# DECISION MEMO

## *Starnes Waterline Special Use Permit Renewal and Permit Consolidation Request*

**USDA Forest Service, Northern Region**
**Nez Perce – Clearwater National Forests**
**Lochsa Ranger District**
**Idaho County, Idaho**

## I. Decision

I have decided to authorize the renewal of the special use permit of Mrs. Bert Starnes (hereinafter referred to as "Starnes") to allow her to continue to operate her existing waterline, as well as to consolidate her permit to incorporate operation of another existing, permitted waterline on adjacent property she has recently purchased. The legal coordinates for both waterlines are at T33N, R6E, Section 32 NW1/4 SE1/4 (Boise Meridian).

### Background

Since 1987, Starnes has held special use permit LOC 61 for her waterline which extends onto Forest Service lands on Little Smith Creek. The waterline is for irrigation purposes on her property. This permit expired December 31, 2013.

The waterline runs along the ground surface for approximately 1,600 feet to provide sufficient water pressure for irrigation and water resource for fire protection. The line is closed and does not feed into a collection system; therefore, only the water used for irrigation is pulled from the creek. There is no overflow runoff from this use. Starnes has a registered water right for .02cfs with an annual volume of 1.5AF between March 15 and November 15 of each year (No. 81-7098).

In January 2013, Starnes notified the Forest Service she had purchased her neighbor's (Waples) property, which lies immediately east of her property, on the opposite side of Little Smith Creek Road. Waples also had a valid permit for a water distribution line from Little Smith Creek. (Permit LOC86). This permit was valid and paid through December 31, 2013, as well.

Waples signed the necessary revocation form naming Starnes as the new owner of the property. As the new owner, Starnes is requesting approval to maintain the Waples existing water distribution line for irrigation and fire protection on that property.

A water right was issued to the original owner of this property (John Smith, 81-7070). Waples did not pursue the transfer of this right in their name; however, Starnes is interested in doing so. The water rights granted for this property were also for .02cfs with an annual volume of 1.2AF between April 1st and October 31st of each year.

## Implementation and Design Specifications

Ground disturbance will not be necessary for either waterline. The Starnes' (previously Waples) waterlines are both above ground pipes that lie along the creek bank for approximately 1,600 feet (.07 acres) before they reach private property. There is no proposed change to the existing waterline layout and no proposed soil disturbance. Because the lines already exist, there is no need to disturb any soil.

Both lines are accessed by an undeveloped foot trail. Because they are above ground, the intake hoses are pulled out of the creek when the use season is over to prevent the lines from freezing. The waterlines are similar in length, feed from the same source, and lie adjacent to one another. Starnes is requesting approval to renew a single permit for both waterlines in an effort to simplify and consolidate permits and billing.

## Rationale for Decision and Reasons for Categorically Excluding the Decision

### *A. Category of Exclusion and Rationale for Using the Category*

Based on information in this document and the project record, I have determined this project is not significant in either context or intensity (40 CFR 1508.27), that no extraordinary circumstances affecting resource conditions exist (36 CFR 220.6), that this project may be categorically excluded from documentation in an EA or EIS, and that it meets all the criteria outlined for 36 CFR 220.6(e)(3)(vi) *Approval, modification, or continuation of minor special uses of National Forest Service lands that require less than five contiguous acres of land.*

The rationale for my decision is based on: 1) the proposed action fully meeting the criteria for Categorical Exclusions, 2) the proposed action meeting the purpose and need, 3) the findings related to extraordinary circumstances, discussed below, 4) the project's consistency with laws and regulations, including the Forest Plan, 5) the on-the-ground review and discussion with resource specialists, and 6) my review of the Biological Assessments (BA), Biological Evaluations (BE), and specialists' reports.

### *B. Finding of the Absence of Adverse Effects to Extraordinary Circumstances*

**1. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species:**

The Interdisciplinary Team (ID Team) Botanist, Wildlife and Fisheries Biologists determined the proposed actions will have no direct or indirect effect or impact on listed or sensitive plant, wildlife or fish species or habitat, and suitable habitat will not be altered because habitat is not present in the project area, habitat is present but the species do not occur in the project area or habitat is present and the species may occur but the project will not affect the habitat for the species; therefore, no incremental effects exist that will cause a cumulative effect, as documented in the Biological Assessments and Evaluations, and specialists' reports (see plant, wildlife, and fish sections of the project record).

2. **Floodplains, wetlands, or municipal watersheds:**

   **The Forest Hydrologist has determined:**

   *Floodplains: The Project will not modify or occupy floodplains to an extent greater than already exists. As such, there will be no adverse impacts to floodplains; thereby complying with EO 11988 and FSH 1909.15, Chapter 30.3.2.*

   *Wetlands: The Project does not propose to modify, occupy, or destroy wetlands. As such, the Project will not adversely affect wetlands; thereby complying with EO 11990 and FSH 1909.15, Chapter 30.3.2.*

   *Municipal Watersheds: The Project area is not located within a municipal watershed. As such, the Project will not adversely affect municipal watersheds; thereby complying with FSH 1909.15, Chapter 30.3.2.*

3. **Congressionally designated areas, such as wilderness, wilderness study areas or national recreation areas:**

The project area is located within .5 miles of the Middle Fork of the Clearwater River but no direct, indirect or incremental effects have been found which will cause cumulatively significant effects to these areas. The point of use is located on private property within the Wild and Scenic River (hereinafter referred to as "WSR") Corridor on a property that is not encumbered by a Conservation Easement. The point of diversion and distribution line on NFS land is not located within the WSR (River Plan – Middle Fork of the Clearwater including the Lochsa & Selway, Map Appendix Page 3); therefore, analysis of effects to the WSR corridor is not necessary.

4. **Inventoried Roadless areas or potential wilderness areas:**

   The project is not located within any Clearwater Forest Plan Roadless Areas, Idaho Roadless Areas (36 CFR 294 (c)) or potential wilderness areas; therefore, no direct or indirect effects or incremental effects that will cause a cumulatively significant effect to these areas are anticipated.

5. **Research Natural Areas:**

   The project area does not include land designated as a Research Natural Area; therefore, no direct or indirect effects or incremental effects that will cause a cumulatively significant effect to these areas are anticipated.

6. **American Indians and Alaska native religious or cultural sites and**

7. **Archaeological sites, or historical properties or areas:** The Forest Archaeologist has determined:

   *Per 36 CFR 800.3(a)(1) the above named project has no potential to cause effects on historic properties, assuming such properties were present. Therefore, the Forest Service has no further legal obligation concerning National Historic Preservation Act compliance.*

8. **Soils:** The Forest Soils Scientist has determined:

   *The two adjacent waterlines referred to in the application are located in an area identified as landslide prone. No surface disturbance or vegetation removal is proposed or planned. The proposed permit consolidation and renewal will not affect landslide prone lands.*

## II. Interested and Affected Agencies, Organizations, and Persons Contacted

On August 16, 2013, letters providing information and seeking public comment were mailed to individuals, organizations, a variety of state and local agencies, and the Nez Perce and Coeur d'Alene tribes. During the public comment period, four letters were received regarding the permit but only two had specific concerns regarding it. These two letters are addressed in Appendix A.

## III. Findings Required by Other Laws

Based on my review of the actions associated with this project, I find that the Starnes Waterline Special Use Permit Renewal and Permit Consolidation Request is consistent with applicable Federal laws and regulations.

**National Forest Management Act and Clearwater National Forest Plan:** This action is consistent with the 1987 Clearwater National Forest Plan (USDA Forest Service 1987), as amended, as required by the National Forest Management Act of 1976 (see project record for further information) because it follows the standards and guidelines contained in those plans. In addition, the decision considers the best available science [36 CFR 219.35(a) (Reinstatement of the 2000 Planning Rule; 74 FR 242)].

**Forest Plan Amendment 20 - PACFISH Riparian Habitat Conservation Areas (RHCAs):** All activities associated with the proposed action comply with direction regarding PACFISH because no effects to wildlife or fish species or habitat are anticipated, and no soil disturbance will occur.

**Endangered Species Act:** A Forest Service Fish Biologist, Wildlife Biologist, and Botanist evaluated the proposed action with regard to the Endangered Species Act as documented in the Biological Assessments, Biological Evaluations, and specialists' reports, and determined the subject Modification project is consistent with the Endangered Species Act because no effects to threatened and endangered species are anticipated.

**Clean Air Act:** This project will comply with the provisions of the Clean Air Act, and the rules, regulations, and permit procedures of the Environmental Protection Agency (EPA) and the Idaho Department of Environmental Quality (IDEQ) because no effects to air quality are anticipated and no prescribed burning is planned.

**Clean Water Act and State Water Quality Laws:** The Interdisciplinary Team Hydrologist has determined that this project complies with the Clean Water Act, and state and Federal water quality laws because this proposal will have no significant effects to the water quality of area or downstream waters.

**National Historic Preservation Act:** Because of the type of project and its location, the Forest Cultural Resource Specialist has determined that this project has little likelihood to adversely affect cultural properties because, *[t]he cultural resources are not eligible for the National Register of Historic Places,* and *[t]he project has been designed to avoid significant effects to components/features associated with listed, eligible or unevaluated cultural resource sites.* Further, the Idaho State Historic Preservation Officer concurred with this determination on July 24, 2013. (A copy of this analysis and concurrence is located in the project record.) Therefore, this project meets the agency's responsibilities under the National Historic Preservation Act (16 USC 470), as amended, and is consistent with the *Programmatic Agreement between the Idaho State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Region 1 National Forests in Northern Idaho Regarding the Management of Cultural Resources.*

**Migratory Bird Treaty Act:** No substantial losses of migratory bird habitat are expected from the implementation of this proposal, nor any measurable impact on neotropical migratory bird populations as a whole, therefore, the proposed action will comply with the Migratory Bird Treaty Act.

The project complies with the U.S. Fish and Wildlife Service Director's Order #131 related to the applicability of the Migratory Bird Treaty Act to Federal agencies and requirements for permits for "take." In addition, this project complies with Executive Order 13186 because the analysis meets agency obligations as defined under the January 16, 2001 Memorandum of Understanding between the Forest Service and U.S. Fish and Wildlife Service designed to complement Executive Order 13186.

**American Indian Treaty Rights:** The Nez Perce Tribal Government Liaison and the Nez Perce Tribe reviewed the subject special use permit modification, and determined the proposed action will not affect Nez Perce Tribe Treaty rights or Nez Perce Tribal members' abilities to exercise those rights.

**Environmental Justice:** The proposed action will not disproportionately impact consumers, Native American Indians, women, low-income populations, other minorities, or civil rights of any American Citizen in accordance with Executive Order 12898. No disproportionate impacts to minority or low-income populations were identified during scoping or the effects analysis.

**Prime Farm Land, Range Land, and Forest Land:** The proposed action complies with the Federal Regulations for prime land. The definition of "prime" forest land does not apply to lands within the National Forest System. The project area does not contain any prime range land or farm land. Federal lands will be managed with appropriate sensitivity to the effects on adjacent lands.

**Energy Requirements:** No unusual energy demands are required to implement the proposed action.

**Other Laws or Requirements:** The proposed action is consistent with all other Federal, State or local laws or requirements for the protection of the environment and cultural resources.

## IV. Administrative Review and Appeal Opportunities, and Implementation Date

Pursuant to 36 CFR 214.4(c), this decision is subject to appeal by the holder, operator or applicant directly affected by the decision.

## V. Contact Person

Questions regarding this decision should be sent to Linda S. Helm, c/o Nez Perce National Forest Supervisor's Office, 104 Airport Road, Grangeville, Idaho 83530; by telephone at (208) 935-4285; or facsimile transmittal at (208) 983-4042 during business hours (weekdays, excluding Federal Holidays, 7:30 a.m. to 4:30 p.m. PST).

## VI. Signature of Deciding Officer

Rick Brazell — 3-25-14

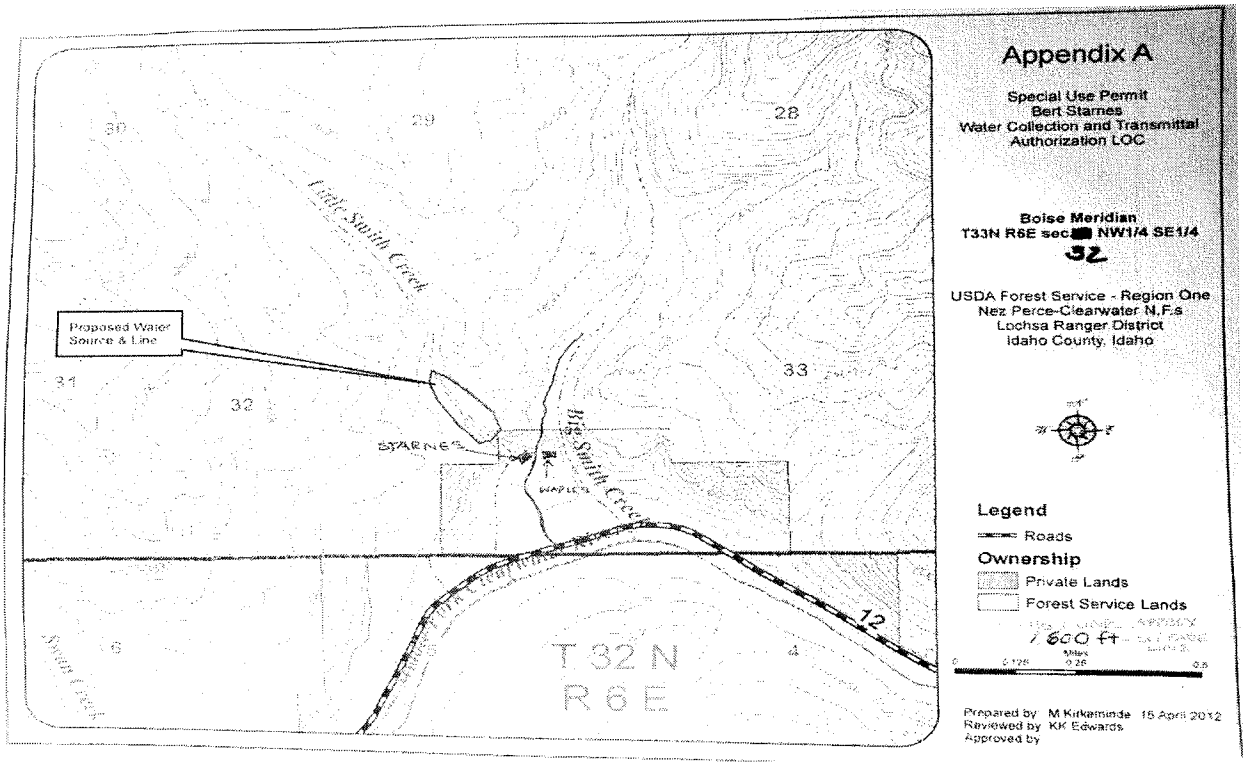
RICK BRAZELL
Forest Supervisor

Date Executed

Enclosures: Map of Waterline Sites
Appendix A

cc: Teresa Trulock, Molly Puchlerz

# Map of Waterline Sites


Appendix A
Special Use Permit
Bert Starnes
Water Collection and Transmittal
Authorization LOC
Boise Meridian
T33N R6E sec[redacted] NW1/4 SE1/4
32
USDA Forest Service - Region One
Nez Perce-Clearwater N.F.s
Lochsa Ranger District
Idaho County, Idaho
Legend
Roads
Ownership
Private Lands
Forest Service Lands
1,600 ft
Prepared by M Kirkeminde 15 April 2012
Reviewed by KK Edwards
Approved by
Proposed Water Source & Line
Little Swift Creek
Big Swift Creek
STARNES
WAPLES
T 32 N
R 6 E
30
29
28
31
32
33
6
4
12

## Appendix A

### Response to Public Comments

On August 16, letters providing information and seeking public comment were mailed to individuals, organizations, a variety of state and local agencies, and the Nez Perce and Coeur d'Alene tribes. Four letters were received regarding this project during the public comment period but only two had specific concerns regarding the proposed permit. These concerns are addressed in the following table.

| Planning Participants' Comments and Forest Service Responses |
|---|
| **Gary Macfarlane, Friends of the Clearwater and Alliance for the Wild Rockies** |
| ***Comment:*** *These projects seem to be minimal in nature as they are existing facilities. We do have two questions. The scoping letter for the Starnes states the first waterline permit has expired but the date is December 31, 2013, which has yet to occur. What is accurate? Second, Starnes waterline as of yet does not have an active water right. Shouldn't the Forest Service wait until the water right is granted before issuing a permit.*<br><br>***Response:*** *An error was made by the author of the scoping letter in stating that the permit had expired when, in fact, as of the date of the letter it had not. We apologize for this inaccuracy.*<br><br>*The Forest Service requires waterline permit holders to obtain their water rights under the terms of their permits or they risk losing them.* |
| **Nez Perce Tribe** |
| ***Comment:*** *How is the Forest ensuring that no more than the permitted amount of water is being removed from Little Smith Creek? What types of flow meters are installed on this system?*<br><br>*Little Smith Creek flows directly into the Middle Fork of the Clearwater River which supports ESA listed fish. Have USFWS and NOAA been consulted?*<br><br>***Response:*** *Currently, the Forest Service does not mandate that waterline permit holders must meter their water.*<br><br>*This project involves reissuance of an existing special use permit for applicant to continue diverting water for domestic use. The applicant has a State water right to divert 0.05 cfs out of Little Smith Creek with an annual limit of 1.2 acre feet. Stream flows in Little Smith Creek will be expected to be about 10 - 15 cfs at base summer low flows, so the percentage of volume diverted is less than 1 percent of the total flow. Given the percentage, diversion is not expected to affect habitat for fish at the point of* |

| Planning Participants' Comments and Forest Service Responses |
| --- |
| *withdrawal or downstream; therefore, USF&WS and NOAA have not been consulted regarding this matter.* |