



City of Santa Fe, New Mexico

Memorandum



DATE: July 22, 2022

TO: Buckman Direct Diversion Board

VIA: Regina Wheeler, Public Works Department Director *RW*
RW (Jul 22, 2022 10:12 MDT)

FROM: Caryn Grosse, Facilities Project Administrator Sr. *Cg*

ACTION

Approval of Amendment #2 to United States Forest Service Permit ESP104603 for solar arrays at Buckman Direct Diversion Raw Water Lift Station to add archeological monitoring; (Caryn Grosse, Project Administrator Senior, clgrosse@santafenm.gov, 505-955-5938)

BACKGROUND AND SUMMARY:

As part of a City wide renewable energy and water conservation project that is currently underway, a total of approximately 1 megawatt of solar will be installed at BDD Booster Station #1A and BDD Lift Station.

In June 2020, the Special Use Permit (SUP) applications for BDD Lift Station and BS1A array locations were submitted to U.S. Forest Service. In October 2021, US Forest Service completed their review, and provided a decision letter and Special Use Permit which combined the two applications for BDD Booster Station 1A and BDD Raw Water Lift Station into a single Special Use Permit, ESP104603. The BDD Board approved the permit at the November 4, 2021, meeting.

USFS sent Amendment #1 to ESP104603, which required archeological assessment and monitoring at BDD Booster Station 1A. This amendment was approved by BDD Board on June 2, 2022, and the amendment was finalized by USFS on June 22, 2022.

As required by Amendment #1, the archeological contractor completed an archeological assessment of the area to the east of the array sites and found soil disturbance from vehicles driving across the archeological site. In addition, the archeologist marked the access route to the solar array site adjacent to BDD Booster Station 1A, and confirmed with USFS that the marked route was acceptable. Under the supervision of the archeological contractor and in coordination with the BDD Facilities Manager, the solar subcontractor began surveying and clearing work at BDD Booster Station 1A during the week July 18, 2022. Regular reports are being made to USFS and BDD leadership as the work progresses.

USFS informed the City on July 19, 2022, that their review of the area near the BDD Raw Water Lift Station during the permitting process had been incomplete, and that there was an historic site near the intended construction area that needed additional review. The City provided the requested information the same day, and USFS was quickly able to complete their review. As a result, USFS has presented Amendment#2, which contains requirements to protect the cultural site. As the cultural site is more than 150' away from the array site, these restrictions should have no impact on the project boundaries. The schedule is affected, as start of work at this location has been delayed, as well as the need to coordinate the trenching schedule with the archeological contractor.

The City of Santa Fe will be responsible for the additional archeological monitoring costs and continue to coordinate with BDD staff on activities in the field.

EXHIBITS:

Amendment #2 to ESP104603 Special Use Authorization for Solar Power Facility

Amendment #1 to ESP104603 Special Use Authorization for Solar Power Facility-signed
Special Use Permit #ESP104603-Signed

Auth ID: ESP104603
Contact ID: BDDDB
Use Code: 623

FS-2700-23 (v. 10/09)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
AMENDMENT
FOR
SPECIAL-USE AUTHORIZATION**

Amendment#: 2

This amendment is attached to and made a part of the ESP104603 special use authorization for SOLAR POWER FACILITY issued to BUCKMAN DIRECT DIVERSION BOARD on 11/24/2021 which is hereby amended as follows:

For the purposes of protecting sensitive resources in the area indicated in red on the attached Appendix A-Map, this amendment places the following restrictions on the access to the construction site for the solar array at the Buckman Lift Station:

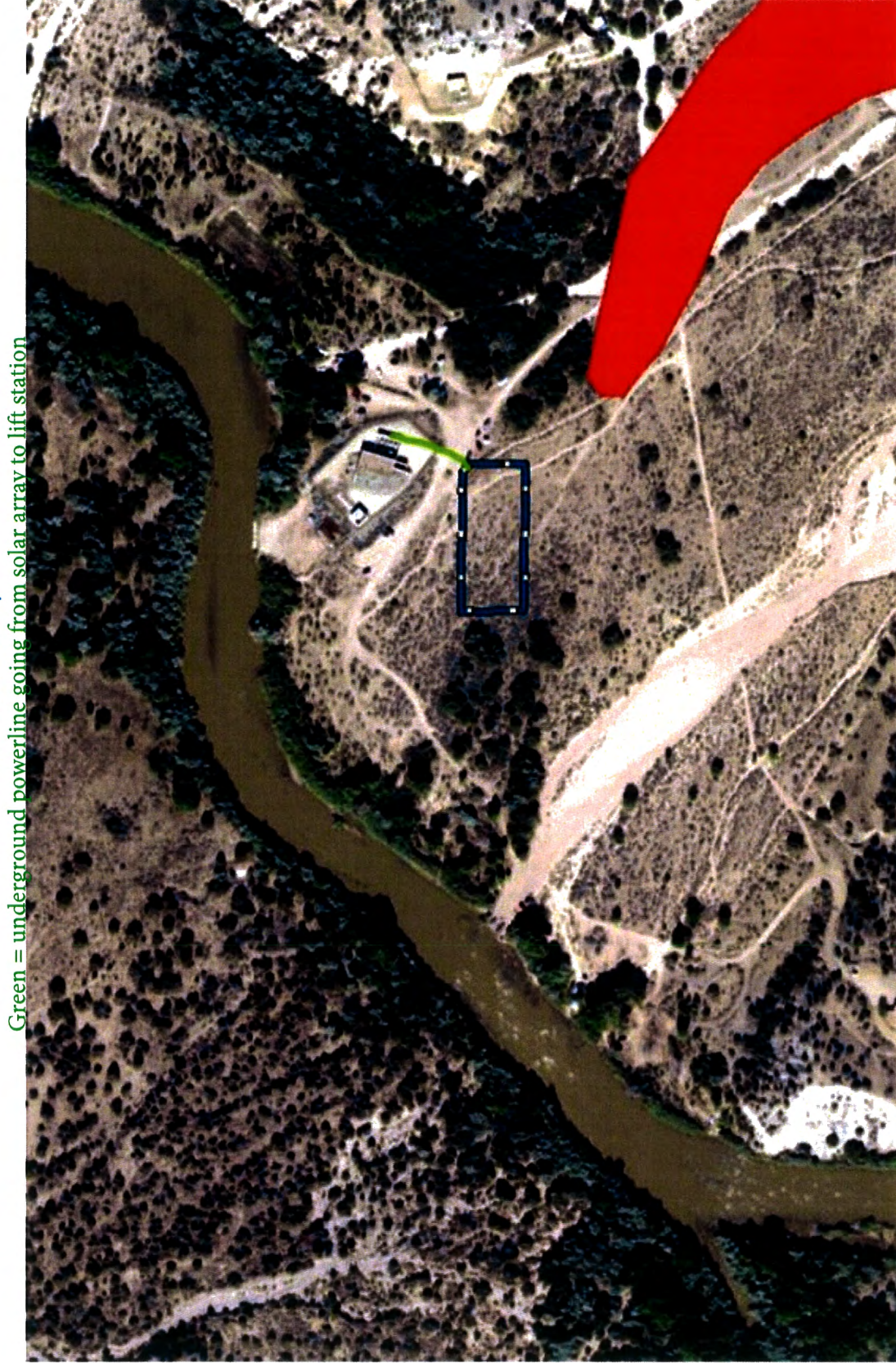
1) No mechanical disturbance will be permitted outside the proposed project footprint indicated by the blue rectangle and green line in the attached Appendix A-Map; 2) during project construction, vehicles and equipment are not allowed to enter the project area from the area south of the northeast corner of the proposed project location; 3) no parking of vehicles or staging of equipment will be permitted south of the existing facility parking location; and 4) no parking or staging off of the existing access road (Old Buckman); and 5) an archaeological contractor, operating under a special use permit issued by the Santa Fe National Forest, will be present and monitor while the conduit trench is dug.

This Amendment is accepted subject to the conditions set forth herein, and to conditions N/A to Appendix A – Map attached hereto and made a part of this Amendment.

Holder BUCKMAN DIRECT DIVERSION BOARD
Holder Signature and Date

Authorized Officer Signature and Date:
for Debbie Cress
Santa Fe National Forest
Forest Supervisor

ESP401603 Amendment 2: Appendix A - Maps
Buckman Direct Diversion Board, Solar Array by Lift Station
Red = Resource Sensitive Area; ground disturbance and equipment/vehicle staging is not permitted in this area
Blue = Solar Array



Auth ID: ESP104603
Contact ID: BDDDB
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FS-2700-23 (v. 10/09)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
AMENDMENT
FOR**

SPECIAL-USE AUTHORIZATION

Amendment #1

This amendment is attached to and made a part of the ESP104603 special use authorization for SOLAR POWER FACILITY to BUCKMAN DIRECT DIVERSION BOARD which is hereby amended as follows:

This amendment places additional requirements on the holder in regards to site restoration, access, and monitoring. This amendment is hereby incorporated into this special use authorization:

1. BDDDB must hire an archaeological contractor, working under a valid special use authorization issued by the SFNF, to complete a damage assessment report and update the site record. Tierra ROW is the preferred contractor, since they performed the initial cultural inventory and report. Prior to initiating work, that contractor must coordinate with Jana Comstock, Zone Archaeologist/Heritage Staff for the Espanola and Coyote Ranger Districts, at jana.comstock@usda.gov, to define the necessary scope of work and obtain documentation of the initial damage assessment performed SFNF archaeologists prior to commencing any work.
2. That archaeological contractor must document the cultural resource site 200 meters to both the north and south of the currently documented extent of the site to ensure a sufficient buffer around the project area and to account for damage beyond the currently documented southern portion of the site that was impacted.
3. The contract archaeologist must monitor all further construction activities related to the solar array, and upon project completion submit a monitoring report to Jana Comstock at jana.comstock@usda.gov.
4. BDDDB or its designee must repair the fence.
5. The unauthorized access road may not be used again for any vehicular travel, including related to addressing the requirements outlined in this letter and to the proposed installation of the solar array. All access to the proposed construction site must adhere to the requirement to use the surveyed access route specified in the draft special use authorization.

This Amendment is accepted subject to the conditions set forth herein, and to conditions to attached hereto and made a part of this Amendment.

Signature and Date:


HOLDER: BUCKMAN DIRECT DIVERSION BOARD 6/20/2022

Signature and Date:

DEBBIE CRESS Digitally signed by DEBBIE CRESS
Date: 2022.06.22 07:53:02 -06'00'
Authorized Officer
Debbie Cress
Santa Fe National Forest, Forest Supervisor

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Authorization ID: ESP104603
Contact Name: BUCKMAN DIRECT DIVERSION BOARD
Expiration Date: 12/31/2041
Use Code: 623

FS-2700-4 (VER. 03/17)
OMB 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SPECIAL USE PERMIT**

Authority: FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976

BUCKMAN DIRECT DIVERSION BOARD of P.O. BOX 909 C/O MR. RICK CARPENTER PROJECT MANAGER - CITY OF SANTA FE SANTA FE NM 87504 (hereinafter "the holder") is authorized to use or occupy National Forest System lands in the SANTA FE NATIONAL FOREST, subject to the terms and conditions of this special use permit (the permit).

This permit covers 3 acres in the Sec. 36, T. 19 N., R. 7 E., NEW MEXICO PRINCIPAL MERIDIAN, ("the permit area"), as shown on the map attached as Appendix A. This and any other appendices to this permit are hereby incorporated into this permit.

This permit issued for the purpose of:

The Buckman Direct Diversion Board (BDD) will construct two ground-mounted solar photovoltaic (PV) systems: one at the BDD Booster Station 1A and the other at the BDD lift station, near the Rio Grande. Both facilities will be constructed and operated on National Forest System lands USFS land within the Santa Fe National Forest, Espanola Ranger District.

At the Booster Station 1A, the ground-mounted net metered solar PV system will have a capacity of 687.50 kW AC. The area required to develop the solar PV system is about 100,000 square feet (approximately 2 acres), which will be enclosed in a security fence. The solar PV system will be connected to the existing BDD facility through 190-foot-long buried conduit.

At the Lift Station, the ground-mounted net metered solar PV system will have a capacity of 250 kW AC. The area required to develop the solar PV system is 35,428 square feet (about one acre), which will be enclosed in a security fence. The solar PV system will be connected to the existing BDD facility through 165-foot-long buried electrical conduit.

To protect known cultural resources adjacent to the project area, 1) no mechanical disturbance should be permitted outside the proposed project footprint; 2) during project construction, vehicles and equipment not allowed to enter the project from the east side of the Booster Station; 3) no parking of vehicles or staging of equipment should be permitted on the east side of the Booster Station.

TERMS AND CONDITIONS

I. GENERAL TERMS

A. AUTHORITY. This permit is issued pursuant to the FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976 and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

B. AUTHORIZED OFFICER. The authorized officer is the Forest Supervisor.

C. TERM. This permit shall expire at midnight on 12/31/2041, 20 years from the date of issuance.

D. CONTINUATION OF USE AND OCCUPANCY. This permit is not renewable. Prior to expiration of this permit, the

holder may apply for a new permit for the use and occupancy authorized by this permit. Applications for a new permit must be submitted at least 6 months prior to expiration of this permit. Issuance of a new permit is at the sole discretion of the authorized officer. At a minimum, before issuing a new permit, the authorized officer shall ensure that (1) the use and occupancy to be authorized by the new permit is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new permit is the same as the type of use and occupancy authorized by this permit; and (3) the holder is in compliance with all the terms of this permit. The authorized officer may prescribe new terms and conditions when a new permit is issued.

E. AMENDMENT. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable forest land and resource management plan, or projects and activities implementing a land management plan pursuant to 36 CFR Part 215.

F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS. In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

G. NON-EXCLUSIVE USE. The use or occupancy authorized by this permit is not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the authorized officer agree are necessary to protect the installation and operation of authorized temporary improvements, the lands and waters covered by this permit shall remain open to the public for all lawful purposes.

H. ASSIGNABILITY. This permit is not assignable or transferable.

I. TRANSFER OF TITLE TO THE IMPROVEMENTS.

1. Notification of Transfer. The holder shall notify the authorized officer when a transfer of title to all or part of the authorized improvements is planned.

2. Transfer of Title. Any transfer of title to the improvements covered by this permit shall result in termination of the permit. The party who acquires title to the improvements must submit an application for a permit. The Forest Service is not obligated to issue a new permit to the party who acquires title to the improvements. The authorized officer shall determine that the applicant meets requirements under applicable federal regulations.

J. CHANGE IN CONTROL OF THE BUSINESS ENTITY.

1. Notification of Change in Control. The holder shall notify the authorized officer when a change in control of the business entity that holds this permit is contemplated.

(a). In the case of a corporation, control is an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation.

(b). In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, control is a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and

operations of the entity.

(c). In other circumstances, control is any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

2. **Effect of Change in Control.** Any change in control of the business entity as defined in paragraph 1 of this clause shall result in termination of this permit. The party acquiring control must submit an application for a special use permit. The Forest Service is not obligated to issue a new permit to the party who acquires control. The authorized officer shall determine whether the applicant meets the requirements established by applicable federal regulations.

II. IMPROVEMENTS

A. LIMITATIONS ON USE. Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity, unless specifically authorized by this permit. Any use not specifically authorized by this permit must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.

B. PLANS. All plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans must be prepared by a professional engineer, architect, landscape architect, or other qualified professional based on federal employment standards acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

C. CONSTRUCTION. Any construction authorized by this permit shall commence by 12/01/2021 and shall be completed by 12/31/2022.

III. OPERATIONS.

A. PERIOD OF USE. Use or occupancy of the permit area shall be exercised at least 365 days each year.

B. CONDITION OF OPERATIONS. The holder shall maintain the authorized improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this permit. Standards are subject to periodic change by the authorized officer when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest resources. The holder shall comply with inspection requirements deemed appropriate by the authorized officer.

C. MONITORING BY THE FOREST SERVICE. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permit area and transmission facilities at any time for compliance with the terms of this permit. The holder shall comply with inspection requirements deemed appropriate by the authorized officer. The holder's obligations under this permit are not contingent upon any duty of the Forest Service to inspect the permit area or transmission facilities. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms and conditions of this permit.

IV. RIGHTS AND LIABILITIES

A. LEGAL EFFECT OF THE PERMIT. This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR 214 and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

B. VALID EXISTING RIGHTS. This permit is subject to all valid existing rights. Valid existing rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the holder for the exercise of any such right.

C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS. The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

D. SERVICES NOT PROVIDED. This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other such service by a government agency, utility, association, or individual.

E. RISK OF LOSS. The holder assumes all risk of loss associated with use or occupancy of the permit area, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and other forces of nature. If authorized temporary improvements in the permit area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

F. DAMAGE TO UNITED STATES PROPERTY. The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs and damage to government-owned improvements covered by this permit.

1. The holder shall be liable for all injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, or other costs in connection with rehabilitation or restoration of natural resources resulting from the use or occupancy authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.J.

2. The holder shall be liable for damage caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause IV.F.1, except that liability shall not include reasonable and ordinary wear and tear.

G. HEALTH AND SAFETY. The holder shall take all measures necessary to protect the health and safety of all persons affected by the use and occupancy authorized by this permit. The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during the term of this permit that causes or threatens to cause a hazard to the health or safety of the public or the holder's employees or agents. The holder shall as soon as practicable notify the authorized officer of all serious accidents that occur in connection with these procedures, activities, events, or conditions. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations of the holder for hazardous conditions or compliance with health and safety standards.

H. ENVIRONMENTAL PROTECTION.

1. For purposes of clause IV.H and section V, "hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

2. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such

as trees, shrubs, and grass), surface water, and groundwater, during the holder's use and occupancy of the permit area. Environmental damage includes but is not limited to all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. If the environment or any government property covered by this permit becomes damaged in connection with the holder's use and occupancy, the holder shall as soon as practicable repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

3. The holder shall as soon as practicable, as completely as possible, and in compliance with all applicable laws and regulations abate any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during or after the term of this permit that causes or threatens to cause harm to the environment, including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources.

I. INDEMNIFICATION OF THE UNITED STATES. The holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use or occupancy authorized by this permit. This indemnification provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use or occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous materials, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

J. BONDING. The authorized officer may require the holder to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this permit or any applicable law, regulation, or order.

V. RESOURCE PROTECTION

A. COMPLIANCE WITH ENVIRONMENTAL LAWS. The holder shall in connection with the use or occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., CERCLA, as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

B. VANDALISM. The holder shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

C. PESTICIDE USE.

1. **Authorized Officer Concurrence.** Pesticides may not be used outside of buildings in the permit area to control pests, including undesirable woody and herbaceous vegetation (including aquatic plants), insects, birds, rodents, or fish without prior written concurrence of the authorized officer. Only those products registered or otherwise authorized by the U.S. Environmental Protection Agency and appropriate State authority for the specific purpose planned shall be authorized for use within areas on National Forest System lands.

2. **Pesticide-Use Proposal.** Requests for concurrence of any planned uses of pesticides shall be provided in advance using the

Pesticide-Use Proposal (form FS-2100-2). Annually the holder shall, on the due date established by the authorized officer, submit requests for any new, or continued, pesticide usage. The Pesticide-Use Proposal shall cover a 12-month period of planned use. The Pesticide-Use Proposal shall be submitted at least 60 days in advance of pesticide application. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time a Pesticide-Use Proposal was submitted.

3. Labeling, Laws, and Regulations. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers. No pesticide waste, excess materials, or containers shall be disposed of in any area administered by the Forest Service.

D. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES. The holder shall immediately notify the authorized officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall follow the applicable inadvertent discovery protocols for the undertaking provided in an agreement executed pursuant to section 106 of the National Historic Preservation Act, 54 U.S.C. 306108; if there are no such agreed-upon protocols, the holder shall leave these discoveries intact and in place until consultation has occurred, as informed, if applicable, by any programmatic agreement with tribes. Protective and mitigation measures developed under this clause shall be the responsibility of the holder. However, the holder shall give the authorized officer written notice before implementing these measures and shall coordinate with the authorized officer for proximate and contextual discoveries extending beyond the permit area.

E. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA). In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the holder inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the holder shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The holder shall follow the applicable NAGPRA protocols for the undertaking provided in the NAGPRA plan of action or the NAGPRA comprehensive agreement; if there are no such agreed-upon protocols, the holder shall as soon as practicable notify the authorized officer of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the forest archaeologist certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.

F. PROTECTION OF THREATENED AND ENDANGERED SPECIES, SENSITIVE SPECIES, AND SPECIES OF CONSERVATION CONCERN AND THEIR HABITAT.

1. Threatened and Endangered Species and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531 et seq., as amended, or within designated critical habitat shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on listed species or designated critical habitat affected by the authorized use and occupancy. Discovery by the holder or the Forest Service of other sites within the permit area containing threatened or endangered species or designated critical habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

2. Sensitive Species and Species of Conservation Concern and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals designated by the Regional Forester as sensitive species or as species of conservation concern pursuant to FSM 2670 shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on sensitive species or species of conservation concern or their habitat affected by the authorized use and occupancy. Discovery by the holder or the Forest Service of other sites within the permit

area containing sensitive species or species of conservation concern or their habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

G. CONSENT TO STORE HAZARDOUS MATERIALS. The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

I. CLEANUP AND REMEDIATION.

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer or the authorized officer's designated representative, of any oil discharge or of the release of a hazardous material in the permit area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is as defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The holder shall immediately notify the authorized officer or the authorized officer's designated representative of any release or threatened release of any hazardous material in or near the permit area which may be harmful to public health or welfare or which may adversely affect natural resources on federal lands.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the holder's activities in the permit area, regardless of whether those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

VI. LAND USE FEE AND DEBT COLLECTION

A. LAND USE FEES. The holder shall pay an initial annual land use fee of \$87.25 for 2021, and thereafter on January 1st.

B. MODIFICATION OF THE LAND USE FEE. The land use fee may be revised whenever necessary to reflect the market value of the authorized use or occupancy or when the fee system used to calculate the land use fee is modified or replaced.

C. FEE PAYMENT ISSUES.

1. **Crediting of Payments.** Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.

2. **Disputed Fees.** Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.

3. **Late Payments**

(a) **Interest.** Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due.

(b) Administrative Costs. If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.

(c) Penalties. A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.

(d) Termination for Nonpayment. This permit shall terminate without the necessity of prior notice and opportunity to comply when any permit fee payment is 90 calendar days from the due date in arrears. The holder shall remain responsible for the delinquent fees.

4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. and common law. Delinquencies are subject to any or all of the following:

(a) Administrative offset of payments due the holder from the Forest Service.

(b) If in excess of 60 days, referral to the United States Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).

(c) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 et seq.

(d) Disclosure to consumer or commercial credit reporting agencies.

VII. REVOCATION, SUSPENSION, AND TERMINATION

A. REVOCATION AND SUSPENSION. The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with federal, state, or local law.
2. For noncompliance with the terms of this permit.
3. For abandonment or other failure of the holder to exercise the privileges granted.
4. With the consent of the holder.
5. For specific and compelling reasons in the public interest.

Prior to revocation or suspension, other than immediate suspension under clause VII.B, the authorized officer shall give the holder written notice of the grounds for revocation or suspension and a reasonable period, typically not to exceed 90 days, to cure any noncompliance.

B. IMMEDIATE SUSPENSION. The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing. The holder may request an on-site review with the authorized officer's supervisor of the adverse conditions prompting the suspension. The authorized officer's supervisor shall grant this request within 48 hours. Following the on-site review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

C. APPEALS AND REMEDIES. Written decisions by the authorized officer relating to administration of this permit are subject to administrative appeal pursuant to 36 CFR Part 214, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

D. TERMINATION. This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a

specified date and termination upon change of control of the business entity. Termination of this permit shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT ISSUANCE OF A NEW PERMIT. Upon revocation or termination of this permit without issuance of a new permit, the holder shall remove all structures and improvements, except those owned by the United States, within a reasonable period prescribed by the authorized officer and shall restore the site to the satisfaction of the authorized officer. If the holder fails to remove all structures and improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VIII. MISCELLANEOUS PROVISIONS

A. MEMBERS OF CONGRESS. No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

B. CURRENT ADDRESSES. The holder and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for billing and payment of land use fees.

C. SUPERIOR CLAUSES. If there is a conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.

D. CULTURAL RESOURCES PROTECTION. The holder, contractor, or lessee shall be responsible for the protection from damage of all identified cultural resources within the area which may be affected by their actions. In addition, the holder, contractor, or lessee shall be liable for all damage or injury to the identified cultural resources caused by their actions. The holder, contractor, or lessee shall immediately notify the agency Project Administrator if any damage occurs to any cultural resource and immediately halt work in the area in which damage has occurred until approval to proceed has been granted by the Project Administrator after consultation with the Forest Archeologist. All provisions of the Region 3 Cultural Resources Damage Assessment Handbook are incorporated by reference herein.

E. NATIVE AMERICAN GRAVE PROTECTION AND REPATRIATION. Pursuant to the Native American Grave Protection and Repatriation Act (NAGPRA) 25 USC 3002(d); 43 CFR Part 10.4, if any human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during the course of ground disturbing activity, the holder will immediately cease activity in the area of the discovery and will make a reasonable effort to protect the remains and objects. The holder will provide immediate telephone notification of the discovery to the Forest Service and will follow up with written confirmation to the authorized officer. The holder will not resume the activity that resulted in the discovery until the authorized officer gives written approval. Approval to resume the activity, if otherwise lawful, will be given thirty (30) days after certification by the authorized officer of the holder's written confirmation of the discovery, or at any time that a written binding agreement is executed between the Forest Service and the affiliated tribes adopting a recovery plan for the remains and objects.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL ITS TERMS AND CONDITIONS.

BEFORE ANY PERMIT IS ISSUED TO AN ENTITY, DOCUMENTATION MUST BE PROVIDED TO THE AUTHORIZED OFFICER OF THE AUTHORITY OF THE SIGNATORY FOR THE ENTITY TO BIND IT TO THE TERMS AND CONDITIONS OF THE PERMIT.

ACCEPTED:

**ANNA HANSEN
BDD BOARD CHAIRPERSON**



Nov 24, 2021

HOLDER NAME, PRECEDED BY NAME AND TITLE
OF PERSON SIGNING ON BEHALF OF HOLDER,
IF HOLDER IS AN ENTITY

SIGNATURE

DATE

APPROVED:

**DEBBIE CRESS
FOREST SUPERVISOR**

**DEBBIE
CRESS**

Digitally signed by
DEBBIE CRESS
Date: 2021.11.30
10:37:35 -07'00'

NAME AND TITLE OF AUTHORIZED OFFICER

SIGNATURE

DATE

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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