

Findings and Recommendations for Issuance of a Section 10(a)(1)(A) Enhancement of Survival Permit (TE109603-0) to the Idaho Department of Lands and the Idaho Department of Fish and Game in Association with the Candidate Conservation Agreement with Assurances for Columbia Spotted Frog at Sam Noble Springs, Owyhee County, Idaho

I. DESCRIPTION OF THE PROPOSED ACTION

A. Introduction

The U.S. Fish and Wildlife Service (Service) proposes to issue an Enhancement of Survival Permit (Permit) to the Idaho Department of Lands (IDL) and the Idaho Department of Fish and Game (IDFG) for the Columbia spotted frog (*Rana luteiventris*), a candidate species for listing under the Endangered Species Act of 1973, as amended (Act). The purpose of the Permit is to authorize incidental take of Columbia spotted frogs associated with the implementation of a Candidate Conservation Agreement with Assurances (Agreement) for spotted frogs at Sam Noble Springs in Owyhee County, Idaho.

The IDL and IDFG have applied to the Service for a Permit to authorize incidental take of Columbia spotted frogs within a 680 acre (275 ha) project area in Owyhee County, Idaho, for a period of 22 years. As a condition of the proposed Permit, the IDL, the IDFG, and the Idaho Governor's Office of Species Conservation (OSC), (collectively, the Agencies), would implement an Agreement (IDL *et al.* 2006), which includes various conservation measures for Columbia spotted frogs. The IDL and IDFG have submitted the Agreement as part of their permit application. The proposed Permit would be issued in accordance with section 10(a)(1)(A) of the Act, and the Service's Candidate Conservation Agreements with Assurances final policy (64 FR 32726).

The effects of the Service issuing the section 10(a)(1)(A) permit are analyzed in the Service's Environmental Assessment, the Finding of No Significant Impact determination, and in a Conference Opinion (USFWS 2006a, b, c). All of these documents are incorporated herein by reference as described in 40 CFR § 1508.13.

The Service has determined that activities conducted in compliance with the Permit are not likely to jeopardize the continued existence of the Columbia spotted frog. This document presents the Service's analysis and finding regarding whether the Agreement meets the Permit issuance criteria as described in section 10(a)(1)(A) of the Act.

B. Description of the Agreement

Under the proposed action, the Agencies would provide various conservation benefits for Columbia spotted frogs on the 680 acre (275 ha) project area (see Figure 2 of the Agreement) while maintaining the current land use of livestock grazing. Implementation of the Agreement for a period of 22 years is intended to reduce or eliminate threats to spotted frogs where they currently occur on the enrolled lands. Implementation of the Agreement is expected to result in an increase in the number and distribution of spotted frogs, and increase the long-term persistence of the species on enrolled lands. The Agreement contains two biological objectives

intended to conserve spotted frogs: first, to reduce impacts associated with livestock grazing and pond access; and second, to improve the amount and quality of spotted frog habitat. These objectives are the basis for the conservation measures identified in the Agreement and are tied to the known threats to the Columbia spotted frog, as identified in the candidate assessment for the species (USFWS 2005). The biological goal of the Agreement is the protection of all spotted frog sites known to be occupied (at the time the Agreement was developed) on the land that is enrolled under the Agreement and Permit.

C. Types of Activities Covered

Activities proposed to be covered under the Permit are the otherwise lawful activities that include livestock grazing, water withdrawal from springs, pond maintenance, vegetation management, and surveying/monitoring for spotted frogs. The IDL and IDFG are seeking incidental take coverage for the entire 680 acre (275 ha) parcel.

D. Conservation Strategy

The purpose of the Agreement is to reduce or eliminate threats to spotted frogs that are present on the enrolled lands. Under the Agreement, the IDL and IDFG would implement the specific conservation measures to benefit Columbia spotted frogs listed below (IDL *et al.* 2006). Conservation measures 1 through 6 have been initiated and are ongoing. Conservation measures 7 and 8 have not yet been implemented.

- (1) Lease to the IDFG, for approximately 22 years, a 104 acre (42 ha) portion of the enrolled lands that contains the majority of the springs, ponds, and wet meadow occupied by spotted frogs;
- (2) Fence the 104 acre (42 ha) wetland complex to exclude livestock and annually check and maintain the fence as necessary;
- (3) Reduce the impacts of livestock grazing on areas outside the enclosure by reducing the number of AUMs by 43 percent on the enrolled land;
- (4) Reduce the amount of water used by livestock by including a float-operated shut-off valve in water tanks supplied by water withdrawn from the area occupied by spotted frogs;
- (5) Increase the amount of available spotted frog habitat by constructing a new pond adjacent to an occupied springhead (Pond #14) and fence a portion of the pond to exclude livestock access;
- (6) Refurbish two existing livestock watering ponds with gentle slopes on one side to facilitate use by spotted frogs;
- (7) Maintain ponds currently occupied by spotted frogs as necessary; and
- (8) Manipulate vegetation inside the enclosure to benefit spotted frogs (targeted juniper removal to maintain surface water availability and control non-native invasive plants).

The Agreement's conservation goal would be met by providing the IDL and IDFG incentives to implement conservation measures for spotted frogs and the regulatory certainty concerning land use restrictions that might otherwise apply should spotted frogs become listed under the Act in

the future. Should the IDL or the IDFG be found not to be in compliance with the conditions of the Permit, the Service would retain the authority to immediately suspend the Permit at its sole discretion, consistent with current regulations described in 50 CFR 13.27(a).

Monitoring and Reporting

The Agreement proposes both compliance and biological monitoring. Both the IDL and IDFG would be responsible for conducting the monitoring, and the IDL would be responsible for reporting the monitoring results. The Service would assist with monitoring. Compliance monitoring would consist of the following actions; the agency responsible for each action is shown in parentheses.

- (1) Annually check fence integrity in October (IDL);
- (2) Annually check that livestock have been removed from the parcel in November (IDL);
- (3) Annually assess whether ponds occupied by spotted frogs need to be refurbished (IDFG); and
- (4) Annually assess whether vegetation manipulations are needed to benefit spotted frogs (IDFG).

Biological monitoring would consist of the following actions; the agency responsible for each action is shown in parentheses.

- (1) Count spotted frog egg masses annually for the first 5 years, periodicity after 5 years to be mutually agreed to by all parties (IDFG);
- (2) Conduct total population estimate for spotted frogs every 5 years (IDFG);
- (3) Search for spotted frog metamorphs annually for the first 5 years, periodicity after 5 years to be mutually agreed to by all parties (IDFG);
- (4) Annually check ponds outside the enclosure for spotted frogs and monitor pond depth within enclosure (IDFG);
- (5) Conduct vegetation sampling of the wet meadow every 5 years for plant species composition, and every 3 years for the overall size of the wet meadow/riparian area (IDL); and
- (6) Conduct vegetation sampling below Pond #3 annually for the first 5 years, and every 5 years thereafter (IDL).

Reports would be due to the Service by January 30 of the year following the biological surveys; copies will be made available to all Parties.

Notification

The proposed Agreement contains provisions for notification of the Service prior to a number of events, including those covered activities likely to result in authorized take such as pond excavation (30 days), proposed modifications of the Agreement (60 days), and termination of the Agreement (60 days). Please see the Agreement (IDL *et al.* 2006) for further notification details.

II. ANALYSIS OF EFFECTS

The Service has determined that the impacts to the Columbia spotted frog likely to result from the proposed action would be adequately minimized by the conservation measures described in the Agreement and the associated Permit. The Service also determined that the proposed action and resultant minimization and elimination of the threats would likely increase the abundance and expand the distribution of frogs on the enrolled lands frogs such that if the conservation measures were to be implemented on other similarly situated lands, the need to list the species under the Act would be precluded. The effects of the proposed action on the Columbia spotted frog are fully analyzed in the Agreement (IDL *et al.* 2006) and the Service's Conference Opinion (USFWS 2006c), which are incorporated herein by reference. A summary of the analysis is provided below.

A. Site-specific Effects

The proposed action would, for approximately 22 years, continue to eliminate livestock grazing in most of the occupied Columbia spotted frog habitat within action area, except for conservation purposes. Continued elimination of livestock grazing in the enclosure is likely to have several beneficial direct effects on Columbia spotted frogs, including: reduced direct mortality; improved shade, hiding, and foraging cover; improved habitat for frog prey (insects); improved survival of all age classes of frogs; and reduced predation. These improvements in habitat should improve survival of all age classes of frogs by reducing mortality from predators, desiccation, potential adverse impacts to water quality, and intraspecific competition for food. In addition, increased vegetation cover, in combination with improvements in other habitat components described below should, over time, increase the likelihood of connecting the population of frogs on the action area with other populations downstream in Rock Creek. The proposed action would also benefit spotted frogs by improving connectivity with Rock Creek (via improved vegetation cover and increased surface water) and increasing the capacity of the wet meadow to hold and release water, thereby increasing surface water availability later in the season and thus the amount of suitable habitat for spotted frogs. The anticipated net result of these changes is an increase in the extent, duration, and quality of Columbia spotted frog habitat through enhancement of ponds and wetland meadows for feeding, breeding, foraging, and migration.

The proposed action would increase the amount of water available to frogs in occupied habitat within the enclosure as compared to past conditions. Increased water availability for frogs would reduce the amount of incidental take from previous levels. Reducing the number of AUMs by 43 percent would likely reduce water demand by livestock in the action area. The estimated water savings resulting from the 43 percent reduction in AUMs varies from 10 to 22 percent depending on spring flows. These water savings estimates only apply to the 30-day period when livestock grazing takes place and assumes the number of livestock watering in the now excluded area is proportional to the number of AUMs inside the enclosure. Given the preference of livestock for grazing the more succulent vegetation in the wet meadow area, these estimates or water savings likely underestimate the actual savings. Construction of the water collection and conveyance system (Trough #15) would still allow remaining livestock in the action area to use water from the excluded area, but less water would likely be used. Because frogs depend heavily on

available surface water, especially in late summer when livestock graze in the action area, making more water available for frogs in occupied habitat is expected to be beneficial.

The proposed action would also maintain or improve Columbia spotted frog breeding and reproduction through a monitoring and adaptive management approach to ensure maintenance of high-quality pond and wetland habitat. Maintenance of frog habitat in the manmade ponds of the action area necessitates occasional excavation with heavy equipment to remove material naturally collecting. Frogs not captured prior to excavation are likely to experience harm, if not death. This activity is likely to result in take at occupied ponds, and is analyzed in the conference opinion (USFWS 2006c) and authorized in the (10)(a)(1)(A) permit.

The proposed action would also likely benefit frogs by manipulating vegetation to improve frog habitat. Junipers that are encroaching on the springs and wet meadow would be removed. This action would have no adverse effect on spotted frogs and would have a beneficial effect over the long-term by improving spring flow, surface water availability, and the extent of the wet meadow vegetation, thereby improving Columbia spotted frog habitat.

Livestock grazing would continue to occur outside the enclosure at about the same rate as prior to the proposed action. Those frogs outside the enclosure (Ponds #12 through #14) would still be at risk of livestock impacts (i.e., trampling, reduced water quality and quantity, reduced wetland vegetation, reduced prey availability) and would continue to have degraded habitat and reduced connectivity to other populations. Pond #12 is now partially fenced, so livestock impacts to spotted frogs occupying that pond are reduced. Improving the amount and distribution of water outside the enclosure should reduce these sources of take by dispersing livestock grazing pressure over the entire Big Field and by reducing the number of cattle using each pond. Columbia spotted frogs would benefit through the protection of an occupied springhead and a portion of the adjacent man-made pond (#14) through fencing. In addition, two previously existing ponds (#12 and #13) would be maintained with a gently sloping north bank to facilitate use by spotted frogs. Use of these ponds by spotted frogs was observed for the first time in 2006 (USFWS 2006c).

Additional take would occur as a result of monitoring and surveying. Frogs would be captured, handled, and PIT-tagged as required by the Agreement. In addition, mortality, as a result of monitoring, may occur. This take is analyzed in the conference opinion (USFWS 2006c) and authorized in the (10)(a)(1)(A) permit.

B. Range-wide Effects: Threat Reduction

1. Present or threatened habitat destruction or modification.

Columbia spotted frog habitat degradation and fragmentation is probably a combined result of past and current influences of heavy livestock grazing, spring development, agricultural development, urbanization, and mining activities. These activities eliminate vegetation necessary to protect frogs from predators and UV-B radiation (Kiesecker and Blaustein 1995, Blaustein *et al.* 1997); reduce soil moisture, create undesirable changes in water temperature, chemistry, and availability; and can cause restructuring of habitat zones through trampling,

downcutting, or degradation which in turn can negatively affect the available invertebrate food source (IDFG *et al.* 1995, Munger *et al.* 1997, Reaser 1997, Engle and Munger 2000, Engle 2002). These activities occurred in the past within Columbia spotted frog habitat and resultant degraded habitat has not improved over time.

The proposed action will reduce this threat to spotted frogs by precluding livestock access to 104 acres (42 ha) of the core wetland complex area for the next 22 years, reducing the number of AUMs permitted to graze the entire 680 acre (275 ha) parcel, and reducing the period of time the AUMs are allowed onsite. The enclosure fence has been in place since 2003 (IDL *et al.* 2006). During the past 3 years, wetland vegetation has recovered to a large extent around many of the ponds and springs within the enclosure. The amount of water within the enclosure that is used by livestock has been reduced by an estimated 43 percent. The net result of the proposed action is anticipated to be sufficient to minimize the threat of habitat destruction or modification to Columbia spotted frogs on the Big Field parcel.

2. *Overutilization.*

This is not known to be a threat to Great Basin Columbia spotted frogs at this time. The proposed action would not likely increase the magnitude, severity, or extent of this factor.

3. *Disease or predation.*

Chytridiomycosis (chytrid) is an emerging panzootic fungal disease in the United States (Rachowicz *et al.* 2005) that is responsible for amphibian population declines in various locations. Chytrids are ubiquitous fungi that are found in aquatic habitats and moist soil where they degrade cellulose, chitin, and keratin. Chytrid has the ability to cause local population declines and local host extinction. The presence of chytrid was confirmed in spotted frogs in Owyhee County, Idaho, but this fungus has not yet been detected in spotted frogs at Sam Noble Springs. Since protocols to prevent further spread of this disease by researchers were instituted in 2001 (FWS 2005), chytrid does not currently pose a threat to spotted frogs occurring in the action area. In addition, annual population monitoring is part of the proposed action and linked with a broader effort to annually monitor spotted frog populations throughout the Owyhee Mountains; such work will allow continued monitoring of the county-wide incidence of chytrid.

Predation by fish and bullfrogs, while an important threat to spotted frogs in general, is not currently a threat to spotted frogs at Sam Noble Springs, nor to spotted frogs in the Owyhee Mountains. Nonnative salmonids bass, and bullfrogs (*Rana catesbeiana*), typical predators of spotted frogs in other areas of their range (IDL *et al.* 2006) are not known to occur at Sam Noble Springs.

4. *Inadequacy of existing regulatory mechanisms.*

Spotted frog occurrence sites and potential habitats occur on both public and private lands. Spotted frog occurrences and habitat that are on Federal land are protected because policies of both the U.S. Forest Service and the Bureau of Land Management direct the agencies to consider candidate species during their land management planning processes. Spotted frog occurrences

and habitats that occur on State lands are less protected. None of the States in which the Great Basin Columbia spotted frog occurs (Idaho, Nevada, and Oregon) afford the species official protection, despite the fact that both Idaho and Nevada have classified the spotted frog as a protected or sensitive species.

Spotted frog occurrence sites and habitats present on private land are afforded no protection. Springs and wetland habitats in the Great Basin on private land are frequently altered to improve water availability for livestock or irrigation, which is often detrimental to spotted frogs. Protection of wetland habitat from loss of water to irrigation or spring development is difficult because most water in the Great Basin has been allocated to water rights applicants based on historical use and spring development has already occurred within much of the known habitat of Columbia spotted frogs (USFWS 2005).

The proposed action will eliminate this threat within Sam Noble Springs, and within the Big Field parcel. No additional spring development would occur on the Big Field parcel, and ponds within the enclosure would only be refurbished to benefit spotted frogs. In addition, by excluding livestock from the 104 acre (42 ha) core spring/wetland area, this area will be allowed to regenerate wetland vegetation, and virtually all water produced by the six springs within the enclosure will be available for spotted frogs and other wetland obligate species. The amount of water withdrawn below pond three will be restricted in amount (replacing only that which the livestock consume and is lost by evaporation), and in duration (withdrawal only occurring while the livestock are present on-site). A reduction of at least 43 percent in water use by livestock will occur as a result of the proposed action. The net result of the action will be to minimize the threat of inadequate regulatory mechanisms to Columbia spotted frogs at Sam Noble Springs and on the Big Field parcel.

5. *Other natural or manmade factors.*

Multiple consecutive years of less than average precipitation have resulted in a reduction in the number of suitable sites available to Columbia spotted frogs (USFWS 2005). Local extirpations eliminate source populations from habitats that in normal years are available as frog habitat (Lande and Barrowclough 1987, Schaffer 1987, Gotelli 1995). These climate events are likely to exacerbate the effects of other threats, thus increasing the possibility of stochastic extinction of subpopulations by reducing their size and connectivity to other subpopulations (USFWS 2005). While the proposed action will not alter the amount or timing of precipitation at Sam Noble Springs, it will improve connectivity of subpopulations within Sam Noble Springs and the larger Rock Creek complex and therefore reduce the effects of sub-average precipitation. Habitat and population connectivity will be improved by increasing the amount and timing of surface water availability, increasing the amount and height of wetland vegetation, and improving water quality. By improving connectivity in these ways, the proposed action will minimize threats to spotted frogs at Sam Noble Springs and on the Big Field parcel from other natural factors.

C. Summary

Implementation of the Agreement is expected to result in minimization and elimination of the known threats to the Columbia spotted frog (USFWS 2005) on the enrolled lands, thereby

resulting in a population increase and a more widely distributed population of spotted frogs on the enrolled lands. If conservation measures included in the Agreement were implemented on all similarly situated properties, the Service believes that the need to list Columbia spotted frogs would be precluded or removed.

The Service estimates that it may take 3 to 5 years of implementing the Agreement and site-specific plans to fully reach a net conservation benefit for spotted frogs. This is primarily due to the expected lag time in the response of vegetation within the livestock enclosure and the consequent lag in spotted frog population numbers. Due to the arid environment of the enrolled lands and variable precipitation in the area, vegetation recolonization rates will likely be variable among years. Depending on these factors, it could take 2 to 3 years for vegetation to re-grow in areas previously subjected to heavy livestock use and another few years for the spotted frog population at the site to respond to the higher quality vegetation that has been established.

III. ENHANCEMENT OF SURVIVAL PERMIT CRITERIA – ANALYSIS AND FINDINGS

As set forth in 50 CFR 17.32(d)(2), the Service finds that the section 10(a)(1)(A) permit issuance criteria for a Candidate Conservation Agreements with Assurances are met as outlined below.

1. The taking of Columbia spotted frogs will be incidental and will be in accordance with the terms of the Candidate Conservation Agreement.

The Service finds that any take of Columbia spotted frogs resulting from implementation of the conservation measures and management activities included in the proposed Agreement will be incidental to, and not the purpose of, these lawful activities. Otherwise lawful activities on the enrolled lands proposed in the Agreement include livestock grazing, water withdrawal from the wetland complex, pond excavation, vegetation management, and spotted frog and vegetation monitoring. The IDL and IDFG are responsible for obtaining other authorizations, if any, necessary under State, Federal, or local laws or regulations in order to carry out these activities. The validity of the Permit will be conditioned upon strict observance of all applicable local, State, or other Federal laws.

2. The Agreement complies with the requirements of the Service's Candidate Conservation Agreement with Assurances policy.

Based, in part, on the analysis provided above in Part II of this document, the Service finds that the Agreement's conservation measures and expected benefits to Columbia spotted frogs, when combined with those benefits that would be achieved if it is assumed that similar conservation measures were also implemented on other necessary properties, would preclude or remove the need to list the species, as discussed in the Candidate Conservation Agreement with Assurances final policy (64 FR 32726). The Agreement also complies with all other requirements of the Candidate Conservation Agreement with Assurances policy.

3. The probable direct and indirect effects of any authorized take of Columbia spotted frogs under the Permit will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

Issuance of the section 10(a)(1)(A) Enhancement of Survival Permit to the IDL and the IDFG was reviewed by the Service under section 7 of the ESA. In a conference opinion, which is incorporated herein by reference (USFWS 2006c), the Service concluded that the direct and indirect effects of implementing the Agreement and issuing the Permit authorizing incidental take of Columbia spotted frogs would not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.

The Service also finds that the taking authorized under the Permit will not appreciably reduce the likelihood of the survival and recovery of Columbia spotted frogs in the wild. The Agreement is intended to provide for protection of Columbia spotted frog populations on the enrolled land. Under the Agreement, the majority of occupied Columbia spotted frog sites (seven of nine) will be protected by implementing conservation measures. The two 'unprotected' ponds were not known to be occupied until after the draft Agreement had been submitted for public comment, revised, and considered final by the Agencies (USFWS 2006c). One of the two 'unprotected' ponds is partially fenced (Pond #12), therefore partially protecting spotted frogs from potential livestock impacts. The Service does not believe the actual incidental take of spotted frogs inside or outside the enclosure will detract from the conservation benefit of having spotted frog populations distributed across the enrolled land. If seven individual spotted frogs are determined to have been incidentally killed during any calendar year, the Service and the Agencies will identify and implement additional protective measures to minimize any further incidental take. The Agreement contains adequate provisions to minimize direct mortality of spotted frogs; no further conditioning of the Permit was necessary.

4. Implementation of the terms of the Candidate Conservation Agreement is consistent with applicable Federal, State, and Tribal laws and regulations.

The Agreement is consistent with all applicable Federal and State laws and regulations. There are no Tribal laws or regulations applicable to the Agreement.

In accordance with the National Environmental Policy Act (NEPA), the Service prepared an Environmental Assessment (EA) and subsequently a Finding of No Significant Impact (FONSI).

The Permit authorizes incidental take of Columbia spotted frogs in accordance with the Agreement and the Act. The IDL and the IDFG are responsible for obtaining other authorizations, if any, under State, Federal, or Local laws or regulations in order to carry out their activities. The validity of the Permit will be conditioned upon strict observance of all applicable State, Local or other Federal laws.

The issuance of the Permit is an undertaking as defined by the National Historic Preservation Act (NHPA). The Service has determined that the Permit, in and of itself, is an undertaking of the type that has little or no potential to cause effects on historic properties (Section 800.3 a(1)).

5. Implementation of the terms of the Agreement will not be in conflict with any ongoing conservation programs for Columbia spotted frogs.

Approval of the Agreement and issuance of the Permit will not be in conflict with any ongoing conservation program for the Columbia spotted frogs, in fact, Agreement approval would compliment ongoing conservation programs.

Over the past several years, the Agencies have worked with Federal agencies and local universities to further conservation of Columbia spotted frogs. In particular, the IDFG and Boise State University have cooperated on a number of graduate studies focused on spotted frogs, and both parties have been involved in implementing a BLM cost share project for long-term monitoring of spotted frogs in Owyhee County. The Agreement is consistent with that ongoing monitoring program by implementing conservation measures for spotted frogs and integrating monitoring conducted on the enrolled land with the ongoing monitoring program. The Agreement's conservation measures would be implemented by the Agencies, and would generally consist of maintaining fencing around the 104 acre (42 ha) wetland area to exclude livestock, reducing the amount of water used by livestock, maintaining/enhancing ponds to benefit spotted frogs, and managing vegetation to benefit frogs (primarily via targeted juniper removal, with other actions possible).

6. The applicant has shown capability for, and commitment to, implementing all of the terms of the Agreement.

Signing of the legally-binding Agreement by the IDL and IDFG assures that it will be implemented, and commits all parties to the obligations outlined under the Agreement. Implementation of the Agreement will be a condition of the Permit, and a failure to perform obligations under the Agreement may be grounds for suspension or revocation of the Permit and cancellation of the Agreement.

The IDFG has demonstrated their interest and capability in, and commitment to, spotted frog conservation over the past 5 years. During this time period, IDFG has actively supported two graduate student studies on spotted frogs; has been involved in, and recently took the lead of, the long-term population monitoring program; since 2003 has leased the 104 acre (75 ha) wetland area from IDL; and has constructed the exclosure fencing on the enrolled lands.

The IDL has also been active in spotted frog conservation. They have pursued completion of the Agreement, been party to negotiations with the permittee to reduce the number of AUMs allowed on the enrolled lands, participated in the design and construction of the water collection and delivery system to compensate for reduced water availability to livestock resulting from the Agreement, and began conducting vegetation monitoring along Rock Creek and the associated riparian area in 2000 and 2001, respectively.

The Agencies have funded the efforts described above to benefit spotted frogs. The IDFG has expended more than \$28,000 since 2003 on conservation of spotted frogs at Sam Noble Springs. Payments on the lease for the first 4 years total approximately \$8,497; the total

cost of the lease over its 25-year duration will be approximately \$38,508. The IDFG funded the construction of the wetland exclosure fence at an estimated cost of \$10,000, and has maintained it for the first 4 years of the lease at an estimated \$750 (\$250/year). The IDFG also contributed to the development, construction, and installation of the water collection and delivery system leading to Trough #15; their total cost was approximately \$8,689. In addition, the IDFG funded the cultural resource survey required to enter into the lease with IDL (an estimated \$400). Finally, the IDFG has supported multiple years of spotted frog monitoring at Sam Noble Springs and elsewhere in Owyhee County; cost estimates for this work are not readily available.

The IDL has also expended funds to conserve spotted frogs at Sam Noble Springs. Since signing the lease with the IDFG in 2003, the IDL has spent an estimated \$2,800 on administration and pond development (Pond #14) and maintenance (Ponds #12 and #13). The IDL also contributed to the development, construction, and installation of the water collection and delivery system leading to Trough #15; the total cost of their efforts was approximately \$9,982.

The Service's Snake River Basin Office (SRBO) has been active in spotted frog conservation efforts. Over the last several years, the SRBO has supported spotted frog conservation efforts by expending office funds to support population surveys and has approached neighboring landowners about participating in a similar agreement. This Agreement is the first such conservation agreement for a Great Basin population of Columbia spotted frogs; therefore, the Service believes the commitment of public funds are necessary and appropriate in order to realize conservation benefits for spotted frogs and provide an example to landowners that are considering participating in similar agreements. The Service will exercise its funding discretion if approached by other landowners interested in developing similar agreements.

7. The duration of the Agreement (approximately 22 years) is sufficient to allow for conservation of Columbia spotted frogs.

This Agreement will be in effect for the duration of the IDFG lease (IDL *et al.* 2006), or approximately 22 years from the date upon which the Agencies have signed it. The Permit will contain notification requirements pertaining to incidental take and land transfer. The IDL or the IDFG will notify the Service at least 30 days prior to initiating (authorized) activities likely to result in take of spotted frogs. The IDL or the IDFG will notify the Service at least 60 days in advance of a potential land sale or transfer. Both requirements are designed to allow the Agencies to review the status of the Agreement and the distribution of spotted frogs on the land and make informed decisions about the best course of action.

IV. PUBLIC COMMENTS

The Service published a Notice of Availability of the Department's Permit application, including the Agreement and EA, in the Federal Register on February 1, 2006 (71 FR 5358). Publication of the notice initiated a 30-day comment period, which closed on March 3, 2006. A news release and Federal Register notice was transmitted (mail, email, and facsimile) to a total of 265 contacts, including local, State, and Federal elected officials; local, State, and Federal agencies; non-governmental organizations; Tribes; local universities and colleges; and private citizens and companies. Copies of the documents were also mailed to two individuals or organizations as a

result of requests the Service received after publication of the notice in the Federal Register. In addition, the website address where the documents were posted was provided to six individuals or organizations that requested copies of the documents. The Service received written comments from the Western Watersheds Project, Idaho Conservation League, Office of Species Conservation, and four private citizens.

A. General Comments

The Western Watersheds Project provided 124 comments in two letters, both dated February 28, 2006. The Idaho Conservation League provided three comments in a letter dated February 27, 2006. The Office of Species Conservation, in a letter dated March 3, 2006, indicated that they did not have any specific comments on the Agreement and supported the Agreement. The Service responded to all of these comments; our individual responses are provided in Attachment 1, and our responses to general categories of questions are provided below.

Category 1. Some commenters indicated that more information was necessary before the Service could enter into an Agreement for Columbia spotted frogs, or they stated that they did not believe the Service was using the best available science to evaluate the proposal.

Response: The responsibility of the Service is to evaluate the application package at the time it is submitted. We lack resources to be able to anticipate submission of CCAAs and conduct studies prior to their submission. Evaluating and approving an Agreement does not require complete knowledge of a species or an ecosystem. To meet the Service's issuance standard for Agreements, each must contain sufficient information about threats and conservation measures to allow us to determine whether the Agreement adequately addresses all threats to target species that are present on a parcel. While there are areas of uncertainty in the Agreement, it contains actions designed to address these uncertainties. These actions should be sufficient to provide us with information with which to evaluate the status of the spotted frog population and habitat quality and make minor changes in site management if necessary.

Regarding the statement that the Service did not use the best available science to evaluate the proposal, we used all available information that was pertinent to the proposed action and our responsibilities under NEPA and the Act. The purpose of an EA is to briefly analyze the impacts of an action and to determine whether the preparation of an Environmental Impact Statement (EIS) is necessary. The EA is not meant to be an all-inclusive review of literature and research related to the proposed action, and we determined through the EA that development of an EIS was not needed. Additional analyses of the effects of the proposed action, using additional information and research, were conducted in the conference opinion (USFWS 2006c).

Category 2. Some commenters indicated that the effect analyses included in the EA and Agreement must be broadened to include other species and other actions occurring in Owyhee County.

Response: The Service agrees with this comment and refers the commenters to those sections of the EA (sections C through H) that include analyses of the effects to wetland and upland vegetation and hydrology, livestock grazing, other wildlife, local communities and economies,

recreation, and cultural resources within the affected area. The broadness of these analyses depended upon the activity and the magnitude of the effect. Because these analyses are within the scope of the EA, such an inclusive analysis is not appropriate in the Agreement and is therefore not a part of that document.

Category 3. A concern was noted over the timing of pond refurbishment and scope of the proposed vegetation management.

Response: We incorporated some of the suggested changes relative to the timing of pond refurbishment. In brief, the Agreement now states that when pond refurbishing is needed to benefit Columbia spotted frogs, ponds will be scheduled for maintenance in a manner that will minimize impacts to spotted frog populations and habitat. This approach will allow limited simultaneous refurbishing where such activities can be conducted with minimal impacts to spotted frogs and avoid larger impacts possible from simultaneous refurbishing of most or all ponds. Regarding the scope of the proposed vegetation management, the intent of the Agreement is to allow focused juniper removal where encroachment of junipers is threatening water production by springs. Targeted removal of junipers in close proximity to springs will ensure that spring flows remain optimal for spotted frogs. The only other vegetation management activities included in the Agreement are to aggressively control non-native, invasive plant species, and possibly to manage vegetation within the enclosure if it is demonstrated to have an adverse effect on spotted frogs (*i.e.*, too dense to allow overland frog movements). Some management efforts to control non-native, invasive plant species have already occurred and will be ongoing as necessary (G. Patton, IDFG, pers. comm. 2006). Such actions are required under State law. In contrast, any action to manage vegetation within the enclosure will be agreed upon by the Agencies prior to its implementation.

Category 4. Some commenters were confused about which actions described in the Agreement and EA had already been implemented and which actions remain to be implemented.

Response: Table 1 of the Agreement clearly identifies which activities have been completed and which activities remain to be completed. To summarize, the lease and enclosure fence are in place, livestock grazing in the enclosure has been eliminated, the water collection and delivery system has been developed and installed, the two livestock ponds outside the enclosure (Ponds #12 and #13) have been refurbished, and a new pond on the western edge of the parcel (Pond #14) has been excavated. The fence around Pond #14 has not yet been completed, although it is scheduled for completion prior to October 31, 2006. Ponds within the enclosure have not been refurbished, and vegetation management (juniper removal) has not yet occurred. Spotted frog population and wetland vegetation monitoring has begun and is ongoing.

Category 5. A concern was noted over potential take of Columbia spotted frogs that may have occurred prior to the Agreement being proposed and made available for public comment.

Response: The Columbia spotted frog is a candidate species under the Act; there are no take prohibitions for candidate species (unlisted species) under the Act. Although we will track the number of individuals and the amount of habitat taken throughout the term of the Agreement and Permit, the take prohibitions under section 9 of the Act will not take effect unless and until the

species is listed as threatened or endangered under the Act. Activities such as trenching that occurred prior to approving the Agreement will not be considered in the Permit because it pertains only to such taking that occurs as a result of the proposed action, which is approving the Agreement.

Category 6. Some commenters indicated that they believe that Columbia spotted frogs should be listed under the Act.

Response: Comments on a species' listing status are considered in the Service's annual candidate notice of review (CNOR) process. The Service annually reviews the status of the species and determines whether it should retain its candidate status, be removed from the candidate list, or be placed on the list of threatened and endangered species. Our determination after the 2005 CNOR process was complete was that the species continued to warrant its candidate status. The Reno Fish and Wildlife Office, in Nevada, has the lead responsibility for this species and is therefore responsible for conducting the annual CNOR for Columbia spotted frogs. The Snake River Fish and Wildlife Office in Boise, Idaho, provides the Reno office with all available information on spotted frogs in the State of Idaho to assist with the annual CNOR.

Category 7. A concern was noted about the possibility of trespass cattle gaining access to the Big Field parcel after October 2006.

Response: The Service will conduct periodic inspections to check for compliance with the Agreement commitments, including the period of allowable grazing. If trespass livestock are observed, we will immediately contact the IDL and request their removal and repair of any conditions that led to their presence. If the IDL cannot consistently prevent trespass livestock from entering the Big Field, the Service has the authority to terminate the Agreement and revoke the associated Permit.

Category 8. Some commenters were concerned about the uncertainties they perceived in the Agreement, including results of the water development project and noxious weed control.

Response: We agree that there are some uncertainties associated with the Agreement, particularly with the water collection and delivery system downstream of Pond #3. The State adequately addresses these uncertainties in the Agreement through the provisions for adaptive management. Visual inspection of the wet meadow and Pond #4 (downstream of Pond #3) in July 2006, did not indicate any changes in the extent of the wet meadow, or the size or depth of Pond #4. Livestock were not yet present on the parcel, and the water collection system had not yet been turned on. All indications were that the installation of the water collection system was successful. The areas disturbed by trenching to install the collection and delivery structures have largely been revegetated; only small patches of bare ground remain. The adaptive management provisions include an option to reduce the amount of water withdrawn from below Pond #3 if adverse effects to the wetland meadow or spotted frog populations are observed. This provision should allow changes in the operation of the water collection system if needed.

Regarding a commenter's reference to uncertainties related to chemical use, the only use of which we are aware occurred in 2005 and 2006, for the purpose of controlling whitetop, which is

a noxious plant species. The IDFG sprayed Escort in a small area adjacent to Pond #1. The initial control effort in 2005 was largely successful, and the anticipated amount of spraying to completely control the isolated occurrence in 2006 is small (G. Patton, pers. comm. 2006). Great care was taken to minimize potential negative effects of the spraying. Escort was not applied in the ponds, the area sprayed was sufficiently upslope to avoid any by-spray or run-off of the chemical into Pond #1, and a hand-sprayer was used so that drift or leaching of toxic compounds was unlikely. The net effect of these vegetation management actions is expected to be beneficial to spotted frogs, native vegetation, and the insect prey base.

Category 9. Some commenters were concerned about impacts of livestock use on the Big Field parcel.

Response: The Agreement would completely remove livestock grazing from the 104 acre (42 ha) wetland complex for approximately 22 years. The wetland complex is the core area known to be occupied by spotted frogs within the Big Field parcel and Sam Noble Springs. While livestock grazing would be allowed to continue outside the enclosure, it would occur at a rate commensurate with the reduction in amount of available land (576 acres instead of 680 acres). Along with fencing 104 acres (42 ha) to exclude livestock, the number of animal unit months (AUMs) allowed on-site would be reduced by 43 percent to compensate for the amount of area withdrawn from grazing. The net effect of these changes would be to: (1) completely eliminate livestock, and livestock-related threats to spotted frogs within the enclosure; and (2) maintain currently allowed levels of grazing on the remaining 576 acres (233 ha) of the Big Field.

We responded to all comments that were provided by the above listed entities; their comments and our responses are provided in Attachment 1.

B. Document Revision

We made four changes between the draft and final Agreement, none of which altered the direction of the Agreement, or significantly changed the content of the Agreement. All changes either increased the amount of information provided on a subject or clarified existing information provided in the Agreement. The changes we made are summarized below.

1. We added information to section 5.D. regarding non-native, invasive plant control. In brief, equipment will be inspected, and any noxious plants/seeds detected will be removed and destroyed prior to the equipment entering the Big Field parcel. In addition, both the IDL and IDFG will continue to aggressively control noxious weeds on the Big Field parcel, including within the enclosure, by appropriate measures, as is required under State law.
2. We clarified the approach to pond refurbishment in section 5.D. When pond refurbishing is needed to benefit Columbia spotted frogs, ponds will be scheduled for maintenance in a manner that will minimize impacts to spotted frog populations and habitat.
3. In section 22, we clarified the notification requirement for succession and transfer of the enrolled lands. Specifically, we added a requirement for 60-day advance notification of the Service if the IDL transfers property ownership to another party during the Agreement.

4. We added the Idaho Governor's Office of Species Conservation as a party to the Agreement; they will not be authorized incidental take under the 10(a)(1)(A) Permit.

V. GENERAL CRITERIA AND DISQUALIFYING FACTORS – FINDINGS

The Service has no evidence that the Permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b)-(c). The IDL and IDFG have met the criteria for the issuance of the Permit and do not have any disqualifying factors that would prevent the Permit from being issued under current regulations.

VI. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend issuance of a section 10(a)(1)(A) Enhancement of Survival Permit to authorize incidental taking of the Columbia spotted frog by the IDL and the IDFG in accordance with the Agreement.


Deputy Regional Director

9/29/06
Date

VII. REFERENCES

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