

# Staff Report

**TO:** Board of Directors

**FROM:** Jennifer Hanson, General Manager

**DATE:** March 23, 2022

**SUBJECT: USFS Owned Campgrounds**

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## ***ADMINISTRATION***

### **RECOMMENDATION:**

Receive a status update on the expiration of the Special Use Permit for Campground and Related Granger-Thye Concessions (Special Use Permit) between the United States Department of Agriculture, Forest Service (USFS) and the District.

### **BACKGROUND:**

The District executed the Special Use Permit for Campground and Related Granger-Thye Concessions (Special Use Permit). The term of the Special Use Permit is for three years and expired on December 31, 2021.

The Special Use Permit allowed for the District's operation of the following campgrounds:

- East Meadows Campground
- Pass Creek/Overflow Campgrounds
- Pass Creek and Woodcamp Boat Launches
- Aspen and Woodcamp Picnic Areas
- Jackson Point Campground
- Woodcamp Campground
- Fir Top Campground
- Findley Campground
- Jackson Creek and Canyon Creek Campgrounds
- Dispersed camping at Milton and Bowman Corridor

These recreational facilities are part of the FERC Yuba-Bear Project #2266. The District is aware of no requirement of the Yuba-Bear FERC Project license or Federal Law or Regulation that would require the District to pay USFS to operate USFS Facilities. In fact, under the current Recreation Plan, it states that the District is only responsible for the construction and implementation of the recreation improvements described in the Plan. The District fulfilled this obligation many years ago and the Recreation Plan provides for no further obligation for the District to operate the facilities located on USFS property. With that said, the District has always indicated that the District is willing to support the operation of the facilities if a reasonable agreement could be reached.

The District notified the USFS on September 13, 2021, that the District did not intend to enter into a new Special Use Permit. The primary reason for this action was related to ongoing concerns related to fire risk associated with the terms and conditions of the Special Use Permit. In June of 2021, the District requested permission to prohibit open campfires at the campgrounds due to extreme drought, lack of water at some of the facilities, and consistent with restrictions in place at other District-owned facilities, including those adjacent to the facilities referenced above, and consistent with the restrictions placed on USFS campground facilities in the Lake Tahoe Basin Management Unit. The USFS denied this request (see attached letter).

Due to fire danger that increased throughout June, and after multiple meetings and phone calls to discuss the District's concerns to no avail, the District sent a letter on June 28, 2021, to the USFS that the District would enact Special Use Permit Section III.G. Health, Safety and Environmental Protection and would be prohibiting open campfires.

In addition to concerns related to fire safety, the District also expressed concerns related to Special Use Permit, Section III Rights and Liabilities: The section of the agreement assigns all risk and liability for any fire or other natural disaster to the District. The current language is so broad in fact that it currently assigns risk and liability for acts of God to the District, including the requirement for the District to pay fire suppression costs on and off of USFS property. This clause is particularly concerning due to the USFS's denial of the District's request to prohibit open campfires when there were significant drought conditions and the District had limited and/or no water sources to even put out a small fire. It should be noted that the two worst fire seasons on record were in 2020 and 2021.

Subsequent to providing notice to the USFS, the District worked with the USFS to transition the campgrounds back to the USFS. During a November 15, 2021 meeting between the District and the USFS, the USFS indicated that they were willing to enter into a new agreement that addressed the District's concerns to the best of their ability. During that meeting, the District provided three areas of

concern that would need to be addressed to allow the District to enter into a new agreement, as summarized below:

- **Fire Restrictions:** The District would have the authority to implement fire restrictions within the campgrounds as determined necessary by the District to address public safety.
- **Use Rates:** The District would be able to establish use rates consistent with the regional market for campgrounds and the other campgrounds owned and operated by the District. The current rate allowed by the USFS is \$24 per night for tent camping, while the District charges \$39 per night for camping. The District established our rates based on a market study conducted and in consideration of sufficient revenue recovery to pay for the cost to operate the facility.
- **Special Use Permit, Section III Rights and Liabilities:** This section would require revision to limit District liability to those actions reasonably under the control of the District.

After that meeting, the USFS indicated that they were unable to address any of the concerns raised by NID in a new agreement. As such, the District determined that it would be beneficial to move forward with the transition and that the District would be willing to support the USFS operation of the campgrounds at an annual amount deemed to be reasonable and appropriate.

Subsequent to these conversations, the USFS has requested the District pay \$457,420 for annual operations, with the actual total due to be decreased by revenue received from use fees. The District countered with \$150,000 cash plus the continued operation of the water system that provides water to the campgrounds (annual estimated cost between \$25,000 and \$35,000). This proposal was reflective of the following:

- USFS proposal is 25% more than the annual cost for the District to operate the same campgrounds during the 2021 recreation season.
- The USFS nightly campsite rate of \$24.00/night is significantly lower than the \$39.00/ night rate charged by NID in the immediate vicinity, with equal or better occupancy rates.
- The District cannot justify payment of \$457,420 in part because that amount represents a subsidy of higher than necessary operating costs and lower than reasonable revenue.

The USFS has not responded to this offer but has instead engaged at a political level.

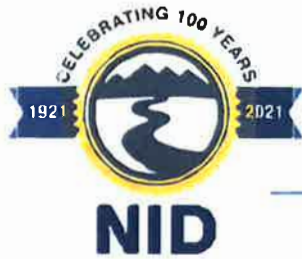
Staff now requests input from the Board regarding any further negotiations.

**BUDGETARY IMPACT:**

The level of fiscal impact associated with any direction will be determined once any final agreement is made.

**Attachments:**

Correspondence related to the matter.



# Nevada Irrigation District

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**Via USPS and email to [eliseo.ilano@usda.gov](mailto:eliseo.ilano@usda.gov)**

Forest Service  
Tahoe National Forest Service  
631 Coyote Street  
Nevada City, CA 95959

June 28, 2021

Attn: ELI ILANO, Forest Supervisor

## **Re: Fires in Campground Facilities Located in the Jackson Meadows Recreation Complex**

Dear Mr. Ilano,

As you are aware, the US Department of Agriculture, Forest Service, and the Nevada Irrigation District (NID) executed the Special Use Permit for Campground and Related Granger-Thye Concessions (Special Use Permit). The term of the Special Use Permit is for three-years, and expired on December 31, 2021.

Under the terms of the Special Use Permit, Section III. G. Health, Safety, and Environmental Protection, NID is required to: *"...take all measures necessary to protect the health and safety of all persons affected by the use and occupancy authorized by this permit."* It has been determined by NID that enhanced fire restrictions are warranted at all NID owned and/or managed campgrounds to reasonably protect the health and safety of the public and staff and to protect the surrounding environment based on the following conditions:

- Severe Drought Conditions:
  - On April 21, 2021, Governor Gavin Newsom issued a State of Emergency Proclamation, stating that *"much of the West is experiencing severe to exceptional drought..."* (Resolution No. 2021-11).
  - The US Drought Monitor identified that Nevada County, including USFS lands where NID is operating under a Special Use Permit in and around the Jackson Meadows campground complex, is currently in extreme drought and that it is likely that *"fire season will last year-round, fires typically occur in wet parts of the state; burn bans are implemented"*.
  - According to the National Integrated Drought Information System, *"Drought can be a contributing factor to wildfire. Dry, Hot, and windy weather combined with dried out (and more flammable) vegetation can increase the probability of large-scale wildfires."* Based on the data available to NID, the Jackson Meadows campground complex experienced low precipitation and snowpack that is resulted in decreased runoff and dry soils, which results in increased fire risk in the area.
  - To date, this season CalFIRE has designated several red flag days where burning is prohibited. A Red Flag Warning is issued for weather events which may result in extreme fire behavior that will occur within 24 hours. A Fire Weather Watch is issued when weather conditions could exist in the next 12-72 hours. A Red Flag Warning is the highest alert. During these times extreme caution is urged by all residents, because a simple spark can cause a major wildfire.

- Decreased Water Supplies
  - NID is experiencing a district-wide water supply shortage, resulting in reservoirs having well below average water storage levels.
  - Specifically, Jackson Meadows Reservoir and Bowman Lake have lower than average water levels.
  - The secondary water source (the spring water) at Jackson Meadows, is of particular concern due to the low level of snow pack that has resulted in a decreased amount of spring water available to NID to suppress small fires that would typically not be of heightened concern.

Based on the conditions described above and consistent with Special Use Permit, Section III. G. Health, Safety, and Environmental Protection, NID has determined that it is necessary to prohibit open wood and charcoal fires to protect the health and safety of all persons affected by the use and occupancy authorized by this permit at the following campgrounds and picnic areas:

- East Meadow Campground
- Pass Creek Campground
- Pass Creek Overflow Camping
- Woodcamp Campground
- Fir Top Campground
- Findley Campground
- Aspen Picnic Area
- Woodcamp Picnic Area

It should also be noted that this action is consistent with recent actions taken by the USDA Forest Service Lake Tahoe Basin Management Unit (Lake Tahoe Basin Management Unit). The press release issued by the Lake Tahoe Basin Management Unit specifically stated that: *"Illegal campfires cause over 90% of the wildfires at Lake Tahoe and increased fire danger due to severe drought conditions, and warm weather is a big concern this summer"*. The press release further stated that *"Enhanced fire restrictions will help reduce the possibility of human-caused fires."* The restrictions enacted by the Lake Tahoe Basin Management Unit include prohibiting building maintain, attending, or using a fire, campfire, or stove fire, including charcoal briquettes and wood.

It is also our understanding that the Tahoe National Forest Service will also be enacting enhanced fire restrictions on or around June 28, 2021, that will prohibit open wood and charcoal fires in the dispersed camping areas in and around the campgrounds referenced above. As such, the District will also be implementing enhanced fire restrictions (as described above) at the campgrounds referenced and subject to the Special Use Permit on June 28, 2021, and in compliance with Special Use Permit, Section III. G. Health, Safety, and Environmental Protection.

The District sincerely appreciates your support in this matter and looks forward to continuing coordination regarding drought and fire concerns. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,  
  
Jennifer Hanson  
General Manager



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**File Code:** 2720  
**Date:** June 30, 2021

Jennifer Hanson  
General Manager  
Nevada Irrigation District  
1036 West Main Street  
Grass Valley, CA 95945

Dear Ms. Hanson,

I am in receipt of your letter dated June 28, 2021 which outlines your concerns specific to the implementation of the current fire restrictions on the Tahoe National Forest and your intention for campfire management within the developed campgrounds of which your respective organization is authorized to operate under special use authorization SIE024 (see enclosed copy of special use authorization). While I acknowledge NIDs concerns regarding the Tahoe National Forest's Order specific to Fire Restrictions (#17-21-03), I would like to reiterate a few points that I have shared in our previous phone conversations and that my staff shared in a meeting with you and your staff on June 24, 2021, as well as clarify my position regarding NIDs intention to further restrict campfire use within the developed campgrounds authorized in special use permit SIE024.

It is my position that the current Tahoe NF fire restrictions (#17-21-03) special order and the associated prohibitions are appropriate for our current conditions and fire management objectives. Therefore, campfires within established fire rings in developed campgrounds will not be prohibited at this time. By extension, as the Authorized Officer and signatory authority for the existing special use permit (SIE024), I will not approve or authorize NID to establish or implement a rule of use further restricting campfires in the campgrounds authorized under the permit. As a reminder, NIDs 2021 operating plan states that "NID will follow all fire restriction imposed by the Forest Service due to unsafe weather conditions". The annual operating plan is subject to review and approval by the Authorized Officer, and full compliance with the operating plan is a requirement of the special use authorization. Violation of the operating plan constitutes non-compliance with the special use authorization and could result in further action being taken by the Authorized Officer.

Implementation of fire restrictions is based on multiple factors, data assessments, and indices based on three measured criteria: (1) live fuel moistures, (2) dead fuel moistures, and (3) the National Fire Danger Rating System (NFDRS) model that calculates the Energy Release Component (ERC), which in combination with local fuels moisture assessments serves as a good indicator for fire danger. The ERC is considered a composite fuel moisture index as it reflects the contribution of all live and dead fuels to potential fire intensity. The ERC relates well to the condition of the fuels and fire managers and planners have found that the ERC can be used as a decision tool to prepare for an approaching fire season or as a tool for to determine daily staffing when used in combination with other monitored variables. Tracking the ERC and other NFDRS components through the season increases the situational awareness of our firefighters, but also aids in the decision-making process for implementation of fire restrictions.





The development of Forest Fire Restrictions and applicable prohibitions that will be included are determined by the conditions, data, and indices described above but also is based on risk of varying types of human-caused fires within certain areas of the National Forest, a balance of likelihood as well as potential fire impacts. This is a dialogue that occurs amongst the leadership of the Tahoe National Forest and the neighboring forests and is grounded in factors discussed above. The conversation is ongoing as conditions change over the season and leaves opportunity for restrictions to be adjusted.

The Tahoe NF is committed to consistent and clear messaging around fire restrictions across all campground and day use facilities owned and/or operated by the Forest Service and to providing public services and amenities in a manner that allows for public enjoyment of National Forest System lands, especially where management presence, infrastructure, and conditions exist to support this use, specifically developed campgrounds and day use sites. The larger concern for us as land managers, also supported by the historic fire data, is the threat of an escaped campfire from dispersed camping. These areas have not been developed or maintained with hardened infrastructure and vegetation clearing to reduce the likelihood of ignition, or rate of spread. Additionally, dispersed areas have less visibility by recreationists, patrol, and maintenance staff compared to developed campgrounds which facilitates a rapid response in developed areas. To address this concern, our Tahoe NF Fire Restriction Order is very specific to prohibit campfires in undeveloped areas of the forest with the expectation this will encourage recreationists to utilize our established campgrounds, which provide controlled conditions for campfires.

As an example of fire risk information at developed campgrounds, a review of my staff's corporate knowledge and records indicate that there have been only two wildfires in the last 20 years at campgrounds at Jackson Meadows Reservoir. These wildfires have been small in nature and were not a result of campfires escaping from established fire rings but were caused by illegal fires that were outside of the individual campsites and smoking. These fires were small in nature and were effectively "put out" by campers prior to the arrival of our wildfire suppression staff.

In conclusion, as stated above and based on the rationale described in this letter, I will not authorize NID to establish a rule of use governing campfires within the campgrounds operated under special use permit SIE024 that is inconsistent with the current Forest Fire Restrictions Order (#17-21-03). However, the Tahoe NF will continue to monitor and evaluate conditions and is committed to continuing the dialogue around fire restrictions with NID as the season progresses and will maintain a high level of engagement with NID aligned with any potential changes to the current Forest Fire Restrictions. If you have any questions, please contact me at [Eli.Ilano@usda.gov](mailto:Eli.Ilano@usda.gov).

Sincerely,



ELI ILANO  
Forest Supervisor

Enclosure

cc: Hillary Santana, Quentin Youngblood, Jonathan Cook-Fisher, Alonzo Henderson



## HIGH IMPORTANCE: Please remove inaccurate fire restrictions information at NID-Operated Campgrounds

Santana, Hillary -FS <hillary.santana@usda.gov>

Thu 7/1/2021 9:29 AM

To: Monica Reyes <reyes@nidwater.com>

Cc: Youngblood, Quentin -FS <quentin.youngblood@usda.gov>; Henderson, Alonzo -FS <alonzo.henderson@usda.gov>; Ilano, Eli- FS <Eliseo.Ilano@usda.gov>

📎 3 attachments (2 MB)

Tahoe National Forest Response To Nevada Irrigation District Letter - Fire Restrictions.pdf; TNF\_FireRestrictionsOrder\_17-21-03\_06252021.pdf; NID Concession Permit\_SIE024.pdf;

### **CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.**

Hello Monica,

I'm reaching out this morning as it has come to the Tahoe National Forest's attention that NID is disseminating inaccurate and inconsistent messaging regarding current fire restrictions on the Tahoe National Forest, specific to developed campgrounds. NID has posted physical signage at campgrounds, placed informational banners on all campground recreation.gov pages, and sent emails to reservation holders stating that wood and charcoal fires are not allowed in established fire rings at the developed campgrounds. This information is not consistent with the current fire restrictions in place for the Tahoe National Forest (see attached fire order 17-21-03), which allows for campfires within the established fire rings within developed campgrounds.

Per the Forest Supervisor letter to NID dated June 30, 2021 that you should have received yesterday afternoon (also attached), NID is not approved to establish a rule of use for fire restrictions that is inconsistent with the current Tahoe National Forest fire restrictions order (17-21-03). Therefore, NID is directed to do the following at all authorized developed campgrounds listed in special use permit SIE024 by the deadlines indicated in **bold** below:

- 1. No later than 4:30pm on July 1, 2021:** Remove all physical signage within the campgrounds stating inaccurate and inconsistent fire restrictions language.
- 2. No later than 12pm on July 1, 2021:**
  - a. Remove all online website language (recreation.gov pages and any other web-based information) applicable to the below campground list stating inaccurate or inconsistent fire restrictions information.
  - b. Discontinue sending emails through recreation.gov or other means to reservation holders that provide inaccurate or inconsistent fire restrictions information and correct inaccurate messaging with current reservation holders who previously received inaccurate/inconsistent information.

Please contact me if you have any questions and respond with confirmation once the above direction has been implemented.

Thank You,



**Hillary Santana**  
**Recreation, Lands, and Heritage Staff Officer (Acting)**  
**Forest Service**  
**Tahoe National Forest**  
**c: 970-987-7140**

## Re: Tahoe National Forest Response To Nevada Irrigation District Letter - Fire Restrictions

Greg Jones <jonesg@nidwater.com>

Thu 7/1/2021 11:58 AM

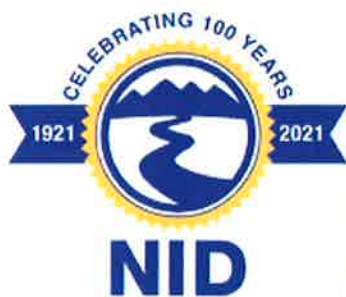
To: Ilano, Eli- FS <Eliseo.Ilano@usda.gov>

Cc: Jennifer Hanson <hansonj@nidwater.com>; Monica Reyes <reyes@nidwater.com>; Kris Stepanian <stepaniank@nidwater.com>; Inglis, Blaine - FS <blaine.inglis@usda.gov>; Santana, Hillary -FS <hillary.santana@usda.gov>

Dear Mr. Ilano,

Jennifer Hanson is currently away on vacation, however I have been in communication with her regarding your response. Although NID appreciates your letter dated June 30, 2021 regarding the position of the USFS on current Tahoe NF fire restrictions (#17-21-03), NID continues to be concerned regarding full liability for wildfires originating from NID managed campgrounds. Should the USFS release, in writing, NID from such liabilities as identified in the Special Use Permit, NID would be satisfied to lift enhanced campfire restrictions on the USFS managed lands.

Regards,



**Greg Jones**  
Assistant General Manager

Nevada Irrigation District  
1036 W. Main Street  
Grass Valley, CA 95945  
Office: (530) 273-6185 ext. 5026  
Direct: (530) 271-6826  
[jonesg@nidwater.com](mailto:jonesg@nidwater.com)

## USFS SUP Expire.pdf

Jennifer Hanson <[hansonj@nidwater.com](mailto:hansonj@nidwater.com)>

Mon 9/13/2021 9:09 AM

To: Ilano, Eli- FS <[Eliseo.Ilano@usda.gov](mailto:Eliseo.Ilano@usda.gov)>

Cc: Monica Reyes <[reyes@nidwater.com](mailto:reyes@nidwater.com)>; Greg Jones <[jonesg@nidwater.com](mailto:jonesg@nidwater.com)>

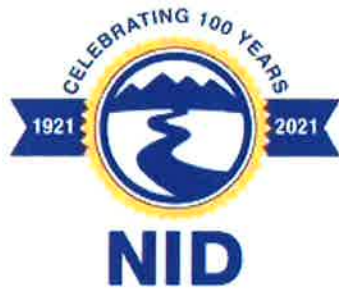
📎 1 attachments (73 KB)

USFS SUP Expire.pdf;

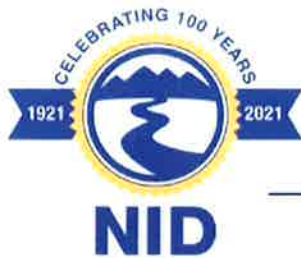
Hi Eli,

Just wanted to let you know in advance that the NID has decided to not apply for an additional extension of the Special Use Permit. Please let us know if you have any questions, and if you require a meeting to transition the operation back to USFS.

Thank you,



**Jennifer Hanson**  
General Manager  
Nevada Irrigation District  
1036 W. Main Street  
Grass Valley, CA 95945  
Office: 530.273-6185  
Email: [hansonj@nidwater.com](mailto:hansonj@nidwater.com)



# Nevada Irrigation District

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Forest Service  
Tahoe National Forest Service  
631 Coyote Street  
Nevada City, CA 95959

September 13, 2021

Attn: ELI ILANO, Forest Supervisor

**Re: Termination of Nevada Irrigation District's (NID/District) Special Use Permit Effective December 31, 2021**

Dear Mr. Ilano,

On April 17, 2019, the US Department of Agriculture, USFS, executed Special Use Permit (SIE024) and operating plan to Nevada Irrigation District for concession campground operations at recreation facilities and dispersed recreation sites associated with the FERC Yuba-Bear Project #2266. The term of the Special Use Permit was for three years, effective April 17, 2019, expiring on December 31, 2021. The District has decided not to apply for the additional five-year extension to its Special Use Permit and will allow the permit to expire on December 31, 2021.

The District anticipates USFS will appreciate the opportunity to operate the following campgrounds and lands owned by the USFS:

- East Meadow Campground
- Pass Creek/Overflow Campgrounds
- Woodcamp Campground
- Fir Top Campground
- Findley Campground
- Aspen and Woodcamp Picnic Areas
- Aspen and Woodcamp Boat Launches
- Jackson Point
- Jackson Creek Campground
- Canyon Creek Campground
- Dispersed Campsites
  - Milton Reservoir
  - Sawmill Reservoir and Canyon Creek
  - Bowman Reservoir

NID will continue to operate and maintain those campgrounds and lands which it owns; Aspen, Silvertip, Faucherie, and Bowman Campgrounds.

The District sincerely appreciates your support over the years and looks forward to a seamless transition and continued relationship with the USFS. NID anticipates meeting with USFS in the near term to facilitate this transition. Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Jennifer Hanson  
General Manager

**RE: [External Email]USFS SUP Expire.pdf**

Ilano, Eli- FS &lt;Eliseo.Ilano@usda.gov&gt;

Mon 9/20/2021 7:04 AM

To: Jennifer Hanson &lt;hansonj@nidwater.com&gt;

Cc: Monica Reyes <reyes@nidwater.com>; Greg Jones <jonesg@nidwater.com>; Lind, Amy -FS <amy.lind@usda.gov>; Jedra, Matthew -FS, Nevada City, CA <matthew.jedra@usda.gov>; Youngblood, Quentin -FS <quentin.youngblood@usda.gov>; Rios, Temoc -FS <temoc.rios@usda.gov>; Santana, Hillary -FS <hillary.santana@usda.gov>; Inglis, Blaine - FS <blaine.inglis@usda.gov>

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Hi Jennifer,

Apologies for the delayed response; I just returned to the country last night. Thanks for the advance notice; I think that will be helpful for all of our planning. We should meet to discuss how to transition and how we can help NID meet its FERC license obligations.

Blaine can assist in scheduling. Who would be the best person for him to work with?

**ELI ILANO****Forest Supervisor****Forest Service****Tahoe National Forest**

p: 530-478-6200

[eli.ilano@usda.gov](mailto:eli.ilano@usda.gov)

631 Coyote Street

Nevada City, CA 95959

[www.fs.fed.us](http://www.fs.fed.us)

**Caring for the land and  
serving people**

**From:** Jennifer Hanson <hansonj@nidwater.com>**Sent:** Monday, September 13, 2021 9:09 AM**To:** Ilano, Eli- FS <Eliseo.Ilano@usda.gov>**Cc:** Monica Reyes <reyes@nidwater.com>; Greg Jones <jonesg@nidwater.com>**Subject:** [External Email]USFS SUP Expire.pdf

[External Email]

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Please send any concerns or suspicious messages to: [Spam.Abuse@usda.gov](mailto:Spam.Abuse@usda.gov)

Hi Eli,



**Date:** October 8, 2021

Jennifer Hanson  
General Manager  
Nevada Irrigation District  
1036 West Main St.  
Grass Valley, CA 95945

**Subject:** Nevada Irrigation District Concessionaire Permit

Dear Ms. Hanson:

This letter is in response to the September 13, 2021 notification letter that we received from you regarding Nevada Irrigation District's (NID) decision not to apply for a new special use permit for operation of the campgrounds and dispersed recreation sites associated with the Yuba-Bear Hydroelectric Project, FERC License No.2266 ("Project"). We appreciate our ongoing partnership and continued efforts to provide quality recreation opportunities for Tahoe National Forest (TNF) visitors to the NID-operated campgrounds. We also appreciate your advance notice of this decision as it will allow the TNF and NID time to prepare for the 2022 camping season.

As required by the current FERC license Recreation Plan for this Project, NID is financially responsible for all maintenance and operations of Project recreation facilities: "*Licensee will be responsible for the construction and implementation of all recreation improvements...*" (Exhibit R, April 2000, Section 6.3). Prior to the current special use permit and previous special use permits issued to NID by the TNF, NID had funded operations and maintenance of the recreation facilities, through agreements with the TNF, since 1998.

We have been working with your staff to schedule a meeting, which we hope to accomplish by November 30, to discuss the TNF's financial needs for operation of these facilities, and other next steps. Several years ago, we presented NID with a draft proposal of the financial costs for funding TNF operation of these facilities. We are working on updating these costs based on more recent projections and experience with operational costs of managing our campgrounds. We will provide you a copy of the revised proposal prior to our meeting. There may also be an opportunity for NID to contribute through directly funding some of these costs, such as utilities and contracted services, in partnership with the TNF.



In addition, we would like to schedule an end of year inspection of the permitted recreation facilities in late October, to ensure compliance with the special use permit prior to termination. This includes, but is not limited to, preparing facilities for winter, water system shutdown, and pumping of all vault toilets.

We look forward to working together over the next few months on planning 2022 and future years' recreation facilities operation.

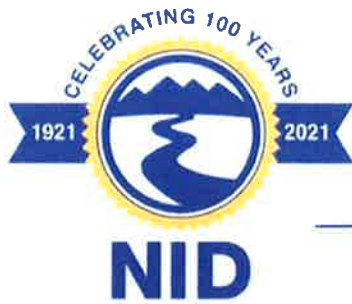
Sincerely,

A handwritten signature in black ink, appearing to read "Eli Ilano". The signature is fluid and cursive, with a long horizontal stroke at the end.

ELI ILANO  
Forest Supervisor

cc: Amy Lind, Joshua Rider





# Nevada Irrigation District

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October 20, 2021

United States Department of Agriculture  
Forest Services  
Tahoe National Forest Supervisor's Office  
631 Coyote Street  
Nevada City, CA 95959

Re: Operation and Maintenance of Improved Recreation Facilities on Tahoe  
National Forest Lands within the Boundaries of FERC Project 2266.

Dear Mr. Ilano:

Thank you for your letter of October 8, 2021. Nevada Irrigation District (NID or District) looks forward to meeting with the Tahoe National Forest (TNF) to transitioning operation and maintenance of recreation facilities within the Yuba-Bear Project ("Project") on United States Forest Service (USFS) lands from NID to TNF. NID also welcomes the opportunity to demonstrate its compliance with the Special Use Permit prior to its expiration. We also look forward to further discussing TNF's assessment that "NID is financially responsible for all maintenance and operation of Project recreation facilities." NID can find no support for that position. As set forth below, NID believes it is clear that the responsibility to operate and maintain USFS facilities located on USFS lands resides with the Tahoe National Forest.

**A. Neither the Recreation Plan Nor Expired Agreements of 1966 and 1998 Require NID to Operate USFS Facilities on TNF Lands.**

USFS' October 8, letter correctly states that under the current Recreation Plan, NID is responsible for "construction and implementation" of the recreation improvements described in the Plan. NID has completed those obligations long ago, and we are of no further work required in this regard. However, "construction and implementation" is not synonymous with "operation and maintenance," of all recreation facilities located on TNF lands within the Project boundary.

The Recreation Plan does not obligate NID to assume the cost to operate and maintain recreation facilities located upon TNF lands. Rather, the Plan references three prior Agreements, dated June 24, 1966, June 26, 1966, and April 22, 1998, pursuant to which NID had previously agreed to fund TNF costs to operate and maintain the facilities. Each of these three agreements are now expired and of no further force or effect. NID never agreed to fund USFS' operation of USFS facilities indefinitely. Clearly, NID has no contractual obligation to fund TNF operation of USFS facilities located within the Yuba Bear Project boundary. As set forth below, it has no legal obligation to do so either.

**B. Neither FERC Precedent Nor Federal Law Require NID to Pay TNF to Operate USFS Facilities Located on TNF Lands.**

**1. FERC precedent does not support USFS' Position.**

USFS contends that NID is responsible for costs incurred by USFS to operate recreation facilities located within the boundaries of the Yuba Bear Project. FERC recently rejected a very similar claim brought by Butte County against DWR concerning the funding of law enforcement and public access to the Oroville Project, holding:

As a general matter, it is our policy to require our licensees to implement necessary license conditions and not to fund personnel at local agencies. Consistent with this policy, nothing in California DWR's license requires an agreement between the licensee and Butte County to pay for law enforcement on project lands or waters. The commission looks to the licensee to ensure compliance with all of the license requirements on project lands and waters. Should a licensee choose to contract with local entities to provide for law enforcement and safety services through an "off-license" agreement, it is free to do so. **However, we do not require our licensees to subsidize local services.** (128 FERC 61,068).

FERC would likely apply a similar analysis to USFS' demand that NID enter into a collections agreement to pay USFS for services provided within the Yuba Bear project boundary. Nothing in NID's license requires such an agreement, and while NID may enter into such an agreement (as it did in the 1998 "Joint Letter" attached to the Recreation Plan), NID's FERC license does not require it to subsidize Forest Service operations.

**2. NID is not Required to Pay TNF to Operate USFS Facilities.**

NID is aware of no provision of federal law which would require NID to pay the Tahoe National Forest to operate USFS Facilities located within the FERC Project boundary. While certain provisions of law allow USFS to impose fees on "visitors" for services such as providing campground facilities, and allow USFS to enter into a "fee management agreement" pursuant to which USFS may pay a local agency to collect fees or provide services, we have not found any authority that USFS may charge a political subdivision for costs incurred by USFS to operate its own facilities.

United States Department of Agriculture, Forest Services

Tahoe National Forest Supervisor's Office

Re: Operation and Maintenance of Improved Recreation Facilities on Tahoe National Forest Lands  
within the Boundaries of FERC Project 2266.

October 20, 2021

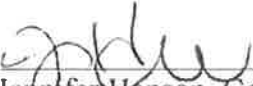
Page -3-

**Conclusion**

NID has met its obligation under the Recreation Plan to “construct and implement” recreation facilities within the FERC Project Boundary. The responsibility for operating and maintaining those facilities located on Tahoe National Forest lands rightly resides with the United States Forest Service. We look forward to discussing other substantive issues concerning the transition of operation and maintenance issues for the 2022 recreation season at our upcoming meeting.

Very truly yours,

NEVADA IRRIGATION DISTRICT

By  \_\_\_\_\_  
Jennifer Hanson, General Manager

## Initial Proposal For Jackson and Bowman

Santana, Hillary -FS <hillary.santana@usda.gov>

Tue 12/21/2021 11:39 AM

To: Monica Reyes <reyes@nidwater.com>

Cc: Youngblood, Quentin -FS <quentin.youngblood@usda.gov>; Hutchinson, Rachel - FS <Rachel.Hutchinson@usda.gov>

📎 2 attachments (32 KB)

JacksonBowman\_TNFPProposal\_12212021.docx; Jackson Meadow and Bowman 2022 Cost Estimates\_12212021.xlsx;

You don't often get email from hillary.santana@usda.gov. [Learn why this is important](#)

Greetings, Monica,

I hope you are well and that your Spartan Race was a success! It was great to meet you in person the other week, and I look forward to continuing to work with you as we refine plans for 2022.

As we discussed in our meeting, I have attached our initial proposal for 2022 operation/maintenance arrangements of the Jackson Meadows complex as well as the Bowman Corridor recreation sites for your review. The first document is more of a description/narrative that would inform the specifics of a future collection agreement and the spreadsheet is the accompaniment with cost estimates/figures. We would greatly appreciate your feedback and welcome any questions you might have. Please reach out to either me or Quentin to discuss further.

Thank you for your time and consideration, and Happy Holidays!



**Hillary Santana**  
**Recreation, Lands, and Heritage Staff Officer**

**Forest Service**  
**Tahoe National Forest**

**c: 970-987-7140**  
[hillary.santana@usda.gov](mailto:hillary.santana@usda.gov)

631 Coyote Street  
Nevada City, CA 95959

[www.fs.fed.us](http://www.fs.fed.us)



**Caring for the land and serving people**

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**Proposal for Operations and Maintenance of Campgrounds within the Bowman Corridor and Jackson Meadows Reservoir – 2022**

**General:** It is anticipated and desired that a collection agreement be developed reflective of cost recovery with the TNF.

- **Bowman Corridor:** The TNF would request approximately **\$46,860** for the above listed personnel, supplies, vehicles, and services for the Bowman Corridor Recreation Sites. **(See cost estimate spreadsheet, Tab 1)**
- **Jackson Meadows Complex:** The TNF would request approximately **\$294,360** for the below listed Day Use Areas, Boat Launch/Restroom Facilities and campgrounds for administration, operations, and management. **(See cost estimate spreadsheet, Tab 2)**
- Payments to the U.S. Forest Service may be reduced by the amount of fees collected by the U.S. Forest Service at the above-listed recreation facilities where fees are currently charged. It is assumed that NID will retain fee revenue for sites operated by NID on NID-owned lands, and that the TNF will retain fee revenue for sites administered and managed by the TNF in 2022 and will utilize those revenues to cover expenses associated with the fee sites.

**Bowman Corridor Campgrounds:**

1. **Recreation Sites on NID Lands:** NID will fully administer and manage sites on NID-owned lands including the Faucherie Group Campground.
2. **Recreation Sites on NFS Lands:** Tahoe NF will administer and manager the Jackson Creek CG, Canyon Creek CG, and Bowman dispersed sites in accordance with the personnel and materials and expenses arrangements listed below.
  - a. Personnel:
    - With reservation revenues and collection agreement funds, TNF will provide personnel, vehicles and supplies to make visitor contacts, perform maintenance on minor campground features, remove garbage and clean the restroom facilities at Jackson Creek and Jackson CG's once a week during the recreation season.
    - **NID will still provide** personnel, vehicles, and supplies to remove garbage and clean the restroom facilities at Jackson Creek and Jackson CG's once a week during the recreation season. In summary, these facilities and grounds will be serviced twice per week.

- b. Materials and Expenses for Bowman Corridor (See Attached Funding Spreadsheet, Tab 1):

<b>Material/Service/Expense</b>	<b>Costs Funded via NID Collection Agreement w/ TNF</b>	<b>NID Fulfills Responsibility Outside of Collection Agreement</b>
Equipment	NID will fund TNF to cover necessary equipment purchases or rentals	
Materials and Supplies	NID will fund TNF to cover Materials/Supplies to carry out work tasks identified above	
Garbage Collection	NID will fund TNF for any non-personnel necessary garbage collection/disposal expenses.	
Vehicles	NID will fund TNF vehicles to transport personnel to job sites	
Vault Pumping		NID will provide vault toilet pumping to the three toilet vaults at Jackson and Canyon Creek Campgrounds. Future year funding for utility costs will be evaluated following the 2022 season.
Hazard Tree Abatement		All Hazard Tree Abatement responsibilities within the Bowman Corridor would remain under the responsibilities of NID

**Jackson Meadows Campgrounds:**

**1. Recreation Sites on NID Lands:**

- a. NID will fully administer and manage the sites on NID-owned lands including Aspen and Silvertip Group Campground as previously discussed.
- b. NID will administer and manage the RV Dump Station.
- c. NID will administer and manage the East Side and West Side Water Systems and ensure water deliver to all facilities.

**2. Recreation Sites on NFS Lands:** TNF will administer and manage the following recreation sites in accordance with the arrangements below:

- a. Personnel:
  - *Developed Campgrounds:* With campground revenues and collection agreement funds, TNF will provide personnel (including campground hosts), vehicles and supplies to administer/manage sites, make visitor contacts, perform maintenance on minor campground features, provide fee collection, remove garbage and clean the restroom facilities at East Meadow, Pass Creek, Findley, Fir Top, Pass Creek Overflow and Woodcamp Campgrounds.
  - *Dispersed Sites:* With collection agreement funds, TNF will administer and manage the Milton Reservoir dispersed campground
  - *Day Use and Boat Launches:*

1. With collection agreement funds, TNF will administer and the manage the Aspen Day Use and Pass Creek Boat Ramp/Restroom Facility.
2. **NID will provide** trash pick-up, facility cleaning, signage, and fee collection at the Woodcamp Day Use and Woodcamp Boat Ramp/Restroom Facility.

b. Materials and Expenses for Jackson Meadows Complex (See Attached Funding Spreadsheet, Tab 2):

<b>Material/Service/Expense</b>	<b>Costs Funded via NID Collection Agreement w/ TNF</b>	<b>NID Fulfills Responsibility Outside of Collection Agreement</b>
Materials and Supplies	NID will fund TNF to cover Materials/Supplies to carry out work tasks identified above	
Water/Utility Fees	NID will fund TNF for any water and utility fees.	
Equipment	NID will fund TNF to cover necessary equipment purchases or rentals	
Generator, Fuel and Power Utility Maintenance	NID will fund TNF to cover purchase of generators, fuel, and ongoing power utility maintenance costs.	
Vehicles	NID will fund TNF vehicles to transport personnel to job sites	
Golf Cart Rental	NID will fund TNF to rent golf carts for use by hosts and staff within the developed campground complex.	
Garbage Collection		NID will directly cover any necessary garbage collection/disposal services or other related expenses for the Bowman Corridor.
Vault Pumping		NID will provide vault toilet pumping to the three toilet vaults at Jackson and Canyon Creek Campgrounds. Future year funding for utility costs will be evaluated following the 2022 season.
Hazard Tree Abatement		All Hazard Tree Abatement responsibilities within the Bowman Corridor would remain under the responsibilities of NID
Sierra County Solid Waste Fees		NID will continue to pay Sierra County Directly for all Solid Waste Fees



## Bowman Corridor 2022 Estimated Collection Agreement Cost Breakdown

<b>Labor</b>	<b>Days</b>	
Staff Lead	30	\$9,090
Seasonal Staff	65	\$23,270
<b>Total Labor</b>		<b>\$32,360</b>

### Non-salary expenses

Equipment	\$ 2,000
Materials/Supplies	\$ 5,000
Vehicles	\$ 5,000
Garbage Collection/Disposal Services	\$ 2,500
Vault Pumping	NID to Provide for 2022
	\$ 14,500

**Labor and Materials Total** **\$46,860**

**Total Bowman Operational Costs** **\$ 46,860**

## Jackson Meadow 2022 Estimated Costs

<b>Labor</b>	<b>Days</b>	
Staff Lead	180	\$54,540
Maintenance Lead	100	\$25,000
Seasonal Staffing & Hosts	120-160 Days	\$150,320
		<b>\$ 229,860</b>

### Non-Salary Expenses

Materials/Supplies	\$ 20,000
Water and Utility Fees	\$ 4,500
Equipment	\$ 7,500
Generator, Fuel and Power Utility Maintenance	\$ 7,500
Vehicles	\$ 15,000
Golf Cart Rental	\$ 10,000
Garbage Collection/Disposal Services	NID to contract directly 2022
Hazard Trees	NID to contract directly 2022
Vault Pumping	NID to contract directly for 2022
Sierra County Solid Waste Fees	NID to Pay Directly for 2022
<b>Total</b>	<b>\$ 64,500</b>

**Labor and Materials Total** \$ 294,360

**Jackson Meadows Total Operations** \$ 294,360



# Nevada Irrigation District

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Forest Service  
Tahoe National Forest Service  
631 Coyote Street  
Nevada City, CA 95959

January 14, 2022

**Attn: Hillary Santana - Recreation, Lands, and Heritage Staff Officer**

**Re: Response to the USFS's Initial Proposal - 2022 Operation of the Jackson Meadows Complex and Bowman Corridor**

Dear Ms. Santana,

NID would like to first apologize for the delayed response, the past storms left our facilities without power, phones and internet for fourteen days, as well as a massive cleanup. NID has reviewed the USFS's proposal for the operation of the Jackson Meadows Complex and the Bowman Corridor. After reading the proposal it is clear there is a disconnect between the two agencies and NID would like to give some clarity to its intentions and expectations.

NID and USFS staff have had numerous conversations and meetings over the past several months to discuss the transition of the USFS taking over maintaining and operating their lands and campgrounds within the Tahoe National Forest. In those meetings, NID made clear its intentions for the 2022 season and into the future. Several times the USFS has asked what NID's vision is for future operations of the Jackson Meadows Complex and the Bowman Corridor and the response has not changed. NID's response has been for the USFS to maintain and operate lands and campgrounds they own and NID will maintain and operate lands and campground it owns. There has been discussion of the "shared" areas (boat launches, day-use areas and the dam bathroom) and working together to come up with a plan for those shared responsibilities. There has also been discussion that NID would continue to operate and maintain both water systems, as well as, repair any water leaks.

In reading through the USFS's proposal, the USFS desires to have a "Collection Agreement" with NID for cost recovery and has expected responsibilities of NID outside of the agreement. NID is not opposed to some type of Collection Agreement but the agreement needs to be financially sound and include all the financial responsibilities of operating and maintaining lands and campgrounds within the Jackson Meadows Complex and Bowman Corridor owned by the USFS.

It should be evident to the USFS after finishing its cost and data analysis for the Collection Agreement and expected responsibilities of NID that the Jackson Meadows Complex and Bowman Corridor is going to be a financial burden to the USFS, as it has been for NID. NID would

suggest the benefit of a rate increase considering the USFS current rates have been in place for at least the past six years, if not longer. NID has asked the USFS to increase rates several times over the past five years and has been denied. With the USFS's current rate of \$24 per night, it is impossible to recover expenses. Attached is a spreadsheet to show the disproportion between revenue and expenses NID has experienced from operating and maintaining the Jackson Meadows Complex and Bowman Corridor.

NID would like to come up with a fair agreement that is financially appropriate to both agencies and includes the USFS operating and maintaining its own lands and campgrounds. The decision for NID not to renew its Special Use Permit was submitted to the USFS on September 10, 2021. Both NID and the USFS need to work together to come to a quick resolution so both agencies can move forward and start to focus on the 2022 camping and recreation season.

Very truly yours,



Monica Reyes

Recreation Manager

Nevada Irrigation District

Enclosure

### Jackson Meadows - Bowman Corridor

	<b>2019</b>	<b>2020</b>	<b>2021</b>
Revenue	\$ 104,207.00	\$ 120,380.00	\$ 122,026.00
Expense	\$ 320,416.67	\$ 421,705.64	\$ 386,444.07
<b>Totals</b>	<b>\$ (216,209.67)</b>	<b>\$ (301,325.64)</b>	<b>\$ (264,418.07)</b>

	<b>2019</b>	<b>2020</b>	<b>2021</b>
Salary	189,627.53	233,263.40	214,004.77
Materials & Supplies	19,466.17	42,857.39	5,574.19
Legal	-	-	2,205.00
Fed/State/Co Fees	13,141.11	6,190.15	10,067.23
Temp Labor	8,096.76	13,216.97	-
Contractor	10,574.60	36,158.25	79,137.02
Insurance	3,436.52	1,955.33	-
Outreach	-	299.90	380.94
Supplies	353.38	218.04	-
Utilities	44,126.38	46,866.25	51,044.01
Bank Fees	249.50	2,012.89	603.36
Woodcamp Water	10,610.75	16,442.34	10,595.04
Aspen Water	20,733.97	22,224.73	12,832.51
<b>Expense Totals</b>	<b>\$ 320,416.67</b>	<b>\$ 421,705.64</b>	<b>\$ 386,444.07</b>
<b>Water Systems*</b>	<b>31,344.72</b>	<b>-</b>	<b>-</b>
	<b>38,667.07</b>	<b>-</b>	<b>23,427.55</b>

\*2021 water expenses are low due to drought - water systems were down

## Jackson/Bowman Collection Agreement Discussion

Santana, Hillary -FS <hillary.santana@usda.gov>

Fri 1/21/2022 2:17 PM

To: Hutchinson, Rachel - FS <Rachel.Hutchinson@usda.gov>; Monica Reyes <reyes@nidwater.com>

 2 attachments (33 KB)

Revised\_Jackson Meadow and Bowman 2022 Cost Estimates\_01212022.xlsx;

JacksonBowman\_TNFProposal\_Revised\_01212022.docx;

Attachments of revised proposal and accompanying spreadsheet are now included.

Meeting to go over FS revised collection agreement proposal and path forward.

Ideally we will end by 3:30, but leaving an extra 30 mins in case we need more time.

---

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**Revised Proposal for Operations and Maintenance of Campgrounds within the Bowman Corridor and Jackson Meadows Reservoir – January 2022**

**General:** It is anticipated and desired that a collection agreement be developed reflective of cost recovery with the TNF.

- **Bowman Corridor:** The TNF would request approximately **\$54,860** for the above listed personnel, supplies, vehicles, and services for the Bowman Corridor Recreation Sites. **(See cost estimate spreadsheet, Tab 1)**
- **Jackson Meadows Complex:** The TNF would request approximately **\$402,560** for the below listed Day Use Areas, Boat Launch/Restroom Facilities and campgrounds for administration, operations, and management. **(See cost estimate spreadsheet, Tab 2)**
- Payments to the U.S. Forest Service may be reduced by the amount of fees collected by the U.S. Forest Service at the above-listed recreation facilities where fees are currently charged. It is assumed that NID will retain fee revenue for sites operated by NID on NID-owned lands, and that the TNF will retain fee revenue for sites administered and managed by the TNF in 2022 and will utilize those revenues to cover expenses associated with the fee sites.
- Costs for water, utility and solid waste fees and contracted services in the attached spreadsheet are estimates. Should true costs for contracted expenses or fees exceed the estimates identified and result in inadequate funding source between the reservation revenues and available collection agreement funds, a modification to the agreement may be necessary to collect additional funds from NID.

**Bowman Corridor Campgrounds:**

- 1. Recreation Sites on NID Lands:** NID will fully administer and manage sites on NID-owned lands including the Faucherie Group Campground.
- 2. Recreation Sites on NFS Lands:** Tahoe NF will administer and manage the Jackson Creek CG, Canyon Creek CG, and Bowman dispersed sites in accordance with the personnel and materials and expenses arrangements listed below.
  - a. Personnel:
    - With reservation revenues and collection agreement funds, TNF will provide personnel, vehicles and supplies to make visitor contacts, perform maintenance on minor campground features, remove garbage and clean the restroom facilities at Jackson Creek and Jackson CG's during the recreation season.



- b. Materials and Expenses for Bowman Corridor (See Attached Funding Spreadsheet, Tab 1):

<b>Material/Service/Expense</b>	<b>Costs Funded via NID Collection Agreement w/ TNF</b>
Equipment	NID will fund TNF to cover necessary equipment purchases or rentals
Materials and Supplies	NID will fund TNF to cover Materials/Supplies to carry out work tasks identified above
Garbage Collection	NID will fund TNF for any necessary non-personnel garbage collection/disposal expenses.
Vehicles	NID will fund TNF vehicles to transport personnel to job sites
Vault Pumping	NID will fund TNF to contract toilet pumping at all vaults on NFS lands within Bowman Corridor. NID will fund the true costs of all vault pumping incurred under the contract. The spreadsheet is an estimate of these costs.
Hazard Tree Abatement	NID will fund TNF to identify and remove hazard trees within the recreation sites through use of contracted services or qualified FS staff. NID will fund TNF the full scope of hazard tree abatement including, but not limited to inspections, identification, equipment rental, personnel time, and site cleanup/disposal.

**Jackson Meadows Campgrounds:**

**1. Recreation Sites on NID Lands:**

- a. NID will fully administer and manage the sites on NID-owned lands including Aspen and Silvertip Group Campground as previously discussed.
- b. NID will administer and manage the RV Dump Station.
- c. NID will administer and manage the East Side and West Side Water Systems and ensure water delivery to all facilities on NID lands.

**2. Recreation Sites on NFS Lands:** TNF will administer and manage the following recreation sites in accordance with the arrangements below:

- a. Personnel:
  - *Developed Campgrounds:* With campground revenues and collection agreement funds, TNF will provide personnel (including campground hosts), vehicles and supplies to administer/manage sites, make visitor contacts, perform maintenance on minor campground features, provide fee collection, remove garbage and clean the restroom facilities at East Meadow, Pass Creek, Findley, Fir Top, Pass Creek Overflow and Woodcamp Campgrounds.
  - *Dispersed Sites:* With collection agreement funds, TNF will administer and manage the Milton Reservoir dispersed campground
  - *Day Use and Boat Launches:*
    1. With collection agreement funds, TNF will administer and the manage the Aspen Day Use and Pass Creek Boat Ramp/Restroom Facility.
    2. With collection agreement funds, TNF will administer and the manage the Woodcamp Day Use and Woodcamp Boat Ramp/Restroom Facility.
- b. Water Systems servicing recreation sites on NFS lands:

- NID will administer and manage the Jackson Meadows East Side and West Side Water Systems and ensure water delivery to all facilities on NFS lands.
- c. Materials and Expenses for Jackson Meadows Complex (See Attached Funding Spreadsheet, Tab 2):

<b>Material/Service/Expense</b>	<b>Costs Funded via NID Collection Agreement w/ TNF</b>
Materials and Supplies	NID will fund TNF to cover Materials/Supplies to carry out work tasks identified above
Water/Utility Fees	NID will fund TNF for any water and utility fees.
Equipment	NID will fund TNF to cover necessary equipment purchases or rentals
Generator, Fuel and Power Utility Maintenance	NID will fund TNF to cover purchase of generators, fuel, and ongoing power utility maintenance costs. The spreadsheet is an estimate of these costs.
Vehicles	NID will fund TNF vehicles to transport personnel to job sites.
Golf Cart Rental	NID will fund TNF to rent golf carts for use by hosts and staff within the developed campground complex. The spreadsheet is an estimate of these costs.
Garbage Collection	NID will fund TNF to contract garbage collection/disposal services for the Jackson Meadows complex. The spreadsheet is an estimate of these costs.
Vault Pumping	NID will fund TNF to contract toilet pumping at all vaults on NFS lands within the Jackson Meadows Complex. NID will fund the true costs of all vault pumping incurred under the contract. The spreadsheet is an estimate of these costs.
Hazard Tree Abatement	NID will fund TNF to identify and remove hazard trees within the recreation sites through use of contracted services or qualified FS staff. NID will fund TNF the full scope of hazard tree abatement including, but not limited to inspections, identification, equipment rental, personnel time, and site cleanup/disposal. The spreadsheet is an estimate of these costs.
Sierra County Solid Waste Fees	NID will provide TNF with all solid waste fees associated with the recreation sites operated and managed by the Forest Service under the collection agreement. The spreadsheet is an estimate of these costs.

## Jackson Meadow 2022 Estimated Costs

<b>Labor</b>	<b>Days</b>	
Staff Lead	180	\$54,540
Maintenance Lead	100	\$25,000
Seasonal Staffing & Hosts	120-160 Days	\$150,320
<b>Total</b>		<b>\$ 229,860</b>

### Non-Salary Expenses

Materials/Supplies	\$ 20,000
Water and Utility Fees	\$ 4,500
Equipment	\$ 7,500
Generator, Fuel and Power Utility Maintenance	\$ 7,500
Vehicles	\$ 15,000
Golf Cart Rental	\$ 10,000
Garbage Collection/Disposal Services	\$28,000
Hazard Trees	\$30,000
Vault Pumping	\$30,000
Sierra County Solid Waste Fees	\$20,200
<b>Total</b>	<b>\$ 172,700</b>

<b>Labor and Materials Total</b>	<b>\$ 402,560</b>
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<b>Jackson Meadows Total Operations*</b>	<b>\$ 402,560</b>
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United States  
Department of  
Agriculture

Forest  
Service

Tahoe National Forest  
Supervisor's Office

631 Coyote Street  
Nevada City, CA 95959  
530-478-6100  
TDD: 1-800-735-2929  
Fax: 530-478-6109

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**File Code:** 2770

**Date:** February 15, 2022

Jennifer Hanson  
General Manager  
Nevada Irrigation District  
1036 West Main St.  
Grass Valley, CA 95945

**CERTIFIED RETURN RECEIPT: 9402 8119 9956 1271 0782 35**

Dear Ms. Hanson:

This letter is intended to document the status of recent communications between the U.S. Forest Service (USFS) and Nevada Irrigation District (NID) in response to NID's September 13, 2021 letter informing the USFS that they would not continue to operate, implement, and maintain the majority of the recreational facilities associated with the Yuba-Bear Hydroelectric Project license (Project) issued to NID by the Federal Energy Regulatory Commission (FERC) (FERC No. 2266); and to request that NID clarify its proposal for the ongoing operation of these facilities.

### **Background**

Between 1998 and 2016, as authorized by the Project license, NID and the USFS were engaged in a voluntary agreement in which NID provided financial resources to the USFS to operate the recreational facilities associated with the Project. This agreement ensured that NID met the requirements for the implementation of the recreation component of the Project.

In the fall of 2016, NID communicated to the USFS that it wished to directly operate the recreational facilities associated with the Project. The USFS worked with NID to develop a special use permit under the Granger-Thye Act and associated operating plan for the maintenance and operation of the recreation facilities on National Forest System (NFS) lands within the license. For the first two years, NID did not meet all the terms of the special use permit and operations plan; however, the USFS continued to work with NID to improve its operations and correct deficiencies. From 2019 through 2021, NID's operations improved substantially.

The special use permit issued to NID carried an expiration date of December 31, 2021. In an email and letter dated September 13, 2021, NID informed the USFS that it did not intend to apply for a new special use permit to continue operating the recreation facilities on NFS lands within the Project. NID did not provide any proposal for the continued operation of the facilities, but did request a meeting with the USFS. The USFS responded on September 20, 2021 via email and with formal correspondence dated October 8, 2021 to confirm the need for a meeting, and suggested that the discussion focus on the USFS's financial requirements to carry out NID's proposed transition, and to reiterate the FERC license requirement that "*Licensee will be responsible for the construction and implementation of all recreation improvements...*" (Exhibit R, April 2000, Section 6.3).



NID responded by letter to the USFS on October 20, 2021, disputing its responsibility to operate and maintain the recreation facilities associated with the Project. The USFS and NID met on October 25, 2021, where the USFS asked how NID intended to meet its license requirements and suggested third party facilitation to resolve the issue. NID communicated that it did not believe third party facilitation was necessary and again suggested the USFS take over the operation of the recreation facilities at USFS expense.

### **Recent Efforts to Develop a Transition Plan and Related Funding Agreement**

Following the October 25 meeting, the USFS and NID staff subsequently met to discuss and develop a proposal for transition of operations and a funding agreement that would provide for the successful transition of operations and maintenance of the recreation facilities within the Project. The initial proposal from the USFS to NID in mid-December outlined a shared operating structure by which NID would directly provide certain aspects of facility operations and NID would also fund the USFS via a collection agreement to provide the remainder of operations and maintenance. In a January 14, 2022 letter from NID to the USFS, NID leadership rejected this proposal and requested the USFS draft a proposal that did not include any NID involvement in the operation of the Federal facilities, with the exception of the water system. USFS staff developed this proposal and provided it to NID staff on January 21, 2022. This proposal estimated the full costs of operations of the recreation facilities on NFS lands, consistent with NID's license requirements referenced above. NID staff informed USFS staff on January 25, 2022 that NID leadership had rejected the proposal.

The USFS dialogue and collaboration with NID staff was conducted in good faith and with genuine intention of reaching an agreement that would allow operation and maintenance to be transitioned from NID to the USFS for the 2022 operating season. However, the USFS is not in a position to take on NID's license obligations, and without NID's agreement to provide adequate funding to carry out the operation and maintenance of the recreation facilities on NFS lands within the Project license, the USFS cannot accept these responsibilities for 2022 operations.

### **Next Steps**

To be clear, the law makes licensees responsible for Project induced recreation. Both NID's current license and its pending license clearly assign responsibility for the operation and maintenance of the recreation facilities under discussion to NID. Further, the current impasse endangers a timely opening of the facilities and the provision of recreational opportunities to the public given the need to invest both in the infrastructure and appropriate staffing prior to the facilities' opening. As a result, I request that NID provide a written proposal within 14 days of the receipt of this letter describing how NID intends to redeem its license responsibilities.

The USFS will remain available for future meetings with NID to discuss recreation services and any aspect of the proposal that would benefit from our input.

Please contact Hillary Santana, Recreation, Lands, and Heritage Staff Officer at [hillary.santana@usda.gov](mailto:hillary.santana@usda.gov) or at 970-987-7140 with any questions or request for future meetings.

Sincerely,



ELI ILANO  
Forest Supervisor

cc: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission; Amy Lind; Joshua Rider



# Nevada Irrigation District

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February 28, 2022

Forest Service  
Tahoe National Forest Service  
631 Coyote Street  
Nevada City, CA 95959  
eliseo.ilano@usda.gov

Attn: ELI ILANO, Forest Supervisor

**Re: Response to February 15, 2022, USFS Correspondence Concerning USFS Recreation Facilities Located Within Yuba-Bear FERC Project Boundary.**

Dear Mr. Ilano,

Nevada Irrigation District (NID or District) received the United States Department of Agriculture, Forest Service (USFS), letter of February 15, 2022, concerning the expiration of the District's Special Use Permit (SIE024) and operating plan related to the concession campground operations at recreation facilities and dispersed recreation sites associated with the FERC Yuba-Bear Project #2266. NID notified USFS that the District did not intend to enter into a new Special Use Permit on September 13, 2021. Since that time NID has worked diligently with USFS to transition to a new operating regime that would provide public recreational access and ensure compliance with all terms of NID's Yuba-Bear Project FERC License. Regrettably, those efforts have not yet yielded a solution that is mutually agreeable to the Parties.

The District describes below its ongoing concerns with the terms of the USFS Special Use Permit, and the District's position that USFS cannot compel NID to pay USFS to operate USFS facilities. However, to avoid conflict and further uncertainty, NID offers USFS an up-front payment of \$150,000 to operate the USFS recreation facilities located within the Yuba-Bear FERC Project boundary, and also offers to provide the labor, expertise, and equipment necessary to operate the water system(s) for those facilities. NID's position is set forth below in further detail.

## **1. The USFS Special Use Permit Contains Unacceptable Conditions**

Before and after the September 13, 2021 notification, the District attempted to aid in the transfer of operations to the USFS and also indicated that the District would be willing to consider continuing operations under a new use permit if the following conditions were addressed:



- **Fire Restrictions:** The District would have authority to implement fire restrictions within the campgrounds as determined necessary by the District to address public safety.
- **Use Rates:** The District would be able to establish use rates consistent with the regional market for campgrounds, and the other campgrounds owned and operated by the District. The current rate allowed by the USFS is \$24 per night for tent camping, while the District charges \$39 per night for camping. The District established our rates based on a market study conducted and in consideration of sufficient revenue recovery to pay for the cost to operate the facility.
- **Special Use Permit, Section III Rights and Liabilities:** The conditions included in the USFS standard special use permit would require modification to limit risk and liability too the District. The current agreement includes conditions that assign all risk and liability for any fire or other natural disaster to the District. The current language is so broad in fact that it currently assigns risk and liability for acts of God to the District, including the requirement for the District to pay fire suppression costs on and off USFS property. The District finds these clauses to be particularly concerning given the fact that the USFS denied the District's request in the summer of 2021 to prohibit open campfires when there were significant drought conditions and the District had limited and/or no water sources to even put out a small fire. Notably, the two worst fire seasons on record were in 2020 and 2021.

Since September 13, 2021, the District and USFS staff have met numerous times to determine whether an acceptable Special Use Permit could be negotiated. Several times during these conversations, a verbal agreement was met on high-level terms, which was then subsequently found to be not agreeable by USFS staff. As noted, in the District's October 20, 2021 letter to USFS, the District does not agree with the assertion that the District is required to pay USFS to operate USFS owned campgrounds in order to maintain compliance with our FERC license related to the Yuba-Bear Project.

**2. NID Is Not Required to Pay USFS To Operate Recreational Facilities Located on Tahoe National Forest Lands within the Yuba Bear Project Boundary.**

NID has consistently maintained the position that USFS cannot compel NID to pay USFS to operate USFS recreation facilities located within the Yuba Bear Project Boundary. NID formalized this position in a February 28, 2017 letter to FERC, in which the District identified the contractual history between the parties and applicable law. (Attachment 1 hereto).

In sum, for many years the Parties had a contractual arrangement pursuant to which NID *agreed* to pay the USFS to operate certain facilities. Those contracts have long since expired and the circumstances under which those contracts were negotiated have changed. As articulated in 2017, NID is aware of no requirement of the Yuba-Bear FERC Project license, or Federal Law or Regulation that would require NID to pay USFS to operate USFS Facilities. To the contrary, based on the internal USFS communications we reviewed in 2017, it appears to be well accepted within USFS, that USFS can operate its own facilities on its own lands, but not at NID's expense.

NID is not aware of any changes in the law since 2017 that have changed this previous analysis.

**3. Despite Being Under No Legal Obligation to Do So, NID is Willing to Contribute \$150,000 to USFS Operation of USFS Recreational Facilities Located within the Yuba-Bear FERC Project Boundary**

The last correspondence received from USFS staff requested \$457,420 for annual operations, with the actual total due to be decreased by revenue received from use fees.

USFS proposal is 25% more than the annual cost for the District to operate the same campgrounds during the 2021 recreation season. Additionally, the USFS nightly campsite rate of \$24.00/night is significantly lower than the \$39.00/night rate charged by NID in the immediate vicinity, with equal or better rates of occupancy. The District cannot justify payment of \$457,420 in part because that amount represents a subsidy of higher than necessary operating costs, and lower than reasonable revenue.

Nonetheless, though under no legal obligation to do so, the District is willing to provide reasonable support to USFS operation of USFS recreation facilities located within the Yuba-Bear FERC project boundary, as follows: 1) \$150,000 in cash, and 2) provide the labor, expertise, and equipment necessary to operate the water systems located at USFS Facilities and NID within the Yuba- Bear FERC Project boundary, subject to an end-of-year repayment of the portion of costs to operate the USFS facilities.

**Conclusion**

NID is under no legal obligation to pay USFS to operate USFS recreation facilities within the Yuba-Bear FERC project boundary. However, to avoid the uncertainty and expense of obtaining a formal resolution of this issue, and to ensure public recreation access for 2022, NID is willing to contribute \$150,000 towards USFS operation of USFS facilities within the Yuba-Bear FERC project boundary, and to provide the labor, expertise, and equipment necessary to operate the water systems serving those facilities, subject to USFS' contribution for a portion of those costs. If this understanding is agreeable to USFS, the Parties will need to reduce this understanding to a formal agreement. NID looks forward to reaching a resolution of these issues in the very near term.

Sincerely,



Jennifer Hanson, General Manager

cc : Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission

**MINASIAN, MEITH,  
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The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Re: Nevada Irrigation District  
Recreation Obligations of Licensee Docket No. 2266-111

Dear Secretary Bose:

Nevada Irrigation District ("NID") is the Licensee for the Federal Energy Regulatory Commission ("FERC") licensed Yuba Bear Project, No. 2266 ("Project"). As discussed herein, the Project includes recreation facilities located upon lands of NID and lands of the United States Forest Service, Tahoe National Forest ("USFS"). NID and United States Forest Service, Tahoe National Forest ("USFS") have been engaged in negotiations concerning operation of Project recreation facilities located upon Tahoe National Forest lands. In this sub-docket NID has filed a series of updates concerning progress on those negotiations. In brief, to date USFS has refused to grant NID a Special Use Authorization to allow NID to operate recreation facilities located upon Tahoe National Forest lands for the 2017 recreation season. As an alternative to granting NID Special Use Authorization to operate Forest Service facilities, USFS has indicated a willingness to operate those facilities, but only at NID expense. In negotiating this "parallel operating" approach ( NID operates NID facilities, and USFS operates USFS facilities) , USFS has suggested that it would "close the gates" and prohibit public access to USFS recreation facilities located within Project boundaries unless NID funded such operations.

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This correspondence sets forth NID's Recreation Obligations under the Yuba Bear Project License and adopted Recreation Plan. This letter further addresses the continuing relevance of the 1998 "Joint Letter" referenced in the adopted Recreation Plan, and the 1966 Agreement for Operations and Maintenance upon which the Joint Letter is based. As discussed herein, neither the License for Project No.2266, adopted Recreation Plan, or FERC precedent support USFS' contention that NID must compensate USFS for operating its own facilities located upon Tahoe National Forest lands. Lastly, internal USFS documents disclosed in response to an NID Freedom Of Information Act request indicate USFS is aware of its responsibility for costs incurred to operate its own facilities.

#### **I. NID's Recreation Obligations Pursuant to its License.**

The Federal Power Commission (FERC's predecessor) Order granting the Yuba Bear Project License addressed NID's Recreation obligations in the following articles:

Article 40: So far as it is consistent with proper operation of the project, the Licensee shall allow the public free access to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and water for navigation and recreational purposes . . .

Article 41: The Licensee shall, within one year from the date of issuance of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

[The License for Project No. 2266 is attached hereto as **Exhibit "1"**].<sup>1</sup>

Ordering Paragraph C further indicates the License is subject to standard terms and conditions set forth in Form L-2, December 15, 1953. Form L-2, in turn, includes an Article 17, which mirrors Article 40 set forth above.

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<sup>1</sup> *Nevada Irrigation District, Order Issuing License (1963)*

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The Recreation Plan referenced in Article 41 is updated from time to time and replaces the previously adopted plan. The Yuba Bear Project License thus incorporates the current version of the Recreation Plan as the document which establishes NID's recreation obligations.

**A. NID's Obligations Under Current Recreation Plan.**

FERC approved NID's current Recreation Plan in July, 2011.<sup>2</sup> Table 2.2.1 of the Recreation Plan identifies the "Yuba Bear River Project Recreation Sites" to include facilities located upon lands of NID and lands of the Tahoe National Forest. (Recreation Plan attached hereto as **Exhibit "2"**). Therefore, the scope of the Recreation Plan includes the facilities at presently at issue in the NID - USFS negotiations.

**1. NID Responsible for "Construction and Implementation."**

Recreation Plan Section 6.3 provides that, "Licensee will be responsible for the construction and implementation of all recreation improvements." The Recreation Plan does not define "implementation." The best interpretation is that "implementation" of recreation improvements means making the facilities generally available for use by the public. Table 6.1 of the Recreation Plan identifies various costs for "improvement." There is nothing to indicate that "implementation" requires NID to pay or incur costs in addition to the costs of construction set forth in Table 6.1.

**2. Operation and Maintenance Responsibilities Identified by Reference to NID-USFS Agreement.**

Section 6.3 of the Recreation Plan is premised on the now expired NID - USFS 1966 Agreement For Operation and Maintenance ("1966 Agreement"), and a 1998 "Joint Letter" predicated on the 1966 Agreement. (1966 Agreement attached hereto as **Exhibit "7"**.) A close reading of Section 6.3 is set forth below along with analysis:

– "Traditionally the USFS was responsible for the operation and maintenance of all Forest Service Recreation improvements."

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<sup>2</sup> Nevada Irrigation District, Order Amending Recreation Plan, 96 FERC ¶ 62,029 (2001).

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This reflects the ‘traditional’ scenario in which the USFS operates USFS facilities located upon its lands. This *can*, however, be modified by agreement, which occurred in this case during the term of the 1966 Agreement.

– “Based on the agreement between the Tahoe National Forest and Nevada Irrigation District dated June 24, 1966 and June 26, 1966, respectively, TNF and NID have agreed that NID is responsible to administer, operate, and maintain the recreation facilities.”

The 1966 Agreement expired in 2012. (1966 Agreement at Section C.2). Therefore, the “1966 Agreement” has very limited, if any, continuing viability regarding the responsibilities of NID and USFS concerning their respective recreation responsibilities. When the 1966 Agreement expired, the parties obligations under that agreement expired as well. Nonetheless, because USFS’ arguments are apparently derived from this document, relevant provisions of the 1966 Agreement are set forth below:

- 5<sup>th</sup> WHEREAS: “the District desires the Service to administer, operate and maintain (1) the on- shore recreation facilities provide for in the Recreation Plan which is described in the State-District Contract . . .”
- Section A (3): The District agrees: “. . . **The Service shall not have any obligations with respect to recreation facilities built on non-federal land**, other than care and policing as provided in B.4. hereof, until title to said lands and facilities shall have been conveyed to the United States and title accepted by the United States.”
- Section B (2): The Service Agrees: “. . . after acceptance by the Service, and for the 50 year period designated in the State-District Contract, Federal appropriations permitting, to administer, operate, maintain, repair, renew and replace as may be necessary, the recreation facilities . . .”
- Section C (2): The Parties Mutually Agree: “**That this agreement shall terminate when the State-District contract terminates, unless the parties hereto shall hereafter mutually agree to terminate it sooner.**” [The State-District Contract terminates 47 years after

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completion of each dam and reservoir discussed in the Agreement. All dam facilities were completed in the mid - 1960s].

- Section C (3): The Parties Mutually Agree: “The performance of this agreement by the Service is contingent upon the appropriation of sufficient funds to enable to Service to perform.”
- Section C (4): The Parties Mutually Agree: “. . . **that during any period in which Federal appropriations do not permit the Service to carry out its obligations under this agreement, the Service will permit the District, pursuant to the provisions of Section 7 of the Granger-Thye Act (16 USC 580d) or any other applicable Federal law, to administer, operate, and maintain the recreation facilities at the District’s expense.**”

Turning back to the FERC Approved Recreation Plan at Section 6.3:

– “A copy of the joint letter signed by NID and TNF addressed to FERC, dated April 22, 1998 is included in Appendix A. [“Joint Letter”]. The Letter documents *the agreement* responsibilities of both the TNF and NID.”

Thus, the “Joint Letter” sets forth NID’s and USFS’ understanding of their obligations under the 1966 Agreement. That was reasonable in 1998, when there was roughly 14 years left on its term. However, the “Joint Letter” *is not* a separate, enforceable contract.

– “Since 1997, *NID, through agreement*, is funding the USFS to do the operation and maintenance of all recreation facilities. A budget is developed annually and agreed to jointly by NID and TNF.”

Turning to the 1998 “Joint letter,” it is obvious that document addresses the parties’ respective obligations under the 1966 Agreement. The FERC filing of the Joint Letter included the 1966 Agreement as an attachment.<sup>3</sup> Additionally, the Parties cite Clause C.4. of the 1966 Agreement, which says that if funds are unavailable to allow USFS to operate

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<sup>3</sup> See FERC Docket No. 2266, Accession No. 19980507 - 0411

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the facilities, USFS will permit the District to administer, operate, and maintain the recreation facilities at the District expense. The 1998 Joint Letter reflects that instead of operating the facilities itself (as it was required to under the 1966 Agreement), NID determined it would be more efficient to simply pay the USFS to do so.

However, NID's agreement to fund USFS operations pursuant to the 1998 "Joint Letter" was not an open-ended commitment. Instead, the parties agreed to implement this plan for 1998, and to reevaluate later. This procedure apparently worked, so the parties continued to implement it until the 1966 Agreement expired (and beyond for a limited time).

Nothing in the "Joint Letter" or 1966 Agreement indicates that NID agreed to fund USFS operation of USFS facilities at all times in the future. Rather, this was a short-term commitment which reflected the parties' obligations under the now expired 1966 Agreement. Neither the 1966 Agreement, nor the "Joint Letter" which is based on it have any further validity concerning responsibility for costs or operation and maintenance responsibilities of Project facilities. Alternatively, if the USFS wishes to argue the 1966 Agreement remains valid - then it must either operate the facilities at its expense, or comply with its contractual obligation under Section C.4 to "permit the District to administer, operate, and maintain the recreation facilities at the District expense," which it has to date refused to do for the 2017 recreation season.

**B. Neither FERC Precedent, Nor Federal Law Support USFS' Arguments.**

**1. FERC Precedent Does Not Support USFS' Position that NID is Responsible for USFS Costs.**

USFS contends that NID is responsible for costs incurred by USFS to operate recreation facilities located upon Tahoe National Forest lands within the boundaries of the Yuba Bear Project. FERC recently rejected a very similar claim brought by Butte County against California Department of Water Resources ("DWR") concerning the FERC licensed Oroville Project. FERC will reject USFS' similar arguments for the same reasons it rejected Butte County's.<sup>4</sup> Butte County's claim is described below:

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<sup>4</sup>*County of Butte, California v. California Department of Water Resources*, 128 FERC ¶ 61,068 (2009).



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Butte County pays more than five million dollars per year to provide law enforcement and public access to the Oroville Project. (*Id.* at Par.10.) Butte County asserted that under the standard license conditions incorporated in the Oroville Project license (identical to those incorporated in the Yuba Bear Project License),<sup>5</sup> the Licensee must “provide for safe recreational opportunities . . . and “full public utilization of such lands and waters for navigation and recreation purposes.” Butte County asserted that by failing to fund these services, the Licensee breached its duties under the license. (*Id.* at par.8.) Butte County asked FERC to require DWR to reimburse Butte County more than five million dollars annually for costs incurred for providing public safety services to the Project, and to pay Butte County more than six million dollars for the use of “county land and natural resources.”

FERC rejected Butte County’s arguments under the following rationale:

Here, Butte County alleges that by failing to reimburse it for the public services it provides on project lands, California DWR is unable to satisfy the recreation and public safety requirements of its license. Butte County’s assertions are without merit.

As a general matter, it is our policy to require our licensees to implement necessary license conditions and not to fund personnel at local agencies. Consistent with this policy, nothing in California DWR’s license requires an agreement between the licensee and Butte County to pay for law enforcement on project lands or waters. The commission looks to the licensee to ensure compliance with all of the license requirements on project lands and waters. Should a licensee choose to contract with local entities to provide for law enforcement and safety services through an “off-license” agreement, it is free to do so. **However, we do not require our licensees to subsidize local services.**

(128 FERC ¶ 61,068, at pars. 18, 21) (Emphasis added).

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<sup>5</sup>*Nevada Irrigation District, Order Issuing License (1963) [incorporating Form L-2, December 15, 1953].*

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FERC should apply a similar analysis to USFS' demand that NID enter into a collections agreement to pay USFS for services provided within the boundaries of Project No. 2266. Nothing in NID's Project license requires such an agreement. While NID *may* enter into such an agreement (as it did in the 1998 "Joint Letter") it cannot be required to subsidize Forest Service operations.

## **2. Federal Law Does Not Support USFS' Position.**

USFS has cited no provision of federal, state, or local law which requires NID to pay USFS to operate USFS facilities.

Internal USFS documents indicate that USFS would operate its own facilities under the Federal Lands Recreation Enhancement Act (FLREA). FLREA allows USFS to impose fees on "visitors" for services such as providing campground facilities (16 USC § 6802); and to enter into a "Fee Management Agreement" pursuant to which USFS pays a local agency to collect fees or provide services (16 USC § 6805). However, FLREA does not authorize USFS to charge a local agency for costs incurred by the USFS to provide services related to USFS facilities.

FERC regulations related to recreation are also silent as to any obligation of a licensee to pay a federal land manager for providing services on federal lands. A FERC licensee must, "comply with Federal . . . regulation for health, sanitation and public safety ...[and] provide either by itself or through arrangement with others for facilities to process adequately sewage, litter, and other wastes . . . ." (18 CFR § 2.7 (f)(1),(2)). But again, nothing in the regulation suggests that NID *must* pay the USFS to provide such services.

## **C. Internal USFS Documents Indicate its Position that NID is Responsible for Costs is not Credible.**

NID propounded a Freedom of Information Act request seeking materials related to USFS administration of the Recreation Facilities at issue. A number of USFS communications produced in response to that request acknowledge that NID *is not* responsible for USFS' costs incurred in operating USFS facilities, and that USFS would be required to "self-fund" for providing these services. Excerpts are set forth below:

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- **Amy Lind, Tahoe and Plumas NF Hydroelectric Coordinator, Email of August 24, 2015:**

In general, the licensee is responsible for building, maintaining and operating campgrounds that are within their FERC license. . . . However, **we cannot require licensees to enter into a collection agreement with us so that we can operate the campgrounds.** (Attached as **Exhibit “5”**).

- **Eli Ilano, Tahoe National Forest Supervisor, Email of November 3, 2015:**

Thanks Amy. **I would interpret this** [referring to NID’s Revised Recreation Plan and the 1966 Agreement] **as giving us the discretion to operate the facilities directly using our appropriations (funding sources) or to permit NID to operate at their expense.** What do you all think. (Attached as **Exhibit “4”**).

- **Kevin McCombe, Tahoe National Forest Recreation Manager, Email of August 11, 2016:**

Eli also stated in the call that **we need to plan TNF taking over operations of FS facilities next year with or without financial support from NID.** I am quite concerned that NID is going to leave us holding a very expensive bag when they fold up operations; **hopefully FERC can help us out here.** (Attached hereto as **Exhibit “3”**).

Based on the foregoing, USFS’ external position that NID is responsible for USFS’ recreation costs, when internally it has acknowledged the opposite, is simply not credible.

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**D. Internal Documents Indicate USFS Determined Early in 2016 Not to Renew NID's Special Use Authorization.**

It is important to keep in mind that NID has submitted an Application for Special Use Authorization for 2017, and that USFS has thus far refused to grant the Application. Based on internal USFS documents produced in response to NID's FOIA request, it appears that as early as July of 2016 recreation, Tahoe National Forest staffers did not anticipate renewing NID's Special Use Authorization for 2017. These materials suggest USFS performance reviews may have been part of a calculated effort to restore campground operations to USFS control in 2017, and to use FERC Staff to accomplish that objective.

- **Kevin McCombe, Tahoe National Forest Recreation Manager, Email of July 18, 2016:**

**Tahoe NF is in contact with the Federal Energy Regulatory Commission (FERC) as they carry the "big stick" in this matter. I have just completed a very thorough mid-season evaluation identifying NID shortfalls that has been forwarded to by supervisor's [sic] for review. NID was only issued a one-year permit and I expect the Forest Service will probably be running the campgrounds next year. (Attached hereto as Exhibit "6" at p.1.)**

- **Heather Newell, Tahoe National Forest Public Service Staff Officer, Email of July 13, 2016:**

I think we should continue to inspect. We should complete a mid-year evaluation and tell NID what has to be improved upon. Document if there is any improvement for the second half of the season. If it doesn't, **the permit expires and they will be in non-compliance and it will be well documented. A new permit would not be issued.** (Attached hereto as Exhibit "6" at p. 5.)

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### Conclusion

NID has submitted to USFS an application for Special Use Authorization to allow NID to operate recreation facilities located within the Yuba Bear Project boundary upon Tahoe National Forest lands. To date, USFS has refused to grant the requested Special Use Authorization. The parties have separately discussed a ‘parallel operations’ approach pursuant to which NID would operate recreation facilities located upon NID lands, and USFS would operate facilities located upon Tahoe National Forest lands. Those discussions have become stalled on the issue of cost - responsibility for USFS operations.

USFS has not cited any provision of law or NID’s Yuba Bear Project license which would require NID pay USFS to operate USFS facilities located within the Project boundary. NID’s prior agreement to pay such costs was predicated on a contractual obligation under the now expired 1966 Agreement. USFS’ contention that NID is responsible for USFS costs is not supported by the terms of the license for Project No. 2266, FERC precedent. NID will continue to negotiate in good faith toward an agreeable resolution of the identified issues.

Very truly yours,

MINASIAN, MEITH, SOARES,  
SEXTON & COOPER, LLP

By S/ Andrew J. McClure  
ANDREW J. McCLURE

AJM/vlh

Enclosures

cc: Remleh Scherzinger, General Manager  
Nevada Irrigation District