

**File Code:** 5400; 5500  
**Date:** April 15, 2020

Dear Interested Party:

This is an informational update pursuant to the Stipulated Remedy Agreement ordered by the U.S. District Court, District of Idaho, November 21, 2019 regarding authorizations for several water facilities on National Forest System (NFS) land in the Sawtooth National Recreation Area (SNRA). The Forest Service will be initiating consultation under section 7 of the Endangered Species Act (ESA) for the authorization of the water facilities to the extent required by law and as expressed in the Stipulation on Remedy filed in *Idaho Conservation League v. U.S. Forest Service*, No. 1:18-cv-00044-BLW (D. Idaho). The following is an update of ongoing work by the U.S. Forest Service in this matter:

- U.S. Forest Service Intermountain Region (R4) Boundary and Title staff have spent several months researching and surveying several facilities likely to qualify as RS2339 claims under the 1866 Mining Act. These include five diversions and associated facilities included in a quiet title action.
- The permitting process for reauthorizing the installation (not operation) of the CHC5 fish screen is progressing. The Forest Service received an updated permit application (SF-299) on December 4, 2019. Idaho Department of Fish and Game has applied for Bonneville Power Administration Funds to install the CHC5 screen and is completing final design plans. The Sawtooth National Forest intends to issue a special use permit for the installation of a fish screen on CHC5 pending completion of consultation on the action by Bonneville Power Administration, the lead action agency for the project. Idaho Fish and Game intends to install the fish screen during the July-August instream work window in 2020. In the interim, CHC5 will be inspected once every three weeks during the period when water is diverted, and once at the end of the irrigation season, until a fish screen is installed or consultation is completed, so long as resources are available, and weather conditions permit us to safely do so. If the Forest Service discovers trapped fish that are listed under the ESA, or other conditions that it determines could harm listed fish species, it will inform the water facility owner of these conditions and, if appropriate, recommend actions to mitigate harm to the listed species.
- Staffing – A Sawtooth Diversion Team, consisting of 17 people, has been assembled and tasked with meeting the terms of the Settlement Agreement.
- The U.S. Forest Service Region 4 Ditch Bill Team is in the process of reviewing and updating the Colorado Ditch Bill cases on the Sawtooth National Recreation Area to prepare for two weeks of site visits during the 2020 field season.
- Field Work – Additional fish occupancy and fish habitat data collection is planned for the 2020 field season in Fisher Creek, Boundary Creek, Cleveland Creek, and possibly Niece (a.k.a. Grover) Creek.



The Forest Service is progressing along the terms of the Settlement Agreement, with the knowledge that the outcome could change pending the results of the appeal. The Covid-19 virus and Governor Little's Stay-at-Home Order issued March 25, 2020 has presented additional complications for staff regarding field work. The situation is dynamic and is changing daily; Covid-19 has the potential to cause delay if critical field and staff work is impeded. Nevertheless, the Forest Service will continue to work with the State of Idaho, the Services, and water facility owners to protect listed fish species and their habitat. If you have questions, please contact Sharon Barnes at 208-727-5005.

Sincerely,

*Kirk Flannigan*  
Kirk Flannigan  
AREA RANGER