

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426
April 22, 2022

OFFICE OF ENERGY PROJECTS

Project No. 4881-031—Idaho
Barber Dam Hydroelectric Project
Ada County Idaho
Fulcrum LLC

VIA FERC Service

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Central Rivers Power, LLC
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VIA USPS First-Class Mail

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Reference: Deficiency of Final License Application

To the Party Addressed:

Ada County and Fulcrum LLC's (co-licensees) application for a new license for the Barber Dam Hydroelectric Project No. 4881 that was filed on November 30, 2021, does not conform to the requirements of the Commission's regulations. A list of deficiencies is attached in Schedule A. Pursuant to section 4.32(e)(1)(i) of the Commission's regulations, please file the requested information within 60 days from the date of this letter. We also need additional information to complete our evaluation and conduct our environmental analysis of your proposal. Schedule B contains a list of the requested information. Under section 4.32(g) of the Commission's regulations, please file the additional information within 90 days from the date of this letter.

In addition, the National Park Service, Boise River Enhancement Network, and U.S. Environmental Protection Agency requested a total of seven additional studies in response to the Commission's tendering notice. We have reviewed the seven additional study requests pursuant to section 4.32(b)(7) of the Commission's regulations, and have determined in a letter being issued concurrently with this letter that the co-licensees must conduct: (1) a recreation study to evaluate additional recreation opportunities at the project, and (2) an environmental justice (EJ) analysis to identify if EJ communities are present in the project area and to evaluate if relicensing the project would have disproportionately high and adverse effects on those EJ communities. The required recreation study and EJ analysis are outlined in Schedule C. The study results must be filed by February 15, 2023.

The co-licensees are not required to conduct the remaining studies; however, we do need additional information on: (1) the proposed spillway construction and the location of any bald eagle nests near the project, and (2) any anticipated need for additional dredging of the intake area during the term of a new license. This required information is described in detail in Schedule B.

If the required information in Schedule A, B, or C causes any other part of the application to be inaccurate, please revise that part and refile it by the due date. Additionally, we are currently reviewing the Supporting Design Report (SDR) and other dam safety documents filed after the license application for adequacy. Please be aware that further requests for additional information may be sent to you after we complete our review of the SDR and dam safety documents, and at any time before final action on your application.

Within 5 days of receipt, please provide a copy of this letter to all agencies and Indian tribes that the licensees will consult in preparing the responses to this request. When the requested information is filed with the Commission, the licensee must provide a complete copy of the information to each agency and Indian tribe consulted under section 16.8 of the Commission's regulations.

The Commission strongly encourages electronic filing. Please file the requested information using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

If you have any questions, please contact Matt Cutlip at (503) 552-2762, or matt.cutlip@ferc.gov.

Sincerely,

For David Turner,
Chief
Northwest Branch
Division of Hydropower Licensing

Enclosure: Schedule A
Schedule B
Schedule C

SCHEDULE A DEFICIENCIES

General

1. Section 4.32(b)(6) of the Commission's regulations requires an applicant to publish notice twice of the filing of its application, no later than 14 days after the filing date, in a daily or weekly newspaper of general circulation in each county in which the project is located. On December 27, 2021, the applicant filed proof that a newspaper notice was published once on December 12, 2021. However, there is no proof that a newspaper notice was published a second time. Please file proof of publication in a newspaper of a second notice of the filing of the license application.

Exhibit A

2. Section 4.61(c)(1)(vii) of the Commission's regulations requires that the Exhibit A provide a description of the drainage area at the project site. This information was not included in the Exhibit A; therefore, please revise the Exhibit A to describe the drainage area.

3. Section 4.61(c)(7) of the Commission's regulations states that Exhibit A must list annual operation and maintenance expenses, including insurance, and administrative and general costs. The Exhibit A does not include the insurance cost. Please revise the Exhibit A to include this information.

4. Section 4.61(c)(8) of the Commission's regulations requires that the Exhibit A include a detailed single-line electrical diagram. The single-line electrical diagram was filed as part of the Exhibit F as Critical Energy Infrastructure Information. Please provide this information in the final license application Exhibit A.

Exhibit E

5. Section 4.61(d)(2)(ii) of the Commission's regulations requires that the license application include an explanation of the specific measures proposed by the applicant, the agencies, and others to protect and enhance environmental resources and values and to mitigate the adverse effects of the project on such resources. The applicant must explain its reasons for not undertaking any measures proposed by any entity consulted.

In its October 24, 2021 comments on the draft license application, the Boise River Enhancement Network recommends a trash can or other disposal facility for monofilament fishing line and fishing hooks to reduce wildlife mortality at the portage trail. However, the final license application does not respond to this recommendation. Therefore, please explain whether you agree to undertake the measure and if not, why

not.

Exhibit G

6. Section 4.41(h)(4) of the Commission's regulations requires that for Non-Federal Lands, the Exhibit G maps must identify by legal subdivision: (i) lands owned in fee by the applicant and lands that the applicant plans to acquire in fee; and (ii) lands over which the applicant has acquired or plans to acquire rights to occupancy and use other than fee title, including rights acquired or to be acquired by easement or lease.

Exhibit G identifies lands immediately surrounding the dam and powerhouse as owned by Ada County and lands held by the co-licensee's through easements in the vicinity of the constructed project features. The project boundary extends approximately 1 mile upstream along the 2,780 ft. elevation contour around the project impoundment. Aerial images of the project show that the project boundary encloses lands along the impoundment shoreline as well as several islands located within the impoundment. However, Exhibit G does not identify land ownership of some of the shoreline lands. For example, the Exhibit G does not identify the lands upstream of the Ada County parcel along the northern reservoir shoreline, or any of the islands within the project boundary, nor does it indicate whether the licensee owns the lands in fee title or has acquired rights to occupy and use the lands by easement or lease. Please revise Exhibit G to identify ownership of all lands within the project boundary by legal subdivision, including the river islands. Additionally, for those lands not owned by the co-licensees, please describe all rights that have been obtained to occupy and use lands within the project boundary.

SCHEDULE B ADDITIONAL INFORMATION

Exhibit A

1. Section A-4.1 states that construction of the new spillway weir would occur from October to March and would require the forebay water level to be drawn down below the current “top of the dam with all water routed through the powerhouse”, but it does not describe the specific elevation that would be maintained during construction. We will need to know the impoundment elevation during construction to conduct our analysis of the effects of the proposed spillway modification on environmental resources within and adjacent to the impoundment. Therefore, please specify the impoundment drawdown elevation for spillway construction.

2. Section A-4.1 states that construction equipment would access the dam crest via a temporary bridge over the tailrace on the downstream side of the dam, which would provide equipment access to an area of riprap along the toe of the dam. It also states:

“During initial construction, a track hoe will cross the face of the dam to place ecology blocks around the left bank half of the dam with the help of an extendable forklift. Once half of the dam is isolated the removal of the top four feet of dam will commence utilizing the track hoe equipped with a pecker, and/or multiple jack hammers. Waste material will be loaded in a dump truck on the downstream side and hauled off site from the right bank.”

It is unclear from this description where the construction equipment would be located during spillway demolition and removal activities. Therefore, please clarify if all construction machinery would be working from the dewatered area at the downstream side of the dam, or if there would be a need for construction equipment to ascend to the top of the dam, and if so, explain how equipment would ascend the dam. It is also unclear where the ecology blocks would be placed relative to where the work is being done. For example, how would the upstream side of the dam be isolated from the impoundment to ensure that waste material does not fall into the impoundment? Additionally, please explain if there would be a need to install coffer dams on the upstream side of the dam in the impoundment in order to complete the spillway construction. Lastly, the description above states that waste material will be loaded in a dump truck and hauled off site, but it does not explain if this would occur immediately or if there would be a need to stage the waste material on site prior to disposal. Please explain whether waste material would be temporarily stored on site prior to disposal, and if so, describe the location and size of the temporary storage site.

3. Section 4.61(c)(1)(viii) of the Commission’s regulations requires that the Exhibit A include the sizes, capacities, and construction materials, as appropriate, of pipelines,

ditches, flumes, canals, intake facilities, powerhouses, dams, transmission lines, and other appurtenances.

Section A-6 on page 18 of the FLA provides the dimensions of the powerhouse intake and trashracks. Based on the description provided, the intake consists of two sections each measuring 16.5 feet high and 20.2 feet wide (about 667 square feet total). Also in section A-6, the description of the trashracks states that there are four trashrack sections each 21.3 feet by 10.8 feet (about 920 square feet total). However, the intake elevation drawings in Exhibit F (sheet F-8) show that the dimensions of the trashracks on each intake are about 29 feet high and 27 feet wide, or 783 square feet each for a total trashrack area on both intakes of 1,566 square feet.

Based on these descriptions, there appears to be discrepancies in the dimensions of the trashracks between Exhibit A and Exhibit F. Additionally, the trashracks appear to be substantially larger than the intake openings. Please correct these discrepancies in the trashrack dimensions and explain why the trashracks are substantially larger than the intake openings.

4. Section A-7.3, Estimated Costs, page A-17, provides the average annual project operation and maintenance cost. However, it does not state whether the annual operation and maintenance cost includes federal tax, local tax, property tax, or insurance. Please explain whether these four costs were already factored into your operation and maintenance cost, and if not, then please provide the dollar value for each.

Exhibit E

Aquatic Resources

5. Although the co-licensees do not propose any specific actions that would disturb sediment in the impoundment, section A-3.3 of the license application states that the area around the intake and trash racks has been dredged in the past and references a report (Kleinfelder, 2016) that indicates the intake was last dredged in 1998. Because the intake area has been dredged in the past, it's possible that it could need to be dredged again in the future to facilitate project operation. Therefore, please explain whether you envision a need to dredge the intake area during the term of a new license given the current level of infill. If yes, please describe the methods for dredging and material disposal. If no, please explain why and at what level of infill would likely require dredging.

Terrestrial Resources

6. Section E-4 of the Exhibit E states that "Proposed construction of the new adjustable weir would not cause disturbance to any existing vegetated areas." However, it provides no information or analysis on where construction equipment and materials

would be staged and where these areas would be located relative to wetland habitats at the project. Map 4 in section E-4 shows wetlands downstream of the tailrace in the vicinity of where spillway construction activities would presumably occur. Therefore, to provide information to support your conclusion and staff's analysis of project effects on wetland habitats at the project, please revise the application to include a specific description of where temporary construction staging areas would be located for heavy equipment and construction materials (e.g., ecology blocks, new spillway equipment) relative to wetland habitats. The analysis should include a specific description of the location, acreages, and vegetative cover type of all temporary staging areas for construction equipment and materials; and assess the proximity of these construction sites to the wetland habitats near the tailrace shown on Map 4.

7. Map 4 in section E-4 shows that there are numerous wetlands located in riparian areas around the shoreline of the impoundment. The analysis of project effects on these wetlands states: "Proposed construction of the new adjustable weir would not cause disturbance to any existing wetland areas." There is no specific information or analysis of potential project effects on wetlands to support this statement. However, as we point out in item 3 above, the license application states that the impoundment elevation would be drawn down during spillway construction but does not specify the elevation of the drawdown. Based on the magnitude and duration of the drawdown, it's possible that the project could affect wetlands in riparian areas around the impoundment. Therefore, section E-4 should be modified to specifically assess the magnitude and duration of the drawdown and whether and to what extent it would affect the identified wetland habitats within the impoundment.

8. Section A-4.1 describes demolition and construction activities involving heavy equipment during a period of three to four months within the low flow window of October to March for spillway construction. Section E-5 states that the area around the Barber Dam impoundment is known to be a unique habitat for wildlife but includes no information or analysis about the potential effects of demolition and construction on wildlife resources. We will need more information about construction noise for our environmental analysis. Therefore, please revise the application to include an estimate of the noise levels and frequency of noise resulting from planned demolition and construction. At a minimum, this should include: (1) the number of days that a track hoe equipped with a pecker and/or multiple jack hammers will be used, (2) the approximate number of hours per day, and (3) the expected noise levels from these demolition activities in decibels. If there are any other loud noise-producing construction activities planned, please provide similar estimates.

Also, please state whether any construction will be planned to occur at night requiring flood lighting of the site, as artificial light may result in wildlife avoidance or attraction to the project and disrupt bird migration. If yes, please provide an estimate of the time of year, number of days, and hours of lighting required. Please also specify the

anticipated rate for drawing down the impoundment for construction, which could affect wildlife along the impoundment shoreline. Your analysis should also include any proposed measures to mitigate adverse effects if warranted.

9. During yellow-billed cuckoo surveys conducted on June 28 and July 18, 2020, surveyors encountered an active bald eagle nest within the study area and documented the nest location on Figure 4 of the Wetlands and Wildlife Study Report. Based on the figure, the nest appears to be located approximately 0.8 mile upstream of the dam and 200 feet outside the project boundary along the southwestern shoreline of the impoundment. However, the Exhibit E does not describe the bald eagle nest, nor does it assess the potential effects of project construction and maintenance activities or recreation on nesting bald eagles. Because of the proximity of the nest site to the project, we will need to assess the potential effects of the project, including the proposed spillway modifications, on nesting bald eagles. Therefore, please revise the Exhibit E to include a description of this identified bald eagle nest and any other known bald eagle nests within 0.5 mile of the project boundary (should they exist), and analyze the effects of project construction, maintenance, and recreation on nesting bald eagles. Your analysis should also include any proposed measures to mitigate adverse effects if warranted.

10. Section E-4.1(B) of the Exhibit E states that the licensee proposes to conduct periodic invasive weed management in upland areas within the project boundary to include the powerhouse parking area, the roadway embankment, and the flood control berm. However, the license application provides no additional information about the weed management measures. We will need to assess the benefits and costs of the proposed weed management measures on environmental resources at the project. Therefore, please provide the following additional information: (1) a specific schedule for monitoring and treating invasive weeds at the project; (2) whether specific invasive plant species would be targeted, or broadcast treatments would be applied; and (3) a description of the vegetation treatment methods (e.g., herbicide or mechanical removal).

11. The Invasive Species and Noxious Weeds study report (Appendix B of the license application) includes a vegetation map of the BPCA (page B-296), and a table of field vegetation data collected at 141 points across the map (pages B-297 to B-301). The source of this information is listed as, "Ecosystem Sciences. 2019. Barber Pools Land Cover Mapping"; however, this report does not appear to be publicly available. For Commission staff to use the information in our analysis, please file a copy of the 2019 Ecosystem Sciences vegetation study report in the project record.

Cultural Resources

12. Table 17 of section E-8 of the license application shows three historic properties that are listed on the National Register of Historic Places (National Register) and located within the project boundary. Section E-8 states that current and future operation and

maintenance activities would have no adverse effects on historic properties at the project. In support of this conclusion, the application states that continued project operation would include maintaining project facilities to ensure that they do not fall into disrepair. It also states that the proposed spillway modification would alter the dam structure, which is one of the sites listed on the National Register, but any effects on the site would be addressed through the development and implementation of an Historic Properties Management Plan (HPMP). Section E-8 also states that the HPMP would include working with the Idaho SHPO to ensure that the historic character of the dam and other historic properties continue to be preserved and/or recorded. There is no other specific information in the license application on how the project would affect the listed sites or what specific measures would be implemented to mitigate adverse effects.

The analysis of project effects on historic properties at the project is incomplete because it does not adequately describe the potential effects of project construction, operation, and maintenance activities on the three National Register-listed historic properties as required by section 106 of the National Historic Preservation Act. Therefore, please revise the Exhibit E to include the following: (1) a specific description of the location of the three National Register sites and how spillway construction activities (e.g., heavy equipment operation, construction staging areas, construction waste staging and disposal activities) would specifically avoid them, or in the case of the physical alteration of the spillway, how exactly the modifications would be mitigated; (2) a map that depicts the three National Register sites in relation to the proposed spillway construction areas; and (3) a specific description of how project operation and maintenance activities would protect or avoid future adverse effects to these sites.

Additionally, while the license application states that the co-licensees propose to develop an HPMP for the project, the HPMP has not been filed in the project record and there is no information on when this would occur. We will need to assess the adequacy of the proposed measures in the HPMP as part of our environmental analysis; therefore, please develop and file the HPMP. The HPMP should be developed in consultation with the Idaho SHPO and any affected tribes and follow the Commission's guidelines for the development of HPMPs¹ and would need to include the following: (1) a basic cultural and historic background section in order to give context to National Register eligibility determinations; (2) a map showing the direct and indirect Area of Potential Effect (APE) established in consultation with the Idaho SHPO and any interested tribes; (3) a complete National Register eligibility determination (assessing criteria A, B, C, and D) on all cultural resources located in the APE; (4) a determination of project-related effects on each of the significant archaeological resources that occur in the APE; (5) a set of measures to avoid, reduce, or mitigate any project-related adverse effects on all National

¹ See Commission and Advisory Council on Historic Preservation's "Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects," dated May 20, 2020.

Register-eligible cultural resources within the APE, including site-specific data recovery plans; (6) a description of future construction and operation activities that would be subject to review by the Idaho SHPO and affected tribes (i.e., exempt, little effect, and case by case) and how review would be conducted; and (7) detailed provisions for addressing any newly-discovered resources. Please provide the Idaho SHPO at least 30 days to review and comment on the HPMP before filing the HPMP with the Commission. The HPMP must include documentation of consultation with the Idaho SHPO, and copies of SHPO comments and recommendations on the completed HPMP, and specific descriptions of how the comments are accommodated by the HPMP. If you do not adopt a recommendation, the filing must include your reasons, based on project specific information.

Recreation and Land Use Resources

13. Table 6 in Appendix B of the license application shows that boating is the most popular recreational use at the project, followed by dog walking, walking, fishing, and swimming. Boaters can access the project from access sites upstream, but section E-6.2 of the license application states that the access road to the project is gated and there is no public drive-in access or parking; therefore, non-boaters can only access the project through private property. 18 C.F.R section 2.7(b) requires licensees “to develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters and to include therein consideration of the needs of persons with disabilities in the design and construction of such project facilities and access”; however, based on the description of recreational access in the license application, it does not appear as though the public has overland access to the project unless they have access to it via adjacent private lands. To assess the effects of the project on recreation resources, we will need to understand how specifically the project is accessed by recreationists. Therefore, please provide a detailed description of the specific locations where recreationists are entering project lands and include a map showing these locations and the specific land ownership parcels at these access sites. In addition, please explain the location on the access road where it is gated and describe whether the gate also restricts pedestrian access to recreational opportunities at the project. Lastly, if the gate is intended to restrict pedestrian access, please explain why given that there are recreational opportunities at the project.

14. In our October 13, 2021 comments on the draft license application, we requested the following information about the recreation facilities at the project: (1) a detailed description of the measures that would be needed to repair the hazard at the canoe takeout lower stairway section, the erosion at the upper stairway section, and the sediment deposition at the canoe put-in; and (2) the cost of each of these improvements. In response, section A-2 of the license application states that the licensee will, “Repair and maintain the portage trail take-out, stairs, trail, put-in and signage for ongoing public use. Initial repairs will consist of replacing the wooden stairs with concrete, clearing and re-

graveling the lower end of the trail near the canoe put-in and improving the put-in”. Table 1 the license application provides a total cost for constructing and maintaining the proposed improvements but does not provide costs for each of them.

We will need additional information on the proposed improvements in order to assess their benefits and costs; therefore, please provide the following: (1) clarification of what you mean by “replacing the wooden stairs with concrete”; specifically, whether the proposal is to replace the existing stairs with concrete stairs or a concrete path; (2) a conceptual design drawing of the proposed structure for replacing the stairs; (3) detailed information on the proposed structure including gradients, description of the area where the water meets the concrete take-out and how users will exit the impoundment safely, and any additional features such as handrails that may be installed; (4) explanation of how the proposal would accommodate all types of boats (e.g., paddle board, kayaks, rafts) used at the facility; (5) a detailed explanation of what is meant by “improving the put-in”, and a description of how you would maintain the put-in to prevent sediment deposition from restricting its use in the future; (6) an operation and maintenance schedule and description of proposed maintenance tasks for each recreation facility (the take out, put-in, portage trail, and directional signage); and (7) a revised cost table that includes a separate capital and annual maintenance cost for each proposed recreation measure (i.e., replacing the wooden stairs, clearing and re-graveling the lower end of the trail near the put-in, improvements to the put-in), rather than a total cost for all improvements as currently shown in Table 1 of the license application.

15. Section 5.3 of the Recreation Study Report states:

The motion-sensitive cameras provided more detailed data regarding the recreational use and activities occurring at the project. The most popular recreational activities at the Project include boating/paddleboarding, walking/other, and dog walking respectively. Fishing and swimming are also popular. Photography/wildlife watching, cycling, and snow activities are the least popular. Slightly more recreational use appears to occur at the upstream side of the portage trail (near the canoe/kayak takeout) than at the downstream side of the portage trail. However, different recreational activities are occurring at either end of the portage trail. Boating/paddleboarding is by far more popular on the upstream side of the portage trail, while dog walking, fishing and swimming are more popular on the downstream side of the portage trail.

It is unclear where exactly on the reservoir and near the portage facilities these recreation activities are taking place. Please provide a map and some representative photographs that show: (1) where the (dog) walking, fishing, and swimming are taking place; (2) where any recreational activities are taking place upstream of the project, other than directly at the portage take-out itself; and (3) where exactly the trail cameras were installed and visitor count surveys were conducted for the Recreation Study.

16. It is unclear whether all the existing portage facilities at the project (i.e., take-out, put-in, and trail) are located within the project boundary. Therefore, please clarify if all the existing portage facilities are within the project boundary.

17. Section E-6.2 of the license application states that there are three other popular recreation areas along the Boise River in the project vicinity (i.e., Eckert Road Bridge, Hwy 21 River Access site, and the Shakespeare festival walking paths). However, there is no information on what amenities these areas offer. This information is needed to evaluate the adequacy of existing project facilities at meeting current and future demand as well as to determine the importance of recreational opportunities at the project relative to other opportunities in the project vicinity. Therefore, please revise the application to include the following: (1) a description of what amenities are available at each site (e.g., bathrooms, access areas/trails, picnic tables, and parking); (2) a description of who manages and maintains each site; and (3) a discussion of the relationship between the sites, for example, do boaters typically enter the river at Hwy 21 Bridge and take out at the Eckert Road bridge, using the Barber Dam portage facility as a means to complete their trip? Or do they enter at the Hwy 21 Bridge and take out at the Barber Dam portage facility and exit the river overland at the project?

SCHEDULE C REQUIRED ADDITIONAL STUDIES

Recreation Study

1. As discussed in Commission staff's April 22, 2022 letter, we do not have sufficient information to understand user preferences, how users specifically access the project, whether existing access is sufficient to accommodate the recreational demand, whether the existing facilities are adequate at meeting current and future demand, and what types of additional facilities might be needed to accommodate current and future demand at the project. Therefore, we are requiring the co-licensees to provide additional information on access points at the project, and to conduct additional in-person intercept surveys at the project.

The additional study must include in-person intercept surveys at the project, with surveys being taken at the portage take-out, put-in, and along the portage trail. Surveys must be taken four days per month from June 1 until the end of October for a total of 20 survey days. These days should consist of two randomized weekdays and randomized weekend days per month. For months with holidays (Fourth of July, Labor Day, and Columbus Day), intercept surveys must be taken on the holiday and one day during the holiday weekend; these surveys will count towards the required survey days for the associated month. Survey times during the day should vary to include morning and afternoon hours and each survey period should be at minimum 3 hours long. Surveyor should record the number of visitors and the type of recreation activities observed at the recreation site during survey periods. Surveys need to include the following information: location, date, time, and weather; recreation activities conducted at the site (including what type of boating vessel used, if any); length of visit; frequency and seasonality of visits to the site; how users access the site and specifically where they entered the site and mode of transport; satisfaction with site and facilities; and visitor preferences and suggested future improvements for the site's public access, recreation opportunities, and facilities. If survey participants accessed the site via the Boise River, surveyor should ask the participant what location they originally put-in on the water and where they plan on taking-out to end their float/paddle. Unless the applicant specifically wants the information, the survey instrument does not need to include a question regarding Covid-19 impacts.

Data collected from the study must be presented in a report that is filed with the Commission. The report should also include any proposed measures to improve recreation access and use at the project. The report must be provided to NPS, BREN, Idaho Department of Parks and Recreation, Ada County Parks and Waterways, Boise Parks and Recreation Department, Idaho Shakespeare Festival, and Idaho Foundation for Parks and Lands, and allow each of the entities 30 days to review and comment before filing the report with the Commission. The report must include documentation of

consultation, copies of comments and recommendations on the completed report after it has been prepared and provided to the entities, and specific descriptions of how the comments are accommodated by the report. If the co-licensees do not adopt a recommendation, the filing must explain the reasons, based on project specific information.

Environmental Justice Study

2. Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*,² and Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*,³ as amended, require federal agencies to consider if impacts on human health or the environment would be disproportionately high and adverse for environmental justice (EJ) communities in the surrounding community resulting from the programs, policies, or activities of federal agencies. To assist Commission staff with its analysis under the National Environmental Protection Act (NEPA), please provide the following:

- a) A table of racial, ethnic, and poverty statistics for each state, county, and census block group within the geographic scope of analysis. In this case, the geographic scope of analysis is areas within 5 miles of the existing project boundary. The table should include the following information from the U. S. Census Bureau’s most recently available American Community Survey 5-year Estimates for each state, county, and block group (wholly or partially) within the geographic scope of analysis:
 - i. Total population;
 - ii. Total population of each racial and ethnic group (i.e., White Alone Not Hispanic, Black or African American, American Indian and Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, some other race, two or more races, Hispanic or Latino origin [of any race]) (count for each group);
 - iii. Minority population including individuals of Hispanic or Latino origin as a percentage of total population;⁴ and
 - iv. Total population below poverty level as a percentage.⁵

The data should be collected from the most recent American Community Survey

² 86 Fed. Reg. 7,619-7,633 (January 27, 2021).

³ 59 Fed. Reg. 7,629-7,633 (February 16, 1994).

⁴ To calculate the percent total minority population, subtract the percentage of “White Alone, Not Hispanic” from 100 percent for any given area.

⁵ To calculate percentage of total population below poverty level, divide the total households below the poverty level by the total number of households and multiply by 100.

files available, using table #B03002 for race and ethnicity data and table #B17017 for low-income households. A template table is provided below.

- b) Identification of environmental justice populations by block group, using the data obtained in response to part a above, by applying the following methods included in EPA's *Promising Practices for EJ Methodologies in NEPA Reviews* (2016).⁶
- i. To identify environmental justice communities based on the presence of minority populations, use the "50 percent" and the "meaningfully greater" analysis methods. To use the "50 percent" analysis method, determine whether the total percent minority population of any block group in the affected area exceeds 50 percent. To use the "meaningfully greater" analysis determine whether any affected block group affected is 10 percent greater than the minority population percent in the county using the following process:
 1. Calculate the percent minority in the reference population (county)
 2. To the reference population's percent minority, add 10 percent (i.e., multiply the percent minority in the reference population by 1.1)
 3. This new percentage is the threshold that a block group's percent minority would need to exceed to qualify as an environmental justice community under the meaningfully greater analysis method.
 - ii. To identify environmental justice communities based on the presence of low-income populations, use the "low-income threshold criteria" method. To use the "low income threshold criteria," the percent of the population below the poverty level in the identified block group must be equal to or greater than that of the reference population (county).
- c) A map showing the project boundary and location(s) of any project-related construction in relation to any identified environmental justice communities within the geographic scope. Denote on the map if the block group is identified as an environmental justice community based on the presence of minority population, low-income population, or both.
- d) A discussion of anticipated project-related impacts on any environmental justice communities for all resources where there is a potential nexus between the effect and the environmental justice community. Examples of resource impacts may include, but are not necessarily limited to, project-related effects on: erosion or

⁶ Available online at https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

sedimentation of private properties; groundwater or other drinking water sources; subsistence fishing, hunting, or plant gathering; access for recreation; housing or industries of importance to environmental justice communities; and construction- or operation-related air quality, noise, and traffic. For any identified effects, please also describe whether or not any of the effects would be disproportionately high and adverse.

- e) If environmental justice communities are present, please provide a description of your public outreach efforts regarding your project, including:
 - i. a summary of any outreach to environmental justice communities conducted prior to filing the application (include the date, time, and location of any public meetings beyond those required by the regulations);
 - ii. a summary of comments received from members of environmental justice communities or organizations representing the communities;
 - iii. a description of information provided to environmental justice communities; and
 - iv. planned future outreach activities and methods specific to working with the identified communities.

- f) A description of any mitigation measures proposed to avoid and/or minimize project effects on environmental justice communities.

- g) Identification of any non-English speaking groups, within the geographic scope of analysis, that would be affected by the project (regardless of the presence/absence of such a group in an identified environmental justice community). Please describe your previous or planned efforts to identify and communicate with these groups and individuals and the measures used to avoid and minimize project-related effects on these communities.

- h) Identification of sensitive receptor locations (e.g., schools, day care centers, hospitals, etc.) within the geographic scope of analysis. Show these locations on the map generated in step c. Provide a table that includes their distances from project facilities and any project-related effects on these locations, including measures taken to avoid or minimize project-related effects.

This information should be developed in consultation with the EPA and any interested community organizations. Please allow stakeholders 30 days to review and comment on a draft of your response. When you file your response with the Commission, please include documentation of your consultation with stakeholders, copies of their comments, and an explanation of how you have addressed stakeholder comments in your final response.

Environmental Justice Data Table Template

| | RACE AND ETHNICITY DATA | | | | | | | | | | LOW-INCOME DATA |
|--------------------------------------|---------------------------------|---|---------------------------------|---|----------------------|---|--------------------------------|----------------------------------|-----------------------------------|---------------------------------------|--|
| Geography | Total Population (count) | White Alone Not Hispanic (count) | African American (count) | Native American/ Alaska Native (count) | Asian (count) | Native Hawaiian & Other Pacific Islander (count) | Some Other Race (count) | Two or More Races (count) | Hispanic or Latino (count) | Total Minority^a (%) | Below Poverty Level^b (%) |
| State | | | | | | | | | | | |
| County or Parish | | | | | | | | | | | |
| Census Tract X, Block Group X | | | | | | | | | | | |