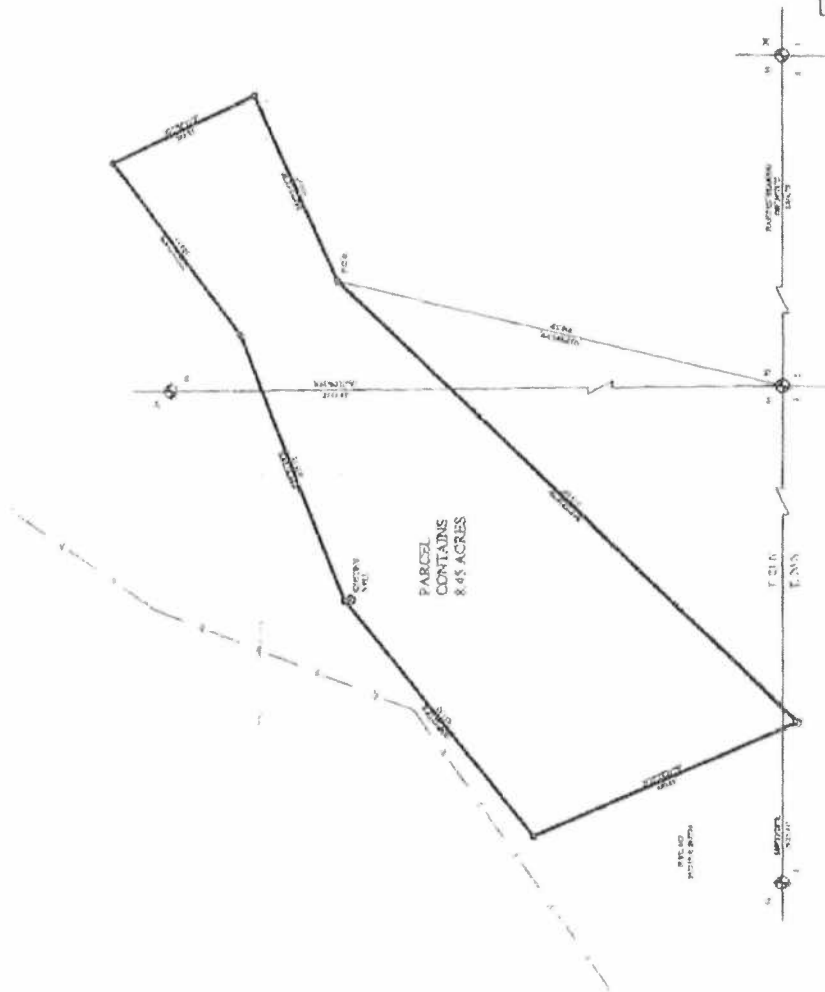
Parcel Contains 8.45 Acres
See Exhibit "F"



INFORMATIONAL DRAWING LOCATED IN SECTION 3, T. 20 N., R. 23 E. AND IN SECTIONS 34 AND 35, T. 21 N., R. 23 E., BOISE MERIDIAN, LEMHI COUNTY, IDAHO



- LEGEND**
- SECTION CORNER
 - 8" x 4" CORNER WITH YELLOW PLASTIC CAP MARKER PLASTED IN
 - 12" IRON - #13 IRON
 - OVERLAP TOP LINE
 - POINT OF BEGINNING



PRATT CREEK RANCH LIMITED

DATE: 10/20/2010
 PROJECT: 10/20/2010 PRATT CREEK RANCH
 DRAWN BY: PRATT CREEK RANCH LIMITED
 CHECKED BY: PRATT CREEK RANCH LIMITED
 LEGAL: 2010-2011 PRATT CREEK RANCH LIMITED
 WADE SURVEYING
 1000 W. 1000 N. SPOKANE, ID 83402
 (208) 325-1111



1/4 SEC	T	R
3	204	22E
34	21N	
35		

EXHIBIT G
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

When recorded, return to:
The Nature Conservancy
Legal Department
559 East South Temple
Salt Lake City, UT 84102

**Notice of Exercise of Reserved Development Right Under Deed of
Conservation Easement**
Lemhi River (Pratt Creek Ranch) Idaho

In the certain Deed of Conservation and Restoration Easement (**Conservation Easement**) recorded under AFN _____ in the records of Lemhi County, Idaho, the Grantor reserved a right for an additional Residential Area called **Residential Area Two**, certain terms and area of which was to be determined at a future time after the original conveyance of the Conservation Easement. *[The Grantor has exercised this right] or [The right has automatically extinguished]* as per the provisions of Section 5.B.(v) of the Conservation Easement.

[The Grantor and] The Nature Conservancy *[or current Holder]* *(Just TNC here if the right is extinguished due to the death of Eric Paul Moulton or sale of the Property)* declare that the reserved right *[has now been exercised by the Grantor] or [is now extinguished]* and no further reservation rights exist of the Grantor to develop Residential Area Two under the Conservation Easement.

(If the Grantor exercises the right, both Parties sign and add the paragraph below)

By signature below, the Grantor and Nature Conservancy acknowledge(s), agree(s), and approve(s) to supplement the Baseline Documentation Report dated _____ depicting the new Residential Area Two. The Parties agree and declare that upon execution of this Notice of this Exercise of Reserved Development Rights the right to develop another Residential Area per the terms of the Conservation Easement is hereby extinguished and that the Baseline Report has been supplemented.

GRANTOR
PRATT CREEK RANCH Limited Partnership,
an Idaho limited partnership:

Name/Title

Date

GRANTEE
THE NATURE CONSERVANCY:

Name/Title

Date

*(If right is extinguished by the death of Eric Paul Moulton or sale of the Property, only
TNC signs and add this paragraph below)*

The Parties agree and declare that upon execution of this Notice of this Exercise of Reserved
Development Rights the right to develop Residential Area Two as per the terms of the
Conservation Easement is hereby extinguished.

THE NATURE CONSERVANCY:

*****NOTE: FOR FORM ONLY, NO SIGNATURES REQUIRED*****

EXHIBIT H
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

APPROVAL AND ACKNOWLEDGEMENT
OF
BASELINE DOCUMENTATION REPORT, GRAZING PLAN, AND HABITAT AND
WATERWAY AGREEMENT

The undersigned hereby acknowledge and agree that the Baseline Documentation Report for the Property located in Lemhi County, Idaho, prepared by _____ and dated _____, is an accurate representation of the biological, physical and historical conditions of the Property as of the date of grant of the Conservation Easement. The undersigned further acknowledge and approve the Grazing Plan and the Habitat and Waterway Agreement. All of the undersigned parties have received copies of the Baseline Documentation Report, Grazing Plan, and Habitat and Waterway Agreement.

Grantor:

Phil F. Moulton Date _____
General Partner, Pratt Creek Ranch Limited Partnership, an Idaho limited partnership

Grantee:

The Nature Conservancy Date _____
Lou Lunte, Deputy Director

United States of America, Bonneville Power Administration

Luke Arant
Supervisory Realty Specialist

4/19/17
Date

EXHIBIT I
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

**SUCCESSOR'S ACCEPTANCE OF THE HABITAT AND WATERWAY AGREEMENT AND
GRAZING PLAN**

The undersigned hereby acknowledges receipt of and agrees to abide by the terms of both the Pratt Creek Ranch Habitat and Waterway Agreement and Grazing Plan established by the terms of the Conservation and Restoration Easement, recorded _____ in Lemhi County, Idaho.

Successor:

Add Name
Add Title

Date

******NOTE: FOR FORM ONLY, NO SIGNATURES REQUIRED******

EXHIBIT J
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

BIOLOGICAL JUSTIFICATION FOR ACQUISITION

Located in Lemhi County, the Pratt Creek Ranch property (Property) is approximately 2,316 acres in size and is operated as a cattle ranch. BPA, working with the Idaho Office of Species Conservation, supported The Nature Conservancy in its pursuit of a conservation easement on the Property. The beneficial outcomes of protecting this Property through a conservation easement include permanently protecting approximately 3.2 miles of in-stream and riparian habitat associated with Pratt and Wimpey Creeks. Protecting these creeks through this easement will greatly benefit the local population of steelhead, listed for protection under the Endangered Species Act (ESA), through creating connectivity to additional reproductive and rearing habitat and affording summer connectivity and cooler water temperatures to attract juvenile spring Chinook salmon, also protected under the ESA, in their early free swimming life stages in two tributaries cooler than the main stem Lemhi River.

This easement complements other conservation actions taken in the Lemhi drainage with similar goals of improving water quality and connectivity, thereby allowing fish and water managers the opportunity to facilitate high flows annually, to shepherd conserved water, to prohibit any new future water withdrawals, and to ensure the improvement of environmental conditions to benefit salmon, steelhead, bulltrout, and other resident fish and wildlife species on a larger watershed scale.

The Lemhi River is a focus in the 2008/10/14 Federal Columbia River Power System (FCRPS) Biological Opinion (BiOp) of the National Oceanic and Atmospheric Administration (NOAA) Fisheries for both the Chinook salmon and steelhead populations. The well-coordinated and long-standing habitat improvement efforts led by the Upper Salmon Basin Watershed Program, most of which have been funded by BPA and the Bureau of Reclamation, have accomplished a tremendous amount of work to provide instream flows to dewatered and dry conditions, improve riparian areas and instream habitats, decrease water temperatures, remove barriers and reconnect tributary streams.

The BiOp goals have been met in much of the Upper Salmon for the major population groups (MPG). The Lemhi River spring Chinook population in particular is pivotal to contributing to the evolutionary significant unit (ESU)-level evaluation framework outlined in the BiOp. This easement and the restoration actions that it allows provide additional credit and a buffer to ensure the BiOp goals are met and sustained. Additionally, protecting and restoring critical salmon and steelhead habitat in the Lemhi has been identified by NOAA Fisheries as necessary to successfully recovering these species. Because the Interior Columbia Technical Recovery Team identified the Lemhi as a "Very Large" population size group, it plays a key role in the current BiOp and Draft Recovery Plan, --especially if the need arises to merge the credit into an MPG or ESU-level.

This conservation easement also helps BPA address salmon and steelhead conservation in the face

of a changing climate. The Property is located at an ideal elevation to buffer the warming effects that are anticipated by leading scientists. At nearly 5,000 feet, the habitat protection/restoration and the water management that will result from this easement will continue to provide cold water refugia for anadromous fish into the future.

As required by the conservation easement, the landowner will improve flows through a flow agreement on Pratt Creek that ensures connectivity to the Lemhi River, and the landowner will participate in a 72-hour high flow event during which water withdrawal will be curtailed in order to mimic and/or enhance channel forming/channel maintaining flow events. These flushing flows will help to increase egg to smolt survivals over time as gravels are consistently washed clean for each successive brood year, providing a benefit to steelhead with secondary benefits to Chinook juveniles rearing over the summer. The landowner is also committed under other agreements to improving habitat and water quality in Wimpey Creek through the removal of a feedlot and significant restoration activities.

In conclusion, the location and size of this Property and its potential benefit to steelhead reproduction and rearing, and Chinook rearing make it an important buffering action that helps ensure FCRPS BiOp implementation.

EXHIBIT K
To Deed of Conservation and Restoration Easement
Lemhi River (Pratt Creek Ranch) Idaho

SHADE TARGET MONITORING

Background¹

There are several important contributors of heat to a stream, including ground water temperature, air temperature, and direct solar radiation (Poole and Berman 2001).² Of these, direct solar radiation is the source of heat that is most easily controlled or manipulated. The parameters that affect the amount of solar radiation hitting a stream throughout its length are shade and stream morphology. Shade is provided by the surrounding vegetation and other physical features such as hillsides, canyon walls, terraces, and high banks. Stream morphology affects how closely riparian vegetation grows together and water storage in the alluvial aquifer. *Streamside vegetation and channel morphology are the factors influencing shade that are most likely to have been influenced by anthropogenic activities* and that can be most readily corrected using Idaho's shade target methodology, also known as Potential Natural Vegetation (PNV).³

Depending on how much vertical elevation surrounds the stream, vegetation further away from the riparian corridor can provide shade. However, riparian vegetation provides a substantial amount of stream shading by virtue of its proximity. We can measure the amount of shade that a stream receives in a number of ways. Effective shade (i.e., that shade provided by all objects that intercept the sun as it makes its way across the sky) can be measured in a given spot with a Solar Pathfinder or with other optical equipment that operates similar to a fish-eye lens on a camera. Canopy cover is the vegetation that hangs directly over the stream and can be measured using a densiometer or estimated visually either on site or using aerial photography. All of these methods provide information about how much of the stream is shaded and how much is exposed to direct solar radiation. PNV along a stream is that riparian plant community that has grown to an overall mature state, although some level of natural disturbance is usually included in the development and use of shade targets. Vegetation can be removed by disturbance either naturally (e.g., wildfire, disease/old age, wind damage, wildlife grazing) or anthropogenically (e.g., domestic livestock grazing, vegetation removal, erosion). The idea behind PNV as targets for temperature is that PNV provides

¹Modified from Idaho Department of Environmental Quality, Technical Services (2012).

² Poole, G.C., and C.H. Berman, An ecological perspective on in-stream temperature: Natural heat dynamics and mechanisms of human-caused thermal degradation, *Environmental Management* 27(6):787–802 (20001).

³ Shumar, M.L., and J. de Varona. 2009. The Potential Natural Vegetation (PNV) Temperature TMDL Procedures Manual. Boise, ID: DEQ.

a natural level of solar loading to the stream without any anthropogenic removal of shade-producing vegetation.

Anything less than PNV results in the stream heating up from anthropogenically created additional solar inputs. We can estimate PNV shade from models of plant community structure (shade curves for specific riparian plant communities), and we can measure or estimate existing vegetative cover or shade. Comparing the two (i.e., existing versus potential) tells us how much excess solar load the stream is receiving and what potential there is to decrease solar gain. Streams disturbed by wildfire require their own time to recover. *Streams that have been disturbed by human activity may require additional restoration above and beyond natural recovery.* Due to this fact, Idaho will evaluate and prioritize those areas where the banks are not suited for natural recovery and work to actively address those factors that are limiting riparian growth.

Existing shade will be evaluated using Idaho DEQ's methodologies (Shumar and de Varona, 2009). Shade targets will be developed based on the correct plant community shade curve and deviations from the target shade will be shared and a plan for restoration be developed. PNV targets determined from an analysis of probable vegetation at the streams and comparing that to shade curves developed for similar vegetation communities in Idaho (Geyer Willow/Reed Grass shade Curve or alternatively Black Cottonwood Shade Curve in Figure 1 and Figure 2). Wimpey Creek will be evaluated by OSC in partnership with TNC and targets set according to the methodology DEQ used on the main stem Lemhi.

- What are the targets for each stream or discrete reach? How do they translate into temp changes; i.e., what's expected benefit in terms of temp changes for listed fish?

This action directly relates to CM-05, Lemhi River Restoration Objectives (Table 11 Lemhi River IMW, ISEMP Report 2015, in progress): Maintaining or enhancing riparian conditions characteristic of good habitat to ensure that adequate vegetation persists to provide shade, increase bank stability and protection, decrease sediment input, and promote the recruitment of large woody debris.

Shade targets are continuous and variable along the stream length. Shade targets are directly related to stream widths and are explicitly shown on the Geyer Willow/Reed Grass PNV curve from Shumar and de Varona (2009) page 254, Figure A.3-6 (attached).

If waterbodies are contributing warm waters, a healthy riparian and stable bank will maintain the temperature and gains from ground water could help moderate water temperature further. Shade does not directly remove heat from water rather it inhibits direct solar input of energy in to the stream.

- What methods will be used?

Shumar and de Varona (2009). The Potential Natural Vegetation (PNV) Temperature TMDL Procedures Manual. Boise, ID: DEQ. Solar Pathfinder procedure on pages 7-13. Image interpretation detailed here.

OWEB. (2001). Addendum to Water Quality Monitoring Technical Guide Book: Chapter 14

Stream Shade and Canopy Cover Monitoring Methods. Oregon's Watershed Enhancement Board. 775 Summer St. NE., Suite 360, Salem, OR 97301-1290. Densiometer and Solar Pathfinder relationship for shade monitoring.

IDEQ, 2007. Beneficial Use Reconnaissance Program Field Manual for Streams. Idaho Department of Environmental Quality. Beneficial Use Reconnaissance Program Technical Advisory Committee. Revised May 2007. Densiometer protocol as a backup to the Solar Pathfinder.

Scientific Protocol for Salmonid Habitat Surveys within the Columbia Habitat Monitoring Program (CHaMP) v4.0: <https://www.monitoringmethods.org/Protocol/Details/2020>
Additional reference for Solar Pathfinder protocol (Status and Trend).

- Who will do work, when, how often?

Monitoring will be coordinated with the The Nature Conservancy (easement holder) working in conjunction with either OSC or with a consultant agreeable to both parties. Yearly solar pathfinder traces will be collected along with photo points. Monitoring will occur after leaf out during the later summer months. Site scale flights by unmanned aerial vehicle can be scheduled annually or biannually to assess progress as compared to the baseline flight outlined below in Step 3. These are interim assessments in the intervening periods between the release of National Agriculture Imagery Program (NAIP)⁴ imagery from USDA Farm Service Agency (FSA).

Photo/satellite image interpretation will occur upon every release FSA-NAIP which is approximately every three years. The baseline for this interpretation was established and documented in the DEQ 2012 TMDL. The Solar Pathfinder traces are ground truthing to both the UAV flights and the FSA-NAIP image interpretation.

- Will there be reference sites?

No. The Geyer Willow/Reed Grass Shade Curve is the reference condition. This is also a temporal design in which we are looking to see increasing shade throughout the reaches under the easement. Additionally, since the target is related to stream width, it is a moving target in the sense that the stream should narrow over time in areas where it may be wide now. This narrowing will occur as root mass stabilizes banks or habitat improvement projects rebuild the channel increasing the target shade due to a reduction in stream width.

- Should the same sites be used for comparative purposes to show changes over time?

Yes. Since 100% of the stream reaches in the easement are evaluated and will be reevaluated over time we will achieve the outcome of comparison. The Solar Pathfinder ground truthing sites will be benchmarked via GPS and re-measured over time.

⁴ <http://www.fsa.usda.gov/FSA/apfoapp?area=home&subject=prog&topic=nai>

Figure 1: A shade curve shows the relationship between effective shade and stream width. As a stream gets wider, the shade decreases as the vegetation has less ability to shade the center of wide streams. As the vegetation gets taller, the more shade the plant community is able to provide at any given channel width.

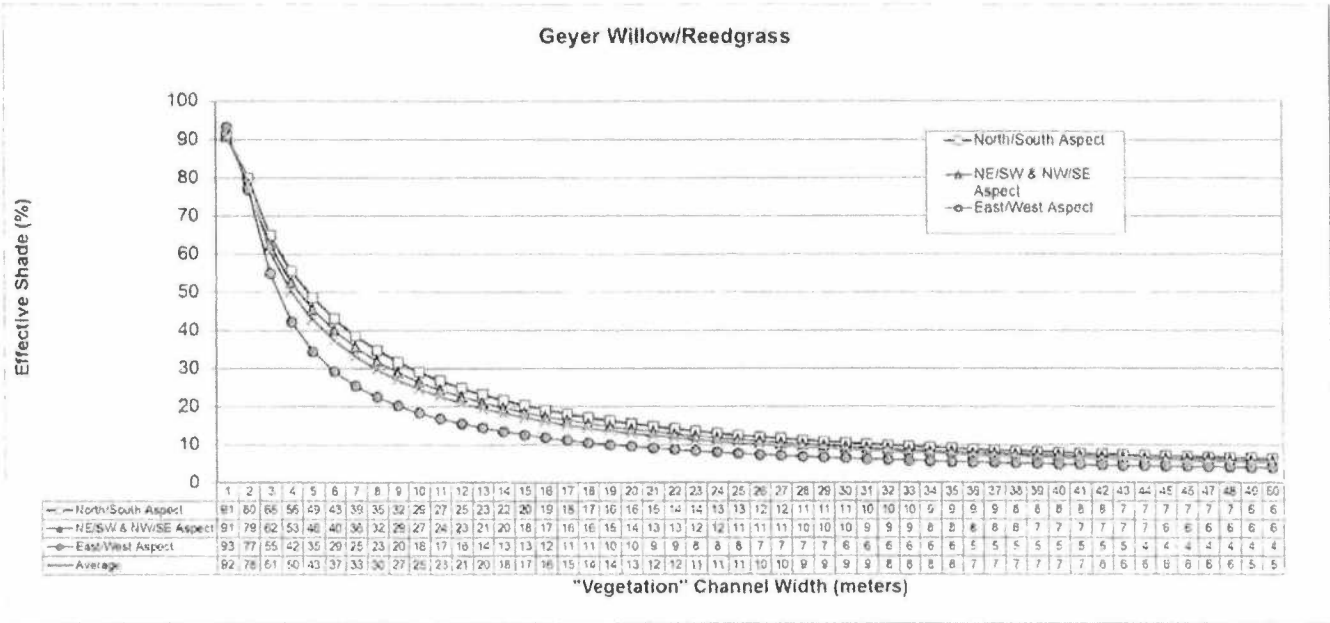
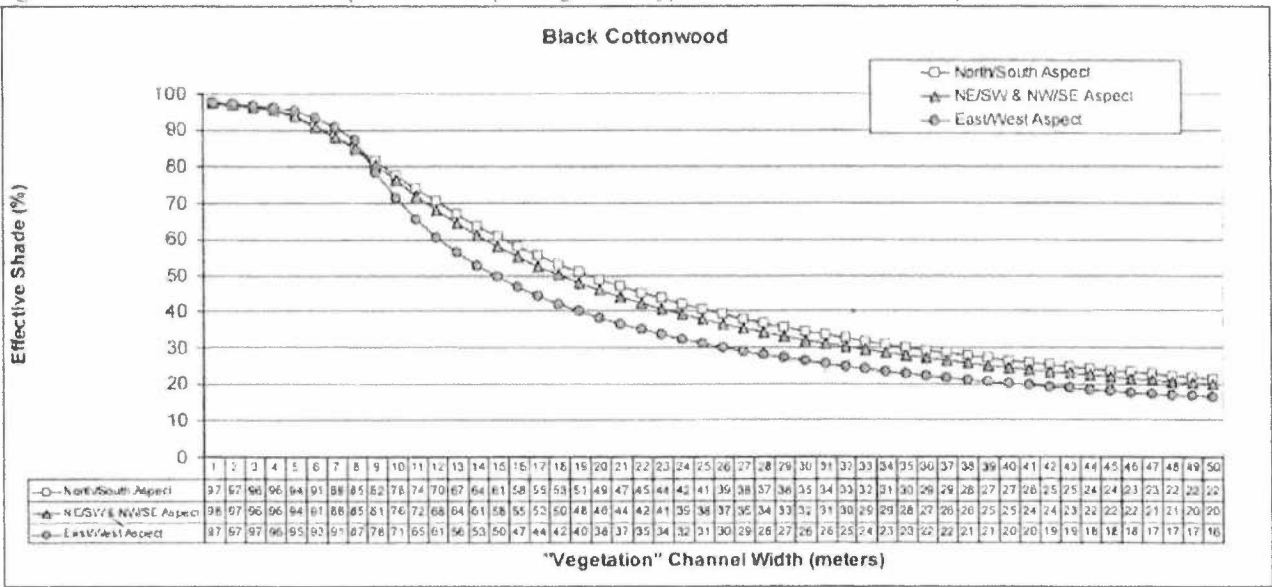


Figure 2:



Planning and Implementing of Active Restoration to Meet Shade Targets

Phase 1: The current effective shade will be measured and assessed for Wimpey Creek (OSC-TNC) and shade targets will be derived beginning in 2017.

Phase 2: Those areas not meeting shade targets need to be quantified as a proportion of the whole riparian zone in the easement. This will inform us of how far away we are from our target.

Phase 3: Inventory and classify areas not meeting shade targets into active restoration needed vs. passive growth that will achieve goals. OSC will create baseline documentation of riparian zone condition and extent via aerial photography. The photo imagery will be geo-rectified and used to identify and prioritize site visits. OSC/TNC will conduct inventories either by contract or by a small inter-disciplinary team (plant ecologist (Upper Salmon Basin Watershed Program (USBWP)), soil scientist (NRCS), and a range conservationist (USBWP Tech Team member) and TNC Staff) to determine the reason as to why the shading is not meeting the goal. For the most part, areas not meeting the expected effected shade targets are either 1) grazed by wildlife or domestic animals at vulnerable times of the growing season or 2) site conditions exist that preclude growth from initiating or continuing. In the first case, in conjunction with the landowner and on a pasture by pasture basis, a determination can be made whether to alter the timing and duration of exposure to domestic livestock or to temporarily exclude domestic livestock by various means until growth is established and interim targets are being met. In the second situation where conditions preclude growth, a small interdisciplinary team should assess site conditions to determine the limiting factor. Possible limiting factors include: soil compaction, competition from non-target species, lack of access to water.

Phase 4: Take the results from the site visits and assess and prioritize to produce a plan and a budget to address those areas not exhibiting needed growth. One example would be areas where the bank is too high and willows cannot root or spread rhizominously due to lack of access to the water table the bank needs to altered and cuttings need to be established. Not all areas need to be addressed since the goal is not 100% shade.