BEFORE THE ENERGY FACILITY SITING COUNCIL

IN THE MATTER OF: ) PARTY McALLISTER’S INTERLOCUTORY APPEAL
) OF THE RULING AND ORDER ON MOTIONS FOR SUMMARY DETERMINATION OF CONTESTED CASE ISSUES FW-13, R-2, AND SP-2

THE APPLICATION FOR SITE CERTIFICATE FOR THE BOARDMAN TO HEMINGWAY TRANSMISSION LINE)

OAH Case No. 2019-ABC-02833

Party Michael McAllister hereby appeals the Hearing Officer’s August 3, 2021 Ruling and Order on Motions for Summary Determination dismissing each of Party McAllister’s issues from the contested case. Party McAllister’s Issues, as previously defined by the Office of Administrative Hearings (“OAH”) and the Energy Facility Siting Council (“EFSC” or “Council”) are as follows:1

1. Whether the proposed Morgan Lake Alternative route complies with the Fish and Wildlife Habitat standard (FW-13).

2. Whether the proposed Morgan Lake Alternative route complies with the Soil Protection Standard (SP-2).

3. Whether visual impacts of the proposed facility structures in the viewshed of Morgan Lake Park are inconsistent with the objectives of the Morgan Lake Park Recreation Use and Development Plan and should therefore be reevaluated (R-2).

The OAH erred in finding that there are no material facts in dispute with regard to any of Party McAllister’s above issues. Because the Hearing Officer’s August 3, 2021 rulings terminate Party McAllister’s right to participate in the contested case proceeding, he now seeks the Council’s review. Incorporated by reference, and included with this appeal, are: (1) Party McAllister’s Opposition to Idaho Power Company’s Motion for Summary Determination on FW-13 and SP-2 and supporting evidence; (2) Party McAllister’s Opposition to Idaho Power

1 Petitioners were not provided the opportunity to define or frame their own issues for purposes of this contested case. Party McAllister’s primary issue, specifically raised in DPO comment and Petition to participate in the contested case was the issue that review of Idaho Power Company’s application was not consistent with federal agency review, calling the application “incomplete” for this reason. The core of Party McAllister’s DPO comment seeks that the Council conduct its review, with respect to the Union County segment, consistent with the federal agency review, which it did not do. As stated in Party McAllister’s Petition, this does not comply with ORS 469.370(13).
Company’s Motion for Summary Determination on R-2 and supporting evidence; (3) Party McAllister’s Opposition to Oregon Department of Energy’s Motion for Summary Determination on FW-13 and supporting evidence; and (4) Party McAllister’s Opposition to Oregon Department of Energy’s Motion for Summary Determination on SP-2 and supporting evidence.

In the August 3 Order, the OAH further narrows Party McAllister’s issues in order to exclude factual disputes relevant to the disposition of Party McAllister’s issues as previously determined. As the OAH acknowledges, EFSC defined issues FW-13 and SP-2 broadly: whether the Applicant’s proposed Morgan Lake Alternative complies with EFSC’s Fish and Wildlife and Soil Protection standards. Party McAllister has pursued his case—and identified factual disputes in opposition of summary determination—based on this framing and scope of his issues as determined by the Council. However, the factual disputes Party McAllister raised in support of his position that the Morgan Lake Route does not comply FW-13 or SP-2 (issues the Council defined) were dismissed as newly raised issues because Party McAllister had not included these assertions in his DPO comment. Thus, while acknowledging that parties are not limited to facts and evidence included in DPO comment, the OAH then proceeds to dismiss the factual disputes raised for the designated issues because Party McAllister did not make each argument at the DPO stage. Thus, the OAH effectively does limit Party McAllister to the facts alleged in DPO comment. In the ruling, the OAH adopts the subtext of IPC’s position that EFSC has defined Party McAllister’s issues FW-13 and SP-2 too broadly and further narrows these issues for purposes of summary determination. This is highly prejudicial as Party McAllister could not know the scope of the issues he may challenge if the OAH limits them beyond the previous determination.

For example, in his DPO comment Party McAllister expressly discussed the importance of Twin Lake as habitat. After being granted standing by EFSC to challenge whether the proposed Morgan Lake Alternative complies with the Fish and Wildlife standard, Party McAllister explained in opposing summary determination, that this critical habitat is category 1 habitat. The Hearing Office determined that Mr. McAllister’s current additional facts and arguments elaborating on the importance of the Twin Lake habitat, i.e. that it is category 1 habitat and why, cannot not now be considered because he did not expressly state Twin Lake is category 1 habitat in DPO comment. The OAH similarly dismisses Party McAllister’s argument (in support of his position that the Morgan Lake Alternative does not comply with the Fish and Wildlife Standard) that the analysis area cannot be reconciled with the dictates of OAR 635-415-0025—incorporated into EFSC’s Fish and Wildlife standard— which requires maximum avoidance for category 1 habitat, as a new issue that must have been raised in DPO comment.

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2 Further, in finding Party McAllister has failed to raise a material dispute of fact, the OAH ignores that OAR 635-415-0025, which is incorporated into OAR 345-022-0060(1), requires mitigation via “avoidance of impacts through alternatives to the proposed development action.” Thus, contrary to OAH determination (August 3 Order at 22), the BLM’s studied alternative that mitigates impacts on habitat is material here as a studied alternative to the development action.  
3 Infrastructure developed feet away from the habitat is not consistent with the avoidance criteria of OAR 635-415-0025.
Further, with respect to R-2, in his DPO comment, Party McAllister raised his concern that the project would have significant adverse impacts on the recreational opportunities of Morgan Lake Park, including on the currently undeveloped viewshed, which the Morgan Lake Park makes clear is an important aspect of the Park and the recreational opportunities enjoyed there. As discussed in Part McAllister’s Opposition to Idaho Power Company’s Motion for Summary Determination on R-2, the fact that the Morgan Lake Park Plan is not binding is not determinative, nor did Party McAllister allege it was binding in DPO comment. Rather, as previously explained, the Plan is evidence of the importance of the undeveloped viewshed of the Park to the recreational opportunities therein. In the August 3 Order, the OAH relies on the finding that the Park Plan is not binding on IPC to find in IPC’s favor. Per the reasoning in the Order, the OAH defined issue R-2 such that Party McAllister could never prevail on the visual impact issue, despite raising concerns of visual impacts on the Park in DPO comment. R-2, as defined by the OAH, misstates and narrows Party McAllister’s concerns. The Aug. 3 Order indicates that Party McAllister should have previously appealed the framing and/or scope of Issue R-2 in the Order on Party Status. However, such interlocutory appeal is prohibited under Rule 345-015-0057, as the Hearing Officer stated on page 85 of the October 29, 2020 Order on Party Status. Accordingly, Party McAllister was not provided the opportunity to challenge the framing or scope during this course of this proceeding.

Finally, as with FW-13 and SP-2, in finding that Party McAllister failed to raise any dispute of fact with respect to R-2, the OAH mischaracterizes facts Party McAllister raises to support his position as new “issues” that he failed to raise in DPO comment. For example, the Hearing Officer concluded that Party McAllister cannot, in discussing visual impacts on the Park, challenge IPC’s representations, analysis, or findings about the visual impacts included in the Application for Site Certificate, as this would constitute a new issue. (See Aug. 3, 2021 Order at 27). This interpretation of what constitutes “issues” versus facts for purposes of the contested case is prejudicial as any fact raised that may create a dispute may be deemed a new issue that was not properly raised, and therefore dismissed without consideration.

For the reasons above, and those detailed in Party McAllister’s attached oppositions to IPC’s and ODOE’s motions for summary determination, the Hearing Officer erred in dismissing Party McAllister’s case.

/s/ Michael McAllister
Michael McAllister
Limited Party

Date: August 10, 2021
CERTIFICATE OF MAILING

On August 10, 2021, I emailed the foregoing Appeal in Case No. OAH Case No. 2019-ABC-02833 to energy.siting@oregon.gov; OED_OAH_REFERRAL@oregon.gov with copies sent as follows:

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I. **INTRODUCTION**

Contrary to Oregon Department of Energy’s (“ODOE”) claims, genuine issues of material fact exist with respect to Party Michael McAllister’s (“Mr. McAllister”) case (Issue FW-13) under the Energy Facility Siting Council (“EFSC” or “Council”) Fish and Wildlife Standard. The ALJ/EFSC granted Mr. McAllister standing to challenge whether Idaho Power Company’s (“IPC”) Application for Site Certificate (“ASC”) comports with this standard after he met the threshold requirements to participate as a party in this matter. Having served no discovery on Mr. McAllister, ODOE now claims that there are no possible factual disputes that could be relevant to whether the facility complies with OAR 345-022-0060. This is incorrect.

As detailed below, the ALJ should deny ODOE’s Motion for Summary Determination (“MSD”) on issue FW-13 because: Mr. McAllister is not limited to facts in his petition or public

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1 OAR 345-022-0060.
comment, ODOE based its findings on flawed analyses and inaccurate and unreliable
information in the ASC, and disputes of fact exist regarding whether the pursued route in Union
County (the Morgan Lake Alternative) complies with the Council’s Fish and Wildlife Habitat
standard.2

II. RELEVANT FACTUAL BACKGROUND

A. EFSC Found Party McAllister Raised the Issue of the Morgan Lake Alternative
Route’s Failure to Comport with the Council’s Fish and Wildlife Habitat Standard
and was Granted Standing to Challenge Compliance with this Standard.

During the applicable public comment period, Mr. McAllister provided public comment
raising numerous concerns with Idaho Power Company’s Morgan Lake Alternative Route
(which IPC applied for and is currently pursuing) citing facts exemplifying, and in support of, his
concerns in addition to citing the relevant EFSC standards. (See Exhibit A to McAllister Petition
for Party Status submitted to OAH Aug. 27, 2020). In the Amended Order on Petitions for Party
Status issued December 4, 2020 after Mr. McAllister’s appeal to the Council, the Office of
Administrative Hearings (“OAH”) determined Mr. McAllister had properly raised issues
concerning the Morgan Lake Alternative Routes’ impact on fish and wildlife habitat and granted
standing to participate in the contested case under this EFSC standard, OAR 345-022-0060,
which requires consistency with the Oregon’s Division 415 Fish and Wildlife Habitat Mitigation

2 Idaho Power Company has also moved for summary determination on FW-13. Disputes of
material fact relevant to issue FW-13 are further addressed in Mr. McAllister Opposition to
IPC’s motion. Mr. McAllister hereby incorporates the facts and arguments presented in
Opposition to IPC’s MSD on FW-13 here (See Party McAllister’s Opposition to Idaho Power
Company’s Motion for Summary Determination on Contested Case Issues FW-13 and SP-2
submitted July 9, 2021).
B. Twin Lake in Morgan Lake Park is Habitat Category 1 Pursuant to OAR 635-415-0025.

The Council’s Fish and Wildlife Habitat standard requires that the facility is consistent with “the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6).” OAR 345-022-0060. Rule 635-415-0025(1)-(6) provides that “[t]he Department shall act to protect [each category of habitat (1) through (6)]…by recommending or requiring: (a) [a]voidance of impacts through alternative to the proposed development action; or (b) no authorization of the proposed development action…”

OAR 635-415-0025(1) defines “Habitat Category 1” as “irreplaceable, essential habitat for a fish or wildlife species, population, or a unique assemblage of species and is limited on either a physiographic province or site-specific basis, depending on the individual species, populations or unique assemblage.” The Twin Lake wetlands—part of which falls within the site boundary—meets this definition. Under Rule 635-415-0005 “Irreplaceable” means that successful in-kind habitat mitigation to replace lost habitat quantity and/or quality is not feasible within an acceptable period of time or location, or involves an unacceptable level of risk or uncertainty, depending on the habitat under consideration and the fish and wildlife species or populations that are affected. Oregon Department of Fish and Wildlife (“ODFW”) guidance

3 Twin Lake wetlands is identified as wetlands in the U.S. Fish and Wildlife Nation Wetlands Inventory at https://www.fws.gov/wetlands/data/mapper.html
4 Habitat Category 2 is defined as essential habitat for a fish or wildlife species, population, or unique assemblage of species and is limited either on a physiographic province or site-specific basis depending on the individual species, population or unique assemblage. Rule 635-415-0025(2). Like Habitat Category 1, the rule dictates avoidance of impacts through alternatives to the proposed development action. Id. Rule 635-415-0005 defines essential habitat as any habitat condition or set of habitat conditions which, if diminished in quality or quantity, would result in depletion of a fish or wildlife species.
5 “Acceptable,” for the purpose of this definition, means in a reasonable time frame to benefit the affected fish and wildlife species.
provides that Habitat Category 1 includes “unique habitats that can’t be replaced, such as a lake with…a unique assemblage.” In Category 1 habitat, no mitigation is allowed (OAR 635-415-0025).

Morgan Lake Park and Twin Lake are in the Blue Mountain Physiographic Province in northeast Oregon. Within the province, the lakes are like no others. McAllister Affidavit 1, ¶ 6a; Ex. 1 (Analysis of Dr. Karen Antell at 3-8); McAllister Affidavit in Support of Opposition to IPC’s and ODOE’s Motions for Summary Determination (MSD) on FW-13 and SP-2 (“McAllister Affidavit 2”), ¶¶ 5, 8, 9. At 4,100 feet in elevation, these lakes are shallow depressions atop a basalt plateau. McAllister Affidavit 2 ¶ 5. Outflow from these lakes is restricted to the spring runoff period such that minerals and sediment is accumulating over time. 

Id. Twin Lake is shallow; the majority of the surface supports floating emergent vegetation mats that are unique within this largest of Oregon’s nine ecoregions. Id. As to the site-specific nature of Twin Lake unique habitats, both the submerged and the emergent vegetation communities are distinctly rich. Id.; McAllister Affidavit 1, Ex. 1 (Analysis of Dr. Karen Antell).

Dr. Karen Antell, Professor of Biology, Eastern Oregon University prepared an analysis of the ecological qualities of the Morgan Lake Area, which the City of La Grande provided to

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6 Process for ODFW staff internal review of Water Rights Transfers that Injure In-stream Water Rights, p. 4 (2006) (available at https://www.dfw.state.or.us/fish/water/docs/Final_Guidance_for_transfer_Injury_ISWR%204-5-06.pdf)
7 https://www.oregonconservationstrategy.org/ecoregion/blue-mountains/
8 McAllister Affidavit 1 was originally submitted in response to IPC’s MSD on R-2. It is also submitted in support of this opposition and attached hereto.
ODOE during the public comment period. In describing the “ecological uniqueness and importance of Morgan Lake Park”, Dr. Antell states:

Morgan Lake and its neighboring environs constitute an area of significant geologic and biological importance. The perennial wetlands are snowmelt and spring fed with no stream-flow inlets or outlets. The presence of these wetlands on the top of the Glass Hill ridge is both unique and of enormous ecological importance. There are no other montane, ridge top wetlands of its size or ecological significance in the area.

McAllister Affidavit 1, Ex. 1 at 4. In her analysis, Dr. Antell further describes the characteristics of the area that constitute “unique assemblage” and “irreplaceable” habitat. Id., Ex. 1 at 3-8.

Rule 635-415-0025 must be viewed in conjunction with the Oregon Conservation Strategy as ODFW policy. “The Oregon Conservation Strategy is an overarching plan to conserve Oregon’s fish and wildlife, and their habitats.”

ODFW’s recommendations for developers and other state or federal entities are based on consistency with state laws, statewide planning goals, and other applicable policies including but not limited the Oregon Conservation Strategy. The Oregon Conservation Strategy defines Strategy Habitats for each of the 9 ecoregions of the state. Uniquely, Twin Lake exhibits six of the eight conservation strategy habitats identified in the Blue Mountain Ecoregion. McAllister Affidavit 2 ¶ 5. The continuum of vegetation, from aquatic, to emergent, to wet meadow, to dry meadow, to mixed conifer forest is distinctly unique and limited at both the physiographic province and on a site-specific basis.

Id. The diversity of wildlife species that occupy this complex habitat matrix is perhaps unprecedented in the province. Id. The Twin Lakes wetlands can only be classified as Habitat

10 https://www.dfw.state.or.us/conservationstrategy/
https://www.oregonconservationstrategy.org/overview/
11 See, e.g. https://www.dfw.state.or.us/MRP/ocean_energy/policies.asp
12 https://www.oregonconservationstrategy.org/ecoregions/
13 See https://oregonconservationstrategy.org/strategy-habitats/
Category 1 because of the diverse unique assemblage that occupies these wetlands and the surrounding uplands.\textsuperscript{14} Lake habitats such as this are irreplaceable.\textsuperscript{15}

Significantly, ODFW does not define “unique assemblage” in statute or rule. However, “ODFW interprets an assemblage as a group of species that exists in a particular habitat” and “in the context of the Division 415 ODFW Fish and Wildlife Habitat Mitigation Policy, habitat categorization might be based on an individual species/population (e.g., grasshopper sparrows) or an assemblage of species that co-occur with a particular habitat (e.g., grassland birds).” McAllister Affidavit 2, Ex. 1 (ODFW response to McAllister inquiry).

Twin Lake (Little Morgan Lake) is among the most unique habitats—containing a unique assemblage— in the Blue Mountains and qualifies as Habitat Category 1, requiring maximum avoidance. McAllister Affidavit 2 ¶¶ 5, 8, 9; McAllister Affidavit 1, Ex. 1 at 3-8 (Dr. Antell analysis). IPC cannot refute this fact because—as IPC admits—the area was not categorized per Rule 635-415-0025. McAllister Affidavit 2, Ex. 3 (McAllister discovery requests to IPC).

C. IPC Admits it Never Categorized Twin Lake or Morgan Lake Park for Purposes of OAR 635-415-0025.

On January 22, 2021, Mr. McAllister served written discovery on Idaho Power Company. Request No. 25 asks that IPC:

Identify the habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and the basis for that determination:

a. Morgan Lake Park
b. Twin Lake
c. Glass Hill Natural Area (encompassing property of Joel Rice)

\textsuperscript{14} See Declaration of Susan Geer submitted in Support of McAllister Oppositions to Motions for Summary Determination on FW-13 and SP-2.

\textsuperscript{15} Process for ODFW staff internal review of Water Rights Transfers that Injure In-stream Water Rights, p. 4 (2006) (accessible at https://www.dfw.state.or.us/fish/water/docs/Final_Guidance_for_transfer_Injury_ISWR%204-5-06.pdf)
d. State-recognized wildlife refuges

McAllister Affidavit 2, Ex. 2 (McAllister discovery requests to IPC). In response, IPC stated it never categorized the habitat of these areas, including the Twin Lake Wetland. IPC stated:

a. Morgan Lake Park – This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

b. Twin Lake – This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

McAllister Affidavit 2, Ex. 3 (IPC responses to discovery requests.)

**D. Contrary to Idaho Power Company’s Claims, the B2H Project Crosses Twin Lake Wetlands\(^{16}\) and Morgan Lake Park.**

Contrary to IPC’s representations, the site boundary for the B2H project crosses Morgan Lake Park, and specifically footprints on the Twin Lake wetlands.\(^{17}\) Multiple IPC-produced ASC maps depict the site boundary crossing the city park boundary,\(^{18}\) feet away from the edge of the lower lake within the park boundary (Twin Lake aka Little Morgan Lake), which is habitat for a rare combination of a multitude of bird species. McAllister Affidavit 1, Ex. 1 at 6 (Dr. Karnen Antell analysis included with La Grande City Comment). Specifically, 0.77 acres of the Twin Lake wetland habitat is within the site boundary. McAllister Affidavit 1 ¶ 9; McAllister Affidavit 2 ¶ 6.

\(^{16}\) Mr. McAllister uses the term “wetland” to refer to a particular type of habitat. Mr. McAllister is not discussing “wetland” for purposes of removal-fill.

\(^{17}\) See e.g. ASC Exhibit C, Attachment C-3 Map 8 (ODOE - B2HAPPDoc3-4 ASC 03_Exhibit C_Project_Location_ASC 2018-09-28. Page 181 of 193); ASC Exhibit B, Attachment B-7a Map 55 (ODOE - B2HAPPDoc3-3-4 ASC 02e_Exhibit B_Affidavit B Attachment B-6 and B-7a_ASC 2018-09-28. Page 79 of 162); McAllister Affidavit 1, Ex. 5. (IPC John Williams Map 3); McAllister Affidavit 1, Ex. 4 (Union County Parcels Map 65); McAllister Affidavit 2 ¶¶ 5-6.

\(^{18}\) Id.
E. ODOE Refused to Provide Specific Facts or Evidence about How it Evaluated the Accuracy and Validity of Applicant Idaho Power’s Representations in the Application for Site Certificate.

On January 22, 2021, Mr. McAllister served written discovery on ODOE. Request No. 5 asks that ODOE:

Describe [its] process for evaluating the accuracy and validity of Applicant Idaho Power’s representations in its Application for Site Certificate (“ASC”).

a. Do you conduct independent study to confirm that the representations in the ASC are accurate? If so, describe this process with respect to the Morgan Lake Alternative.

McAllister Affidavit 2. Ex. 5 (McAllister Requests to ODOE).

In response, ODOE provided no facts or information regarding any steps or action, specific to the ASC at issue, that it took to verify IPC’s representation and provided that ODOE “application review process does not require that ODOE conduct any study to evaluate application materials.” McAllister Affidavit 2, Ex. 6 (ODOE Responses to Discovery).

III. ARGUMENT

A. ODOE’s Arguments Lack Merit and there are Disputes of Fact Relevant to whether Applicant Complies with the Fish and Wildlife Habitat Standard.

Disputes of fact exist regarding whether the pursued route in Union County (the Morgan Lake Alternative) complies with the Council’s Fish and Wildlife Habitat standard. ODOE asserts that there are no possible factual disputes that could be introduced into the record relevant to whether the facility complies with OAR 345-022-0060 (ODOE MSD at 2). ODOE makes this sweeping claim having never issued any discovery to Mr. McAllister. McAllister Affidavit 2, ¶ 11. ODOE argues it is entitled to summary determination because: the Council’s Fish and Wildlife Habitat Standard is not species specific; ODOE found IPC complied with the standard (OAR 345-022-0060) based on IPC’s application; and ODOE “does not separately make
recommendations for the standard related to Morgan Lake Alternative. (ODOE MSD at 2). None of ODOE’s arguments warrant a ruling in its favor.

1. **Party McAllister is not limited to facts in petition or public comment and never implies OAR 345-022-0060 is species specific.**

ODOE’s first claim that it is entitled to a favorable ruling “because the Council’s Fish and Wildlife Habitat standard is not species-specific but focused on habitat” is nonsensical and appears to misconstrue Mr. McAllister’s public comment while also incorrectly assuming that Mr. McAllister is limited to facts included in his public comment when proving his case under OAR 345-022-0060. First, that the Fish and Wildlife Habitat standard is not species specific is entirely irrelevant here. Mr. McAllister referenced particular species in public comment because species are a function of habitat. Indeed, “habitat” is defined as the place or environment where a plant or animal naturally or normally lives and grows. Mr. McAllister’s public comments comprehend that the Fish and Wildlife Habitat standard is focused on habitat.

Second, the applicable procedural rules do not require that potential parties allege every fact upon which they may rely in a contested case at the public comment stage. Such requirements would obviate the purpose of the contested case process. The ALJ/EFSC found that Mr. McAllister has met the above requirements to establish the right to participate in this contested case and nothing in the rules limits the facts Mr. McAllister may use to prove the merits of his case to those raised in public comment

2. **ODOE based its findings on inaccurate and unreliable information in Idaho Power Company’s Application for Site Certificate.**

Idaho Power Company’s Application for Site Certificate is fraught with inaccuracies,

19 See Merriam-Webster Dictionary Definition at https://www.merriam-webster.com/dictionary/habitat
flawed analyses, and misleading and false information.

The only evidence or facts ODOE references to support its claim that it is entitled to summary decision is the ASC and ODOE’s Proposed Order based on the error-ridden ASC. ODOE’s motion must fail because it is the ASC, and the representations therein, that are at issue here. As parties have repeatedly raised, the ASC consists of flawed analyses, inconsistencies, and inaccurate, misleading and false representations. For example, as is relevant for purposes of FW-13, IPC falsely represents that the Morgan Lake Park and the Twin Lake wetlands are entirely outside the site boundary of its Morgan Lake Alternative Route.20 Not only does site boundary cross Morgan Lake Park, specifically 0.77 acres of the Twin Lake wetland habitat is within the site boundary. McAllister Affidavit 1 ¶ 9. Further, IPC falsely claims the Mill Creek Route— for which it applied—is the route the BLM identified in its Final Environmental Impact Statement (it is not) while at the same time falsely claiming that the actual Agency-preferred route (the Glass Hill Alternative) “was not carried forward by BLM as the agency preferred route”(it was);21 IPC misrepresents the boundary of Morgan Lake Park;22 IPC’s conclusions in ASC Exhibit T are premised on flawed methodologies, and unsupported assumptions.23 This is far from an exhaustive list and is further supplemented by information in the many party responses opposing summary determination in this matter.

20See McAllister Opposition to IPC MSD on R-2 and supporting McAllister Affidavit.
21 ASC Exhibit B at B-39 (Table B-6) (ODOE - B2HAPPDoc3-3 ASC 02a_Exhibit_B_Project Description_ASC 2018-09-28. Page 45 of 96); McAllister Affidavit 1, Ex. 6.
23 See McAllister Opposition to IPC’s MSD of R-2 (submitted and served 6/25/21) at 13-19; See generally, Lois Barry Opposition to IPC MSD on Issue SR-6 (submitted and served 6/25/21).
Accordingly, ODOE’s reliance on the inaccurate ASC to support its recommended findings in its Proposed Order render ODOE’s “findings of fact” also flawed and unreliable. Thus, ODOE’s findings cannot constitute undisputed facts.

3. Idaho Power Company admits it never categorized the Twin Lake Wetlands, which is Category 1 Habitat under OAR 635-415-0025.

As detailed in Section II.B above, the Twin Lake wetlands constitute Habitat Category 1. Neither IPC nor ODOE can refute this fact because IPC admits it never categorized Twin Lake or Morgan Lake Park, which the site boundary crosses, under OAR 635-415-0025 (See Section II.D above).24 McAllister Affidavit 2, Ex. 3 (IPC’s discovery responses).

Thus, at a minimum, there is a dispute of fact regarding whether the Morgan Lake Route complies OAR 635-415-0025, as required under OAR 345-022-0060, because not only did IPC fail to properly categorize the Twin Lake wetlands, it states it failed to categorize it at all. This is deeply problematic because, as Habitat Category 1, no loss is allowed and either impacts must be fully avoided through alternatives or no authorization of the proposed development is allowed if impacts cannot be avoided. OAR 635-415-0025. B2H, as proposed, in no way complies with these requirements as a portion of the wetlands actually falls inside site boundary. As described in Section II.B above, Twin Lake is a spring-fed lake. Blasting for tower construction could disrupt the flow rates to all the area springs, and could severely diminish the quality of the habitat.

Even if the entire wetlands was outside the site boundary, which it is not, building the Project feet away from this critical habitat does not meet the avoidance criteria for either Habitat Category 1 or 2. Idaho Power recognizes most of the habitat categorized—which is limited to the

24 See also, Party McAllister’s Opposition to IPC’s MSD on R-2 (submitted 6/25/21).
500 foot-wide site boundary—as Habitat Category 2. Like Habitat Category 1, the applicable rules dictate “avoidance of impacts through alternatives to the proposed development action” as the first alternative.\textsuperscript{25} OAR 635-415-0025.

IPC, perhaps seeking to obscure the fact that it has falsely represented to ODOE that its “Proposed Route” in the ASC is the Agency Preferred NEPA route, claims that because it did not apply for what it has since acknowledged as the true NEPA route, the findings of the BLM are entirely irrelevant here.\textsuperscript{26} This is incorrect because of the mandates of OAR 635-415-0025, which requires “avoidance of impacts through alternatives to the proposed development action.” The rule does not limit the consideration of avoidance of impact to routes chosen by IPC. While EFSC perhaps may not consider alternatives not applied for for purposes of \textit{issuing a site certificate for those alternatives}, studied and recognized alternatives—particularly those the BLM evaluated—are absolutely relevant to assessment of “avoidance of impacts through alternatives,” or whether “impacts cannot be avoided” thus resulting in no authorization of the development action. OAR 635-415-0025. Thus, it is highly relevant to compliance with OAR 635-425-0025 that an alternative route that avoids the impacts of the current proposed action has been identified by a reviewing federal agency.\textsuperscript{27}

\textsuperscript{25} Notably all impacts are avoided by the BLM’s agency selected NEPA route.
\textsuperscript{26} This misrepresentation is highly relevant and should be of concern to ODOE. IPC uses its misrepresentation as the basis for its corridor change and compares constraints of the Morgan Lake Route with those of the false “NEPA route.”
\textsuperscript{27} B2H Final EIS, Chapter 2 (Proposed Action and Alternatives) Available at https://www.bpa.gov/efw/Analysis/NEPADocuments/nepa/Boardman%20Hemingway/Boardman_Chapter_2_Proposed_Action_and_Alternatives.pdf.
4. The “Analysis Area” for fish and wildlife habitat cannot be squared with the requirements of OAR 635-415-0025.

The analysis area for the Fish and Wildlife Habitat standard identified in the Second Amended Project Order cannot be reconciled with the “the general fish and wildlife habit mitigation goals and standards of OAR 635-415-0025(1) though (6),” as OAR 345-022-0060 requires. For purposes of compliance with OAR 345-022-0060, the analysis area is limited to a narrow site boundary, which measures approximately 500 feet across. This incorrectly assumes that the facility’s impacts on fish and wildlife habitat are confined within that narrow corridor. According to the Second Amended Project Order and Idaho Power Company’s ASC, Category 1 habitat that lies just one foot outside the site boundary is entirely irrelevant and the facility’s impacts on the habitat need not be assessed. This cannot be squared with the mandates of 635-415-0025, which requires “no loss of either habitat quantity or quality” and dictates “avoidance of impacts through alternatives to the proposed development action; or no authorization of the proposed development action” for this category 1 habitat just outside the site boundary. ODOE and IPC’s position that the design, construction and development of a facility such as the B2H transmission line only affects habitat within a 500 foot corridor is absurd.

In concrete terms, a portion of the irreplaceable habitat of the Twin Lake wetlands lies inside the site boundary while a portion lies immediately outside the site boundary. It is ODOE’s and IPC’s position that the precious Twin Lake wetlands touching the site boundary do not matter and, as IPC admits, were not assessed or categorized in accordance with Division 415 ODFW Fish and Wildlife Habitat Mitigation Policy. Not only is this not scientifically sound or

supported, it defies common sense and logic. Defining the analysis area for fish and wildlife habitat as the 500 foot wide site boundary—and limiting habitat categorization to the area therein—cannot be consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025, which seeks maximum avoidance of Habitat Category 1, and consideration of alternatives for all categories, and thus does not comply with OAR 345-022-0060.

Finally, it is unclear how ODOE’s claim that “the Department does not separately make recommendations for the standard related to the Morgan Lake Alternative” has any bearing here. The question is whether design, construction and operation of the facility complies with EFSC standards. IPC has applied for the Morgan Lake Alternative Route where it now intends to construct the facility. Thus, the Council must find that design, construction, and operation of the facility along that selected route complies with OAR 345-022-0060, and IPC’s Morgan Lake Route that IPC currently intends to build does not.

**Conclusion**

For the foregoing reasons the ALJ should deny ODOE’s Motion for Summary Determination on Issue FW-13.

/s/ Michael McAllister

Michael McAllister

Date: July 9, 2021
CERTIFICATE OF MAILING

On July 9, 2021, I served the foregoing Opposition to Motion for Summary
Determination in Case No. OAH Case No. 2019-ABC-02833 on the following recipients:

By: First Class Mail:
John C. Williams
PO Box 1384
La Grande, OR 97850

By: Electronic Mail:
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Idaho Power Company
dstanish@idahopower.com

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Lois Barry
"McAllister Affidavit 2"

McAllister Affidavit in Support of Opposition to Idaho Power Company and Oregon Department of Energy Motions for Summary Determination

FW-13 and SP-1

(McAllister Affidavit 2)
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENERGY

IN THE MATTER OF:

THE APPLICATION FOR SITE CERTIFICATE FOR THE BOARDMAN TO HEMINGWAY TRANSMISSION LINE

AFFIDAVIT OF MICHAEL McALLISTER IN SUPPORT OF PARTY McALLISTER'S OPPOSITION TO IDAHO POWER COMPANY AND OREGON DEPARTMENT OF ENERGY'S MOTIONS FOR SUMMARY DETERMINATION OF CONTESTED CASE ISSUES FW-13 AND SP-2

OAH Case No. 2019-ABC-02833

I, Michael McAllister, state and declare as follow:

1. I submit this Affidavit in support of my Oppositions to Idaho Power Company and Oregon Department of Energy's Motion for Summary Determination on FW-13 and SP-2.

2. I am a lifelong outdoorsman and the son of Oregon's widely respected outdoorsman and journalist, Thomas H. McAllister (Tom), whose job consisted of writing about Oregon's natural places for the Oregon Journal (which merged with the Oregonian). As a result, I grew up exploring every corner of Oregon's natural settings. I first visited Morgan Lake Park in the late 1960s when Tom took the family to La Grande to cover the story of the joint effort to establish the Park as a cooperative city/state/federally funded project. I remember vividly the diverse and unique assemblage of birds at that time which included the first Black Turn that I had ever seen.

3. I pursued natural resource management as my career and obtained a B.S. in Wildlife Resources and Communications from the University of Idaho.

McAllister Affidavit 2 Page 1
4. I have lived on and managed natural resources across the subject landscape for over 40 years. As an independent natural resource contractor, I have made a career specializing in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data that is used for planning purposes, most often for National Environmental Policy Act (NEPA) analyses.

5. Using my professional skills and knowledge, I have surveyed and studied the Twin Lake wetlands and surrounding area. At approximately 4,100 feet in elevation, these lakes are shallow depressions atop a basalt plateau. Outflow from these lakes is restricted to the spring runoff period such that minerals and sediment is accumulating over time. Twin Lake is shallow; the majority of the surface supports floating emergent vegetation mats that are unique within this largest of Oregon’s nine ecoregions. As to the site-specific nature of Twin Lake unique habitats, both the submerged and the emergent vegetation communities are distinctly rich. Significantly, the Twin Lake area exhibits six of the eight conservation strategy habitats identified in the Blue Mountain Ecoregion. These strategy habitats include aspen woods, late successional mixed conifer forests, natural lakes, grasslands, ponderosa pine woodlands, and wetlands. The continuum of vegetation, from aquatic, to emergent, to wet meadow, to dry meadow, to mixed conifer forest is distinctly unique and limited at both the physiographic province and on a site-specific basis. The diversity of wildlife species that occupy this complex habitat matrix is perhaps unprecedented in the province. The Twin Lake wetlands specifically is 27 acres of continuous wetlands extending into the B2H site boundary.

6. I surveyed the portion of wetland habitat that falls within Idaho Power Company’s site boundary. Based on the ASC Attachment P1-8, Habitat Categorization, Union County, Map 157, I identified the acreage of the Twin Lake wetland that falls within the City of La Grande’s Morgan Lake Park boundary. On the ground, I transcribed the eastern site boundary on the ground in relation to the Morgan Lake Park property corner at GPS coordinates; 45 degrees, 17 minutes, 57.7 seconds / 118 degrees, 08 minutes, 44.0 seconds. On the northing, the site boundary is 202 feet into the park. On easting, the site boundary is 331 feet into the park.
boundary. From this the calculated overlap of the site boundary is 0.77 acres of predominantly wetland habitat.

7. As someone who is intimately familiar with natural resources and the many landscapes, habitats, and outdoor opportunities in Oregon, I purchased my home and property over 30 years ago, approximately one quarter mile from Morgan Lake Park, precisely because of the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan Lake Wetlands in Morgan Lake Park.

8. Based on my extensive professional and personal experience with the natural settings of Oregon, the Twin Lake Wetlands in Morgan Lake Park and the surrounding area are rare, remarkable, and irreplaceable for many reasons.

9. Within the entirety of the Blue Mountains Physiographic Province, there are no other montane, ridgetop wetland lakes that are represented by such a diverse assemblage of both vegetation and wildlife species. Attached as Exhibit 4 to this Affidavit is a non-comprehensive list plant species identified at Morgan Lake Park developed by Dr. Karen Antell, Professor of Biology, and Susan Geer, botanist.

10. Discovery. I responded to Idaho Power’s Company’s discovery requests on February 5, 2021, the same day IPC and ODOE responded to my discovery. I objected to IPC’s interrogatories. IPC never clarified its requests, responded, or sought a discovery order. In response to my requests for documents, IPC provided a single document. While IPC initially offered to provide responsive GIS data, it later reneged and did not provide the information.

11. Oregon Department of Energy never served any discovery on me.

12. Because I, and other parties, had identified significant false information in IPC’s application for site certificate, I asked ODOE in discovery to identify any specific steps it took in this matter to confirm the information in the ASC, on which it relied in the Proposed Order, was accurate. ODOE identified no action specific to the B2H application.

13. Attached as Exhibit 1 to this Affidavit is a true and correct copy of an email response I received from the Oregon Department of Fish and Wildlife regarding its interpretation of “unique assemblage.” I provided this document to IPC in response to discovery requests.

McAllister Affidavit 2 Page 3
14. Attached as Exhibit 2 is a true and accurate copy of my discovery requests to Idaho Power Company.

15. Attached as Exhibit 3 is a true and accurate copy of Idaho Power Company’s Responses to my discovery requests.

16. Attached as Exhibit 4 is a true and accurate copy of a species list provided to me by Dr. Karen Antell.

17. Attached as Exhibit 5 is a true and accurate copy of the discovery requests I served on ODOE.

18. Attached as Exhibit 6 is a true and accurate copy of ODOE’s discovery responses.

19. Attached as Exhibit 7 is a true and accurate copy of my discovery responses to IPC’s discovery requests.

July____, 2021

Michael McAllister

Signed before me this _____th day of July____, 2021 by Charles H. Gillis

Barbara Peden, Notary Public for Oregon
My Commission expires: 9-24-24
May 8, 2021

VIA EMAIL

Jocelyn Pease, jocelyn@mrg-law.com; and Lisa Rackner, lisa@mrg-law.com; and David Stanish, dstanish@idahopower.com.

McDowell Rackner Gibson
419 SW 11th Ave
Suite 400
Portland OR, 97205

Re: OAH Case No. 2019-ABC-02833 – Boardman to Hemingway Transmission Line – McAllister First Supplemental Responses to IPC Interrogatory Nos. 1-5, Request for Production Nos. 1-2

Please find supplemental responses to Idaho Power’s discovery requests, identified below and attached.


Birds of Northeast Oregon, A Grande Ronde Bird Club, Oregon Department of Fish & Wildlife Publication.

Sincerely,

Michael McAllister
Michael:

Answers to the two questions you outlined in your email:

1) Has the State Game Refuge state for Morgan Lake Park ever been formally dissolved?

Yes, the agreement that you provided in your email expired in 1976 (see bottom of first page you sent). In 1977 there was a new agreement that ended in 1982 and at that time the agreement was never renewed.

2) Can you please provide information regarding how ODFW identifies and/or interprets a "unique assemblage" as the term is used for purposes of Rule 635-415-0025 (Implementation of Department Habitat Mitigation Recommendation)?

ODFW does not define unique assemblage in statute or rule. In general terms, ODFW interprets an assemblage as a group of species that exist in a particular habitat. For example and in the context of the Division 415 ODFW Fish and Wildlife Habitat Mitigation Policy, habitat categorization might be based on an individual species/population (e.g., grasshopper sparrows) or an assemblage of species that co-occur within a particular habitat (e.g., grassland birds).

If you have additional question, please address those to Sarah Reif (copied on this email) who is our Energy Coordinator out of our Salem Headquarters Office. She will direct questions to the appropriate staff.

Thank you.

Nick Myatt

Grande Ronde Watershed District Manager

Oregon Department of Fish and Wildlife

107 20th Street

La Grande, OR  97850

(541)962-1824
Date: January 22, 2021

To: Idaho Power Company
    C/O Lisa Rackner (lisa@mrg-law.com)

From: Michael McAllister

Re: Informal Discovery Requests

DEFINITIONS

1. “You” or “Your” means Idaho Power Company, each of its present and former agents and other individuals acting or purporting to act on its behalf.

2. “Document(s)” means physical documents and electronically stored information, including any written, printed, typed, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in the possession, custody, and/or control of Idaho Power or known by Idaho Power to exist, including, but not limited to: papers, letters, internal and external correspondence and communications, electronic files, meta data, emails, messages, and computerized files.

3. “Morgan Lake Park” means the tract of land described as follows:

   Commencing at the Southeast corner of the Southwest quarter of the Southwest quarter of Section 13, in Township 3 South, Range 37 East of the Willamette Meridian; running thence West on the Section line 31.50 chains; then North 15.25 chains; thence West on a line parallel with the section line 21 chains; thence North at right angles to said last line 24.75 chains to the North line of the Southeast quarter of section 14, said Township and Range; thence East on the center line of said Section 14 a distance of 27.50 chains; thence North 10.50 chains; thence East 25 chains to the East line of the Southwest quarter of the Northwest quarter of Section 13, said township and range; thence South 50.50 chains to the place of beginning.

4. “Twin Lake” means the smaller of two lakes within the boundaries of Morgan Lake Park as recognized in the National Wetlands Inventory.

REQUESTS

Compliance with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022 with respect to the Morgan Lake Alternative:
1. Identify all individuals likely to have discoverable information that you may use to support your claim that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

2. Identify: all persons on whose testimony you may rely to support your claims that the Morgan Lake Alternative Route complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022; their professional background; and the substance of their expected testimony.

3. To the extent that you rely on any documents not contained in the Application for Site Certificate (ASC) to support your claim that the MLA complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022, produce all such documents.

4. Please produce all documents, including communications, both internal and external, relating to the development of the Morgan Lake Alternative Route. This includes all documents reflecting internal deliberations relating to the development of the MLA.

5. Identify each landowner with whom you consulted, as stated in your ASC (B-6, pp.1, 9) in developing Idaho Power’s Morgan Lake Alternative.

6. Explain with specificity how you used and/or incorporated the input of landowners in developing the MLA.

7. Produce all documents, including emails and other communications, relating to the input from landowners used to develop the Morgan Lake Alternative. This includes internal communications and other documents reflecting internal deliberations regarding the input of landowners and development of the MLA.

8. Identify each landowner whose input you incorporated to develop the MLA, as you stated in your ASC.

9. Did you consider input from local landowner Michael McAllister regarding mitigation of impacts (as required by OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022) through inclusion of federal Agency Selected (NEPA) Route, identified in green on the interactive map on your website. An image of this route is attached hereto as Ex. A.
10. Produce all documents, including internal and external communications, relating to what you have referred to as the BLM’s Agency Preferred route in Attachment B-6 of the ASC.

11. Please explain why you chose not to pursue the Glass Hill Alternative you reference on p. B-39 of ASC, and that you identify in Request No. 18(a) below, to comply with the mitigation requirements in OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

12. Explain the purpose and significance of your comparison between the Mill Creek Route and the Morgan Lake Alternative found on p.9 of Attachment B-6, 2017 Supplemental Citing Study. Specifically explain why this comparison is included in the ASC and why you compare those two particular routes.

13. Explain the basis for your claim in Attachment B-6 of the ASC that the Mill Creek Route is the Agency Preferred Alternative in the FEIS.
   a. Produce the documents on which you rely to make this claim.

14. Explain the basis of your claim on page B-39 of your ASC that “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route.”
   a. Produce all documents, including communications, in support of your claim that “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route.”

15. In developing your ASC in attempted compliance with mitigation requirements of OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), explain why you did not pursue the “federal Agency Selected Route (NEPA),” identified in green on the interactive map on your website (attached hereto as Ex. A) to meet the mitigation requirements of OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

16. Explain why in your ASC, you compare the Morgan Lake Alternative to the Mill Creek Route rather than to the “federal Agency Selected Route (NEPA) identified on the IPC map referenced in No. 15.
17. Produce all documents, including internal and external communications, relating to your
decision not to include federal Agency Selected (NEPA) Route, as identified on Ex. A to
these Requests, to comply with the mitigation requirements of OAR-345-022-0100,
OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

18. Idaho Power has failed to use consistent naming conventions over the life of this project
and in the documents it has generated. Please clearly identify or produce a map clearly
defining what you refer to in your ASC as:

   a. The Glass Hill Alternative
   b. The BLM Agency Preferred Alternative Route
   c. The Mill Creek Route

19. Admit that the BLM’s Agency Preferred Alternative in the FEIS is not the same as the
Mill Creek Route.

20. If you deny Request for Admission No. 19, explain the basis for your denial, and produce
all documents supporting this position.

21. Admit that the Glass Hill Alternative is the same as the BLM’s Agency Preferred
Alternative in the FEIS.

22. If you deny the Request for Admission No. 21, explain the basis for your denial, and
produce all documents supporting this position.

**OAR-345-022-0060 (Fish and Wildlife Habitat)**

23. Produce all documents, including communications, regarding the presence of threatened
and endangered species, both federally and state listed, and the Morgan Lake Alternative
Route.

24. Produce all internal and external communications, including but not limited to
communications with Oregon Department of Energy, Oregon Department of Fish and
Wildlife, the U.S. Bureau of Land Management, the U.S. Forest Service, landowners and
other private stakeholders, relating to fish and wildlife habitat along the Morgan Lake
Alternative.

25. Identify the habitat category, as defined by Rule 635-415-0025, you consider each of the
following to be and the basis for that determination:

   a. Morgan Lake Park
b. Twin Lake

c. Glass Hill Natural Area (encompassing property of Joel Rice)

d. State-recognized wildlife refuges

26. Produce all documents relating to your response to No. 25 above.

27. Identify and describe what, if any, study and analysis has been completed with respect to fish and wildlife habitat within:

   e. Morgan Lake Park

   f. One mile of the Park boundary

   g. Two miles of the Park boundary

28. Produce all documents relating to your responses to No. 27.

29. Identify and provide contact information for any individual(s) upon whose analysis you relied for No. 27 above.

30. Identify the definition and/or interpretation of “unique assemblage” on which you rely for purposes of compliance with OAR-345-022-0060 and the incorporated OAR 635-415-0025.

31. Identify Idaho Power’s avoidance criteria with respect to bald eagles’ nests.

32. Explain why the bald eagles’ nests located at (Nest #1)

   N 45 18 06.6, W 118 08 44.2 (within 12 feet of park boundary, and within 50 feet of Twin Lake, and within approx. 500 feet of nearest tower) and (Nest # 2)

   N 45 17 47.9, W 118 08 55.0 (within 1200 feet of nearest tower) are not recognized in your ASC, including on Table B-2 in ASC Exhibit B.

33. Did you consider Morgan Lake Park as a wildlife refuge in your ASC?

34. Explain why you did not identify Morgan Lake Park, or the encompassed Twin Lake, as environmentally sensitive areas.

   h. If it is your position that these are not environmentally sensitive areas:

      i. Explain in detail the basis for this conclusion, including what study was done to arrive at this conclusion; and

      ii. Produce all documents, including communications, relating to this determination.
35. You state in your ASC that “[t]he entire Morgan Lake Route Alternative was considered forested. No other Alternative Routes were considered forested.” (p. R-52). Explain:
   i. Why you have chosen to pursue what you have identified as an entirely forested alternative over non-forested alternatives;
   j. How this is consistent with the habitat mitigation goals of OAR 635-415-0025.

**OAR-345-022-0100 (Recreation)**

36. Produce all internal and external communications, including those from landowners, concerning impacts of the Project on Morgan Lake Park.

37. Produce all documents, including internal and external communications, relating to your determination that the proposed siting of the Morgan Lake Route is consistent with the Morgan Lake Park Recreation Use and Development Plan.

38. Explain in detail how you determined that the Morgan Lake Alternative complies with OAR-345-022-0100 with respect to Morgan Lake Park.

39. Explain in detail the process through which you determined that “[t]he Project will not result in a direct loss of recreation opportunity to the park.” (T-44).
   a. Produce all documents, including communications, relating to your determination that “[t]he Project will not result in a direct loss of recreation opportunity to the park.”

40. Please identify the definition and/or interpretation of “recreation opportunity” on which you rely for purposes of compliance with OAR-345-022-0100 and your claim identified in No. 39 above (ASC, T-44).

41. Identify what you have determined to be the “recreation opportunit[ies]” of Morgan Lake Park.
   a. Explain the process through which you arrived at this determination;
   b. Produce all documents relating to this determination.

42. With respect to Morgan Lake Park, you state in your ASC “[t]he Project will not be visible from primary recreation areas, and therefore visual impacts will not cause adverse impacts to visitor experience at the park.” (T-44); with respect to this claim:
   a. Identify which areas you believe are “primary recreation areas”;
b. Explain in detail the process through which you determined these areas to be the “primary recreation areas”;
c. Produce all documents relating to your claim that these are the primary recreation areas.

43. Identify and describe what, if any, study and analysis has been completed with respect to recreation within:
   k. Morgan Lake Park
   l. One mile of the Park boundary
   m. Two miles of the Park boundary

44. Produce all documents relating to No 43.

45. Explain why the MLA was not presented for public comment.

46. Explain how you believe you have complied with OAR-021-0010(b)(D).

Cc:
ODOE – C/O Rowe Patrick G (Patrick.G.Rowe@doj.state.or.us)
Colin Andrew
Kathryn Andrew
Irene Gilbert
Karen Antell
Louis Squire
Lois Barry
Anne March
Kevin March
Susan Geer
STOP B2H
MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 25:

Identify the habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and the basis for that determination:

a. Morgan Lake Park
b. Twin Lake
c. Glass Hill Natural Area (encompassing property of Joel Rice)
d. State-recognized wildlife refuges

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 25:

a. Morgan Lake Park - This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

b. Twin Lake - This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

c. Glass Hill Natural Area (Joel Rice property) – The portion of Joel Rice’s property that is within the Site Boundary was not field surveyed, because Mr. Rice denied Idaho Power’s requests for right-of-entry. Accordingly, Idaho Power characterized the habitat remotely pursuant to the methods described in the Habitat Categorization Matrix, Exhibit P1, Attachment P1-1. The habitat categorization of temporary and permanent impact areas on this property are associated with the Morgan Lake Alternative and are as follows:

• Category 6 habitat: 1.8 acres of permanent disturbance to Developed habitat type. This is an existing road to be improved. Within Category 3 Elk Summer Range; however, developed habitats do not get modified based on overlap with wildlife habitat overlays.

• Category 3 habitat: 1.9 acres of permanent disturbance and 8.2 acres of temporary disturbance to Douglas Fir/Mixed Grand Fir habitat type. Within Elk Summer Range.

• Category 2 habitat: 0.04 acres of permanent and 0.01 acres of temporary disturbance to Perennial Stream habitat type. These disturbances are from an existing road that would be improved that is adjacent to Sheep Creek.

d. State-recognized wildlife refuges – Idaho Power objects to this request as vague and ambiguous, because the term “state-recognized wildlife refuges” is undefined and could be referring to any number of refuges throughout the state. Without waiving that objection, Idaho Power provides the following information regarding the Ladd Marsh Wildlife Area. No field surveys were performed on this property, so habitat categorization was done remotely. The habitat categorization of temporary and permanent impact areas on Ladd Marsh are associated with the Mill Creek Route and are as follows:

• Category 6 habitat: 1.1 acres of permanent disturbance to Developed habitat type. This is an existing road to be improved. Within Category 2 Elk Winter Range and Category 2 Mule Deer Winter Range; however, developed habitats do not get modified based on overlap with wildlife habitat overlays.

• Category 2 habitat: 1.0 acres of permanent and 7.1 acres of temporary disturbance in Shrub-Steppe without Big Sage; 4.4 acres of permanent disturbance in Ponderosa Pine; trace acres of temporary and permanent disturbance in Native Grassland; trace acres of temporary and permanent disturbance in Intermittent Stream. These disturbances are associated with 3 tower locations, temporary work areas, existing roads needing
improvement, and clearance of the ROW in forested areas. These areas are within Category 2 Elk Winter Range and Category 2 Mule Deer Winter Range.
## Vascular Plants of Morgan Lake Park
### City of La Grande
### Union County, Oregon

Compiled by Karen Antell, Eastern Oregon University and Susan Geer, US Forest Service

June/July 2021

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
<th>Native or Introduced</th>
<th>Wetland Status</th>
</tr>
</thead>
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<tr>
<td>Acer glabrum</td>
<td>Maple, Rocky Mountain</td>
<td>N</td>
<td>FAC</td>
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<td><strong>ADOXACEAE</strong></td>
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<td>Sambucus cerulea</td>
<td>Elder, Blue</td>
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<td>Alisma triviale</td>
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<td>Allium accuminatum</td>
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<td>Allium fibrillum</td>
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<td>Anthriscus caucalis (?)</td>
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<td>Heracleum maximum</td>
<td>Cow-parsnip</td>
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<td>Ligustrum canbyi</td>
<td>Lovage, Canby’s</td>
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<td>Lomatium ambiguum</td>
<td>Biscuit-root, Wyeth</td>
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<td>Lomatium dissectum</td>
<td>Biscuit-root, Fernleaf</td>
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<td>Lomatium grayi</td>
<td>Biscuit-root, Gray’s</td>
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<td>Lomatium leptocarpum</td>
<td>Biscuit-root, Gumbo</td>
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<td>Sweet-cicely, Mountain</td>
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<td>Osmorhiza occidentalis</td>
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<td>Perideridia montana</td>
<td>Yampah, Gairdner’s</td>
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<td>Dogbane, Spreading</td>
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<td>Asclepias speciosa (?)</td>
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<td>Maianthemum (both racemosum and stellatum?)</td>
<td>False Solomon’s Seal</td>
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<td>Triteleia grandiflora</td>
<td>Triteleia, Large-flowered</td>
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<td>Achillea millefolia</td>
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<td>Arnica sororia</td>
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<td>Balsamorhiza, Arrowleaf</td>
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<td>Cirsium arvense</td>
<td>Thistle, Field</td>
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<td>Helianthella uniflora</td>
<td>Little-sunflower</td>
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<td>Madia glomerata</td>
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<td>Senecio integerrimus</td>
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<td>Taraxacum officinale</td>
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<td>Tragopogon dubius</td>
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<td>Wyethia amplexicaulis</td>
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<td>Berberis repens</td>
<td>Oregon-grape, Creeping</td>
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<td>Betula occidentalis (?)</td>
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<td>Amsinckia spp. (intermedia, lycopsoides, retrorsa)</td>
<td>Tarweed</td>
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<td>Buglossoides arvensis</td>
<td>Gromwell, Field</td>
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<td>Lithospermum ruderale</td>
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<td>Myosotis discolor</td>
<td>Forget-me-not, Yellow and Blue</td>
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<td>Myosotis micrantha</td>
<td>Scorpion-grass, Blue</td>
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<td>Dianthus armeria</td>
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<td>Bastard Toadflax, Umbellate</td>
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<td>Carex atherodes</td>
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<td>Carex bebbii</td>
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<td>Carex geyeri</td>
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<td>Carex lenticulatis</td>
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<td>Carex stipata</td>
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<td>Carex utriculata</td>
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<td>Dipsacus sylvestris</td>
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<td>Equisetum arvense</td>
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<td>Lupinus caudatus</td>
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<td>Trifolium plumosum</td>
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<td>Erodium cicutarium</td>
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<td>Geranium richardsonii</td>
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<td>Geranium viscosissimum</td>
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<td>Ribes cereum</td>
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<td>Philadelphus lewisii</td>
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<td>Hypericum perforatum</td>
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<td>Iris missouriensis</td>
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<td>Juncus ensifolius</td>
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<td>Juncus tenuis</td>
<td>Rush, Slender</td>
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<td>Mentha arvensis</td>
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<td>Calochortus eurycarpus</td>
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<td>Calochortus macrocarpus</td>
<td>Maripose Lily, Sagebrush</td>
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<td>Erythronium grandiflorum</td>
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<td>Fritillaria pudica</td>
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<td>Sidalcea oregana</td>
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<td>Menyanthes trifoliata</td>
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<td>Miner’s Lettuce</td>
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**ROSACEAE**

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**RUBIACEAE**

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<td>Viola purpurea</td>
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</table>
Date: January 22, 2021

To: Oregon Department of Energy
   C/O Rowe Patrick G (Patrick.G.Rowe@doj.state.or.us)

From: Michael McAllister

Re: Informal Discovery Requests

DEFINITIONS

1. “You” or “Your” or “ODOE” means Oregon Department of Energy, each of its present and former agents and other individuals acting or purporting to act on its behalf.

2. “Document(s)” means physical documents and electronically stored information, including any written, printed, typed, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in the possession, custody, and/or control of ODOE or known by ODOE to exist, including, but not limited to: papers, letters, internal and external correspondence and communications, electronic files, meta data, emails, messages, and computerized files.

3. “Morgan Lake Park” means the tract of land described as follows:

Commencing at the Southeast corner of the Southwest quarter of the Southwest quarter of Section 13, in Township 3 South, Range 37 East of the Willamette Meridian; running thence West on the Section line 31.50 chains; then North 15.25 chains; thence West on a line parallel with the section line 21 chains; thence North at right angles to said last line 24.75 chains to the North line of the Southeast quarter of section 14, said Township and Range; thence East on the center line of said Section 14 a distance of 27.50 chains; thence North 10.50 chains; thence East 25 chains to the East line of the Southwest quarter of the Northwest quarter of Section 13, said township and range; thence South 50.50 chains to the place of beginning.

4. “Twin Lake” means the smaller of two lakes within the boundaries of Morgan Lake Park as recognized in the National Wetlands Inventory.

REQUESTS

Compliance OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022 with respect to the Morgan Lake Alternative:
1. Identify all individuals likely to have discoverable information that you may use to support ODOE’s position that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

2. Identify: all persons on whose testimony you may rely to support your position that the Morgan Lake Alternative Route complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022; their professional background; and the substance of their expected testimony.

3. Please produce all documents including, communications, both internal and external, relating to the Morgan Lake Alternative Route (“MLA”).

4. Produce all communications with landowners relating to the MLA.

5. Describe ODOE’s process for evaluating the accuracy and validity of Applicant Idaho Power’s representations in its Application for Site Certificate (“ASC”).
   a. Do you conduct independent study to confirm that the representations in the ASC are accurate? If so, describe this process with respect to the Morgan Lake Alternative.

6. Does the ODOE recognize Applicant’s Mill Creek segment of the proposed route as the BLM’s FEIS agency preferred alternative, as Applicant represented in its ASC, (Attachment B-6 pp.1-3) and in its comparison of the corridor variations of the Morgan Lake Alternative and the Mill Creek (alleged FEIS) routes?
   a. What steps, if any, did you take to confirm the veracity of Applicant’s representation that the Mill Creek Route is the “BLM’s Agency Preferred Alternative in the FEIS.” (See Attachment B-6, Table 3.1-1).

7. Please identify, through production of or reference to a map, what ODOE recognizes as “BLM’s Agency Preferred Alternative in the FEIS” and what ODOE recognizes as the “Morgan Lake Alternative.”

8. Explain the purpose and significance of the comparison between the Mill Creek Route and the Morgan Lake Alternative found on Attachment B-6 2017, p. 9 Supplemental Citing Study.
   a. Did ODOE consider this comparison in making its determinations and if so how?
9. Idaho Power has failed to use consistent naming conventions over the life of this project and in the documents it has generated. Please clearly identify or produce a map clearly defining what ODOE understands to be:
   a. The Glass Hill Alternative
   b. The BLM Agency Preferred Alternative Route
   c. The Mill Creek Route

10. Admit that the BLM’s Agency Preferred Alternative in the FEIS is not the same as the Mill Creek Route referenced in the ASC.

11. If you deny Request for Admission No. 10, explain the basis for your denial, and produce all documents supporting this position.

12. Admit that the Glass Hill Alternative is the same as the BLM’s Agency Preferred Alternative in the FEIS.

13. If you deny the Request for Admission No. 12, explain the basis for your denial, and produce all documents supporting this position.

14. Admit that comparative analyses are relevant to evaluating compliance with, and appropriate mitigation required by, OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

15. If you deny Request for Admission No. 14, explain the basis for your denial.

16. Admit that consideration of alternative routes is relevant to compliance with, and appropriate mitigation required by, OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

17. If you deny Request for Admission No. 16, explain the basis for your denial.

18. Explain why Idaho Power was not required to present the MLA for public comment.

**OAR-345-022-0060 (Fish and Wildlife Habitat)**

19. Produce all internal and external communications, including but not limited to communications with Applicant Idaho Power, Oregon Department of Fish and Wildlife, the U.S. Bureau of Land Management, the U.S. Forest Service, landowners and other
private stakeholders, relating to fish and wildlife habitat along the Morgan Lake Alternative in the ASC.

20. Identify and describe what, if any, analysis has been completed with respect to the habitat of Morgan Lake Park, including Twin Lake.

21. Please identify which habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and explain the basis for this determination:
   a. Morgan Lake Park
   b. Twin Lake
   c. Glass Hill Natural Area (encompassing property of Joel Rice)
   d. State-recognized wildlife refuges

22. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) with respect to the Morgan Lake Alternative, and identify the specific documents on which you relied.

23. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) with respect to the habitat of Morgan Lake Park, and identify the specific documents on which you relied.

   a. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) specifically with respect to the habitat of Twin Lake, and identify the specific documents on which you relied.

24. To the extent you considered information not contained in the ASC for Nos. 22-23 above, please produce such information.

25. Identify the definition and/or interpretation of “unique assemblage” on which you rely for purposes of determining compliance with OAR-345-022-0060 and the incorporated OAR 635-415-0025.

26. In the ASC, Idaho Power states that “[t]he entire Morgan Lake Route Alternative was considered forested. No other Alternative Routes were considered forested…” (p. R-52). Please explain your determination that the Applicant’s pursuit of the only entirely forested alternative is consistent with the habitat mitigation goals of OAR 635-415-0025.
27. Produce all documents, including communications, regarding the presence of threatened and endangered species, both federally and state listed, along the Morgan Lake Alternative Route.

**OAR-345-022-0100 (Recreation)**

28. Produce all internal and external communications, including those from landowners, concerning impacts of the Project on Morgan Lake Park.

29. Explain in detail how you determined that the Morgan Lake Alternative complies with OAR-345-022-0100 with respect to Morgan Lake Park.

30. Identify the specific documentation on which you relied in determining the Morgan Lake Alternative complied with OAR-345-022-0100 with respect to Morgan Lake Park Recreation Area.

   a. To the extent you considered information not contained in the ASC, please produce such information.

31. Explain how you determined the proposed siting of the transmission line is consistent with objectives of the local government’s Morgan Lake Park Recreation Use and Development Plan (ASC, R-13).

32. Produce all documents, including internal and external communications, relating to your determination that the proposed siting of the MLA is consistent with the Morgan Lake Park Recreation Use and Development Plan.

Cc:
Idaho Power Company C/O Lisa Rackner (lisa@mrg-law.com)
Colin Andrew
Kathryn Andrew
Irene Gilbert
Karen Antell
Louis Squire
Lois Barry
Anne March
Kevin March
EXHIBIT 6
and Administrative Project Record. Subject to and without waiving this objection, the
Department refers Mr. McAllister to the resources referenced above in ODOE Response to
Question 1.

**McAllister Question 4:** Produce all communications with landowners relating to the
MLA.

**ODOE Response to Question 4:** ODOE objects to this request because the relevance of
the requested discovery is not apparent related to Issues FW-13, SP-2 or R-2. ODOE objects to
this request on the basis that it is not reasonably likely to produce information that is generally
relevant to Issues FW-13, SP-2 or R-2. Moreover, the information requested is outside of EFSC
jurisdiction, is not required by Division 21 application requirements under 345-021-0010(1),
and/or is not necessary to meet an applicable EFSC standard.

**McAllister Question 5:** Describe ODOE’s process for evaluating the accuracy and
validity of Applicant Idaho Power’s representations in its Application for Site Certificate
(“ASC”).

**ODOE Response to Question 5:** The Department’s senior sting staff review all of the
exhibits submitted in a preliminary ASC (pASC) and ASC against the applicable OAR Division
21 application requirements and issue requests for additional information if additional
information is needed. The Department sends review requests to reviewing agencies, Special
Advisory Groups, and Tribal Governments requesting comments on a pASC and ASC. As
necessary, the Department may contract with an EFSC-approved consultant to assist in the
technical review of an application Exhibit. An application is complete when the Department
finds that the applicant has submitted information adequate for the Council to make findings or
impose conditions on all applicable Council standards. The Department may find that the
application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010. OAR 345-015-0190(5).

McAllister Question 5(a): Do you conduct independent study to confirm that the representations in the ASC are accurate? If so, describe this process with respect to the Morgan Lake Alternative.

ODOE Response to Question 5(a): ODOE objects to this request because the relevance of the requested discovery is not apparent, and it is unclear how the request should be responded to related to Issues FW-13, SP-2 or R-2. Further, ODOE objects to this request on the basis that it is not reasonably likely to produce information that is generally relevant to Issues FW-13, SP-2 or R-2. Subject to and without waiving this objection, the Department reiterates that the summary of the ODOE application review process provided above in ODOE Response to Question 5 does not require “independent studies” or contracting with consultants to evaluate application materials. Further, if consultants are contracted with to assist in review of application materials they would be specific to an ASC Exhibit, impact, or other narrow question of interest rather than an independent study of an entire route or alternative route for potential impacts to all resources.

McAllister Question 6: Does the ODOE recognize Applicant’s Mill Creek segment of the proposed route as the BLM’s FEIS agency preferred alternative, as Applicant represented in its ASC, (Attachment B-6 pp.1-3) and in its comparison of the corridor variations of the Morgan Lake Alternative and the Mill Creek (alleged FEIS) routes?

ODOE Response to Question 6: ODOE objects to this request because the relevance of the requested discovery is not apparent, and it is unclear how the request is related to Issues FW-13, SP-2 or R-2. Further, ODOE objects to this request on the basis that it is not reasonably
February 5, 2021

**VIA EMAIL**

Jocelyn Pease, jocelyn@mrg-law.com; and Lisa Rackner, lisa@mrg-law.com; and David Stanish, dstanish@idahopower.com.

McDowell Rackner
Gibson 419 SW 11th Ave
Suite 400
Portland OR, 97205

**Re:** OAH Case No. 2019-ABC-02833 – Boardman to Hemingway Transmission Line – McAllister Responses to IPC Interrogatory Nos. 1-5, Request for Production Nos. 1-2

**PRELIMINARY STATEMENT**

Discovery in this matter is currently ongoing. Each and every following response is rendered and based upon information reasonably available at the time of preparation of these responses. I (Michael McAllister) reserve the right to amend these responses to these Document Requests and Interrogatories. I will provide supplemental responses in the event any further responsive material comes within my knowledge, possession, custody or control.

I have not completed my respective discovery in this action. I, therefore, specifically reserve the right to introduce any evidence from any source that may hereinafter be discovered in documents or other discovery produced and testimony from any witness whose identity may hereafter be discovered.

**Idaho Power Discovery Requests:**

**Interrogatory No. 1**

Identify each expert witness you intend to provide testimony on your behalf in this matter and for each expert witness state the following:

a. Full name;

b. Address;

c. Qualifications, including a list of all publications authored by the witness within the preceding ten years; and

d. The subject matter on which the witness is expected to testify.

**McAllister Response:**

I object to this Request as premature given that discovery is ongoing, and the I am still in the process of obtaining further information relating to my issues and determining witnesses from
whom I will provide testimony. Subject to and without waiving this objection, I respond as follows:

1) Witness
   a. Michael McAllister, Landscape Ecologist
   b. 60069 Morgan Lake Road, La Grande, Oregon, 97850.
   c. Qualifications
      i. Bachelor of Science from the University of Idaho in Wildlife Resources with emphasis in Communications.
      ii. Professional Natural Resource Inventory Consultant since ~1990.
      iii. Owner of Wildland Resource Enterprises (assumed business name with State of Oregon since 1984), specializing in contracted protocol survey methodologies for fisheries, forest, fuels, vegetation, and wildlife inventories across private, state, federal and tribal ownerships.
      iv. Michael McAllister has lived on the Glass Hill Monocline near Morgan Lake since 1979. Michael first approached Idaho Power Corporation in 2007 extending his professional expertise in a good-faith effort to site the B2H Transmission Line so-as-to minimize the direct and indirect impacts on the natural resources along the Glass Hill Monocline.
   d. All aspects of his qualified subject matter issues: FW-13, R-2, and SP-2.

2) Witness
   a. Susan Geer (as a private citizen, not representing USFS)
   b. 906 Penn Ave. La Grande OR 97850
   c. Botanist/Ecologist; MS Ecology Utah State U 1993, BS Knox College 1988; Currently WWNF Forest Long term Range Monitoring Coordinator; 28 years working for Wallowa Whitman NF, PNW Lab, Deschutes NF, Sevilleta LTER, Idaho Fish and Game; The Nature Conservancy; Long term vegetation monitoring, biological evaluations, rare plant surveys and monitoring, data collection, analysis and summaries for land management.
   d. All aspects of her qualified subject matter relating issues: FW-13, R-2, and SP-2.

3) Witness
   e. Dr. Karen Antell
   f. Dr. Karen Antell, PhD, Science Office, Eastern Oregon University One University Blvd, La Grande, OR 97850
   g. Qualifications:
      i. Bachelor of Science in Botany, University of California, Santa Barbara, 1979; PhD in Botany, Washington State University, Pullman, WA, 1985; Professor of Biology, Eastern Oregon University, La Grande, OR from 1989-present; Courses taught include:
         1. BIOL 111 Environmental Biology
         2. BIOL 211, 212, 213 Principles of Biology (majors Biology sequence)
         3. BOT 201, 202, 203 Plant Biology
         4. BIOL 313 Riparian Biology
         5. BIOL 334 Plant Taxonomy
6. BIOL 415 Forest Ecology
7. BIOL 421 Agrostology
8. BIOL 433 Plant Physiology

Interrogatory No. 2

Identify each witness (other than those expert witness(es) you identified in response to Interrogatory No. 1) you intend to provide testimony on your behalf in this matter and for each witness state the following:

a. Full name;
b. Address; and
c. The subject matter on which the witness is expected to testify.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and determining witnesses from whom I will provide testimony. Subject to and without waiving this objection, I respond as follows:

1) Witness
   h. John Williams
      i. Landowner 2500 acres adjacent to Morgan Lake Park, Box 1384, La Grande OR, 97850.
      j. Morgan Lake Alternative Route; integrity of twin lakes habitat; Morgan Lake Park Recreation Area; empirical knowledge of wildlife and habitat within the Morgan Lake Park and adjacent land under his ownership.

2) Witness
   k. Michael McAllister (for non-expert testimony)
      l. See above
      m. FW-13, R-2, and SP-2.

3) I also anticipate testimony from additional local landowners and Union County community members with interests affected by the Morgan Lake Alternative Route.

Interrogatory No. 3

Identify any and all documents (see definition of document below) or other exhibits you plan to offer as evidence in this matter, whether offered with filed testimony or at hearing.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues. Subject to and without waiving this objection, I respond as follows:
1. DPO comments and attachments/exhibits
2. Documents I submitted during the course of this contested case, including Petition for Party Status and attachments
3. Public Comment to Oregon Public Utility Commission and attachments
4. ODOE’s Proposed Order for the B2H Transmission Line and attachments/exhibits
5. ODOE Project Orders throughout the life of B2H Project
6. Idaho Power Company’s Application for Site Certificate and attachments/exhibits
8. Bureau of Land Management Final Environmental Impact Statement
9. Morgan Lake Park Recreational Use and Development Plan
10. Union County members’ letters regarding the B2H Transmission Line Project
11. Letters from Union County Land Owners to Idaho Power
24. Documents produced in response to Idaho Power’s Requests for Production
Interrogatory No. 4

Issue SP-2: Refer to page four of the comments that you submitted to the Oregon Department of Energy on December 21, 2018. Please identify with specificity the basis for your assertion that the Morgan Lake Alternative does not comply with the Energy Facility Siting Council’s Soil Protection Standard.

McAllister Response:

I object to this request as outside the scope of issues to be tried in this contested case. The content of my public comment relates to the threshold issue of my standing in this case and does not limit my evidence or argument to assertions in my DPO comments. Energy Facility Siting Counsel (EFSC) has already determined my standing with respect to certain issues raised in my public comments. As such, I further object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and the basis of my assertion that the Morgan Lake Alternative does not comply with EFSC standards continues to be informed by information and documents produced in ongoing discovery. Subject to and without waiving this objection, I respond as follows:

The composition and productivity of the soil impacted by the Morgan Lake Alternative is significant because the site potential of that soil is great. See Agricultural Experiment Station, and United States. Soil Conservation Service. Soil Survey of Union County Area, Oregon. [Washington, D.C.?]: The Service, 1985. I reviewed detailed soil-map units categorizing the soils impacted on both the Morgan Lake Route and the Glass Hill Alternative (which became the BLM’s Agency Preferred Alternative in both the DEIS and the FEIS). The plant communities and plant associations reflect that potential of the soil impacted by the Morgan Lake Alternative Route. The basis of my assertion is that the Project will have significant adverse impacts to soil. The significance of the impacts are demonstrated through comparison (see, e.g. Application for Site Certificate, Ex. B-6). I conducted a comparative analysis, which included EFSC’s soil standard, to demonstrate that the impacts are significant as demonstrated through comparative analysis (see BLM identified the environmentally preferred route in FEIS; discussed in analysis).

Also refer to EFSC Hearing on Appeal of Denial of Issues for Party Status, Nov. 20, 2020 https://soundcloud.com/odoe/november-energy-facility

Interrogatory No. 5

Issue FW-13: Refer to pages three and four of the comments that you submitted to the Oregon Department of Energy on December 21, 2018. Please identify with specificity the basis for your assertion that the Morgan Lake Alternative does not comply with the Oregon Department of Fish and Wildlife habitat mitigation goals and standards identified in OAR 635-415-0025(1) through (6).
McAllister Response:

I first object that it is unclear which document you refer to in this interrogatory. The date December 21, 2018 does not appear in my public comments. In addition, I object to this request as outside the scope of issues to be tried in this contested case. The content of my public comment relates to the threshold issue of my standing in this case and does not limit my evidence or argument to assertions in my DPO comments. EFSC has already determined my standing with respect to certain issues raised in my public comments. As such, I further object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and the basis of my assertion that the Morgan Lake Alternative does not comply with EFSC standards continues to be informed by information and documents produced in ongoing discovery.

See EFSC Hearing on Appeal of Denial of Issues for Party Status, Nov. 20, 2020
https://soundcloud.com/odoe/november-energy-facility

Request for Production No. 1

Please provide a copy of any and all documents (see definition of document below) on which you rely to support the positions you plan to take on the issues for which you have been granted Limited Party Status, including any exhibits, appendices, or attachments you intend to provide with the testimony of any witnesses you will be submitting in this case.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further documents relating to my issues. I further object to this request on the grounds that many of the documents that are responsive to this request are already in the possession of Idaho Power or are publicly available through online sources, (e.g. Final Environmental Impact Statement). I further object on the grounds that producing all documents on which I will rely identified in my Response to Interrogatory No. 3 (such as books or other voluminous resources or materials) would be unduly burdensome. Subject to and without waiving this objection, see McAllister documents produced on February 5, 2021 with these writing responses.

Request for Production No. 2

Please provide a copy of any and all documents (see definition of document below) received pursuant to all public records requests relevant to the issues in this contested case for which you have been granted Limited Party Status.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further documents relating to my issues. Subject to and without waiving this
objection, I respond as follows:

I have not at this time received documents from public records requests.
"McAllister Affidavit 1"

Affidavit Submitted in Support of All McAllister Oppositions to Motions for Summary Determination (R-2, F-13, SP-2)
I, Michael McAllister, state and declare as follow:

1. I submit this Affidavit in support of my Opposition to Idaho Power Company’s Motion for Summary Determination.

2. I am a lifelong outdoorsman and the son of Oregon’s widely respected outdoorsman and journalist, Thomas H. McAllister (Tom), whose job consisted of writing about Oregon’s natural places for the Oregon Journal (which merged with the Oregonian). As a result, I grew up exploring every corner of Oregon, its natural settings, and the recreational opportunities this state provides. I first visited Morgan Lake Park in 1967 when Tom took the family to La Grande to cover the story of the joint effort to establish the Park as a cooperative city/state/federally funded project. I remember vividly the diverse and unique assemblage of birds at that time which included the first Black Tern that I had ever seen.

3. I obtained a B.S. in Wildlife Resources and Communications from the University of Idaho.

4. I have lived on and managed natural resources across the subject landscape for over 40 years. As an independent natural resource contractor, I have made a career specializing...
in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data that is used for planning purposes, most often for National Environmental Policy Act (NEPA) analysis.

5. As someone who is intimately familiar with natural resources and the many landscapes, habitats, and outdoor opportunities in Oregon, I purchased my home and property over 30 years ago, approximately one quarter mile from Morgan Lake Park, precisely because of the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan Lake Wetlands in Morgan Lake Park.

6. Based on my extensive experience in the natural settings of Oregon, Morgan Lake Park and the surrounding area is a rare, remarkable, irreplaceable gem for many reasons:

   a. Within the entirety of the Blue Mountains Physiographic Province, there are no other montane, ridgetop wetland lakes that are represented by such a diverse assemblage of both vegetation and wildlife species.

   b. A ten-minute drive from downtown La Grande brings you to the top of the Blue Mountains at Morgan Lake Park, which is situated on a Columbia River basalt plateau. As you approach from the east on Morgan Lake Road, the view to the west is to the distant horizon (25 miles) which is the divide between the Grande Ronde River Basin and the John Day River Basin. From where you turn right off the Morgan Lake Road and into the park, the transmission line will be within 500 feet, and grossly dominant to this sunset view scape. At 4,500 feet elevation, the expansive view shed is unprecedented. To the north, you look at the shield volcano complex, included: Mahogany Mountain, Sugarloaf Mountain, Green Mountain, Mount Emily, Thimbleberry Mountain, and Black Mountain at 25 miles distance. To the east, you view across the Grande Ronde Valley (largest in North America) to the Wallowa Mountains (“the Alps of the West”) where the Eagle Cap is visible on a clear day. To the south, you see into the drainages of Sheep Creek, Rock Creek, Graves Creek, Whiskey Creek, Jordan Creek, and Beaver Creek. These view sheds from the Morgan Lake area are little modified
since 1812 when Robert Stewart first described (in journal) this landscape. This, as he and five others made the first cross-country trip from Astoria to St. Lewis, “discovering the Oregon Trail.” In the dark of night, the only lights to be seen in any direction are the very distant lights of traffic on interstate 84 towards Pendleton. The undeveloped natural integrity is central to the important recreational opportunities the Park provides. As a result, maintaining the maximum natural integrity is crucial to the unique and important recreational opportunities this Park provides to both to locals and travelers alike.

7. In the 30 years I have spent living below Morgan Lake Park, I have watched this nearly untouched landscape be enjoyed by thousands of visitors every year who engage in a variety of activities that rely on the natural setting. These have included, but are by no means limited to:

   a. Elk Viewing, where herds (many hundreds) of elk grazing the vast mountain prairies that can be viewed from the park. These are views that, if constructed, would be polluted by B2H towers and the crackling buzz of the transmission line.

   b. Star gazing. At the junction of the Morgan Lake County Road and the park entrance road, 20-30 cars will park for even the minor celestial events; eclipses can draw much greater attendance. The Project, if constructed, will ruin such activities as the currently unobstructed sky, which is necessary for the activity, will be polluted by 200 feet tall transmission towers within 500 feet distance. The silence of the night sky will be buzzing at Union County’s “#1 Hotspot Destination.”

   c. Bird watching. Because of the unique and rare type of wetland habitat Twin Lake provides, Twin Lake is a common destination for birders, including myself. Recently, while watching from the south shore of Twin Lake, I watched a pair of mating sand hill cranes fly in, land, and do their courtship dance at the north edge of Twin Lake. I reported this observation to ODFW’s Kathy Nowak (pers. com) and she informed me that this pair of Cranes is banded with radio tracking, and

McAllister Affidavit Page 3
that the birds are nesting at Twin Lake this year. For the past six years a pair of bald eagles have nested in the vicinity of Twin Lake, where they have fledged young in each year. From Twin Lake, the view of the eagle’s current nest will be obstructed by a tower after construction, per Idaho Power’s tower maps in the ASC. What is most extraordinary about the birding at Morgan Lake Park is the extreme diversity of species that occupy the continuum of habitats: aquatic, emergent vegetation, wet meadow, dry meadow, mixed shrub, aspen, cottonwood, and old-growth ponderosa pine to Douglas-fir communities. It is noteworthy that the unique richness of this park was fully embraced by the City of La Grande when they developed the first Morgan Lake Park Recreational Use and Development Plan. Oregon Department of Fish and Wildlife started keeping creel census data for the park in 1960, and today the Park perimeter fence is still posted (30 plus metal signs) as a State Game Refuge, which I recently counted. The local residence and the people of Union County still understand Morgan Lake Park to be a State Game Refuge. Idaho Power also refers to Morgan Lake Park as a wildlife refuge in identifying its “designation or management.” (ASC Exhibit T, Attachment T-3-2 (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28. Page 89 of 291.).

d. Hiking around the perimeter of both Morgan Lake and Twin Lake, which are hikes that currently provide undeveloped natural settings. If the Project is constructed, these hikes will no longer consist of natural settings as the towers would be in view.

8. As a La Grande local who enjoys nature, I am a “typical” visitor to the park. I enjoy the recreational opportunities I can pursue at Morgan Lake Park precisely because there is no development. My enjoyment of the activities I engage in at the Park, including wildlife viewing, bird watching, hiking, and star gazing are dependent on the natural setting and integrity, which has to date been preserved. The recreational opportunity of viewing wildlife in unadulterated natural setting cannot exist under, or adjacent to development such as B2H.

McAllister Affidavit Page 4
9. Using my professional skills and knowledge, and based on the ASC Attachment P1-8, Habitat Categorization, Union County, Map 157, I identified the acreage of the Twin Lake wetland that falls within the City of La Grande’s Morgan Lake Park boundary. On the ground, I transcribed the eastern site boundary on the ground in relation to the Morgan Lake Park property corner at GPS coordinates: 45 degrees, 17 minutes, 57.7 seconds / 118 degrees, 08 minutes, 44.0 seconds. On the northing, the site boundary is 202 feet into the park. On easting, the site boundary is 331 feet into the park boundary. From this the calculated overlap of the site boundary is 0.77 acres of wetland habitat affected.

10. Attached as Exhibit 1 to this affidavit is a true and accurate copy of the August 31, 2017 City of La Grande Comments from La Grande City Manager regarding B2H project.

11. Attached as Exhibit 2 to this affidavit is a true and accurate copy of the April 27, 2018 City of La Grande Comments from La Grande City Manager regarding B2H project.

12. Attached as Exhibit 3 to this affidavit is a true and accurate copy of the 2019 City of La Grande Proclamation Declaring and Clarifying Opposition to the Boardman to Hemingway Powerline Project.

13. Attached as Exhibit 4 is a true and accurate copy of a Map Idaho Power created (Map 65) depicting Union County land parcels and the project site boundary and where the site boundary crosses Morgan Lake Park.

14. Attached as Exhibit 5 is a true and accurate copy of a map Idaho Power Map that Idaho Power provided to my neighbor John Williams.

15. Attached as Exhibit 6 is a true and correct copy of my response to Idaho Power’s ex parte communications with the Council, submitted to the Office of Administrative Hearings on May 28, 2021.

June 24th, 2021

Michael McAllister

McAllister Affidavit Page 5
Signed before me this 24th day of June, 2021 by Michael McAllister.

[Signature]

Charles H. Gillis, Notary Public for Oregon
My Commission Expires: June 19, 2023
MEMORANDUM

TO: Kellen Tardaewether  
Oregon Department of Energy  
550 Capitol St. N.E., 1st Floor  
Salem, OR 97301

FROM: Robert A. Strope, City Manager  
City of La Grande, Oregon  
P.O. Box 670  
1000 Adams Avenue  
La Grande, OR 97850  
(541) 962-1309  
rstrope@cityoflagrande.org

DATE: August 31, 2017

RE: City of La Grande Comments on the Amended Preliminary Application for Site Certification for the Boardman to Hemingway Transmission Line

General Comments: The La Grande City Council, in partnership with the Union County Commissioners conducted two public meetings to listen to comments from residents regarding this project as part of the review of the Amended Preliminary Application referenced above. The public sentiment expressed at those meetings was overwhelming in opposition to the Boardman to Hemingway Transmission Line. The basis for that opposition included, but was not limited to reduced property values to homes along the proposed route; view shed impacts throughout the area; environmental impacts both during construction and when the transmission line becomes operational; impacts to recreational facilities such as Morgan Lake; and a lack of public notice and involvement throughout the process. Of particular concern to the City Council was the decision by the applicant not to submit the BLM preferred route as the proposed route, or at the very least an alternative for consideration for Site Certification. Of the two routes identified in the application, the applicant selected the most impactful to the City of La Grande of those two as their proposed route.

As a general observation, the application is missing information in several areas and therefore is incomplete. These areas are identified in our review. The document also appears to be a boiler plate product that addresses general items, with no resolutions for local government regarding the negative impacts that come with it, and therefore it leaves the burden to the local government (cities and counties) to deal with. It also doesn’t recognize approved master
planning studies done by local governments where the submitted site location may create conflicts within such studies. The submitted sites appear to be a “copy and paste version” for a considerable amount of the document and replicates information that doesn’t apply to the area they are addressing. This document was extremely difficult to maneuver through to find information. Also, with such a major project of this nature, the limited amount of time allowed to review the information submitted was inadequate, particularly given the way the materials are organized. Later in this review we touch on infrastructure impacts which are largely unknown due to the lack of specificity in the application. Based on this, we would ask that a condition of any approval include that the applicant be required to mitigate any adverse impacts to the City’s infrastructure related to the project, particularly those related to the use of City roads that are not well suited for the anticipated heavy vehicle traffic.

The City of La Grande’s comments are provided in part as general comments and in part using the table provided where we were able to identify specific sections of the Application that correlate to our comments. Our inability to specifically link some of our general comments to page and paragraph in the application is directly related to the short timeframe provided for our review and the manner in which the information is scattered throughout the over 17,000 pages in the document. We have done our best with the limited time and would ask that we not be penalized for the placement of our comments and that all our comments be given due consideration.

**Geological Review** – The south and west hills of La Grande have been classified by the adopted engineering report titled “Engineering Geology of the La Grande Area, Union County, Oregon”, dated 1971, as a geological hazard area. The study addresses numerous fault lines from Sheep Creek to and through the La Grande area, which covers the area submitted for site selection. That document is attached and supports concerns for all work proposed within the submitted study area. This plan is addressed in the City of La Grande Comprehensive Plan in addressing Goal 7.

There is nothing that could be found addressing storm sewer treatment, storm water volume control for impervious areas or dust control. Waters from the south and west hills around La Grande flow directly into and through the City. La Grande has numerous inversions, creating air quality problems, and is recognized by the Department of Environmental Quality as a nonattainment city. These health and environmental hazards should have been addressed.

**Exhibit T – Recreation.**

**View Shed Concerns of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Morgan Lake Park is the City of La Grande’s only campground and is heavily used by local and regional day users as well as out of state, local, and regional campers. The park is open from late April thru October and boasts an average of over 50 vehicles per day and thousands of park visitors per year. Park users currently participate in a variety of recreational activities including; camping, fishing, non-motorized boating, bird watching, wildlife viewing, star gazing, paddle boarding, swimming, and more.

There is one route to the park via Morgan Lake Road that crests at the top of the ridge where an access road enters the park. This coincidentally is the only exit to the park as well. Currently, park users experience vast views of mountain prairies and mature stands of Ponderosa Pine and Douglas Fir.
In addition to the environmental impacts Karen Antell details in her report below, the Morgan Lake alternative proposed route that travels through the park boundary, close to Little Morgan or Twin Lake would severely impact the view shed and recreational experience of park users. The first and last impression of the park would be the view of the power lines. The noise created from the lines will affect the peaceful outdoor recreation experience for all park users.

This heavily used park is a quiet sanctuary only minutes from town where thousands of local, regional, and out of state visitors come to enjoy their favorite outdoor recreational activities. The noise and the view shed and environmental impact will cripple our efforts to provide the same outdoor recreation experience for our park visitors.

Given Idaho Power elected not to include the BLM preferred route, the impacts to the City of La Grande, particularly as they relate to the view shed and recreational amenities are much more significant than they otherwise would have been. Accordingly, if the proposed and/or alternate route are approved it would be appropriate for the applicant to mitigate these adverse impacts by improving and enhancing the recreational facilities that will be degraded.

**Assessment of the natural qualities of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Dr. Karen Antell, PhD, Professor of Biology, Eastern Oregon University prepared the following summary of the ecological qualities of the Morgan Lake area and is incorporated as part of the City’s review:

I have a PhD in Botany, and have been employed as Professor of Biology at Eastern Oregon University since 1987. Over the past 30 years, I have developed extensive knowledge of the biological diversity exhibited at Morgan Lake and the associated wetlands surrounding Twin Lake (a.k.a. Little or Lower Morgan Lake), with primary emphasis on vegetation, Lepidopterans (butterflies and moths), birds, and amphibians.

Introduction: Morgan Lake Park was created by the City of La Grande in 1967 and a plan was adopted as a guiding document for management of the park. The Morgan Lake Park Recreational Use and Development Plan states that “A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users.” Additionally, the “Little Morgan Lake area” (a.k.a. Twin Lake) “should be left as a natural habitat for birds and animals with little change or interference from man’s activities.” The area has been managed with an emphasis on development of recreational uses such as “fishing, bird watching, nature study,” and non-motorized boating. Domestic livestock are not allowed within the park.

Morgan Lake Park has existed essentially unchanged since the mid-1970s. To my knowledge, external threats to the natural and recreational values of the lake (other than wildfire) have not previously been identified, and no comprehensive biological inventories have been completed. The possibility of development of the B2H power line in close proximity to the park warrants an assessment of potential impact to the natural and recreational qualities of the area.

This report summarizes some of the unique natural qualities of Morgan and Twin Lakes that may be altered due to construction of the B2H power line in close proximity to the park.
1. Ecological Uniqueness and Importance of Morgan Lake Park

Morgan Lake and its neighboring environs constitute an area of significant geologic and biological importance. The perennial wetlands are snowmelt and spring fed with no stream-flow inlets or outlets. The presence of these wetlands on the top of the Glass Hill ridge is both unique and of enormous ecological importance. There are no other montane, ridge top wetlands of its size or ecological significance in the area.

Prior to its acquisition as a city park, a dam was constructed on the north side of Morgan Lake in order to store water for both hydropower generation and agricultural use. Consequently, what originally would have been a palustrine wetland was developed into a perennial lake, with relatively little surface fluctuation. The lakeshore edge has been altered with introduction of rock revetments in some areas. Although the ecological qualities of this lake have been altered significantly over time, the lake remains a permanent water source with aquatic insect and introduced fish populations that sustain diverse bird species that otherwise are rare on Glass Hill.

Twin Lake is located west of Morgan Lake (Fig. 1). This lower-lying area has not been damned or physically altered. There are no stream inlets or outlets. Water levels fluctuate throughout the year, creating a variety of habitats for many different species. Soft edges harbor diverse emergent vegetation as well as submerged aquatic species. This wetland serves as a highly productive water source for amphibian reproduction and nesting waterfowl.

Figure 1. Google Earth image of Morgan Lake and Twin Lake, 16 August 2017.

2. Biological Diversity at Morgan Lake and Twin Lake Area

Morgan Lake Park hosts a maturing Ponderosa pine/Douglas-fir forest. Timber harvest is not prescribed in the Recreational Use and Development Plan, and tree cutting has been
limited to removal of diseased or hazard trees. No commercial logging has occurred since at least 1967. In addition to the development of this maturing forest on deeper-soiled sites, the area also hosts an outstanding diversity of understory and herbaceous vegetation. Because of exclusion of livestock since establishment of the city park, the area has been less impacted by soil disturbance and invasive weed incursion than surrounding private lands.

Twin Lake represents a rare palustrine wetland that remains in excellent condition. Virtually the entire northern half of Glass Hill is in private ownership, where most wet meadows have been highly impacted by livestock grazing. Twin Lake has not been drained or otherwise “managed”, and the diverse aquatic and emergent wetland plants native to the area are still almost entirely intact.

Following is a summary of some of the most unique or ecologically significant qualities of Morgan Lake Park, emphasizing the following: forested areas; understory/herbaceous vegetation; birds; amphibians; and Lepidopterans (butterflies and moths).

Maturing Ponderosa pine/Douglas-fir forest:
The forest surrounding the lake includes a mixed stand of maturing trees and smaller diameter stock. There are scattered downed trees and snags, however campers have scavenged much of the dead wood for firewood over the years. Visitors have the opportunity to experience a forest with diverse understory, unimpacted by grazing, and that is developing mature qualities. Although many visitors may not be able to articulate that this is why they love to come to Morgan Lake, nevertheless, this small pocket of high-quality forest draws a large number of visitors throughout the year because they just “love going up there”.

Because of intense commercial logging throughout much of Glass Hill, these large trees represent significant potential for wildlife use. Nesting species that require larger-diameter trees that frequently are observed at Morgan Lake include: Great Horned Owl, American Bald Eagle, and Osprey.

Other cavity nesting species typically require not only snags, but also abundant insect populations to support the high protein requirements for rearing young nestlings. Morgan Lake produces hatches of aquatic insects that sustain active breeding populations of the following species: Violet-green Swallow, Tree Swallow, Western bluebird, Mountain bluebird, several flycatcher species.

Mature conifers also provide food resources for seed eating bird species as well, including Red, and White-winged crossbills, a variety of finches, Pine siskins, Black-capped and Mountain chickadees.

Aspen, Cottonwood and Willow:
In addition to coniferous forest trees, the park also sustains a few small groves of Quaking aspen, which are otherwise rare on Glass Hill. Large, Black cottonwoods are found at the north end of the lake. These fast-growing, native trees provide nesting and roosting habitat for a wide variety of bird species. They also harbor insects that provide food to migratory and residential bird populations. Willow thickets occur around the perimeters of both Morgan Lake and Twin Lake. Their dense vegetation provides essential cover for
successful nesting of many birds, especially neo-tropical migratory species, such as warblers and Western tanagers.

Understory/Herbaceous Vegetation:
Shrub and forb species diversity at Morgan Lake Park is very high. Open, thin-soiled areas support a healthy example of Palouse Prairie type native grassland. In addition to native grasses, such as Sandberg’s bluegrass and Oatgrass (Danthonia) species, the area hosts many flowering forbs, including Lomatium, Mariposa lily, Prairie smoke, Larkspur, and Phlox.

Forest areas are dominated by Idaho fescue, Snowberry, Mule-ears, Chokecherry, Elderberry, Ocean spray, and Wild rose. Other flowering species include Lupine, Golden pea, Goldenrod, Sugarbowls, Buttercups and sedges. Examples of birds supported by fruiting shrubs at Morgan Lake include: Black-headed grosbeak, Spotted towhee, American robin, and waxwings.

Aquatic Vegetation:
Twin Lake is notorious for its lush “forest” of native Yellow pond (water) lily. This dense vegetation provides excellent cover for a wide variety of nesting waterfowl, including ducks, geese, grebes, coots, and others. Other unusual and interesting aquatic plants that can be seen at Twin Lake (and nowhere else on Glass Hill) include Bogbean (Menyanthes) and Bladderwort (Utricularia), an insectivorous plant.

Birds:
An enormous diversity of bird species utilizes the Morgan Lake area, both for nesting and feeding. Raptors hunt the open areas, and forest dwellers occupy the timber. Waterfowl utilize both Morgan Lake (feeding) and Twin Lake (nesting). Morgan Lake is a stopover for migratory diving birds that require deeper water than is found elsewhere in the area. For example, Common loons are typically found at Morgan Lake in fall and spring, but not in other areas of Union County. Cormorants and even Great blue herons also have become a common sight around the lake.

Habitat for woodpeckers is especially important at Morgan Lake. Several species of woodpeckers that are on the ODFW Sensitive-critical species list for Oregon have been detected at the park, including Lewis’ woodpecker, Pileated woodpecker, and White-headed woodpecker.

Other bird species that now are rare or extirpated from western Oregon, but persist at Morgan Lake Park, include Common nighthawks and Western meadowlarks, both of which currently are listed as sensitive species in Oregon.

Amphibians:
Native amphibian populations have been decimated throughout the Grande Ronde Valley due to a combination of habitat loss, invasive Bullfrogs and, likely the Chytrid or BT fungus. The Morgan Lake system, so far, has avoided bullfrog infestation, and still supports healthy native frog populations. Twin Lake is a critical breeding area for Pacific chorus frogs. Columbia spotted frogs (Sensitive-critical species status) have been documented at Morgan Lake, and therefore must be breeding in the area. Suitable habitat for Long-toed salamanders and Western toads (Sensitive species status) also exists.
Lepidopterans (butterflies and moths):
I have conducted nighttime surveys of moth species at Morgan Lake annually since 2014. The area hosts a surprisingly diverse and unique assemblage of species that is not replicated on other areas of Glass Hill. Many lepidopterans, especially moths, require specific host plant species in order to rear their larvae. Therefore, the high diversity of herbaceous plant species translates into a very high diversity of butterfly and moth species. After hatching, adult butterflies and some moths require nectar sources for feeding until they have reached reproductive maturity and produced eggs. The variety of flowering shrubs and herbaceous plant species at Morgan Lake provides critical feeding habitat for both larval and adult butterflies and moths, and sustains an exceptional level of species diversity. Healthy populations of Lepidopterans in turn support many species of birds and bats that feed on these insects throughout all seasons of the year.

Bats:
Although I am unaware of any bat surveys that may have been conducted in the Morgan Lake area, it is possible that some data exist. Morgan and Twin Lakes, and their surrounding forested habitat, constitute exceptionally important roosting, breeding and feeding habitat for a wide variety of bat species, some of which no doubt are listed as sensitive and/or critical species in Oregon.

Conclusions: In conclusion, Morgan Lake Park represents a unique area on the Glass Hill ridge because of a combination of several features: public ownership, no recent commercial timber harvest, no livestock grazing, and management for quiet recreation. The area currently is free from intrusion of man-made infrastructure except for limited access roads. Construction of a 500 kV power line within close proximity to the park would result in degradation of the natural qualities of the area, including wide-spread impacts to the wildlife, and plant life. In addition to the visual impact of the power lines themselves, significant impacts due to tower footprint construction, construction and maintenance of access roads, and herbicide use, could have profound impact on water quality of Twin Lake. Introduction of invasive plant species could have irreversible impact on the health and diversity of the native flora and all of the bird, insect and mammal species that depend on these resources.

Developing a well-informed understanding of the risks and possible outcomes of power line construction in the area should be a high priority for the city. No matter how well intentioned, mitigation efforts seldom replace or restore the qualities that have been lost or damaged to their previous condition. The City of La Grande is very concerned about any alteration to the sensitive, outstanding and unique qualities of Morgan Lake Park (Fig 2).
Figure 2. Morgan Lake alternative (left) and Mill Creek alternative (right) routes near Morgan Lake Park.
McAllister
Affidavit

EXHIBIT 2

EXHIBIT 2
MEMORANDUM

TO: Kellen Tardaewether
   Oregon Department of Energy
   550 Capitol St. N.E., 1st Floor
   Salem, OR  97301

FROM: Robert A. Strope, City Manager
       City of La Grande, Oregon
       P.O. Box 670
       1000 Adams Avenue
       La Grande, OR 97850
       (541) 962-1309
       rstrope@cityoflagrande.org

DATE: April 27, 2018

RE: Idaho Power Responses to City of La Grande Comments on the Amended Preliminary Application for Site Certification for the Boardman to Hemingway Transmission Line

General Comments: The La Grande City Council renews our objection to the Proposed Route in the preliminary application and again strongly requests that Idaho Power remove the Proposed Route from their application and instead use the Morgan Lake Alternative or ideally reconsider the BLM preferred route. As we stated previously, of the two routes identified in the application, the applicant selected the one most impactful to the City of La Grande as their Proposed Route. In their response Idaho Power states they intend to construct on the route that has the most support from the local community. The local community does not support the B2H project as evidenced by the overwhelming adverse public response each time the topic is on an agenda. Therefore Idaho Power is unlikely to get community support for any route as it will be perceived as support for the project. Perhaps another way to put it, the La Grande City Council, which represents over the more than 13,000 residents who are in closest proximity to B2H, has stated they object more to the Proposed Route than the Morgan Lake Alternative. This should be more than sufficient for Idaho Power to remove the Proposed Route from their application.

The City of La Grande is disappointed that the Idaho Power response to our comments repeatedly reference a lack of specific deficiencies given one of the main points we and other jurisdictions have made is the preliminary application itself does not provide sufficient information in many areas to adequately review what they are proposing to construct as we would with a normal land use application that had detailed site plans.
Given the lack of detail contained in the preliminary application, we would ask that conditions of approval be included to protect the City’s interests and avoid any disputes in the future should the project be approved. Some specific conditions we are requesting are shown in bold in the following paragraphs. Idaho Power could also revise their application to include these to streamline the process.

Below are additional comments regarding the Idaho Power response:

**Exhibit T – Recreation.**

**View Shed Concerns of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Despite the detailed information provided by Dr. Karen Antell, PhD, Professor of Biology, Eastern Oregon University in our previous submission, Idaho Power’s states that we have not provided evidence of impacts the line may have on Morgan Lake. It is difficult to be more precise on impacts given the lack of detail in the Idaho Power preliminary application that we pointed out. Their submission lacks details regarding how they plan to access the line during construction, the types and quantities of equipment that will travel up Morgan Lake Road during construction. Idaho Power’s staff acknowledged during public meetings that the towers would be an impact on the view shed but that people would get used to it over time. We would ask that Idaho Power be required to provide evidence that such a project does not adversely impact an amenity such as Morgan Lake. Another option would be for Idaho Power to consider physical improvements at Morgan Lake to enhance the recreational experience and help offset the view shed impacts.

At a minimum, the City would ask that if the project is approved, a condition of approval would include that for the approximately 1.5 miles of the line that would be in view from Morgan Lake that H Frame towers be used to help mitigate the adverse impact to the view shed. If the Proposed Route is selected instead of the Morgan Lake Alternative, a condition of approval should be added to require H Frame towers in the view shed visible from the City of La Grande. Again, the City of La Grande adamantly opposes the Proposed Route and would ask Idaho Power to remove it from their application.

**Exhibit U – Public Services include utilities such as road systems, water, sanitation services, power, and other amenities necessary for the construction.**

If Morgan Lake Road will be used for construction access, for the safety of the public and Idaho Power’s construction crews, the City of La Grande requests that a condition of approval be included to require Idaho Power to widen Morgan Lake Road to a standard 22 foot width from the end of the asphalt in the vicinity of 91 Walnut to the end of the road with guardrails from Skyline Drive to Marvin Road. Given the grade and winter conditions, asphalt would not be the preferred surface, but rather a minimum 6 inch thick rock and gravel surface using base rock from Harney Rock & Paving Company, Haines, Oregon, which has proven to be ideally suited to the existing conditions on this road. **If Glass Hill will be used for construction access, it would also need to be improved to these same standards with the addition of improving the intersection of Glass Hill and Morgan Lake Road to allow for left turns from Glass Hill onto Morgan Lake Road.** Glass Hill would not require guard rails. Soil stabilization, slide areas, and improved drainage will be required to be addressed as part of needed improvements to accommodate construction traffic, as well as the use of Mag Chloride...
for dust control and to aid in the stabilization. Union County Public Works can provide more
detailed information regarding the standards.

Route for construction traffic, both proposed and Morgan Lake Alternative: If the project is
approved, in addition to the actions Idaho Power stated they would be taking regarding
traffic, the City would ask that as a condition of approval Idaho Power will use the following
route: From Highway 30 to Gekeler Lane to C Avenue to Walnut Street to Morgan Lake
Road to Glass Hill Road. Further, that prior to the start of construction, the section of C
Avenue from the intersection of C Avenue and Sunset and the section of Walnut from
Morgan Lake Road to C Avenue be improved to City of La Grande Class I standards to
accommodate the construction traffic and restored if needed upon completion of the
project. Also, that Idaho Power be required as a condition of approval to repair any damage
resulting from their vehicles and equipment that occur during construction and that upon
completion of construction all infrastructure be restored to as good or better than it was
prior to construction.
McAllister Affidavit

EXHIBIT 3

EXHIBIT 3
CITY OF LA GRANDE
PROCLAMATION

Declaring and Clarifying Opposition to the
Boardman to Hemingway Powerline Project
2019

Whereas, the City of La Grande is the only community of its size along the entire route of the proposed Boardman to Hemingway (B2H) Powerline where view shed and infrastructure impacts would be direct; and

Whereas, the over 13,000 citizens of La Grande will not receive any direct benefit of any nature from the B2H Powerline; and

Whereas, the City of La Grande has repeatedly expressed concerns that the most impactful route to the City of La Grande was selected as the Proposed Route despite the fact that it would have the most adverse impacts to the City of La Grande including but not limited to view shed; reduced property values of homes in the vicinity of the Proposed Route; environmental impacts during construction and when the transmission line becomes operational; and proximity to City water infrastructure; and

Whereas, the Morgan Lake Alternative would adversely impact the view shed of the City's Morgan Lake Park and could adversely impact the experience of visitors to this unique Park; and

Whereas, during construction, certain residential and arterial streets within La Grande City limits used to access property outside the City limits could experience damage from hauling loads that may exceed road standards; and

Whereas, the City believes the BLM Preferred Route is a viable option that would not impact the City of La Grande;

Now Therefore, I, Mayor Stephen E. Clements, on behalf of the City Council of La Grande, Union County, Oregon, do hereby declare we oppose the construction of the B2H Powerline, and further request that Idaho Power and its collaborators withdraw their application to construct the powerline. If the application is not withdrawn, we request the application be revised to include the BLM Preferred Route as the only route in the vicinity of La Grande; or at worst, the application be modified to remove the Proposed Route from consideration. The City Council also recognizes the ultimate decision regarding placement and construction of the B2H powerline lies solely with the State of Oregon, and recognizing such, will continue to request that if the Oregon Department of Energy ultimately approves the application, that they impose conditions of approval that address the actual and potential impacts to the City of La Grande to mitigate those impacts.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of La Grande, Union County, Oregon, this Third (3rd) day of April, 2019.

[Signature]
Stephen E. Clements
Mayor

ATTEST:

[Signature]
Kayla M. Nichols
City Recorder
McAllister
Affidavit

EXHIBIT 4

EXHIBIT 4
McAllister
Affidavit

EXHIBIT 6

EXHIBIT 6
May 28, 2021

Alison Greene Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list


Dear ALJ Green Webster,

I greatly appreciate the opportunity to respond to Idaho Power Company’s (IPC) improper ex parte communication to the Energy Facility Siting Council (EFSC) seeking to influence the outcome of this case. It is troubling that IPC presumably regarded such attempts to influence the decision-maker on matters directly related to issues parties are currently litigating to be appropriate and raises further concerns of undisclosed past conduct and communications, which have been sought and denied in discovery. Here, IPC not only asks EFSC to halt its rulemaking duties, but to ensure that Oregon Department of Energy (ODOE) will not interfere with IPC’s transmission line to the detriment of Oregon’s protected areas, scenic resources, recreation resources, and the interests of its residents.

IPC Misconstrues the Project History to Claim Unfair Surprise.

IPC’s most recent ex parte attempt to improperly influence the outcome of this case is consistent with a past pattern of misconstruing facts, the record, and the history of this project in order to achieve IPC objectives that provide no benefit to the Oregon public. Significantly here, while IPC claims the rulemaking in question would unfairly prejudice IPC such that the Council should “pause the rulemaking entirely” and direct ODOE staff to ensure that the B2H project is not impacted, any prejudice IPC suffers is a result of its own making. Not only has IPC long been aware of the issues relating to Protected Areas, Scenic Resources, and Recreation on the Morgan Lake Alternative, which petitioners are now litigating in this case, it chose to pursue this high impact route instead of the Bureau of Land Management’s (BLM) Agency Preferred Route—identified as the Agency Preferred Alternative since 2014—that obviates the issues IPC details in its ex parte communication.

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1I sought such communications in my discovery requests and subsequent motion for discovery order, which was denied on the basis of relevance. IPC’s April 22, 2021 letter to EFSC underscores the relevance of communications I requested but have been withheld. I respectfully request that the ALJ reconsider my Motion for Discovery Order with respect to my requests for IPC communications.
Among material misrepresentations IPC has made in its Application for Site Certificate (ASC) relevant to its current claim of unfair prejudice are those found in IPC’s Application for Site Certificate, Exhibit B Project Description, and the associated Attachment B-6 2017 Supplemental Siting Study. Indeed, the entire Supplemental Siting Study as it relates to the routes with which IPC’s ex parte communication is concerned (Mill Creek and Morgan Lake Alternative) is founded on false premises including that (1) the Mill Creek route was the BLM’s agency preferred route in its FEIS (it was not), and (2) that the actual Agency Preferred Route in the FEIS, the Glass Hill Alternative, was not carried forward (it was). Here, IPC misrepresents, among other things: the origin of both its Proposed Mill Creek Route and its Morgan Lake Alternative; the BLM’s study of identified routes; the BLM’s conclusions in its Final Environmental Impact Statement (FEIS); and the BLM’s fundamental role in this process, falsely claiming the BLM developed the Mill Creek route. Importantly, IPC’s concerns expressed in its April 22, 2021 ex parte communication primarily, if not entirely, pertain to this stretch of the transmission line through Union County and the contested case issues relating to Protected Areas, Scenic Resources, and Recreation on this segment—the standards subject to the current rulemaking with which IPC is concerned.

Understanding the significance of the falsehoods contained in Attachment B-6 2017 Supplemental Siting Study requires explanation. In December of 2014, the BLM identified the Glass Hill Alternative Route (referenced in the ASC) as the Agency Preferred Alternative for this project. In November 2016, the BLM identified this same route as its Agency Preferred Alternative pursuant to its analysis of proposed routes under National Environmental Policy Act (NEPA). Contrary to this well-documented fact, IPC represents in its 2018 Exhibit B Project Description that the “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route” as its “Basis for Corridor Change.” See Table B-6, Page B-39 of Exhibit B (IPC Basis for Corridor Change). This is patently false. In fact, the Glass Hill Alternative Corridor, has been the Agency Preferred Route since 2014 when it was identified as the NEPA preliminary preferred alternative in the Draft Environmental Impact Statement (DEIS).

Further, IPC falsely represents that the Mill Creek Route (rather than the Glass Hill Route) is the BLM’s Agency Preferred NEPA Alternative. For example, Table 3.1.1 “Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC” (Attachment B-6 at p. 3) represents the following:

2 The BLM did not “develop” any routes for this project. The BLM only evaluated routes that were developed by others and presented for comparative analysis.
As stated above, Mill Creek is not the BLM’s Agency Preferred Alternative in the FEIS. The BLM did not analyze this route. IPC further states that “In Union County, the Proposed Route includes portions of the Proposed Route that were included in the Draft Amended pASC and the Mill Creek Route that was developed by the BLM.” (Exhibit B, Attachment B-6 at p.9) This is, again, a gross misrepresentation of the Mill Creek (IPC Proposed) Route. Not only is the Mill Creek Route not the Agency Preferred Alternative, as conveyed throughout IPC’s ASC, the Mill Creek route was not developed by the BLM. As stated above, the BLM did not “develop” routes for this project, but evaluated routes presented, which did not include either the Mill Creek or Morgan Lake Route.

IPC has since acknowledged in its discovery responses that the Mill Creek Route is **not the BLM’s Agency Preferred Alternative** in the FEIS, as it falsely claimed in its ASC. Specifically, in response to McAllister Request No. 13, IPC states “Table 3.1-1 indicating that the Mill Creek route was part of BLM's agency preferred alternative in the Final EIS, that statement is incorrect.” (See attached Exhibit 1, IPC Discovery Responses). IPC has also represented to the Hearing Officer that this is a “typographical error.” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as the misrepresentation is consistently perpetuated throughout the Exhibit B Project Description (2018) and Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at p.1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route). Thus, IPC’s claim this is a typo is not credible and implies that either IPC is unaware of the of the contents of its own application or that it purposefully misrepresented this fact to ODOE.

**Table 3.1-1. Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC**

<table>
<thead>
<tr>
<th>Route Originator</th>
<th>Route Designation</th>
<th>EFSC Status</th>
<th>Status in FEIS</th>
</tr>
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<tbody>
<tr>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IPC</td>
<td>Proposed Route</td>
<td>Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
<tr>
<td>IPC</td>
<td>Morgan Lake</td>
<td>Not Analyzed in the Draft Amended pASC. IPC Alternative Route in the Amended pASC.</td>
<td>Not Analyzed in the FEIS.</td>
</tr>
<tr>
<td>BLM</td>
<td>Mill Creek</td>
<td>Not Analyzed in the Draft Amended pASC. Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
</tbody>
</table>

As stated above, Mill Creek is not the BLM’s Agency Preferred Alternative in the FEIS. The BLM did not analyze this route. IPC further states that “In Union County, the Proposed Route includes portions of the Proposed Route that were included in the Draft Amended pASC and the Mill Creek Route that was developed by the BLM.” (Exhibit B, Attachment B-6 at p.9) This is, again, a gross misrepresentation of the Mill Creek (IPC Proposed) Route. Not only is the Mill Creek Route not the Agency Preferred Alternative, as conveyed throughout IPC’s ASC, the Mill Creek route was not developed by the BLM. As stated above, the BLM did not “develop” routes for this project, but evaluated routes presented, which did not include either the Mill Creek or Morgan Lake Route.

IPC has since acknowledged in its discovery responses that the Mill Creek Route is **not the BLM’s Agency Preferred Alternative** in the FEIS, as it falsely claimed in its ASC. Specifically, in response to McAllister Request No. 13, IPC states “Table 3.1-1 indicating that the Mill Creek route was part of BLM's agency preferred alternative in the Final EIS, that statement is incorrect.” (See attached Exhibit 1, IPC Discovery Responses). IPC has also represented to the Hearing Officer that this is a “typographical error.” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as the misrepresentation is consistently perpetuated throughout the Exhibit B Project Description (2018) and Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at p.1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route). Thus, IPC’s claim this is a typo is not credible and implies that either IPC is unaware of the of the contents of its own application or that it purposefully misrepresented this fact to ODOE.
IPC further falsely claims in its Supplemental Siting Study that “The Morgan Lake Alternative was developed by IPC with input from local Land owners” (Attachment B-6 at p. 9, 3.2.3.3 IPC’s Morgan Lake Alternative). In reality, the majority of landowners opposed the Morgan Lake Alternative due to impacts on the natural resources, including Scenic Resources, Recreation Resources, and land meeting Protected Area criteria. Troublingly, a single landowner, who had recently acquired land in the area, developed and proposed the Morgan Lake Route, which IPC readily adopted and has since pursued. This fact is reflected in IPC’s private correspondence with this landowner, attached hereto as Exhibit 2, stating IPC intended to adopt the route the landowner proposed (now called the Morgan Lake Alternative). While the Glass Hill Alternative was developed to minimize impacts on sensitive resources including Protected Areas, Scenic Resources, and Recreation, the Morgan Lake Alternative was developed to minimize impacts to one new landowner’s personal interest. And, unlike the Glass Hill Alternative, IPC’s Morgan Lake Route was not studied or subjected to public comment.

IPC’s misrepresentations outlined above and its course of action during the application process undermine its claims of unfair prejudice if EFSC continues with “the current direction of the rulemaking to update the standards related to Protected Areas, Scenic Resources, and Recreation Resources.” For reasons that remain unclear, IPC chose to exclude the actual Agency Preferred Alternative identified in the FEIS and evaluated pursuant to NEPA from its application, while at the same time falsely representing to ODOE that the Mill Creek Route (for which it has applied) was the Agency Preferred Route in the FEIS. In reality, in the eleventh hour of the project, IPC opted to apply for multiple routes through Union County that had never been studied, and remain unevaluated by the BLM. IPC chose to pursue one of these unevaluated routes, the Morgan Lake Alternative, in favor of a single land owner who proposed the route to IPC.

Significantly, the concerns IPC raised to the Council in its ex parte communication would be moot if IPC had pursued the route the reviewing federal agency identified pursuant to NEPA analysis. NEPA’s stated purpose is to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 USC § 4321. This is consistent with ODOE’s stated mission and values, the purpose of EFSC oversight which seeks to “ensure that Oregon has an adequate energy supply while protecting Oregon’s environment and public safety,” and the discussed updates to EFSC’s Protected Areas, Scenic Resources, and Recreation standards that IPC contests.

Contrary to IPC’s claims, “the current direction of the rulemaking” does not unfairly prejudice IPC. IPC chose to (1) exclude the BLM’s agency evaluated and preferred route from the ASC, 3

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3 The issue of the need for the BLM to conduct supplemental study on these newly added routes is currently being litigated in federal district court. Case No. 2:19-cv-01822-SU.
4 See https://www.oregon.gov/energy/About-Us/Pages/Mission-Values.aspx
(2) include routes that have not been studied, and (3) pursue a route that has been the source of public concern since it became known to the public due to its impacts on, among other things, Scenic Resources, Recreation Resources, and sensitive areas that meet the Protected Area criteria. IPC and ODOE have advanced the position that an applicant may apply for any route it chooses, regardless of NEPA and the federal agency review—or the underlying motives driving selection of a specific route—so long as the applied for route comports with EFSC standards. Accordingly, IPC must accept the outcomes of its decision to apply for, or not apply for, a particular route. Now, after excluding the actual Agency Preferred Route evaluated pursuant to NEPA, which obviates the issues giving rise to IPC’s current concerns, IPC asks that EFSC conform its standards and rulemaking procedures to ensure IPC’s success to the detriment of Oregon’s protected areas, scenic resources, recreational resources, and the interests of its residents. Oregonians should not suffer the consequences of IPC’s poor business decisions.

**IPC’s Claims Regarding “Other Problems with ODOE’s Proposals” are Baseless.**

Finally, IPC’s contentions in Section III of its April 22, 2021 ex parte communication further undermine IPC’s credibility and expose IPC’s claims of potential prejudice as a red herring. Here, IPC appears to purport that it relied on an absurd interpretation of OAR 345-022-0040(2) in its Alternative Route Analysis, which runs counter to the interpretation ODOE provided to IPC in the Second Amended Project Order. Specifically, ODOE states:

> Note that OAR 345-022-0040(1) generally prohibits siting of transmission lines through protected areas, which include state parks. However, under OAR 345-022-0040(2), EFSC may approve a route that passes through a protected area if the council determines that other routes outside the protected area would “have greater impacts.” If the transmission line routing proposed by the applicant will pass through a protected area, the applicant shall describe in detail the alternative routes it studied and provide analysis in the application to support a finding that routing the transmission line through the protected area would have less impacts than the alternatives. (Second Amended Project Order, July 26, 2018, at p. 14).

In the subsequent ODOE rulemaking project that IPC contests, ODOE explains that “Staff believes this rule is intended to allow a transmission line…to pass through a protected area when greater impacts cannot be avoided, but the construction implies that a linear facility could be sited on a protected area when other lesser impact alternatives may be available.” (October 22-23 EFSC Meeting, Agenda Item D (October 9, 2020)). The proposed amendment only seeks to clarify that the original intent of the rule is to allow the project to pass through a protected area only when Council finds that no alternative routes or sites would have lesser impacts, which is the logical interpretation.

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6 This position conflicts with ORS 469.370(13) requiring that the council shall conduct its site certificate review…in a manner that is consistent with and does not duplicate federal agency review, including development with the federal agency and reliance on a joint records to address applicable council standards.
The analytical framework has never changed. Rather, ODOE seeks to clarify the construction of the language so as not to achieve an absurd result. IPC appears to argue that the proper analytical framework is to conclude that an alternative may pass through protected areas if that alternative has greater impacts than other routes. This is nonsensical and has clearly never been the intent of OAR 345-022-0040(2). If IPC relied on this perverse interpretation, as it appears to claim, this exposes troubling fundamental issues with its route analysis.

IPC’s ex parte communication asking EFSC to halt required, common-sense rulemaking claiming unfair prejudice, at its core, intends to obscure the fact that, in the eleventh hour of what IPC points out was a 12-year process, it added new routes that had never been studied, while excluding the Agency Preferred NEPA route, which adequately addressed the issues of Protected Areas, Scenic Resources, and Recreation that are the basis of IPC’s current concern. EFSC should not bend standards and procedures to suit the needs of an Idaho corporation at the expense of Oregon’s natural resources and the public interest of Oregonians.

Sincerely,

Michael McAllister
Petitioner
February 5, 2021


Issue No. R-2, SP-2, FW-13

MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 1:

Identify all individuals likely to have discoverable information that you may use to support your claim that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 1:

Idaho Power objects to this request as vague, ambiguous, and overbroad. Without waiving this objection, Idaho Power identified its witnesses for these issues (to the extent the identity of such witnesses is known at this time) below in response to Question 2.
Issue No. R-2, SP-2, FW-13

MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 13:

Explain the basis for your claim in Attachment B-6 of the ASC that the Mill Creek Route is the Agency Preferred Alternative in the FEIS.

   a. Produce the documents on which you rely to make this claim.

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 13:

Idaho Power objects to this request as vague and ambiguous, as it is unclear what statement in Attachment B-6 you are referring to.

Without waiving that objection, if this request is referring to the statement in Table 3.1-1 indicating that the Mill Creek route was part of BLM’s agency preferred alternative in the Final EIS, that statement is incorrect and an error on Idaho Power’s part. For the Blues Mountain segment of the project, in the Final EIS, BLM identified the Glass Hill Alternative as modified by route variations S2-A2, S2-D2, and S2-F2 as the Environmentally Preferable Action Alternative Route and BLM’s Agency Preferred Alternative Route.
27 February 2015

Brad Allen
Via electronic mail

Subject: Elk Song Ranch Alternative Routes

Dear Brad and June Allen:

Thank you for providing an alternative route for Boardman to Hemingway Transmission Line Project where it crosses your property known as the Elk Song Ranch. We took your proposed route and modified it slightly to avoid known constraints in the area. Both your proposed route (red dashed line) and the modified routes (orange line and yellow line) are shown on the attached map and explained below.

Your proposed route follows the general route of the Glass Hill Road area you state has a higher human presence than the location of the proposed route. In the siting of a transmission line we must consider the impacts to the human as well as the natural environment. We modified your proposed route to avoid passing over several structures and to be further away from Morgan Lake, a local recreation site. We also developed an alternative route (yellow line) that would further reduce impacts to Morgan Lake. The above recommendations reflect the same methodology we used for routing along the entire length of the project.

A site visit to the area by Idaho Power transmission engineers and final design of the transmission line could result in further refinement of the modified route on the Elk Song Ranch. Please contact me if you would like to discuss any aspect of the routing.

Regards,

Todd Adams
B2H Project Leader

Enc: map

cc: D Gonzalez  BLM
    T Gertch  BLM
    R Straub  BLM
    Z Funkhouser  IPC
    M Colburn  IPC
Sent from my iPhone

Begin forwarded message:

From: "Adams, Todd" <TAdams@idahopower.com>
To: "bradallen4030@hotmail.com" <bradallen4030@hotmail.com>
Cc: "Don Gonzalez" <dgonzale@blm.gov>, "Gertsch, Tamara" <tgertsch@blm.gov>, "Renee L' 'Straub" <rstraub@blm.gov>, "Funkhouser, Zach" <ZFunkhouser@idahopower.com>, "Colburn, Mitchell" <MColburn@idahopower.com>
Subject: B2H Elk Song Ranch Alternative Route

Brad,

Attached please find a map showing your alternative route as you proposed along with a suggested route variation as explained in the letter. Don’t hesitate to contact me if you have any questions.

Regards,
Todd Adams

This transmission may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether electronic or hard copy format. Thank you.

2 Attachments
I, Susan Geer, state and declare as follow:

1. I submit this Declaration in support of Michael McAllister’s Oppositions to Idaho Power Company and Oregon Department of Energy Motion for Summary Determination on FW-13.

2. I am a professional botanist and vegetation ecologist with a B.A. in Biology from Knox College and M.S. in Ecology from Utah State University, and 29 years professional experience for the most part in northeast Oregon. Most of my career has been with the USFS, but I have also worked for The Nature Conservancy, Idaho Fish and Game, Union County SWCD, and National Park Service. In this declaration I am not officially representing any agency, only myself.

3. I have lived in La Grande since 2003 and have visited Twin Lake several times to enjoy the peaceful natural setting and observe birds and animals. Only recently we have become aware that the unique setting and rich habitat are in peril.
4. Several of my professional experiences have exposed me to gathering data in wetland areas, in particular my current position conducting Multiple Indicator Monitoring of riparian areas and rare plant surveys including wetlands. In previous years I have assisted in the inventory of wetland Research Natural Areas on Forest Service lands. Other notable examples: In 2007 I categorized and ranked riparian wetlands for the Idaho Heritage Program; in 2004 I inventoried plants of wetlands and riparian areas on Zumwalt Preserve of The Nature Conservancy in Oregon; and in 1996 I inventoried the newly acquired Sharon Fen preserve for The Nature Conservancy of Oregon.

5. In my professional estimation, Twin Lake appears to be a unique and irreplaceable wetland. Twin Lake is connected hydrologically to Morgan Lake but offers a different set of vegetation and habitat types to wildlife. The lacustrine system contains an amazing amount of vegetation including shoreline, emergent, and aquatic bed vegetation types; in fact, the entire lake is in a shallow depression and covered with floating vegetation which is absolutely teeming with wildlife, particularly birds and amphibians. I have read that these systems are on average more productive and store more carbon than an old growth forest. Last year on a visit with wildlife biologist Laura Navarrete we heard Columbia spotted frogs, and recently I saw sandhill cranes and bald eagles nesting.

6. I visited the portion of wetland habitat that falls within Idaho Power Company’s site boundary with Michael McAllister in June 2021. The lake and associated vegetation types are surrounded by a basalt rim topped with upland forest. There is an outflow area on the hillside below emerging as a spring/seep area of facultative and obligate wetland vegetation including a variety of sedges and rushes as a previously undocumented occurrence of Trifolium douglasii, a rare plant. This outflow area is within Idaho Power’s site boundary.

7. Dr. Karen Antell and I recognize the unique vegetative and geologic features of Twin Lake and have started a preliminary list of vegetation (attached) in our spare time. This list is only a start, by no means a complete list, but it gives a hint of the diversity of vegetation. We hope to engage other natural resources specialists to aid in inventory and aspire to convince the City of La Grande to enroll the lake in the State’s Natural Areas program. Twin Lake is a the Geer Declaration in support of McAllister Page 2
best representative I have seen, of a plant community unprotected in the Natural Areas program Blue Mountains ecoregion: (93) Freshwater lake with aquatic beds and marshy shore (Oregon State Natural Areas Plan 2020, page 133).

8. Based on my observations at Twin Lake, the area contains an incredible density of birds, bats, and insects often in flight above and around the lake. These have not been inventoried. It appears to me that the placement of Idaho Power’s transmission line next to Twin Lake would cause grave problems for the birds and bats, not to mention the insects, of Morgan Lake Park. The lines themselves would surely be deadly, and the noise has got to be detrimental as well.

9. I believe that without question, the vegetation of Twin Lake is a “unique assemblage” and absolutely must be Category 1 Habitat of ODFW. I have found no evidence in the ASC or elsewhere, that Idaho Power or ODFW has completed an inventory of the area adequate to declare otherwise. To my knowledge, the vegetation inventory started by myself and Dr. Antell is the first of its kind. While I have heard there are likely great amateur bird inventories that exist within our community, a complete inventory has not been assembled. When it is, I am confident it will show Morgan Lake Park is a nexus of bird diversity and numbers. The same is true for other wildlife species.

July 9, 2021

[Signature]

Susan Geer
Introduction

Contrary to Idaho Power Company’s (“IPC”) claims, genuine issues of material fact exist with respect to Party Michael McAllister’s (“Mr. McAllister”) case under the Energy Facility Siting Council (“EFSC” or “Council”) Recreation Standard.¹ The ALJ granted Mr. McAllister standing to challenge whether IPC’s Application for Site Certificate (“ASC”) comports with this standard after he met the threshold requirements to participate as a party in this matter. IPC’s motion for summary determination must fail because: (1) IPC misconstrues the issue and attempts to improperly limit the facts Mr. McAllister may use to prove his case; (2) IPC’s sole argument is based on false information; and (3) disputes of material fact exist as to whether the Morgan Lake Alternative Route will likely result in a significant adverse impact to important recreational opportunities of Morgan Lake Park.

¹ OAR 345-022-0100(1).
Relevant Factual Background

A. Petitioner McAllister Raised the Issue of the Morgan Lake Alternative Route’s Failure to Comport with Requirements of OAR 345-022-0100 and was Granted Standing to Challenge Compliance with this Standard.

During the applicable public comment period, Petitioner McAllister provided public comment raising numerous concerns with Idaho Power Company’s Morgan Lake Alternative Route (which IPC applied for and is currently pursuing) citing facts exemplifying, and in support of, his concerns in addition to citing the relevant EFSC standards. (See Exhibit A to McAllister Petition for Party Status submitted to OAH Aug. 27, 2020). With respect to the standard at issue in this Opposition, Recreation-OAR 345-022-0100, Mr. McAllister stated:

“Morgan Lake Route 3 also establishes towers within 500 feet of Morgan Lake Park. Here, the impact on La Grande's public will be High. The first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) - *A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users*. Also noteworthy is the fact that the City of La Grande Chamber of Commerce has long promoted Morgan Lake Park as the #1 Recreation Tourist Destination in the La Grande Area. And the State of Oregon designated Morgan Lake Park as a State Wildlife Refuge in the 1960s. Today Oregon Department of Fish and Wildlife identifies the Lake as an easy access fishing destination for the handycapped. [sic].

Morgan Lake Park encompasses two separate Lakes. Morgan Lake is 70 acres in size and is developed with road access and camping. Twin Lake is 27 acres in size, undeveloped, and with no road access or camping. Twin Lake has been identified by both Federal and State programs to conserve, restore, and protect wetlands. Oregon has developed a Wetland Conservation Strategy (Oregon Division of Lands, 1993). This Strategy is implemented through the Oregon Wetlands Inventory and Wetlands Conservation Plans (See Webpage). This planning process allows local governments to balance wetlands protection with other land-use needs. Twin Lake is recognized as an important, persistent, emergent vegetation wetlands, which includes both submersed and floating plants.

*Id.* He also cited OAR 345-022-0100. In the Order on Petitions for Party Status, issued October 29, 2020, the Hearing Officer determined Mr. McAllister had properly raised issues concerning
the Morgan Lake Alternative Routes’ impact on recreational resources under OAR 345-022-0100. (ALJ Oct. 29, 2020 Order at p. 63) and granted standing to participate in the contested case under this EFSC standard.

B. The Recreational Opportunities that Morgan Lake Park Provides Depend on Natural Setting and Non-development of the Area as Reflected in the Morgan Lake Park Recreational Use and Development Plan.

The Morgan Lake Park Recreational Use and Development Plan (“Morgan Lake Park Plan” or “Park Plan”) evidences the kind of recreational opportunities the Park provides and the importance of non-development to these unique recreational opportunities available at this rare, wild city park. See Morgan Lake Park Recreational Use and Development Plan (Ex. B to IPC’s MSD on R-2). Speaking to the kinds of important recreational opportunities at the Park, the Morgan Lake Park Policy Statement provides:

MORGAN LAKE PARK POLICY STATEMENT

Morgan Lake Park shall be managed and improved in a manner consistent with the objective of providing a quality outdoor recreational experience harmonious with a natural forest and lake area (as opposed to typical city park activities). Example activities consistent with this objective include fishing, bird watching, nature study, boating, but do not include baseball, motor bike trails, hunting, shooting, or playground activities using swings, merry-go-rounds, slides, etc.

A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users. (See also users numbers policy.)

Wildlife numbers and diversity shall be encouraged through habitat improvements particularly around Little Morgan Lake and other designated habitat improvement zones. Nest boxes will be allowed in accordance with development plan. (Build nest boxes, etc. out of natural material) Habitat improvement zones are areas of minimal development. Such development will encourage human dispersion and wildlife occupancy by a diversity of plant species.

The Little Morgan Lake area of the Morgan Lake Park should be left as a natural habitat for birds and animals with little change or interference from man’s activities. Trees and shrubs, if added, should be established compatibly with the natural setting.

Soil and vegetation (trees, shrubs, grasses, forbs) shall be protected from abuse so as to perpetuate the natural recreational values of Morgan Lake Park.
The City of La Grande (“the City”) both recognizes typical activities enjoyed at the park (e.g. “bird watching,” “nature study,” and “hiking”) and that such activities require “maximum natural setting.” The City further stated in public comment regarding impacts of the B2H Transmission Line, that “Park users…participate in a variety of recreational activities including; camping, fishing, non-motorized boating, bird watching, wildlife viewing, star gazing, paddle boarding, swimming and more” and that these opportunities require an undeveloped, maximum natural setting. See Affidavit of Michael McAllister, ¶ 10, Ex.1 at 3 (City of La Grande Public Comment, Aug. 31, 2017) (“This heavily used park is a quiet sanctuary…where thousands of local, regional, and out of state visitors come to enjoy their favorite outdoor recreational activity. The noise and the view shed and environmental impact will cripple our efforts to provide the same outdoor recreation experience for our park visitors.”); see also Declaration of Geoffrey Witek; Declaration Kyann Sholtes; Affidavit of Charles Gillis; and McAllister Affidavit.

C. Morgan Lake Park Falls within the Site Boundary for B2H.

Contrary to IPC’s representations in its motion, the site boundary for the B2H project crosses Morgan Lake Park. Multiple IPC-produced ASC maps depict the site boundary crossing the city park boundary,² feet away from the edge of the lower lake within the park boundary (Twin Lake aka Little Morgan Lake), which is habitat for a rare combination of a multitude of bird species and recreational destination for bird watching. McAllister Declaration ¶ 7a; Ex. 1 at 6 (Dr. Karnen Antell analysis included with City Comment). The City of La Grande highlighted

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² See e.g. ASC Exhibit C, Attachment C-3 Map 8 (ODOE - B2HAPPDoc3-4 ASC 03 Exhibit C_Project_Location_ASC 2018-09-28. Page 181 of 193); ASC Exhibit B, Attachment B-7a Map 55 (ODOE - B2HAPPDoc3-3.4 ASC 02e_Exhibit B_Attachment B-6 and B-7a_ASC 2018-09-28. Page 79 of 162); McAllister Affidavit, Ex. 5. (IPC John Williams Map 3); McAllister Affidavit, Ex. 4 (Union County Parcels Map 65).
this fact for IPC in public comment stating “the Morgan Lake alternative proposed route that travels through the park boundary, close to Little Morgan or Twin Lake would severely impact the view shed and recreational experience of users.” McAllister Declaration, Ex. 1 at 3.3

**Applicable Legal Standards**

**A. The Applicable Rules Do Not Require Parties to Make their Case at the Public Comment or Standing Stage.**

The requirements for establishing standing in this contested case do not limit or define the facts that parties can present to prove the merits of their case once they have been granted standing to on an issue within the Council’s jurisdiction.

1. **Establishing Standing.**

As pertinent here, “party” means:

Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency’s proceeding or represents a public interest in such result.

ORS 183.310(7)(c).

Pursuant to OAR 345-015-0016(5), a petition requesting party or limited party status must include the following:

(a) The information required under OAR 137-003-0005(3);4


4 OAR 137-003-0005(3) sets out the requirements for petitions to participate in a contested case hearing as a party or limited party and provides:

The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner’s attorney, if any;
(b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding; and

(c) A reference to the person’s comments at the public hearing showing that the person raised the issue or issues at the public hearing.

2. Eligibility Requirements.

Pursuant to ORS 469.370(5) and OAR 345-015-0016, a petitioner must satisfy the following requirements to be granted party or limited party status in this contested case:

1. Comment either in writing or in person on the record of the draft proposed order (DPO) public hearing, specifically, during the period of May 22, 2019 through August 22, 2019.

2. Submit a written petition for party or limited party status by the specified deadline, in

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency’s proceeding, a detailed statement of the petitioner’s interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner’s qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (3)(d) or (e) of this rule.

ORS 469.370(5) states, in pertinent part: “The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application.” OAR 345-015-0016(3) (“only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate.”)

OAR 345-015-0016(1) provides in pertinent part: “[A] person requesting to participate as a party or limited party in a contested case proceeding must submit a petition to the hearing officer by the date specified in the Department’s notice issued under OAR 345-015-0230.”
this case, August 27, 2020.

3. Demonstrate in the written petition for party or limited party status a personal interest in the outcome of the proceeding or demonstrate representation of a public interest in the outcome of the proceeding.

4. Raise, in the written petition for party or limited party status, at least one issue that is within the Council’s jurisdiction with sufficient specificity afford the Council, and Applicant, an adequate opportunity to respond.

3. Issues

As provided in ORS 469.370(3) and (5) and OAR 345-015-0016(3) to be considered in the contested case, the issue must meet the following requirements:

1. The issue must be within the jurisdiction of the Council. To be within the Council’s jurisdiction, the issue must be related to a Council standard expressed in a rule or an applicable, relevant statute identified in the Project Order.

2. The issue must have been raised in person or in writing prior to the close of the public record on the DPO, during the period of May 22, 2019 through August 22, 2019.

3. The issue must have been raised with sufficient specificity to afford the decision maker an opportunity to respond to the issue. “To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person’s position on the issue.” OAR 345-015-0016.

These rules do not require that potential parties allege every fact upon which they may rely in a contested case at the public comment stage. Such requirements would obviate the purpose of the contested case process. The Hearing Officer found that Mr. McAllister has met the above requirements to establish the right to participate in this contested case. The relevant EFSC standard, compliance with which Mr. McAllister has been granted standing to challenge, is

7 OAR 345-015-0016(3) provides, in pertinent part, “To raise an issue in a contested case proceeding on an application for a site certificate, the issue must be within the jurisdiction of the Council.”

8 Mr. McAllister has been granted standing under two additional standards which are the subject of separate MSD’s to which Mr. McAllister is also responding.
Recreation - OAR 345-022-0100, requiring that construction and operation of a facility “are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order.” Mr. McAllister now has the opportunity to prove the merits of his case, which allows presentation of facts beyond those raised in public comment and petition for party status.

Argument

I. Parties are Not Limited to Facts Asserted in Public Comment to Prove the Merits of Their Case under the Applicable EFSC Standard.

In its motion, IPC erroneously assumes that either (1) parties are limited to the facts and assertions included in public comment, or (2) the OAH may establish new, narrowed standards for parties to challenge in the Contested Case. Neither of these assumptions is supported. Indeed, if true, this would eliminate the need for a contested case as the decision maker could rule based on public comment alone.

IPC’s sole argument is based on a misconstruction of the issue. IPC argues it is entitled to summary determination “because the Company is not required to demonstrate compliance with the development limitations in the Morgan Lake Plan because the site boundary for B2H is

9 This standard also requires that “[t]he Council shall consider the following factors in judging the importance of a recreational opportunity: (a) any special designation or management of the location; (b) the degree of demand; (c) outstanding or unusual qualities; (d) availability or rareness; (e) irreplaceability or irretrievability of the opportunity. With respect to (a) “designation or management,” IPC identifies Morgan Lake Park as both a City Park and a Wildlife Refuge in its Application for Site Certificate. See e.g. ASC Exhibit T, Attachment T-3-2 (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28. Page 89 of 291.)

10 For example, IPC appears to purport that the Office of Administrative Hearings (OAH) may establish the standard at issue as whether the proposed facility is inconsistent with the Morgan Lake Park Recreational Use and Development Plan rather than the applicable EFSC standard of whether “construction and operation of a facility, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area…” as stated in OAR-345-022-0100.
entirely outside the Morgan Lake Park.” (IPC Mot. 4:15-5:1). However, Mr. McAllister did not allege in his public comment that IPC is bound by the Park Plan, nor is Mr. McAllister’s issue limited to the binding or jurisdictional nature of the objectives cited in La Grande’s Recreational Use and Development Plan. Rather, Mr. McAllister highlighted the Park Plan, its goals, and the identified recreational opportunities therein to illustrate the significant—indeed devastating—impact the proposed development of the Morgan Lake Alternative Route would have on the Park, expressly citing to OAR 345-022-0100. Specifically, the Morgan Lake Park Plan provides evidence that non-development is critical to the kinds of recreational opportunities the Park provides to its typical user. Whether or not the Park Plan is binding is not dispositive here.

Secondly, this argument incorrectly assumes that Mr. McAllister is limited to discussion of the Morgan Lake Plan in proving his case under OAR 345-022-0100. In fact, IPC’s argument goes beyond limiting Mr. McAllister to the facts relating to the Park Plan and its objectives to say the only relevant fact is whether the Park falls within the site boundary. And, because Morgan Lake Park is allegedly entirely outside the site boundary (which is false), his case is moot. IPC’s position is not supported by the applicable procedural rules. Finally, to the extent that IPC argues that Mr. McAllister is confined by a newly articulated, narrowed standard, this is also unsupported by the applicable rules. As detailed in Section A above, a party must have

11 As discussed in Section II below, the Park does fall within the site boundary, contrary to IPC’s claims.
12 However, IPC is actually bound by the Park Plant under ORS 226.010 because Project acreage is within the site boundary. McAllister Affidavit ¶ 9, Ex. 4-5.
13 While IPC cites additional facts from Mr. McAllister’s public comment relating to the proposed route’s impact on recreational opportunities, IPC admittedly does not address the validity of those factual assertions, but rather IPC misconstrues the issue in attempt to improperly limit the arguments Mr. McAllister is allowed to make at hearing.
raised an issue within the Council’s jurisdiction to establish standing to in the Contested Case. The rules within EFSC jurisdiction are, of course, already defined and cannot be developed, narrowed, or redefined for purposes of the Contested Case, as IPC suggests. Here, the relevant standard within the Council’s jurisdiction pursuant to which Mr. McAllister was granted standing is OAR-345-022-0100. The procedural rules do not prescribe a process for redefining or narrowing these standards for the purpose of individual parties’ cases. Indeed any standard, other than those enumerated and described in Division 22 would be outside the Council’s jurisdiction.

Accordingly, the standard that governs Mr. McAllister’s contested case with respect to Recreation and the proposed route is whether “construction and operation of a facility, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area…” as stated in OAR-345-022-0100, not whether the proposed facility is inconsistent with the Morgan Lake Park Recreational Use and Development Plan, or whether IPC is bound by the Park Plan, as IPC appears to argue. And, as explained above, nothing in the rules limits the facts Mr. McAllister may use to prove the merits of his case to either those raised in public comment, or those used in the OAH’s issue description.14

II. Contrary to IPC’s Claims, Morgan Lake Park Falls within B2H Site Boundary and Therefore within the City of La Grande’s Planning Jurisdiction.

IPC’s instant motion must fail because its sole argument is based on a falsehood. Specifically, IPC claims it is entitled to judgment in its favor “because the Company is not required to demonstrate compliance with the development limitations in the Morgan Lake Plan

14 Further, IPC’s position assumes that the Hearing Officer framed and limited Mr. McAllister’s issue in a manner that necessarily precludes his success.
because the site boundary for B2H is entirely outside of Morgan Lake Park.” Contrary to this representation, portions of the Park fall within the site boundary. Indeed, IPC’s own ASC maps depicting the site boundary render its assertion demonstrably false.15 Below is one example from IPC’s ASC maps clearly depicting the site boundary crossing the Morgan Lake Park Parcel.16

The City of La Grande underscored the fact that the Morgan Lake Alternative “travels through the park boundary” for IPC in public comment. McAllister Affidavit, Ex. 1 at 3 (City Comments). As such, IPC’s argument is baseless. Indeed, by IPC’s own logic, the Morgan Lake Park Plan is binding on IPC because portions of the Park do, in fact, fall within the site boundary. See ORS 226.010; IPC Mot. at 4-6.

15 See e.g. ASC Exhibit C, Attachment C-3 Map 8 (ODOE - B2HAPPDoc3-4 ASC 03 _Exhibit C_Project_Location_ASC 2018-09-28. Page 181 of 193); ASC Exhibit B, Attachment B-7a Map 55 (ODOE - B2HAPPDoc3-3.4 ASC 02e_Exhibit B_Attachment B-6 and B-7a_ASC 2018-09-28. Page 79 of 162); McAllister Affidavit, Ex. 5 (IPC John Williams map).
16 McAllister Affidavit, Ex. 4. IPC misidentifies Morgan Lake here as “Grande Ronde Lake.”
III. IPC’s Assessment of the Impacts on Recreation at Morgan Lake Park, Including Visual Impacts, is Flawed and the Facility will Result in Significant Impacts to Important Recreational Opportunities.

Even assuming IPC had not misrepresented the site boundary, IPC’s motion should still fail as additional disputes of material fact relevant to the resolution of the legal issue (whether the proposed facility comports with requirements of OAR 345-022-0100) remain. OAR 137-003-0580(6).

The EFSC Recreation Standard at issue here requires that “construction and operation of a facility…are not likely to result in a significant adverse impact to important recreation opportunities in the analysis area” when considering the following factors: (a) any special designation or management of the location; (b) the degree of demand; (c) outstanding or unusual qualities; (d) availability or rareness; (e) irreplaceability or irretrievability of the opportunity. OAR 345-022-0100. To demonstrate compliance with this standard, and in accordance with OAR 345-021-0010(1)(t), Exhibit T must include the following:

Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

A. A description of the recreational opportunities in the analysis area that includes information on the factors listed in OAR 345-022-0100(1) as a basis for identifying important recreational opportunities.
B. A description of any significant potential adverse impacts to the important opportunities identified in (A) including, but not limited to:
   i. Direct or indirect loss of a recreational opportunity as a result of facility construction or operation.
   ii. Noise resulting from facility construction or operation.
   iii. Increased traffic resulting from facility construction or operation.
   iv. Visual impacts of facility structures or plumes.

For purposes of the standard, “significant” is defined as:

“having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population
or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which the possible impacts are caused by the proposed action.” OAR 345-001-0010(53).

The analysis area for impacts on recreational opportunities, including visual impacts, is the site boundary plus additional 2 miles outside of the site boundary.17

IPC’s analysis and conclusions about the impacts the facility will have on the unique and irreplaceable recreational opportunities of Morgan Lake Park are deeply flawed. Among other things, IPC’s grossly inadequate analysis is conclusory, relies on subjective factors and unsupported assumptions, involves misrepresentations of fact, and excludes the required analysis of impacts on recreational opportunities within the full “analysis area” for this standard (extending 2 miles beyond the site boundary). The following non-exhaustive examples reflect these flaws and factual disputes material to the disposition of the relevant issue.

1. IPC fails to analyze the visual impacts of all components of the project in the analysis area.

In its application, IPC states that “Project-related actions that could affect recreation opportunities include[] construction and operation of Project facilities including permanent features (transmission towers, conductors, access roads, stations, communication stations)” and “temporary features (multiuse sites and pulling and tensioning sites).”18 The site boundary for the Project includes “ten communication sites of less than ¼ acre each and two alternative


communication station sites. One such communication station reflected in Attachment T-6c Viewshed Maps 1 and 2 touches the “important recreation area” of Morgan Lake Park, will be clearly seen from the Park, and will impact the recreational opportunities described in the Morgan Lake Park Plan, which necessarily rely on the undeveloped natural setting. Indeed, visitor’s first impression of the Park would be the view of this new structure. However, nowhere in the ASC Exhibit T or corresponding attachments does IPC analyze the impacts—visual or otherwise—of these structures. Tellingly, IPC excludes Morgan Lake Park from the photosimulations provided in Attachment T-5.

In addition to failing to analyze the impacts of all structures, IPC troublingly misrepresents the boundary of Morgan Lake Park in Attachment T-4 “Visual Impact Methodology and Analysis.” In Figure T-4-6, IPC identifies Morgan Lake Park as only Morgan Lake and the immediately surrounding area. In reality, the boundary is much greater and

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22 ASC, Exhibit T, Attachment T-5 (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28. Page 267-277 of 291). Note there are two key observations point next to the Park depicted at ASC Exhibit T, Attachment T-4-57, Figure T-4-6, which are excluded from IPC’s photosimulations.
entirely encompasses Twin Lake (also known as Little Morgan Lake, the smaller of two lakes inside the Park boundary). In Attachment T-4, IPC represents the Park Boundary as follows:24

The true boundary of Morgan Lake Park is reflected by the dotted line below, as depicted in the Morgan Lake Park Recreational Use and Development Plan. (See Ex. B to IPC’s MSD at 41)25:

Not only does IPC’s misrepresentation mislead the reviewer about the Project’s impacts on Morgan Lake Park, such inaccuracies call into question IPC’s credibility and the general reliability of the representations made in its application.26

24 *Id.*
25 This is the same boundary reflected in IPC’s Parcel Map 65, McAllister Affidavit Ex. 4.
26 This misrepresentation in the ASC is far from an isolated incident. Indeed, IPC has entirely misrepresented the federal review process and findings of the Federal Environmental Impact Statement (FEIS) in its application, falsely claiming it applied for the route selected in the FEIS.
2. *IPC’s analysis and conclusion rely on entirely unsupported assumptions about the “typical visitor.”*

In the ASC, IPC claims the “Project will have a less than significant overall effect on the experience of a **typical visitor** to Morgan Lake Park.” Specifically, with respect to the Morgan Lake Alternative, IPC concludes:

The Project will not result in a direct loss of recreation opportunity to the park. Temporary traffic and access impacts may occur during construction, but will be temporary and less than significant. Visual impacts will be low intensity. Considering the various components of the visitor experience, the Project will have a less than significant overall effect on the experience of a **typical visitor** to Morgan Lake Park.

However, IPC provides no basis for what constitutes a “typical visitor,” which activities a “typical visitor” engages in (e.g. hiking, bird watching, star gazing, wildlife viewing, nature study, all identified as common activities by the City of La Grande), or from where/which vantage points in the Park they frequently engage in such activities (e.g. bird watching at Twin Lake places the viewer in direct line of site of a tower, which sits directly in front of a bald eagle’s nest. McAllister Affidavit ¶ 7c. Indeed, IPC provides no facts—nor conducted any analysis— for who constitutes as a typical visitor of this unique resource.

Contrary to IPC’s unsupported assumptions about the typical visitor, significant evidence shows the Project will, in fact, have an extremely significant negative overall effect on the experience of a typical visitor to Morgan Lake Park and the opportunities they pursue there. The

Additional falsehoods undermining the credibility of the application are detailed in Mr. McAllister’s Response to Idaho Power’s ex parte communications, submitted May 28, 2021 and attached to McAllister Affidavit as Ex. 6. Such demonstrably false claims entirely undermine the credibility of Mr. Funkhouser’s Affidavit in support of IPCs Motions for Summary Determination.

City of La Grande made this clear in advocating for its residents. See McAllister Affidavit Ex. 1, Ex. 2. In expressing the significant impact the Morgan Lake Alternative would have on the recreational opportunities typically pursued at the Park, the City states:

This heavily used park is a quiet sanctuary only minutes from town where thousands of local, regional, and out of state visitors come to enjoy their favorite outdoor recreational activities. The noise and the view shed and environmental impact will cripple our efforts to provide the same outdoor recreation experience for our park visitors.28

Further, IPC’s relevant “analysis method” for visual impacts is dependent on “viewer perception,” which IPC defines as “how that change will be perceived by viewer.”29 Specifically, IPC states:

The determination of magnitude [of visual impacts] was used to evaluate the level of change to scenic quality/attractiveness and landscape character of the resource (“resource change”) and how that change will be perceived by viewers (“viewer perception”).30

This metric is inherently flawed because “the level of attractiveness” and how a change will be perceived by a viewer is entirely subjective and indeed unknowable absent a survey of typical users regarding how they would perceive the change. IPC conducted no such survey and, in fact, the vast majority of input and evidence from Park users relating to how they perceive the change directly contradicts IPC’s claims. This is reflected in (1) myriad public comments, (2) Affidavits and Declarations in support of this opposition; (3) public comments and Proclamation of the City of La Grande on behalf of residents; and (4) The Morgan Lake Recreational Use and Development Plan.

28 McAllister Affidavit, Ex. 1 at 2-3.
First, during public comment, community members repeatedly and consistently raised concerns about the devastating impact the facility would have on the Park and the enjoyment of the recreational activities dependent on its natural setting. These public comments are consistent with Declarations and Affidavits provided in support of this opposition. See McAllister Affidavit; Gillis Affidavit; Witek Declaration, Sholtes Declaration.

Second, the City repeatedly spoke to how viewers would perceive the change on behalf of La Grande’s residents, highlighting current “vast views of mountain prairies,” that would be ruined by the proposed route which “would severely impact the view shed and recreational experience of park users.” Indeed, “the first and last impression of the park would be the view of the power lines.” City Mayor Stephen Clements signed a Proclamation on April 3, 2019 asserting that “the Morgan Lake Alternative would adversely impact the view shed of the City’s Morgan Lake Park and could adversely impact the experience of visitors to this unique Park.” McAllister Affidavit, Ex. 3 (City of La Grande Proclamation April 3, 2019).

Finally, the Morgan Lake Park Recreational Use and Development Plan provides further evidence of how development would be “perceived by the viewer”—specifically a “typical visitor”—in describing the kind of activities the Park provides, such as “bird watching,” “nature

31 See e.g. ODOE - B2HAPPDoc5-1 All DPO Comments Combined-Rec'd 2019-05-22 to 08-22. Page 329 of 6396 (Micah Anderson); 123 of 6396 (Mayor Steven Clements); 2902 of 6396 (Robert Keng); 2813 of 6396 (William Whitaker); 1284-1285 of 6396 (Molly Eekhoff); 1129-1133 of 6396 (Matt Cooper); 545-546, 621-623 of 6396 (Lois Barry); 340 of 6396 (Karen Antell); 332-333 of 6396 (Colin Andrew); 1708 of 6396 (Carolyn Giles); 3111-3112 of 6396 (Meredee Lloyd); 3120 of 6396 (Carrie Caselton Lowe); 3826 of 6396 (JoAnne Marlette); 4070 of 6396 (Gray McGuire); 4766, 4780-4781 of 6396 (Tamson Cosgrove Ross); 5591, 5601 of 6396 (Stop B2H); 5882 of 6396 (Sara Watson); 5989 of 6396 (Sarah Wehrle); 6107 of 6396 (Susan Badger Jones).
32 McAllister Affidavit, Ex. 1 at 2.
33 Id. at 3.
34 Id. at 3.
study,” “hiking,” in a “maximum natural setting.” The evidence detailed above supports the conclusion that the facility (IPC’s pursued Morgan Lake Alternative) will have significant adverse impact to important recreation opportunities in the analysis area. This evidence creates a dispute of fact material to IPC’s conclusion that “visual impacts to Morgan Lake Park will be less than significant.” 35

3. IPC’s flawed analysis and the underlying method fail to properly consider the impacts in light of the kinds of recreational opportunities Morgan Lake Park provides, which depend on the natural setting.

Related to its unsupported assumptions about the “typical visitor” IPC also fails to adequately consider the nature of the specific recreational activities that users typically engage in. The impacts of the project must be assessed in light of the particular recreational opportunities the Park provides. IPC’s analysis method fails to do this. Here, the Park’s recreational opportunities necessarily depend on lack of development, solitude, the “maximum natural” setting, as the Park Plan, the City of La Grande, and individual Park users have repeatedly underscored. The typical park user, who enjoys the Park precisely for its natural integrity—who enjoys viewing wildlife in natural settings or hiking in natural settings, bird watching or star gazing—do not seek out places next to towering, buzzing transmission lines to enjoy such pursuits. See e.g. Witek Declaration; Sholtes Declaration; Gillis Affidavit; McAllister McAllister Affidavit.

As such, construction and operation of the facility will result in significant—in fact devastating—adverse impacts to important recreational opportunities that exist at Morgan Lake Park, which no one disputes is a unique and important recreational site.

**Conclusion**

For the foregoing reasons, IPC’s Motion for Summary Determination of Mr. McAllister’s Recreation issue should be denied.

/\s/ Michael McAllister \\
Michael McAllister  \\
Date: June 25, 2021
CERTIFICATE OF MAILING

On June 25, 2021, I mailed the foregoing PETITIONER McALLISTER’S OPPOSITION TO APPLICANT’S MOTION FOR SUMMARY DETERMINATION OF CONTESTED CASE ISSUE R-2 in OAH Case No. 2019-ABC-02833.

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La Grande, OR 97850

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/s/ Michael McAllister  
Michael McAllister
Affidavit of Michael McAllister in Support of
Opposition to Idaho Power Company’s Motion
for Summary Determination on R-2
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENERGY

IN THE MATTER OF: )
THE APPLICATION FOR SITE )
CERTIFICATE FOR THE BOARDMAN )
TO HEMINGWAY TRANSMISSION )
LINE )
) )
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AFFIDAVIT OF MICHAEL McALLISTER IN SUPPORT OF PARTY McALLISTER’S OPPOSITION TO IDAHO POWER COMPANY’S MOTION FOR SUMMARY DETERMINATION OF CONTESTED CASE ISSUE R-2

OAH Case No. 2019-ABC-02833

I, Michael McAllister, state and declare as follow:

1. I submit this Affidavit in support of my Opposition to Idaho Power Company’s Motion for Summary Determination.

2. I am a lifelong outdoorsman and the son of Oregon’s widely respected outdoorsman and journalist, Thomas H. McAllister (Tom), whose job consisted of writing about Oregon’s natural places for the Oregon Journal (which merged with the Oregonian). As a result, I grew up exploring every corner of Oregon, its natural settings, and the recreational opportunities this state provides. I first visited Morgan Lake Park in 1967 when Tom took the family to La Grande to cover the story of the joint effort to establish the Park as a cooperative city/state/federally funded project. I remember vividly the diverse and unique assemblage of birds at that time which included the first Black Tern that I had ever seen.

3. I obtained a B.S. in Wildlife Resources and Communications from the University of Idaho.

4. I have lived on and managed natural resources across the subject landscape for over 40 years. As an independent natural resource contractor, I have made a career specializing

McAllister Affidavit Page 1
in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I
gather data that is used for planning purposes, most often for National Environmental Policy Act
(NEPA) analysis.

5. As someone who is intimately familiar with natural resources and the many
landscapes, habitats, and outdoor opportunities in Oregon, I purchased my home and property
over 30 years ago, approximately one quarter mile from Morgan Lake Park, precisely because of
the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan
Lake Wetlands in Morgan Lake Park.

6. Based on my extensive experience in the natural settings of Oregon, Morgan Lake
Park and the surrounding area is a rare, remarkable, irreplaceable gem for many reasons:

a. Within the entirety of the Blue Mountains Physiographic Province, there are no
other montane, ridgetop wetland lakes that are represented by such a diverse
assemblage of both vegetation and wildlife species.

b. A ten-minute drive from downtown La Grande brings you to the top of the Blue
Mountains at Morgan Lake Park, which is situated on a Columbia River basalt
plateau. As you approach from the east on Morgan Lake Road, the view to the
west is to the distant horizon (25 miles) which is the divide between the Grande
Ronde River Basin and the John Day River Basin. From where you turn right off
the Morgan Lake Road and into the park, the transmission line will be within 500
feet, and grossly dominant to this sunset view scape. At 4,500 feet elevation, the
expansive view shed is unprecedented. To the north, you look at the shield
volcano complex, included: Mahogany Mountain, Sugarloaf Mountain, Green
Mountain, Mount Emily, Thimbleberry Mountain, and Black Mountain at 25
miles distance. To the east, you view across the Grande Ronde Valley (largest in
North America) to the Wallowa Mountains ("the Alps of the West") where the
Eagle Cap is visible on a clear day. To the south, you see into the drainages of
Sheep Creek, Rock Creek, Graves Creek, Whiskey Creek, Jordan Creek, and
Beaver Creek. These view sheds from the Morgan Lake area are little modified
since 1812 when Robert Stewart first described (in journal) this landscape. This, as he and five others made the first cross-country trip from Astoria to St. Lewis, “discovering the Oregon Trail.” In the dark of night, the only lights to be seen in any direction are the very distant lights of traffic on interstate 84 towards Pendleton. The undeveloped natural integrity is central to the important recreational opportunities the Park provides. As a result, maintaining the maximum natural integrity is crucial to the unique and important recreational opportunities this Park provides to both to locals and travelers alike.

7. In the 30 years I have spent living below Morgan Lake Park, I have watched this nearly untouched landscape be enjoyed by thousands of visitors every year who engage in a variety of activities that rely on the natural setting. These have included, but are by no means limited to:

a. Elk Viewing, where herds (many hundreds) of elk grazing the vast mountain prairies that can be viewed from the park. These are views that, if constructed, would be polluted by B2H towers and the crackling buzz of the transmission line.

b. Star gazing. At the junction of the Morgan Lake County Road and the park entrance road, 20-30 cars will park for even the minor celestial events; eclipses can draw much greater attendance. The Project, if constructed, will ruin such activities as the currently unobstructed sky, which is necessary for the activity, will be polluted by 200 feet tall transmission towers within 500 feet distance. The silence of the night sky will be buzzing at Union County’s “#1 Hotspot Destination.”

c. Bird watching. Because of the unique and rare type of wetland habitat Twin Lake provides, Twin Lake is a common destination for birders, including myself. Recently, while watching from the south shore of Twin Lake, I watched a pair of mating sand hill cranes fly in, land, and do their courtship dance at the north edge of Twin Lake. I reported this observation to ODFW’s Kathy Nowak (pers. com) and she informed me that this pair of Cranes is banded with radio tracking, and
that the birds are nesting at Twin Lake this year. For the past six years a pair of bald eagles have nested in the vicinity of Twin Lake, where they have fledged young in each year. From Twin Lake, the view of the eagle’s current nest will be obstructed by a tower after construction, per Idaho Power’s tower maps in the ASC. What is most extraordinary about the birding at Morgan Lake Park is the extreme diversity of species that occupy the continuum of habitats: aquatic, emergent vegetation, wet meadow, dry meadow, mixed shrub, aspen, cottonwood, and old-growth ponderosa pine to Douglas-fir communities. It is noteworthy that the unique richness of this park was fully embraced by the City of La Grande when they developed the first Morgan Lake Park Recreational Use and Development Plan. Oregon Department of Fish and Wildlife started keeping creel census data for the park in 1960, and today the Park perimeter fence is still posted (30 plus metal signs) as a State Game Refuge, which I recently counted. The local residence and the people of Union County still understand Morgan Lake Park to be a State Game Refuge. Idaho Power also refers to Morgan Lake Park as a wildlife refuge in identifying its “designation or management.” (ASC Exhibit T, Attachment T-3-2 (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28. Page 89 of 291.).

d. Hiking around the perimeter of both Morgan Lake and Twin Lake, which are hikes that currently provide undeveloped natural settings. If the Project is constructed, these hikes will no longer consist of natural settings as the towers would be in view.

8. As a La Grande local who enjoys nature, I am a “typical” visitor to the park. I enjoy the recreational opportunities I can pursue at Morgan Lake Park precisely because there is no development. My enjoyment of the activities I engage in at the Park, including wildlife viewing, bird watching, hiking, and star gazing are dependent on the natural setting and integrity, which has to date been preserved. The recreational opportunity of viewing wildlife in unadulterated natural setting cannot exist under, or adjacent to development such as B2H.

McAllister Affidavit Page 4
9. Using my professional skills and knowledge, and based on the ASC Attachment P1-8, Habitat Categorization, Union County, Map 157, I identified the acreage of the Twin Lake wetland that falls within the City of La Grande’s Morgan Lake Park boundary. On the ground, I transcribed the eastern site boundary on the ground in relation to the Morgan Lake Park property corner at GPS coordinates; 45 degrees, 17 minutes, 57.7 seconds / 118 degrees, 08 minutes, 44.0 seconds. On the northing, the site boundary is 202 feet into the park. On easting, the site boundary is 331 feet into the park boundary. From this the calculated overlap of the site boundary is 0.77 acres of wetland habitat affected.

10. Attached as Exhibit 1 to this affidavit is a true and accurate copy of the August 31, 2017 City of La Grande Comments from La Grande City Manager regarding B2H project.

11. Attached as Exhibit 2 to this affidavit is a true and accurate copy of the April 27, 2018 City of La Grande Comments from La Grande City Manager regarding B2H project.

12. Attached as Exhibit 3 to this affidavit is a true and accurate copy of the 2019 City of La Grande Proclamation Declaring and Clarifying Opposition to the Boardman to Hemingway Powerline Project.

13. Attached as Exhibit 4 is a true and accurate copy of a Map Idaho Power created (Map 65) depicting Union County land parcels and the project cite boundary and where the site boundary crosses Morgan Lake Park.

14. Attached as Exhibit 5 is a true and accurate copy of a map Idaho Power Map that Idaho Power provided to my neighbor John Williams.

15. Attached as Exhibit 6 is a true and correct copy of my response to Idaho Power’s ex parte communications with the Council, submitted to the Office of Administrative Hearings on May 28, 2021.

June 24, 2021

[Signature]
Michael McAllister

McAllister Affidavit Page 5
Signed before me this 24th day of June, 2021 by Michael McAllister.

Charles H. Gillis, Notary Public for Oregon
My Commission Expires: June 19, 2023
McAllister
Affidavit

EXHIBIT 1

EXHIBIT 1
MEMORANDUM

TO: Kellen Tardaewether  
Oregon Department of Energy  
550 Capitol St. N.E., 1st Floor  
Salem, OR 97301

FROM: Robert A. Strope, City Manager  
City of La Grande, Oregon  
P.O. Box 670  
1000 Adams Avenue  
La Grande, OR 97850  
(541) 962-1309  
rstrope@cityoflagrande.org

DATE: August 31, 2017

RE: City of La Grande Comments on the Amended Preliminary Application for Site Certification for the Boardman to Hemingway Transmission Line

General Comments: The La Grande City Council, in partnership with the Union County Commissioners conducted two public meetings to listen to comments from residents regarding this project as part of the review of the Amended Preliminary Application referenced above. The public sentiment expressed at those meetings was overwhelming in opposition to the Boardman to Hemingway Transmission Line. The basis for that opposition included, but was not limited to reduced property values to homes along the proposed route; view shed impacts throughout the area; environmental impacts both during construction and when the transmission line becomes operational; impacts to recreational facilities such as Morgan Lake; and a lack of public notice and involvement throughout the process. Of particular concern to the City Council was the decision by the applicant not to submit the BLM preferred route as the proposed route, or at the very least an alternative for consideration for Site Certification. Of the two routes identified in the application, the applicant selected the most impactful to the City of La Grande of those two as their proposed route.

As a general observation, the application is missing information in several areas and therefore is incomplete. These areas are identified in our review. The document also appears to be a boiler plate product that addresses general items, with no resolutions for local government regarding the negative impacts that come with it, and therefore it leaves the burden to the local government (cities and counties) to deal with. It also doesn’t recognize approved master
planning studies done by local governments where the submitted site location may create conflicts within such studies. The submitted sites appear to be a “copy and paste version” for a considerable amount of the document and replicates information that doesn’t apply to the area they are addressing. This document was extremely difficult to maneuver through to find information. Also, with such a major project of this nature, the limited amount of time allowed to review the information submitted was inadequate, particularly given the way the materials are organized.

Later in this review we touch on infrastructure impacts which are largely unknown due to the lack of specificity in the application. Based on this, we would ask that a condition of any approval include that the applicant be required to mitigate any adverse impacts to the City’s infrastructure related to the project, particularly those related to the use of City roads that are not well suited for the anticipated heavy vehicle traffic.

The City of La Grande’s comments are provided in part as general comments and in part using the table provided where we were able to identify specific sections of the Application that correlate to our comments. Our inability to specifically link some of our general comments to page and paragraph in the application is directly related to the short timeframe provided for our review and the manner in which the information is scattered throughout the over 17,000 pages in the document. We have done our best with the limited time and would ask that we not be penalized for the placement of our comments and that all our comments be given due consideration.

**Geological Review** – The south and west hills of La Grande have been classified by the adopted engineering report titled “Engineering Geology of the La Grande Area, Union County, Oregon”, dated 1971, as a geological hazard area. The study addresses numerous fault lines from Sheep Creek to and through the La Grande area, which covers the area submitted for site selection. That document is attached and supports concerns for all work proposed within the submitted study area. This plan is addressed in the City of La Grande Comprehensive Plan in addressing Goal 7.

There is nothing that could be found addressing storm sewer treatment, storm water volume control for impervious areas or dust control. Waters from the south and west hills around La Grande flow directly into and through the City. La Grande has numerous inversions, creating air quality problems, and is recognized by the Department of Environmental Quality as a nonattainment city. These health and environmental hazards should have been addressed.

**Exhibit T – Recreation.**

**View Shed Concerns of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Morgan Lake Park is the City of La Grande’s only campground and is heavily used by local and regional day users as well as out of state, local, and regional campers. The park is open from late April thru October and boasts an average of over 50 vehicles per day and thousands of park visitors per year. Park users currently participate in a variety of recreational activities including; camping, fishing, non-motorized boating, bird watching, wildlife viewing, star gazing, paddle boarding, swimming, and more.

There is one route to the park via Morgan Lake Road that crests at the top of the ridge where an access road enters the park. This coincidentally is the only exit to the park as well. Currently, park users experience vast views of mountain prairies and mature stands of Ponderosa Pine and Douglas Fir.
In addition to the environmental impacts Karen Antell details in her report below, the Morgan Lake alternative proposed route that travels through the park boundary, close to Little Morgan or Twin Lake would severely impact the view shed and recreational experience of park users. The first and last impression of the park would be the view of the power lines. The noise created from the lines will affect the peaceful outdoor recreation experience for all park users.

This heavily used park is a quiet sanctuary only minutes from town where thousands of local, regional, and out of state visitors come to enjoy their favorite outdoor recreational activities. The noise and the view shed and environmental impact will cripple our efforts to provide the same outdoor recreation experience for our park visitors.

Given Idaho Power elected not to include the BLM preferred route, the impacts to the City of La Grande, particularly as they relate to the view shed and recreational amenities are much more significant than they otherwise would have been. Accordingly, if the proposed and/or alternate route are approved it would be appropriate for the applicant to mitigate these adverse impacts by improving and enhancing the recreational facilities that will be degraded.

**Assessment of the natural qualities of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Dr. Karen Antell, PhD, Professor of Biology, Eastern Oregon University prepared the following summary of the ecological qualities of the Morgan Lake area and is incorporated as part of the City’s review:

I have a PhD in Botany, and have been employed as Professor of Biology at Eastern Oregon University since 1987. Over the past 30 years, I have developed extensive knowledge of the biological diversity exhibited at Morgan Lake and the associated wetlands surrounding Twin Lake (a.k.a. Little or Lower Morgan Lake), with primary emphasis on vegetation, Lepidopterans (butterflies and moths), birds, and amphibians.

Introduction: Morgan Lake Park was created by the City of La Grande in 1967 and a plan was adopted as a guiding document for management of the park. The Morgan Lake Park Recreational Use and Development Plan states that “A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users.” Additionally, the “Little Morgan Lake area” (a.k.a. Twin Lake) “should be left as a natural habitat for birds and animals with little change or interference from man’s activities.” The area has been managed with an emphasis on development of recreational uses such as “fishing, bird watching, nature study,” and non-motorized boating. Domestic livestock are not allowed within the park.

Morgan Lake Park has existed essentially unchanged since the mid-1970s. To my knowledge, external threats to the natural and recreational values of the lake (other than wildfire) have not previously been identified, and no comprehensive biological inventories have been completed. The possibility of development of the B2H power line in close proximity to the park warrants an assessment of potential impact to the natural and recreational qualities of the area.

This report summarizes some of the unique natural qualities of Morgan and Twin Lakes that may be altered due to construction of the B2H power line in close proximity to the park.
1. Ecological Uniqueness and Importance of Morgan Lake Park

Morgan Lake and its neighboring environs constitute an area of significant geologic and biological importance. The perennial wetlands are snowmelt and spring fed with no stream-flow inlets or outlets. The presence of these wetlands on the top of the Glass Hill ridge is both unique and of enormous ecological importance. There are no other montane, ridge top wetlands of its size or ecological significance in the area.

Prior to its acquisition as a city park, a dam was constructed on the north side of Morgan Lake in order to store water for both hydropower generation and agricultural use. Consequently, what originally would have been a palustrine wetland was developed into a perennial lake, with relatively little surface fluctuation. The lakeshore edge has been altered with introduction of rock revetments in some areas. Although the ecological qualities of this lake have been altered significantly over time, the lake remains a permanent water source with aquatic insect and introduced fish populations that sustain diverse bird species that otherwise are rare on Glass Hill.

Twin Lake is located west of Morgan Lake (Fig. 1). This lower-lying area has not been damned or physically altered. There are no stream inlets or outlets. Water levels fluctuate throughout the year, creating a variety of habitats for many different species. Soft edges harbor diverse emergent vegetation as well as submerged aquatic species. This wetland serves as a highly productive water source for amphibian reproduction and nesting waterfowl.

![Google Earth image of Morgan Lake and Twin Lake, 16 August 2017.](image-url)

2. Biological Diversity at Morgan Lake and Twin Lake Area

Morgan Lake Park hosts a maturing Ponderosa pine/Douglas-fir forest. Timber harvest is not prescribed in the Recreational Use and Development Plan, and tree cutting has been
limited to removal of diseased or hazard trees. No commercial logging has occurred since at least 1967. In addition to the development of this maturing forest on deeper-soiled sites, the area also hosts an outstanding diversity of understory and herbaceous vegetation. Because of exclusion of livestock since establishment of the city park, the area has been less impacted by soil disturbance and invasive weed incursion than surrounding private lands.

Twin Lake represents a rare palustrine wetland that remains in excellent condition. Virtually the entire northern half of Glass Hill is in private ownership, where most wet meadows have been highly impacted by livestock grazing. Twin Lake has not been drained or otherwise “managed”, and the diverse aquatic and emergent wetland plants native to the area are still almost entirely intact.

Following is a summary of some of the most unique or ecologically significant qualities of Morgan Lake Park, emphasizing the following: forested areas; understory/herbaceous vegetation; birds; amphibians; and Lepidopterans (butterflies and moths).

Maturing Ponderosa pine/Douglas-fir forest:
The forest surrounding the lake includes a mixed stand of maturing trees and smaller diameter stock. There are scattered downed trees and snags, however campers have scavenged much of the dead wood for firewood over the years. Visitors have the opportunity to experience a forest with diverse understory, unimpacted by grazing, and that is developing mature qualities. Although many visitors may not be able to articulate that this is why they love to come to Morgan Lake, nevertheless, this small pocket of high-quality forest draws a large number of visitors throughout the year because they just “love going up there”.

Because of intense commercial logging throughout much of Glass Hill, these large trees represent significant potential for wildlife use. Nesting species that require larger-diameter trees that frequently are observed at Morgan Lake include: Great Horned Owl, American Bald Eagle, and Osprey.

Other cavity nesting species typically require not only snags, but also abundant insect populations to support the high protein requirements for rearing young nestlings. Morgan Lake produces hatches of aquatic insects that sustain active breeding populations of the following species: Violet-green Swallow, Tree Swallow, Western bluebird, Mountain bluebird, several flycatcher species.

Mature conifers also provide food resources for seed eating bird species as well, including Red, and White-winged crossbills, a variety of finches, Pine siskins, Black-capped and Mountain chickadees.

Aspen, Cottonwood and Willow:
In addition to coniferous forest trees, the park also sustains a few small groves of Quaking aspen, which are otherwise rare on Glass Hill. Large, Black cottonwoods are found at the north end of the lake. These fast-growing, native trees provide nesting and roosting habitat for a wide variety of bird species. They also harbor insects that provide food to migratory and residential bird populations. Willow thickets occur around the perimeters of both Morgan Lake and Twin Lake. Their dense vegetation provides essential cover for
successful nesting of many birds, especially neo-tropical migratory species, such as
warblers and Western tanagers.

Understory/Herbaceous Vegetation:
Shrub and forb species diversity at Morgan Lake Park is very high. Open, thin-soiled areas
support a healthy example of Palouse Prairie type native grassland. In addition to native
grasses, such as Sandberg’s bluegrass and Oatgrass (Danthonia) species, the area hosts
many flowering forbs, including Lomatium, Mariposa lily, Prairie smoke, Larkspur, and
Phlox.

Forested areas are dominated by Idaho fescue, Snowberry, Mule-ears, Chokecherry,
Elderberry, Ocean spray, and Wild rose. Other flowering species include Lupine, Golden
pea, Goldenrod, Sugarbowls, Buttercups and sedges. Examples of birds supported by
fruiting shrubs at Morgan Lake include: Black-headed grosbeak, Spotted towhee, American
robin, and waxwings.

Aquatic Vegetation:
Twin Lake is notorious for its lush “forest” of native Yellow pond (water) lily. This dense
vegetation provides excellent cover for a wide variety of nesting waterfowl, including ducks,
geese, grebes, coots, and others. Other unusual and interesting aquatic plants that can
be seen at Twin Lake (and nowhere else on Glass Hill) include Bogbean (Menyanthes)
and Bladderwort (Utricularia), an insectivorous plant.

Birds:
An enormous diversity of bird species utilizes the Morgan Lake area, both for nesting and
feeding. Raptors hunt the open areas, and forest dwellers occupy the timber. Waterfowl
utilize both Morgan Lake (feeding) and Twin Lake (nesting). Morgan Lake is a stopover
for migratory diving birds that require deeper water than is found elsewhere in the area.
For example, Common loons are typically found at Morgan Lake in fall and spring, but not
in other areas of Union County. Cormorants and even Great blue herons also have
become a common sight around the lake.

Habitat for woodpeckers is especially important at Morgan Lake. Several species of
woodpeckers that are on the ODFW Sensitive-critical species list for Oregon have been
detected at the park, including Lewis’ woodpecker, Pileated woodpecker, and White-
headed woodpecker.

Other bird species that now are rare or extirpated from western Oregon, but persist at
Morgan Lake Park, include Common nighthawks and Western meadowlarks, both of which
currently are listed as sensitive species in Oregon.

Amphibians:
Native amphibian populations have been decimated throughout the Grande Ronde Valley
due to a combination of habitat loss, invasive Bullfrogs and, likely the Chytrid or BT fungus.
The Morgan Lake system, so far, has avoided bullfrog infestation, and still supports healthy
native frog populations. Twin Lake is a critical breeding area for Pacific chorus frogs.
Columbia spotted frogs (Sensitive-critical species status) have been documented at
Morgan Lake, and therefore must be breeding in the area. Suitable habitat for Long-toed
salamanders and Western toads (Sensitive species status) also exists.
**Lepidopterans (butterflies and moths):**
I have conducted nighttime surveys of moth species at Morgan Lake annually since 2014. The area hosts a surprisingly diverse and unique assemblage of species that is not replicated on other areas of Glass Hill. Many lepidopterans, especially moths, require specific host plant species in order to rear their larvae. Therefore, the high diversity of herbaceous plant species translates into a very high diversity of butterfly and moth species. After hatching, adult butterflies and some moths require nectar sources for feeding until they have reached reproductive maturity and produced eggs. The variety of flowering shrubs and herbaceous plant species at Morgan Lake provides critical feeding habitat for both larval and adult butterflies and moths, and sustains an exceptional level of species diversity. Healthy populations of Lepidopterans in turn support many species of birds and bats that feed on these insects throughout all seasons of the year.

**Bats:**
Although I am unaware of any bat surveys that may have been conducted in the Morgan Lake area, it is possible that some data exist. Morgan and Twin Lakes, and their surrounding forested habitat, constitute exceptionally important roosting, breeding and feeding habitat for a wide variety of bat species, some of which no doubt are listed as sensitive and/or critical species in Oregon.

Conclusions: In conclusion, Morgan Lake Park represents a unique area on the Glass Hill ridge because of a combination of several features: public ownership, no recent commercial timber harvest, no livestock grazing, and management for quiet recreation. The area currently is free from intrusion of man-made infrastructure except for limited access roads. Construction of a 500 kV power line within close proximity to the park would result in degradation of the natural qualities of the area, including wide-spread impacts to the wildlife, and plant life. In addition to the visual impact of the power lines themselves, significant impacts due to tower footprint construction, construction and maintenance of access roads, and herbicide use, could have profound impact on water quality of Twin Lake. Introduction of invasive plant species could have irreversible impact on the health and diversity of the native flora and all of the bird, insect and mammal species that depend on these resources.

Developing a well-informed understanding of the risks and possible outcomes of power line construction in the area should be a high priority for the city. No matter how well intentioned, mitigation efforts seldom replace or restore the qualities that have been lost or damaged to their previous condition. The City of La Grande is very concerned about any alteration to the sensitive, outstanding and unique qualities of Morgan Lake Park (Fig 2).
Figure 2. Morgan Lake alternative (left) and Mill Creek alternative (right) routes near Morgan Lake Park.
McAllister Affidavit

EXHIBIT 2
MEMORANDUM

TO: Kellen Tardaewether  
Oregon Department of Energy  
550 Capitol St. N.E., 1st Floor  
Salem, OR  97301

FROM: Robert A. Strope, City Manager  
City of La Grande, Oregon  
P.O. Box 670  
1000 Adams Avenue  
La Grande, OR 97850  
(541) 962-1309  
rstrope@cityoflagrande.org

DATE: April 27, 2018

RE: Idaho Power Responses to City of La Grande Comments on the Amended Preliminary Application for Site Certification for the Boardman to Hemingway Transmission Line

General Comments: The La Grande City Council renews our objection to the Proposed Route in the preliminary application and again strongly requests that Idaho Power remove the Proposed Route from their application and instead use the Morgan Lake Alternative or ideally reconsider the BLM preferred route. As we stated previously, of the two routes identified in the application, the applicant selected the one most impactful to the City of La Grande as their Proposed Route. In their response Idaho Power states they intend to construct on the route that has the most support from the local community. The local community does not support the B2H project as evidenced by the overwhelming adverse public response each time the topic is on an agenda. Therefore Idaho Power is unlikely to get community support for any route as it will be perceived as support for the project. Perhaps another way to put it, the La Grande City Council, which represents over the more than 13,000 residents who are in closest proximity to B2H, has stated they object more to the Proposed Route than the Morgan Lake Alternative. This should be more than sufficient for Idaho Power to remove the Proposed Route from their application.

The City of La Grande is disappointed that the Idaho Power response to our comments repeatedly reference a lack of specific deficiencies given one of the main points we and other jurisdictions have made is the preliminary application itself does not provide sufficient information in many areas to adequately review what they are proposing to construct as we would with a normal land use application that had detailed site plans.
Given the lack of detail contained in the preliminary application, we would ask that conditions of approval be included to protect the City’s interests and avoid any disputes in the future should the project be approved. Some specific conditions we are requesting are shown in bold in the following paragraphs. Idaho Power could also revise their application to include these to streamline the process.

Below are additional comments regarding the Idaho Power response:

**Exhibit T – Recreation.**

**View Shed Concerns of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Despite the detailed information provided by Dr. Karen Antell, PhD, Professor of Biology, Eastern Oregon University in our previous submission, Idaho Power’s states that we have not provided evidence of impacts the line may have on Morgan Lake. It is difficult to be more precise on impacts given the lack of detail in the Idaho Power preliminary application that we pointed out. Their submission lacks details regarding how they plan to access the line during construction, the types and quantities of equipment that will travel up Morgan Lake Road during construction. Idaho Power’s staff acknowledged during public meetings that the towers would be an impact on the view shed but that people would get used to it over time. We would ask that Idaho Power be required to provide evidence that such a project does not adversely impact an amenity such as Morgan Lake. Another option would be for Idaho Power to consider physical improvements at Morgan Lake to enhance the recreational experience and help offset the view shed impacts.

At a minimum, the City would ask that if the project is approved, a condition of approval would include that for the approximately 1.5 miles of the line that would be in view from Morgan Lake that H Frame towers be used to help mitigate the adverse impact to the view shed. If the Proposed Route is selected instead of the Morgan Lake Alternative, a condition of approval should be added to require H Frame towers in the view shed visible from the City of La Grande. Again, the City of La Grande adamantly opposes the Proposed Route and would ask Idaho Power to remove it from their application.

**Exhibit U – Public Services include utilities such as road systems, water, sanitation services, power, and other amenities necessary for the construction.**

If Morgan Lake Road will be used for construction access, for the safety of the public and Idaho Power’s construction crews, the City of La Grande requests that a condition of approval be included to require Idaho Power to widen Morgan Lake Road to a standard 22 foot width from the end of the asphalt in the vicinity of 91 Walnut to the end of the road with guardrails from Skyline Drive to Marvin Road. Given the grade and winter conditions, asphalt would not be the preferred surface, but rather a minimum 6 inch thick rock and gravel surface using base rock from Harney Rock & Paving Company, Haines, Oregon, which has proven to be ideally suited to the existing conditions on this road. **If Glass Hill will be used for construction access, it would also need to be improved to these same standards with the addition of improving the intersection of Glass Hill and Morgan Lake Road to allow for left turns from Glass Hill onto Morgan Lake Road.** Glass Hill would not require guard rails. Soil stabilization, slide areas, and improved drainage will be required to be addressed as part of needed improvements to accommodate construction traffic, as well as the use of Mag Chloride...
for dust control and to aid in the stabilization. Union County Public Works can provide more
detailed information regarding the standards.

Route for construction traffic, both proposed and Morgan Lake Alternative: **If the project is approved, in addition to the actions Idaho Power stated they would be taking regarding traffic, the City would ask that as a condition of approval Idaho Power will use the following route:** From Highway 30 to Gekeler Lane to C Avenue to Walnut Street to Morgan Lake Road to Glass Hill Road. **Further, that prior to the start of construction, the section of C Avenue from the intersection of C Avenue and Sunset and the section of Walnut from Morgan Lake Road to C Avenue be improved to City of La Grande Class I standards to accommodate the construction traffic and restored if needed upon completion of the project. Also, that Idaho Power be required as a condition of approval to repair any damage resulting from their vehicles and equipment that occur during construction and that upon completion of construction all infrastructure be restore to as good or better than it was prior to construction.**
McAllister Affidavit

EXHIBIT 3

EXHIBIT 3
CITY OF LA GRANDE
PROCLAMATION

Declaring and Clarifying Opposition to the
Boardman to Hemingway Powerline Project
2019

Whereas, the City of La Grande is the only community of its size along the entire route of the proposed Boardman to Hemingway (B2H) Powerline where view shed and infrastructure impacts would be direct; and

Whereas, the over 13,000 citizens of La Grande will not receive any direct benefit of any nature from the B2H Powerline; and

Whereas, the City of La Grande has repeatedly expressed concerns that the most impactful route to the City of La Grande was selected as the Proposed Route despite the fact that it would have the most adverse impacts to the City of La Grande including but not limited to view shed; reduced property values of homes in the vicinity of the Proposed Route; environmental impacts during construction and when the transmission line becomes operational; and proximity to City water infrastructure; and

Whereas, the Morgan Lake Alternative would adversely impact the view shed of the City’s Morgan Lake Park and could adversely impact the experience of visitors to this unique Park; and

Whereas, during construction, certain residential and arterial streets within La Grande City limits used to access property outside the City limits could experience damage from hauling loads that may exceed road standards; and

Whereas, the City believes the BLM Preferred Route is a viable option that would not impact the City of La Grande;

Now Therefore, I, Mayor Stephen E. Clements, on behalf of the City Council of La Grande, Union County, Oregon, do hereby declare we oppose the construction of the B2H Powerline, and further request that Idaho Power and its collaborators withdraw their application to construct the powerline. If the application is not withdrawn, we request the application be revised to include the BLM Preferred Route as the only route in the vicinity of La Grande; or at worst, the application be modified to remove the Proposed Route from consideration. The City Council also recognizes the ultimate decision regarding placement and construction of the B2H powerline lies solely with the State of Oregon, and recognizing such, will continue to request that if the Oregon Department of Energy ultimately approves the application, that they impose conditions of approval that address the actual and potential impacts to the City of La Grande to mitigate those impacts.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of La Grande, Union County, Oregon, this Third (3rd) day of April, 2019.

______________________________
Stephen E. Clements
Mayor

ATTEST:

______________________________
Kayla M. Nichols
City Recorder
McAllister Affidavit

EXHIBIT 4
McAllister
Affidavit

EXHIBIT 5

EXHIBIT 5
McAllister
Affidavit

EXHIBIT 6
May 28, 2021

Alison Greene Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list


Dear ALJ Green Webster,

I greatly appreciate the opportunity to respond to Idaho Power Company’s (IPC) improper ex parte communication to the Energy Facility Siting Council (EFSC) seeking to influence the outcome of this case. It is troubling that IPC presumably regarded such attempts to influence the decision-maker on matters directly related to issues parties are currently litigating to be appropriate and raises further concerns of undisclosed past conduct and communications, which have been sought and denied in discovery.1 Here, IPC not only asks EFSC to halt its rulemaking duties, but to ensure that Oregon Department of Energy (ODOE) will not interfere with IPC’s transmission line to the detriment of Oregon’s protected areas, scenic resources, recreation resources, and the interests of its residents.

IPC Misconstrues the Project History to Claim Unfair Surprise

IPC’s most recent ex parte attempt to improperly influence the outcome of this case is consistent with a past pattern of misconstruing facts, the record, and the history of this project in order to achieve IPC objectives that provide no benefit to the Oregon public. Significantly here, while IPC claims the rulemaking in question would unfairly prejudice IPC such that the Council should “pause the rulemaking entirely” and direct ODOE staff to ensure that the B2H project is not impacted, any prejudice IPC suffers is a result of its own making. Not only has IPC long been aware of the issues relating to Protected Areas, Scenic Resources, and Recreation on the Morgan Lake Alternative, which petitioners are now litigating in this case, it chose to pursue this high impact route instead of the Bureau of Land Management’s (BLM) Agency Preferred Route—identified as the Agency Preferred Alternative since 2014—that obviates the issues IPC details in its ex parte communication.

1I sought such communications in my discovery requests and subsequent motion for discovery order, which was denied on the basis of relevance. IPC’s April 22, 2021 letter to EFSC underscores the relevance of communications I requested but have been withheld. I respectfully request that the ALJ reconsider my Motion for Discovery Order with respect to my requests for IPC communications.
Among material misrepresentations IPC has made in its Application for Site Certificate (ASC) relevant to its current claim of unfair prejudice are those found in IPC’s Application for Site Certificate, Exhibit B Project Description, and the associated Attachment B-6 2017 Supplemental Siting Study. Indeed, the entire Supplemental Siting Study as it relates to the routes with which IPC’s ex parte communication is concerned (Mill Creek and Morgan Lake Alternative) is founded on false premises including that (1) the Mill Creek route was the BLM’s agency preferred route in its FEIS (it was not), and (2) that the actual Agency Preferred Route in the FEIS, the Glass Hill Alternative, was not carried forward (it was). Here, IPC misrepresents, among other things: the origin of both its Proposed Mill Creek Route and its Morgan Lake Alternative; the BLM’s study of identified routes; the BLM’s conclusions in its Final Environmental Impact Statement (FEIS); and the BLM’s fundamental role in this process, falsely claiming the BLM developed the Mill Creek route. Importantly, IPC’s concerns expressed in its April 22, 2021 ex parte communication primarily, if not entirely, pertain to this stretch of the transmission line through Union County and the contested case issues relating to Protected Areas, Scenic Resources, and Recreation on this segment—the standards subject to the current rulemaking with which IPC is concerned.

Understanding the significance of the falsehoods contained in Attachment B-6 2017 Supplemental Siting Study requires explanation. In December of 2014, the BLM identified the Glass Hill Alternative Route (referenced in the ASC) as the Agency Preferred Alternative for this project. In November 2016, the BLM identified this same route as its Agency Preferred Alternative pursuant to its analysis of proposed routes under National Environmental Policy Act (NEPA). Contrary to this well-documented fact, IPC represents in its 2018 Exhibit B Project Description that the “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route” as its “Basis for Corridor Change.” See Table B-6, Page B-39 of Exhibit B (IPC Basis for Corridor Change). This is patently false. In fact, the Glass Hill Alternative Corridor, has been the Agency Preferred Route since 2014 when it was identified as the NEPA preliminary preferred alternative in the Draft Environmental Impact Statement (DEIS).

Further, IPC falsely represents that the Mill Creek Route (rather than the Glass Hill Route) is the BLM’s Agency Preferred NEPA Alternative. For example, Table 3.1.1 “Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC” (Attachment B-6 at p. 3) represents the following:

---

2 The BLM did not “develop” any routes for this project. The BLM only evaluated routes that were developed by others and presented for comparative analysis.
Table 3.1.1. Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC

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<th>Route Originator</th>
<th>Route Designation</th>
<th>EFSC Status</th>
<th>Status in FEIS</th>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>IPC</td>
<td>Proposed Route</td>
<td>Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
<tr>
<td>IPC</td>
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<td>Not Analyzed in the FEIS.</td>
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<tr>
<td>BLM</td>
<td>Mill Creek</td>
<td>Not Analyzed in the Draft Amended pASC. Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
</tbody>
</table>

As stated above, Mill Creek is not the BLM’s Agency Preferred Alternative in the FEIS. The BLM did not analyze this route. IPC further states that “In Union County, the Proposed Route includes portions of the Proposed Route that were included in the Draft Amended pASC and the Mill Creek Route that was developed by the BLM.” (Exhibit B, Attachment B-6 at p.9) This is, again, a gross misrepresentation of the Mill Creek (IPC Proposed) Route. Not only is the Mill Creek Route not the Agency Preferred Alternative, as conveyed throughout IPC’s ASC, the Mill Creek route was not developed by the BLM. As stated above, the BLM did not “develop” routes for this project, but evaluated routes presented, which did not include either the Mill Creek or Morgan Lake Route.

IPC has since acknowledged in its discovery responses that the Mill Creek Route is not the BLM’s Agency Preferred Alternative in the FEIS, as it falsely claimed in its ASC. Specifically, in response to McAllister Request No. 13, IPC states “Table 3.1-1 indicating that the Mill Creek route was part of BLM's agency preferred alternative in the Final EIS, that statement is incorrect.” (See attached Exhibit 1, IPC Discovery Responses). IPC has also represented to the Hearing Officer that this is a “typographical error.” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as the misrepresentation is consistently perpetuated throughout the Exhibit B Project Description (2018) and Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at p.1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route). Thus, IPC’s claim this is a typo is not credible and implies that either IPC is unaware of the of the contents of its own application or that it purposefully misrepresented this fact to ODOE.
IPC further falsely claims in its Supplemental Siting Study that “The Morgan Lake Alternative was developed by IPC with input from local Land owners” (Attachment B-6 at p. 9, 3.2.3.3 IPC’s Morgan Lake Alternative). In reality, the majority of landowners opposed the Morgan Lake Alternative due to impacts on the natural resources, including Scenic Resources, Recreation Resources, and land meeting Protected Area criteria. Troublingly, a single landowner, who had recently acquired land in the area, developed and proposed the Morgan Lake Route, which IPC readily adopted and has since pursued. This fact is reflected in IPC’s private correspondence with this landowner, attached hereto as Exhibit 2, stating IPC intended to adopt the route the landowner proposed (now called the Morgan Lake Alternative). While the Glass Hill Alternative was developed to minimize impacts on sensitive resources including Protected Areas, Scenic Resources, and Recreation, the Morgan Lake Alternative was developed to minimize impacts to one new landowner’s personal interest. And, unlike the Glass Hill Alternative, IPC’s Morgan Lake Route was not studied or subjected to public comment.

IPC’s misrepresentations outlined above and its course of action during the application process undermine its claims of unfair prejudice if EFSC continues with “the current direction of the rulemaking to update the standards related to Protected Areas, Scenic Resources, and Recreation Resources.” For reasons that remain unclear, IPC chose to exclude the actual Agency Preferred Alternative identified in the FEIS and evaluated pursuant to NEPA from its application, while at the same time falsely representing to ODOE that the Mill Creek Route (for which it has applied) was the Agency Preferred Route in the FEIS. In reality, in the eleventh hour of the project, IPC opted to apply for multiple routes through Union County that had never been studied, and remain unevaluated by the BLM.

IPC chose to pursue one of these unevaluated routes, the Morgan Lake Alternative, in favor of a single land owner who proposed the route to IPC.

Significantly, the concerns IPC raised to the Council in its ex parte communication would be moot if IPC had pursued the route the reviewing federal agency identified pursuant to NEPA analysis. NEPA’s stated purpose is to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 USC § 4321. This is consistent with ODOE’s stated mission and values, the purpose of EFSC oversight which seeks to “ensure that Oregon has an adequate energy supply while protecting Oregon’s environment and public safety,” and the discussed updates to EFSC’s Protected Areas, Scenic Resources, and Recreation standards that IPC contests.

Contrary to IPC’s claims, “the current direction of the rulemaking” does not unfairly prejudice IPC. IPC chose to (1) exclude the BLM’s agency evaluated and preferred route from the ASC, 3 The issue of the need for the BLM to conduct supplemental study on these newly added routes is currently being litigated in federal district court. Case No. 2:19-cv-01822-SU.

4 See https://www.oregon.gov/energy/About-Us/Pages/Mission-Values.aspx

(2) include routes that have not been studied, and (3) pursue a route that has been the source of public concern since it became known to the public due to its impacts on, among other things, Scenic Resources, Recreation Resources, and sensitive areas that meet the Protected Area criteria. IPC and ODOE have advanced the position that an applicant may apply for any route it chooses, regardless of NEPA and the federal agency review—or the underlying motives driving selection of a specific route—so long as the applied for route comports with EFSC standards. Accordingly, IPC must accept the outcomes of its decision to apply for, or not apply for, a particular route. Now, after excluding the actual Agency Preferred Route evaluated pursuant to NEPA, which obviates the issues giving rise to IPC’s current concerns, IPC asks that EFSC conform its standards and rulemaking procedures to ensure IPC’s success to the detriment of Oregon’s protected areas, scenic resources, recreational resources, and the interests of its residents. Oregonians should not suffer the consequences of IPC’s poor business decisions.

**IPC’s Claims Regarding “Other Problems with ODOE’s Proposals” are Baseless.**

Finally, IPC’s contentions in Section III of its April 22, 2021 ex parte communication further undermine IPC’s credibility and expose IPC’s claims of potential prejudice as a red herring. Here, IPC appears to purport that it relied on an absurd interpretation of OAR 345-022-0040(2) in its *Alternative Route Analysis*, which runs counter to the interpretation ODOE provided to IPC in the *Second Amended Project Order*. Specifically, ODOE states:

> Note that OAR 345-022-0040(1) generally prohibits siting of transmission lines through protected areas, which include state parks. However, under OAR 345-022-0040(2), EFSC may approve a route that passes through a protected area if the council determines that other routes outside the protected area would “have greater impacts.” If the transmission line routing proposed by the applicant will pass through a protected area, the applicant shall describe in detail the alternative routes it studied and provide analysis in the application to support a finding that routing the transmission line through the protected area would have less impacts than the alternatives. (Second Amended Project Order, July 26, 2018, at p. 14).

In the subsequent ODOE rulemaking project that IPC contests, ODOE explains that “Staff believes this rule is intended to allow a transmission line…to pass through a protected area when greater impacts cannot be avoided, but the construction implies that a linear facility could be sited on a protected area when other lesser impact alternatives may be available.” (October 22-23 EFSC Meeting, Agenda Item D (October 9, 2020)). The proposed amendment only seeks to clarify that the original intent of the rule is to allow the project to pass through a protected area only when Council finds that no alternative routes or sites would have lesser impacts, which is the logical interpretation.

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6 This position conflicts with ORS 469.370(13) requiring that the council *shall* conduct its site certificate review…in a manner that is consistent with and does not duplicate federal agency review, including development with the federal agency and reliance on a joint records to address applicable council standards.
The analytical framework has never changed. Rather, ODOE seeks to clarify the construction of the language so as not to achieve an absurd result. IPC appears to argue that the proper analytical framework is to conclude that an alternative may pass through protected areas if that alternative has greater impacts than other routes. This is nonsensical and has clearly never been the intent of OAR 345-022-0040(2). If IPC relied on this perverse interpretation, as it appears to claim, this exposes troubling fundamental issues with its route analysis.

IPC’s ex parte communication asking EFSC to halt required, common-sense rulemaking claiming unfair prejudice, at its core, intends to obscure the fact that, in the eleventh hour of what IPC points out was a 12-year process, it added new routes that had never been studied, while excluding the Agency Preferred NEPA route, which adequately addressed the issues of Protected Areas, Scenic Resources, and Recreation that are the basis of IPC’s current concern. EFSC should not bend standards and procedures to suit the needs of an Idaho corporation at the expense of Oregon’s natural resources and the public interest of Oregonians.

Sincerely,

Michael McAllister
Petitioner
February 5, 2021


issue No. R-2, SP-2, FW-13

MICHAEL McALLISTER’S DISCOVERY REQUEST NO. 1:

Identify all individuals likely to have discoverable information that you may use to support your claim that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

IDAHO POWER’S RESPONSE TO MICHAEL McALLISTER’S DISCOVERY REQUEST NO. 1:

Idaho Power objects to this request as vague, ambiguous, and overbroad. Without waiving this objection, Idaho Power identified its witnesses for these issues (to the extent the identity of such witnesses is known at this time) below in response to Question 2.
Issue No. R-2, SP-2, FW-13

MICHAEL McALLISTER’S DISCOVERY REQUEST NO. 13:

Explain the basis for your claim in Attachment B-6 of the ASC that the Mill Creek Route is the Agency Preferred Alternative in the FEIS.

a. Produce the documents on which you rely to make this claim.

IDAHO POWER’S RESPONSE TO MICHAEL McALLISTER’S DISCOVERY REQUEST NO. 13:

Idaho Power objects to this request as vague and ambiguous, as it is unclear what statement in Attachment B-6 you are referring to.

Without waiving that objection, if this request is referring to the statement in Table 3.1-1 indicating that the Mill Creek route was part of BLM’s agency preferred alternative in the Final EIS, that statement is incorrect and an error on Idaho Power’s part. For the Blues Mountain segment of the project, in the Final EIS, BLM identified the Glass Hill Alternative as modified by route variations S2-A2, S2-D2, and S2-F2 as the Environmentally Preferable Action Alternative Route and BLM’s Agency Preferred Alternative Route.
27 February 2015

Brad Allen
Via electronic mail

Subject: Elk Song Ranch Alternative Routes

Dear Brad and June Allen:

Thank you for providing an alternative route for Boardman to Hemingway Transmission Line Project where it crosses your property known as the Elk Song Ranch. We took your proposed route and modified it slightly to avoid known constraints in the area. Both your proposed route (red dashed line) and the modified routes (orange line and yellow line) are shown on the attached map and explained below.

Your proposed route follows the general route of the Glass Hill Road area you state has a higher human presence than the location of the proposed route. In the siting of a transmission line we must consider the impacts to the human as well as the natural environment. We modified your proposed route to avoid passing over several structures and to be further away from Morgan Lake, a local recreation site. We also developed an alternative route (yellow line) that would further reduce impacts to Morgan Lake. The above recommendations reflect the same methodology we used for routing along the entire length of the project.

A site visit to the area by Idaho Power transmission engineers and final design of the transmission line could result in further refinement of the modified route on the Elk Song Ranch. Please contact me if you would like to discuss any aspect of the routing.

Regards,

Todd Adams
B2H Project Leader

Enc: map

cc: D Gonzalez  BLM
    T Gertch  BLM
    R Straub  BLM
    Z Funkhouser  IPC
    M Colburn  IPC
B2H Project
- Proposed Corridor
- Mile Marker

Elk Song Re-Routes
- Proposed by Stakeholder
- IPC Proposed Alternate
- IPC Proposed Alternate Variation

Existing Transmission
- 230 kV

Elk Song Ranch
- Glass Hill Rebarrow Forest
- Wildlife Management Area
- Existing Pipeline
- Structures (Not Verified)
- NSR

Elk Song Ranch Alternative Routes
Boardman to Hemingway Transmission Line Project
Oregon - Idaho

February 2015
-----Original Message-----
From: Brad Allen <bradallen4030@hotmail.com>
To: wildlandmm@netscape.net <wildlandmm@netscape.net>
Sent: Sat, Mar 7, 2015 9:09 am
Subject: Fwd: B2H Elk Song Ranch Alternative Route

Sent from my iPhone

Begin forwarded message:

From: "Adams, Todd" <TAdams@idahopower.com>
To: "bradallen4030@hotmail.com" <bradallen4030@hotmail.com>
Cc: "Don Gonzalez" <dgonzale@blm.gov>, "Gertsch, Tamara" <tgertsch@blm.gov>, "Renee L’Straub" <rstraub@blm.gov>, "Funkhouser, Zach" <ZFunkhouser@idahopower.com>, "Colburn, Mitchel" <MColburn@idahopower.com>
Subject: B2H Elk Song Ranch Alternative Route

Brad,

Attached please find a map showing your alternative route as you proposed along with a suggested route variation as explained in the letter. Don’t hesitate to contact me if you have any questions.

Regards,
Todd Adams

This transmission may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether electronic or hard copy format. Thank you.

2 Attachments
Affidavit of Charles H. Gillis in Support of Opposition to Idaho Power Company’s Motion for Summary Determination on R-2
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF ENERGY

In the Matter of: ) AFFIDAVIT OF CHARLES GILLIS IN SUPPORT OF PETITIONER
) McALLISTER'S OPPOSITION TO
) IDAHO POWER COMPANY'S
) MOTION FOR SUMMARY
) DETERMINATION OF
) CONTESTED CASE ISSUE R-2

OAH Case No. 2019-ABC-02833

STATE OF OREGON ) ss.
County of Union )

I, Charles H. Gillis, being first duly sworn, aver that the following is true to
the best of my knowledge and belief:

1. I have been a resident of La Grande, Union County, Oregon since May, 1983.

2. When I arrived in Union County I was not a fisherman.

3. Because of the unique ease of access to Morgan Lake Park from my
various residences in La Grande, Oregon, I learned to fish to my everlasting
benefit.

4. For those who are not familiar with the sport and art of fishing, the
actual catching of fish is gratifying, but not the most enjoyable aspect of the
pastime.

5. For myself, and the majority of fishermen I know and have fished
with, the opportunity to experience a quiet, scenic, undisturbed environment
available in a place like Morgan Lake Park is the main attraction and justification for fishing.

6. Collateral pleasures associated particularly with fishing at Morgan Lake Park are:

a. Seeing family gatherings engaged in enjoying the park's facilities.

b. Seeing a wide variety of bird life. Everything from Hummingbirds to Bald Eagles is seen commonly at Morgan Lake Park.

c. The steep, dirt access road is a significant challenge for a mountain bicyclist. In my younger years I took great pleasure in riding up to Morgan Lake Park towing a bicycle trailer loaded with waders, a float tube, and other fishing accessories. Others enjoy this challenge to this day.

d. The lack of development is a key element of Morgan Lake Park that brings me great pleasure. Although there are picnic tables, rest rooms, and a dock, that is the extent of the obvious man-made features in the area. Morgan Lake Park is a no-stress environment, and as such it is uniquely valuable.
7. Everything I describe above is threatened with extinction by Idaho Power Company's ill-conceived, and unnecessary transmission line project.

DATED: this 20th day of June, 2021.

Charles H. Gillis

Signed before me this 20 day of June, 2021 by Charles H. Gillis

Barbara Peden, Notary Public for Oregon
My Commission expires:
Declaration of Kyann Sholtes in Support of Opposition to Idaho Power Company’s Motion for Summary Determination on R-2
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENERGY

IN THE MATTER OF:

THE APPLICATION FOR SITE CERTIFICATE FOR THE BOARDMAN TO HEMINGWAY TRANSMISSION LINE

) DECLARATION OF KYANN SHOLTES IN SUPPORT OF PETITIONER McALLISTER’S OPPOSITION TO IDAHO POWER COMPANY’S MOTION FOR SUMMARY DETERMINATION OF CONTESTED CASE ISSUE R-2

OAH Case No. 2019-ABC-02833

1, Kyann Sholtes, state and declare as follow:

1. I submit this Declaration in support of Michael McAllister’s Opposition to Idaho Power Company’s Motion for Summary Determination. I make this declaration freely and if called as a witness I would testify about the facts in this declaration.

2. I grew up in La Grande and have spent significant time at Morgan Lake Park over the years. I left La Grande years ago, but when I return I always visit Morgan Lake Park and take advantage of the unique opportunity it provides as a beautiful natural place unlike any other city park I have been to.

3. My entire life, Morgan Lake Park has been a place of respite for my family and me. Its beauty and serenity never fails to bring a much needed sense of peace. Many of my fondest memories of growing up in this community take place at Morgan Lake. From fishing as a young child with my dad and brother, canoeing across the lake with my grandfather, summer swims with my mom, wildflower identification field trips in grade school, ice skating on the frozen winter lake, to family strolls and birdwatching around the lake shore. Now it is a place I bring my young son, so that he too can grow up knowing the peace and beauty of Morgan Lake.
Park, which provides a special piece of nearly untouched nature that is easily accessible to the community. This is an extremely special place that my family cherishes deeply. It's a place we all frequent to this day. It's a place we now go to feel close to my late brother, who too deeply loved this place and its beauty, wildlife, and tranquility.

4. I have reviewed multiple maps depicting the development of transmission towers, communication stations, and other development required for the B2H transmission line.

5. The construction of this powerline, using the Morgan Lake Route, would desecrate this sacred place. I sincerely plead that you consider options that would not destroy Morgan Lake Park not only for my family and me, but for so many in the community who love this special place.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in LaGrande, OR, on June 21, 2021.

Kyann Sholtes
Declaration of Geoffrey Witek in Support of Opposition to Idaho Power Company’s Motion for Summary Determination on R-2
I, Geoffrey Witek, state and declare as follow:

1. I submit this declaration in support of Michael McAllister’s Opposition to Idaho Power Company’s Motion for Summary Determination. I make this declaration freely and if called as a witness I would testify about the facts in this declaration.

2. Both at home and in any place I visit, I seek out wild places and recreational opportunities in nature. Among the outdoor activities I pursue are hiking, observing wildlife, identifying wild plant species, and generally escaping manmade development.

3. Every time I visit La Grande, I also visit Morgan Lake Park. As someone who appreciates nature, I enjoy Morgan Lake Park because of its undeveloped natural setting just a few minutes from downtown La Grande.

4. One thing I particularly appreciate about the Park is the opportunity to enjoy varied views and perspectives. I like the combination of sweeping views of prairie and mountain contrasted with clusters of forest.
5. I have reviewed multiple maps depicting the development of transmission towers, communication stations, and other development required for the B2H transmission line. Based on these maps, the prairie views I enjoy will be disrupted by towers and new road development.

6. The B2H transmission line as depicted for the Morgan Lake Alternative Route will significantly diminish my ability to enjoy the Park and my desire to go there. As someone who appreciates and seeks out natural settings for recreation and who enjoys a wide variety of outdoor activities, I do not pursue my outdoor activities that feature nature in any way near large transmission developments.

7. The B2H transmission line will significantly detract from the characteristics of the Park I find appealing. If it is constructed as planned, I anticipate seeking out alternative outdoor activities in future visits to the area.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in __Oakland, CA__, on June __21st__, 2021.

Geoffrey Witek
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENERGY

IN THE MATTER OF: ) PARTY McALLISTER’S
) ) OPPOSITION TO IDAHO
) ) POWER COMPANY’S MOTION
) ) FOR SUMMARY
) ) DETERMINATION ON
) ) CONTESTED CASE ISSUES FW-
) ) 13 AND SP-2
) )
) OAH Case No. 2019-ABC-02833

PARTY
McALLISTER

I.
INTRODUCTION

Contrary to Idaho Power Company’s (“IPC’s”) claims, genuine issues of material fact exist with respect to Party Michael McAllister’s (“Mr. McAllister”) case under the Energy Facility Siting Council (“EFSC” or “Council”) Fish and Wildlife Habitat and Soil standards.\(^1\) The Council granted Mr. McAllister standing to challenge whether Idaho Power Company’s Application for Site Certificate (“ASC”) comports with these standards as to its Morgan Lake Alternative Route after he met the threshold requirements to participate as a party in this matter.

As detailed below, the ALJ should deny IPC’s Motion for Summary Determination (“MSD”) on FW-13 and SP-2 because: (1) IPC misconstrues the relevant issues and attempts to re-litigate an issue that the Council has already excluded; (2) IPC seeks to improperly limit the facts Mr. McAllister may use to prove his case; and (3) disputes of fact exist regarding whether

\(^1\) OAR 345-022-0060; OAR 345-022-0022.
Morgan Lake Route complies with either the Council’s Fish and Wildlife Habitat or Soil Protection standards.

II. RELEVANT FACTUAL BACKGROUND

A. EFSC Found that Mr. McAllister Raised the Issue of the Morgan Lake Alternative Route’s Failure to Comport with the Council’s Fish and Wildlife Habitat Standard and was Granted Standing to Challenge the Route’s Compliance with this Standard.

During the applicable public comment period, Mr. McAllister provided public comment raising numerous concerns with Idaho Power Company’s Morgan Lake Alternative Route (which IPC applied for and is currently pursuing), citing facts exemplifying, and in support of, his concerns in addition to citing the relevant EFSC standards. (See Exhibit A to McAllister Petition for Party Status submitted to OAH Aug. 27, 2020). In the Amended Order on Petitions for Party Status issued December 4, 2020 after Mr. McAllister’s appeal to the Council, the Office of Administrative Hearings (“OAH”) determined Mr. McAllister had properly raised issues concerning the Morgan Lake Alternative Route’s impact on fish and wildlife habitat and granted standing to participate in the contested case under this EFSC standard, OAR 345-022-0060, which requires consistency with the Oregon’s Division 415 Fish and Wildlife Habitat Mitigation Policy. (OAH December 4, 2020 Order at 62-63).

B. Relevant to Mr. McAllister’s Fish and Wildlife Habitat Issue, Twin Lake Wetlands in Morgan Lake Park is Habitat Category 1 Pursuant to OAR 635-415-0025.

The Council’s Fish and Wildlife Habitat standard requires that the facility is consistent with “the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6).” OAR 345-022-0060. Rule 635-415-0025(1)-(6) provides that “[t]he Department shall act to protect [each category of habitat (1) through (6)]…by recommending or requiring: (a) [a]voidance of impacts through alternative to the proposed development action; or (b) no authorization of the proposed development action…”
OAR 635-415-0025(1) defines “Habitat Category 1” as “irreplaceable, essential habitat for a fish or wildlife species, population, or a unique assemblage of species and is limited on either a physiographic province or site-specific basis, depending on the individual species, populations or unique assemblage.” The Twin Lake wetlands—part of which falls within the site boundary—meets this definition. Under Rule 635-415-0005 “Irreplaceable” means that successful in-kind habitat mitigation to replace lost habitat quantity and/or quality is not feasible within an acceptable period of time or location, or involves an unacceptable level of risk or uncertainty, depending on the habitat under consideration and the fish and wildlife species or populations that are affected. Oregon Department of Fish and Wildlife (“ODFW”) guidance provides that Habitat Category 1 includes “unique habitats that can’t be replaced, such as a lake with...a unique assemblage.” In Category 1 habitat, no mitigation is allowed. See OAR 635-415-0025.

Twin Lake exhibits “unique habitat” characteristics that are limited on both the physiographic province and on a site-specific basis. “Physiographic Province” (OAR 635-415-

2 This is identified as wetlands in the U.S. Fish and Wildlife Nation Wetlands Inventory at https://www.fws.gov/wetlands/data/mapper.html
3 Habitat Category 2 is defined as essential habitat for a fish or wildlife species, population, or unique assemblage of species and is limited either on a physiographic province or site-specific basis depending on the individual species, population or unique assemblage. Rule 635-415-0025(2). Like Habitat Category 1, the rule dictates avoidance of impacts through alternatives to the proposed development action. Id. Rule 635-415-0005 defines essential habitat as any habitat condition or set of habitat conditions which, if diminished in quality or quantity, would result in depletion of a fish or wildlife species.
4 “Acceptable,” for the purpose of this definition, means in a reasonable time frame to benefit the affected fish and wildlife species.
5 Process for ODFW staff internal review of Water Rights Transfers that Injure In-stream Water Rights, p. 4 (2006) (accessible at https://www.dfw.state.or.us/fish/water/docs/Final_Guidance_for_transfer_Injury_ISWR%204-5-06.pdf)
0005(26)) means any one of nine major geographical areas (ecoregions in Oregon Conservation Strategy) within the State of Oregon based upon differences in topography, climate, and vegetation as defined in the Oregon Wildlife Diversity Plan (OAR 635-100-0001). Both Morgan Lake Park and Twin Lake are in the Blue Mountain Physiographic Province in northeast Oregon.\(^6\) Within the province, the lakes are like no others. McAllister Affidavit 1, ¶ 6a; Ex. 1 (Analysis of Dr. Karen Antell at 3-8);\(^7\) McAllister Affidavit in Support of Opposition to IPC’s and ODOE’s Motions for Summary Determination (MSD) on FW-13 and SP-2 (“McAllister Affidavit 2”), ¶¶ 5, 8, 9. At 4,100 feet in elevation, these lakes are shallow depressions atop a basalt plateau. McAllister Affidavit 2 ¶ 5. Outflow from these lakes is restricted to the spring runoff period such that minerals and sediment is accumulating over time. \(\text{Id.}\) Twin Lake is shallow; the majority of the surface supports floating emergent vegetation mats that are unique within this largest of Oregon’s nine ecoregions.\(^8\) \(\text{Id.}\) As to the site-specific nature of Twin Lake unique habitats, both the submerged and the emergent vegetation communities are distinctly rich. \(\text{Id.}\) ¶ 5. McAllister Affidavit 1, Ex. 1 (Analysis of Dr. Karen Antell).

Dr. Karen Antell, Professor of Biology, Eastern Oregon University prepared an analysis of the ecological qualities of the Morgan Lake Area, which the City of La Grande provided to ODOE during the public comment period. In describing the “ecological uniqueness and importance of Morgan Lake Park,” Dr. Antell states:

Morgan Lake and its neighboring environs constitute an area of significant geologic and biological importance. The perennial wetlands are snowmelt and

\(^6\) [https://www.oregonconservationstrategy.org/ecoregion/blue-mountains/](https://www.oregonconservationstrategy.org/ecoregion/blue-mountains/)

\(^7\) McAllister Affidavit 1 was originally submitted in support of opposition to IPC MSD on R-2. It is also submitted in support of this opposition and attached hereto.

spring fed with no stream-flow inlets or outlets. The presence of these wetlands on the top of the Glass Hill ridge is both unique and of enormous ecological importance. There are no other montane, ridge top wetlands of its size or ecological significance in the area.

McAllister Affidavit 1, Ex. 1 at 2. In her analysis, Dr. Antell further describes the characteristics of the area that constitute “unique assemblage” and “irreplaceable” habitat. See Id., Ex. 1 at 2-8.

Rule 635-415-0025 must be viewed in conjunction with the Oregon Conservation Strategy as ODFW policy. “The Oregon Conservation Strategy is an overarching plan to conserve Oregon’s fish and wildlife, and their habitats.”

ODFW’s recommendations for developers and other state or federal entities are based on consistency with state laws, statewide planning goals, and other applicable policies including but not limited the Oregon Conservation Strategy. The Oregon Conservation Strategy defines Strategy Habitats for each of the 9 ecoregions of the state. Uniquely, Twin Lake exhibits six of the eight conservation strategy habitats identified in the Blue Mountain Ecoregion. McAllister Affidavit 2 ¶ 5. The continuum of vegetation, from aquatic, to emergent, to wet meadow, to dry meadow, to mixed conifer forest is distinctly unique and limited at both the physiographic province and on a site-specific basis.

Id. The diversity of wildlife species that occupy this complex habitat matrix is perhaps unprecedented in the province. Id. The Twin Lake wetlands can only be classified as Habitat Category 1 because of the diverse unique assemblage that occupies these wetlands and the

9 https://www.dfw.state.or.us/conservationstrategy/
https://www.oregonconservationstrategy.org/overview/
10 See, e.g. https://www.dfw.state.or.us/MRP/ocean_energy/policies.asp
11 https://www.oregonconservationstrategy.org/ecoregions/
12 See https://oregonconservationstrategy.org/strategy-habitats/
surrounding uplands.\textsuperscript{13} Lake habitats such as this are irreplaceable.\textsuperscript{14}

Significantly, ODFW does not define “unique assemblage” in statute or rule. However, “ODFW interprets an assemblage as a group of species that exists in a particular habitat” and “in the context of the Division 415 ODFW Fish and Wildlife Habitat Mitigation Policy, habitat categorization might be based on an individual species/population (e.g., grasshopper sparrows) or an assemblage of species that co-occur with a particular habitat (e.g., grassland birds).”

McAllister Affidavit 2, Ex. 1. (ODFW response to McAllister inquiry).

Twin Lake (Little Morgan Lake) is among the most unique habitats—containing a unique assemblage—in the Blue Mountains and qualifies as Habitat Category 1, requiring maximum avoidance. McAllister Affidavit 2 ¶¶ 5, 8, 9. McAllister Affidavit 1, Ex. 1 At 3-8 (Dr. Antell analysis). IPC cannot refute this fact because—as IPC admits—the area was not categorized per Rule 635-415-0025. McAllister Affidavit 2, Ex. 3 (McAllister discovery requests to IPC).

C. IPC Admits it Never Categorized Twin Lake or Morgan Lake Park for Purposes of OAR 635-415-0025.

On January 22, 2021, Mr. McAllister served written discovery on Idaho Power Company. Request No. 25 asks that IPC:

Identify the habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and the basis for that determination:

a. Morgan Lake Park
b. Twin Lake
c. Glass Hill Natural Area (encompassing property of Joel Rice)
d. State-recognized wildlife refuges

\textsuperscript{13} See also Declaration of Susan Geer in Support of Party McAllister’s Oppositions to FW-13 and SP-2.
\textsuperscript{14} Process for ODFW staff internal review of Water Rights Transfers that Injure In-stream Water Rights, p. 4 (2006) (accessible at https://www.dfw.state.or.us/fish/water/docs/Final_Guidance_for_transfer_Injury_ISWR%204-5-06.pdf)
McAllister Affidavit 2, Ex. 2 (McAllister discovery requests to IPC). In response, IPC stated it never categorized the habitat of these areas, including the Twin Lake wetland. IPC stated:

a. Morgan Lake Park – This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

b. Twin Lake – This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

McAllister Affidavit, Ex. 3 (IPC responses to discovery requests.)

D. Contrary to Idaho Power Company’s Claims, the B2H Project Crosses Twin Lake Wetlands\(^{15}\) and Morgan Lake Park.

Contrary to IPC’s representations, the site boundary for the B2H project crosses Morgan Lake Park, and specifically footprints on the Twin Lake wetlands.\(^ {16}\) Multiple IPC-produced ASC maps depict the site boundary crossing the city park boundary,\(^ {17}\) feet away from the edge of the lower lake within the park boundary (Twin Lake aka Little Morgan Lake), which is habitat for a rare combination of a multitude of bird species. McAllister Affidavit 1, Ex. 1 at 6 (Dr. Karnen Antell analysis included with La Grande City Comment). Specifically, 0.77 acres of the Twin Lake wetland habitat is within the site boundary. McAllister Affidavit 1 ¶ 9; McAllister Affidavit 2 ¶ 6.

E. EFSC Found Mr. McAllister Raised the Issue of the Morgan Lake Alternative Route’s Failure to Comport with the Council’s Soil Protection Standard and was Granted Standing to Challenge Compliance with this Standard.\(^ {18}\)

\(^{15}\) Mr. McAllister uses the term “wetland” as a particular type of habitat. Mr. McAllister is not discussing “wetland” for purposes of removal-fill.

\(^{16}\) See e.g. ASC Exhibit C, Attachment C-3 Map 8 (ODOE - B2HAPPDoc3-4 ASC 03_Exhibit C_Project_Location_ASC 2018-09-28. Page 181 of 193); ASC Exhibit B, Attachment B-7a Map 55 (ODOE - B2HAPPDoc3-3.4 ASC 02e_Exhibit B_Attachment B-6 and B-7a_ASC 2018-09-28. Page 79 of 162); McAllister Affidavit 1, Ex. 5. (IPC John Williams Map 3); McAllister Affidavit 1, Ex. 4 (Union County Parcels Map 65); McAllister Affidavit 2 ¶¶ 5-6.

\(^{17}\) Id.

\(^{18}\) ODOE also submitted two separate motions for summary determination against Mr. McAllister on SP-1 and FW-13. Disputes of material fact relevant to issue FW-13 and SP-2 are further
Similarly, Mr. McAllister raised issues with the Morgan Lake Alternative Route’s impacts on soil. In the Amended Order on Petitions for Party Status issued December 4, 2020 after Mr. McAllister’s appeal to the Counsel, the OAH determined Mr. McAllister had properly raised the issue concerning the Morgan Lake Alternative Route’s impact on soil and granted standing to participate in the contested case under this EFSC standard, OAR 345-022-0022.

F. IPC’s Motion Misstates the Record.

1. IPC falsely claimed it applied for the Agency Preferred NEPA Route in its ASC.

As an initial matter, the record must be clarified with respect to IPC’s representations regarding the NEPA route. In its motion, IPC emphatically claims that it analyzed the NEPA route in the federally permitting process, “but has not proposed [the NEPA route] in the application for site certificate.” (IPC MSD at 3:13-15). This claim directly contradicts IPC’s representations in its ASC, in which it purports that the NEPA route is IPC’s “Proposed Route.”

addressed in Mr. McAllister Opposition to ODOE’s motions. Mr. McAllister hereby incorporates the facts and arguments presented in Opposition to ODOE’s MSD on FW-13 and Opposition to ODOE MSD on SP-2 here (See Party McAllister’s Oppositions to Motion for Summary Determination on Contested Case Issues FW-13 and SP-2 submitted July 9, 2021).

Mr. McAllister used comparative analysis to demonstrate impacts and exemplify his concerns. IPC’s claim that comparative analyses are irrelevant is confusing, as IPC’s contractor, Tetra Tech, conducted the same type of comparative analysis in its evaluation. See, e.g. ASC Exhibit J, Attachment J-4 (Wetland Delineation Part 1) pp. 3, 8, 11, 13, 14; see also 23, 24, 28 with disclaimer (accessible at https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2018-09-28-B2H-ASC-Exhibit-J-Wetland-Delineation-Part-1.pdf)

ASC Exhibit B, Attachment B-6 (2017 Supplemental Siting Study) at 3 (ODOE - B2HAPPDodc3-3.4 ASC 02e_Exhibit B_Attachment B-6 and B-7a_ASC 2018-09-28. Page 7 of 162)
Specifically, IPC claims in the ASC that: (1) the Mill Creek Route, for which it has applied, is the Bureau of Land Management’s (“BLM”) preferred route in the Final Environmental Impact Statement (“FEIS”), i.e., the NEPA route (it was not); (2) that this purported NEPA route is IPC’s “Proposed Route;” and (3) that the actual Agency Preferred Route in the FEIS, the Glass Hill Alternative, was not carried forward by the BLM (it was). Further, IPC compares the constraints and impacts of the false “NEPA” route (IPC’s “Proposed” Mill Creek Route) to those of the Morgan Lake Alternative Route in its 2017 supplemental siting study.

In November 2016, the BLM identified the Glass Hill Alternative Route as its Agency Preferred Alternative in the FEIS pursuant to its analysis of proposed routes under NEPA. Contrary to this well-documented fact, IPC represents in its 2018 Exhibit B Project Description that the “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route” as its “Basis for Corridor Change.” See Table B-6, Page B-39 of Exhibit

21 ASC Exhibit B, Attachment B-6 (2017 Supplemental Siting Study) at 3 (ODOE - B2HAPPDoc3-3.4 ASC 02e_Exhibit B_Attachment B-6 and B-7a_ASC 2018-09-28. Page 7 of 162); ASC Exhibit B, at B-39 (ODOE - B2HAPPDoc3-3 ASC 02a_Exhibit_B_Project Description_ASC 2018-09-28. Page 45 of 96); See Final Environmental Impact Statement, Chapter 2 at 23, 136 (available at https://www.bpa.gov/efw/Analysis/NEPADocuments/nepa/Boardman%20Hemingway/Boardman_Chapter_2_Proposed_Action_and_Alternatives.pdf) (identifying the Glass Hill Alternative as the Agency preferred route).

22 ASC Exhibit B, Attachment B-6 (2017 Supplemental Siting Study) at 9 (ODOE - B2HAPPDoc3-3.4 ASC 02e_Exhibit B_Attachment B-6 and B-7a_ASC 2018-09-28. Page 13 of 162).

23 Final Environmental Impact Statement, Chapter 2 at 23, 136 (available at https://www.bpa.gov/efw/Analysis/NEPADocuments/nepa/Boardman%20Hemingway/Boardman_Chapter_2_Proposed_Action_and_Alternatives.pdf). This was the same route as the BLM identified as its preferred route in the draft DEIS in 2014. Id.
B (IPC Basis for Corridor Change).\textsuperscript{24} This is patently false. In fact, the Glass Hill Alternative Corridor, has been the Agency Preferred Route since 2014 when it was identified as the NEPA preliminary preferred alternative in the Draft Environmental Impact Statement (DEIS).\textsuperscript{25} IPC’s Table 3.1.1 “Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC” (Attachment B-6 at p. 3) clearly depicts IPC’s misrepresentation that Mill Creek Route (rather than the Glass Hill Route) is the BLM’s Agency Preferred NEPA Route:

\textbf{Table 3.1-1. Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC}

<table>
<thead>
<tr>
<th>Route Originator</th>
<th>Route Designation</th>
<th>EFSC Status</th>
<th>Status in FEIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union County</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IPC</td>
<td>Proposed Route</td>
<td>Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
<tr>
<td>IPC</td>
<td>Morgan Lake</td>
<td>Not Analyzed in the Draft Amended pASC.</td>
<td>Not Analyzed in the FEIS.</td>
</tr>
<tr>
<td>BLM</td>
<td>Mill Creek</td>
<td>Not Analyzed in the Draft Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
</tbody>
</table>

After initiation of this Contested Case, IPC acknowledged this inaccuracy in its ASC, claiming it was a “typographical error” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as IPC consistently perpetuates this falsehood throughout the Exhibit B Project Description (2018) and its Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass

\textsuperscript{24} ASC Exhibit B, at B-39 (ODOE - B2HAPPDoc3-3 ASC 02a_Exhibit_B_Project Description_ASC 2018-09-28. Page 45 of 96
\textsuperscript{25} Final Environmental Impact Statement, Chapter 2 at 23, 136 (available at https://www.bpa.gov/efw/Analysis/NEPADocuments/nepa/Boardman%20Hemingway/Boardman_Chapter_2_Proposed_Action_and_Alternatives.pdf).
Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at 1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route)).

This misrepresentation is significant because out of one side of its mouth, IPC claims it applied for the BLM’s NEPA route, while out of the other claiming the Agency selected NEPA route cannot be considered because IPC did not apply for the FEIS route. IPC cannot have it both ways. Such duplicitous contradictions undermine IPC’s credibility and underscore the unreliability of IPC’s application, on which ODOE relied in drafting its Proposed Order.

2. In determining party status pursuant to OAR 345-022-0022 and OAR 345-022-0060, EFSC already dismissed Mr. McAllister’s “Route Selection” issue, which IPC attempts to re-litigate.

Understanding that the Mill Creek Route was, in fact, not the Agency Selected NEPA route, Mr. McAllister attempted to challenge whether the ASC, and ODOE’s Proposed Order relying on the ASC, complied with ORS 469.370(13), which requires the Council conduct its review in a manner consistent with federal agency review in this Contested Case. Specifically,

27 Mr. McAllister further explained to EFSC on appeal that:
“In my Petition and public comment, I specifically raised the issue that review of IPC’s application was not consistent with federal agency review, calling the application “incomplete” for this reason. ORS 469.370(13) specifically requires that the council shall conduct its site certificate review…in a manner that is consistent with and does not duplicate federal agency review, including development with the federal agency and reliance on a joint records to address applicable council standards. As I have previously
Mr. McAllister stated in Petition that “IPC’s application and deliberate exclusion of the [true] NEPA route is inconsistent with ORS 469.370(13). (McAllister Petition for Party Status submitted to OAH Aug. 27, 2020 at p. 4). The ALJ identified this issue as “Route Selection—Alternative Analysis” and EFSC determined the issue was not properly raised, excluding the issue from the contested case, along with several others that Mr. McAllister sought to address in the contested case proceeding. 28 (Dec. 4, 2020 Amended Order on Petitions for Party Status at 63).

As stated above in Section II.A and B, EFSC found that, among the issues within its jurisdiction that Mr. McAllister had properly raised and thus were not dismissed, were:

a. Whether the proposed Morgan Lake Alternative complies with the Fish and Wildlife Habitat Standard, OAR 345-022-0060

b. Whether the proposed Morgan Lake Alternative complies with the Soil Protection Standard, OAR 345-022-0022

Accordingly, contrary to IPC’s assertions, Mr. McAllister’s comparative analysis or “Route Selection—Alternative Analysis” is not the operative issue, nor is Mr. McAllister limited to discussing his comparative analysis when proving the merits of his case under the two issues above.

3. IPC’s Discovery Requests and McAllister Responses.

At the time that Mr. McAllister had to respond to IPC’s discovery requests, discovery from IPC was still outstanding. McAllister Affidavit 2 ¶ 10. Accordingly, Mr. McAllister raised, the Council did not, and to this day has not, complied with this law as it relates to the Union County segment of the transmission line.” (McAllister Appeal of Interim Order on Party Status to EFSC, submitted Nov. 6, 2020 at 3). 28 ODOE has taken the position that the OAH/EFSC exclusion of issues from the contested case is not a final order, and parties must wait until the disposition of the contested case to challenge the exclusion of issues from the contested case.
reserved the right to introduce evidence based on the ongoing discovery and development of the
case, including discovery responses from IPC and ODOE that had not been provided. Further, in
response to IPC’s requests, Mr. McAllister identified the documentary evidence he anticipated
introducing in this matter, including the ASC and administrative record. Mr. McAllister’s
complete discovery responses are attached as Exhibit 7 to McAllister Affidavit 2 (in support of
all Oppositions to all MSDs on FW-13 and SP-2). In its motion, IPC does not fully state its
Interrogatories 4 and 5, which each read as follows:

“Refer to page four of the comments that you submitted to the Oregon
Department of Energy on December 21, 2018. Please identify with specificity the
basis of your assertion that the Morgan Lake Alternative does not comply with the
Energy Facility Siting Council’s [Soil Protection and Fish and Wildlife Habitat
standards].”

Mr. McAllister objected to both Interrogatory 4 and 5, that “it is unclear which document you
refer to in this interrogatory. The date December 21, 2018 does not appear in my public
comments.” McAllister Affidavit 2, Ex. 7. Mr. McAllister further objected that the request
attempted to improperly limit the facts he may use in the case to those included DPO comment.
IPC never responded to objection, clarified its requests, or sought a discovery order. McAllister
Affidavit 2 ¶ 10; Ex. 7.

29 IPC MSD on SP-2 and FW-13, Affidavit of Jocelyn Pease/ Exhibit A, Attachment 2, p.2;
Attachment 3 p. 2-3.
30 IPC again relies on the fact that Mr. McAllister conducted a comparative analysis to argue
there is no dispute of fact, stating comparative analyses cannot be relevant. However, this
contradicts the methodology of IPC’s own contractor Tetra Tech, which conducts comparative
analyses to assess impacts. See, e.g. ASC Exhibit J, Attachment J-4 (Wetland Delineation Part 1)
pp. 3, 8, 11, 13, 14; see also 23, 24, 28 with disclaimer (accessible at
ASC-Exhibit-J-Wetland-Delineation-Part-1.pdf). If comparative analyses are irrelevant, it is
unclear why IPC’s contractor relies on them in conducting analysis.

Mr. McAllister’s full response to Interrogatory 4 is as follows:
III. ARGUMENT

A. IPC Misstates the Relevant Issue and Improperly Attempts to Limit the Facts on which Mr. McAllister can Rely to Prove his Case under the Applicable EFSC Standards.

1. IPC misconstrues the relevant issue conflating FW-13 and SP-2 with “Route Selection—Alternative Analysis,” which has already been excluded from the Contested Case.

IPC’s primary argument is based on its misconstruction of the relevant issue(s). The relevant issues here, as stated in the Amended Order for Party Status, are whether IPC’s “Morgan Lake Alternative Route complies with the Fish and Wildlife Habitat standard,” OAR 345-022-0060; and whether IPC’s “Morgan Lake Alternative Route complies with the Soil Protection standard,” OAR 345-022-0022. (Dec. 4, 2020 Order at 62-64). EFSC has already I object to this request as outside the scope of issues to be tried in this contested case. The content of my public comment relates to the threshold issue of my standing in this case and does not limit my evidence or argument to assertions in my DPO comments. Energy Facility Siting Counsel (EFSC) has already determined my standing with respect to certain issues raised in my public comments. As such, I further object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and the basis of my assertion that the Morgan Lake Alternative does not comply with EFSC standards continues to be informed by information and documents produced in ongoing discovery. Subject to and without waiving this objection, I respond as follows:

The composition and productivity of the soil impacted by the Morgan Lake Alternative is significant because the site potential of that soil is great. See Agricultural Experiment Station, and United States. Soil Conservation Service. Soil Survey of Union County Area, Oregon. [Washington, D.C.]: The Service, 1985. I reviewed detailed soil-map units categorizing the soils impacted on both the Morgan Lake Route and the Glass Hill Alternative (which became the BLM’s Agency Preferred Alternative in both the DEIS and the FEIS). The plant communities and plant associations reflect that potential of the soil impacted by the Morgan Lake Alternative Route. The basis of my assertion is that the Project will have significant adverse impacts to soil. The significance of the impacts are demonstrated through comparison (see, e.g. Application for Site Certificate, Ex. B-6). I conducted a comparative analysis, which included EFSC’s soil standard, to demonstrate that the impacts are significant as demonstrated through comparative analysis (see BLM identified the environmentally preferred route in FEIS; discussed in analysis)
determined that Mr. McAllister raised these particular issues sufficiently in DPO comments to participate in the contest case, challenging IPC’s Morgan Lake Alternative Route’s compliance with EFSC standards OAR 345-022-0060 and OAR 345-022-0022.

IPC appears to attempt to merge issues FW-13 and SP-2 into a single issue and redefine this as whether “the Morgan Lake Alternative would have greater impacts on soils and fish and wildlife habitat than a route that Idaho Power analyzed…(the “NEPA route”),” but did not apply for, claiming the issue—as redefined by IPC—is outside Council’s jurisdiction. (IPC MSD FW-13 and SP-2 at 1:11-2:1). Here, not only does IPC contradict its own ASC in which it states that the NEPA route (which IPC falsely claims is the Mill Creek Route) is IPC’s Proposed Route, IPC confusingly appears to argue that EFSC erred in granting Mr. McAllister standing to challenge whether IPC’s Morgan Lake Alternative Route complies with EFSC’s Fish and Wildlife Habitat and Soil Protection standards, asserting that “because the Council does not have jurisdiction to analyze routes not proposed by Idaho Power in this case” Mr. McAllister has failed to raise a genuine issue of fact as to SP-2 and FW-13. This argument both conflates: (1) issues FW-13 and SP-2 with the issue of “Route Selection—Alternative Analysis,” which the ALJ and EFSC have already excluded from the contested case; and (2) the standing requirements with those of the merits stage of the contested case.

2. **IPC seeks to improperly limit the facts Mr. McAllister can rely on to prove the merits of his case.**

The requirements for establishing standing in this contested case do not limit or define the facts that parties can present to prove the merits of their case once they have been granted standing on an issue within the Council’s jurisdiction. Nor do the rules require that potential parties allege every fact upon which they may rely in a contested case at the public comment stage. Such requirements would obviate the purpose of the contested case process. Here, the crux
of IPC’s argument is that Mr. McAllister is limited to arguing that the [true] NEPA route is less impactful than the Morgan Lake Alternative. This is incorrect and unsupported by the applicable procedural rules.

Here, EFSC found that Mr. McAllister has met the requirements to establish the right to participate in this contested case, stating the two issues that are the subject of the current motion as: “whether the Morgan Lake Alternative complies with the Fish and Wildlife Habitat standard” and “whether the Morgan Lake Alternative complies with the Soil Protection standard.” The relevant EFSC standards, compliance with which Mr. McAllister has been granted standing to challenge, are OAR 345-022-0022 (requiring the Council to find the Project is not likely to result in a significant adverse impact to soils) and OAR 345-022-0060 (requiring that the Council must find that the design, construction and operation of a facility “are consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(7)"). Mr. McAllister now has the opportunity to prove the merits of his case, which allows presentation of facts beyond those raised in public comment and petition for party status.

In its motion, IPC acknowledges that Mr. McAllister is not limited to facts in his DPO comment, but appears to assert that Mr. McAllister has not raised the issue of compliance with the fish and wildlife habitat standard—contrary to the Amended Order on Party Status. Specifically IPC states, “Mr. McAllister is correct that he may introduce additional evidence in this contested case, but he can raise only the issues identified in the DPO comment.” (IPC MSD at 7-8 n.22). To be clear, the operative issues that EFSC determined Mr. McAllister properly raised in DPO comment, which he was granted standing the challenge in the contested case are:

______________________________

31 Mr. McAllister has also been granted standing to challenge compliance with the Recreation standard which is the subject of separate MSD’s to which Mr. McAllister has also responded.
(a) whether the Morgan Lake Alternative complies with the Fish and Wildlife Habitat standard, OAR 345-022-0060; and (b) whether the Morgan Lake Alternative complies with the Soil Protection standard, OAR 345-022-0022. (Dec. 4, 2020 Order at 62-64). IPC’s motion must fail because it is based on its attempt to redefine Mr. McAllister’s issues such that they are as outside the Council’s jurisdiction, and thus any facts introduced would be irrelevant or inapplicable. This is inconsistent with past rulings.

Further, IPC attempts to limit the facts on which Mr. McAllister can rely based on response to two unclear, objectionable interrogatories, while ignoring the evidence Mr. McAllister cites in response to other requests, which encompass the then forthcoming discovery responses from ODOE and IPC, the ASC, and administrative record. IPC never responded to Mr. McAllister’s objections, clarified its requests, nor sought a discovery order. McAllister Affidavit 2 ¶ 10. Additionally, these interrogatories appear to be limited to identifying facts stated in DPO comment. As stated above, parties are not limited to the facts alleged at the DPO comment stage in the contested case hearing.

B. There are Genuine Issues of Material Fact Relevant to Mr. McAllister’s Issue FW-13: Whether the Proposed Morgan Lake Alternative Complies with the Fish and Wildlife Habitat Standard.

Contrary to IPC’s claims, Mr. McAllister has identified evidence to indicate that the Project does not comply with EFSC’s Fish and Wildlife Habitat Standard.

1. Contrary to IPC’s Claims, the Twin Lake Wetlands in Morgan Lake Park Falls within B2H Site Boundary.

IPC claims that the “site boundary for B2H is entirely outside of Morgan Lake Park” and
Twin Lake wetlands therein. Contrary to this representation, portions of the Park fall within the site boundary. Indeed, IPC’s own ASC maps depicting the site boundary render its assertion demonstrably false. Not only does site boundary cross Morgan Lake Park, specifically 0.77 acres of the Twin Lake wetland habitat is within the site boundary. McAllister Affidavit 1 ¶ 9; McAllister Affidavit 2 ¶¶ 5-6.

2. Idaho Power Company admits it never categorized the Twin Lake Wetlands, which is Category 1 Habitat under OAR 635-415-0025 requiring maximum avoidance.

As detailed in Section II.B above, the Twin Lake wetlands constitute Habitat Category 1. Neither IPC nor ODOE can refute this fact because IPC admits it never categorized Twin Lake or Morgan Lake Park under OAR 635-415-0025, which the site boundary crosses (See Section II.D above). McAllister Affidavit 2, Ex. 3. (IPC’s discovery responses).

Thus, at a minimum, there is a dispute of fact regarding whether the Morgan Lake Route complies OAR 635-415-0025, as required under OAR 345-022-0060, because not only did IPC fail to properly categorize the Twin Lake wetlands, it states it failed to categorize it at all. This is deeply problematic because, as Habitat Category 1, no loss is allowed and either impacts must be fully avoided through alternatives or no authorization of the proposed development is allowed if impacts cannot be avoided. OAR 635-415-0025. B2H, as proposed, in no way complies with these requirements as a portion of the wetlands actually fall inside site boundary. As described in

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32 Twin Lake is 27 of contiguous wetlands extending into the project site boundary. McAllister Affidavit 2 ¶¶ 5-6.
33 See e.g. ASC Exhibit C, Attachment C-3 Map 8 (ODOE - B2HAPPDoc3-4 ASC 03_Exhibit C_Project_Location_ASC 2018-09-28. Page 181 of 193); ASC Exhibit B, Attachment B-7a Map 55 (ODOE - B2HAPPDoc3-3.4 ASC 02e_Exhibit B_Attachment B-6 and B-7a_ASC 2018-09-28. Page 79 of 162); McAllister Affidavit 1, Ex. 5 (IPC John Williams map).
34 See also, Party McAllister’s Opposition to IPC’s MSD on R-2 (submitted 6/25/21).
Section II.B above, Twin Lake is a spring-fed lake. Blasting for tower construction could disrupt the flow rates to all the area springs, and could severely diminish the quality of the habitat.

Even if the entire wetlands was outside the site boundary, building the Project feet away from this critical habitat does not meet the avoidance criteria for either Habitat Category 1 or 2. IPC recognizes most of the habitat categorized—which is limited to the 500 foot-wide site boundary—as Habitat Category 2. Like Habitat Category 1, the applicable rules for Category 2 habitat dictate “avoidance of impacts through alternatives to the proposed development action” as the first alternative. OAR 635-415-0025.

IPC, perhaps seeking to obscure the fact that it has falsely represented to ODOE that its “Proposed Route” is the Agency Preferred NEPA route, centers its arguments on the claim that, because it did not apply for what it has since acknowledged as the true NEPA route, the BLM’s findings are entirely irrelevant here. This is incorrect because OAR 635-415-0025 requires “avoidance of impacts through alternatives to the proposed development action.” The rule does not limit the consideration of impact avoidance to routes selected by IPC. While EFSC perhaps may not consider alternatives not applied for purposes of issuing a site certificate for those alternatives, studied and recognized alternatives—particularly those the BLM evaluated—are absolutely relevant to assessment of “avoidance of impacts through alternatives,” or whether “impacts cannot be avoided” thus resulting in no authorization of the development action. See OAR 635-415-0025. Thus, it is highly relevant to the assessment of compliance with OAR 635-

36 Significantly, all impacts are avoided by the BLM’s agency selected NEPA route.
425-0025 that a BLM-recommended alternative route, which avoids the impacts of the current proposed action, has been identified.  

3. **The Analysis Area for fish and wildlife habitat cannot be squared with the requirements of OAR 635-415-0025.**

   The analysis area for the Fish and Wildlife Habitat standard identified in the Second Amended Project Order cannot be reconciled with the “the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) though (6)” as OAR 345-022-0060 requires. For purposes of compliance with OAR 345-022-0060, the applicable analysis area for the Project has been limited to a narrow site boundary, which measures approximately 500 feet across. This “analysis area” incorrectly assumes that the facility’s impacts on fish and wildlife habitat are confined within a 500 foot-wide corridor. Thus, according to the Second Amended Project Order and Idaho Power Company’s ASC, Category 1 habitat that lies just one foot outside the site boundary is entirely irrelevant and the facility’s impacts on the habitat need not be assessed. This cannot be squared with the mandates of 635-415-0025, which requires “no loss of either habitat quantity or quality” and dictates “avoidance of impacts through alternatives to the proposed development action; or no authorization of the proposed development action” for this Category 1 habitat just outside the site boundary. ODOE and IPC’s position that the design, construction and development of a facility such the B2H transmission line only affects habitat within a 500 foot corridor is absurd.


In concrete terms, a portion of the irreplaceable habitat of the Twin Lake wetlands lies inside the site boundary while a portion lies immediately outside the site boundary. It is ODOE’s and IPC’s position that the precious Twin Lake wetlands touching the site boundary do not matter and, as IPC admits, were not assessed or categorized in accordance with OAR 635-415-0025 and Division 415 ODFW Fish and Wildlife Habitat Mitigation Policy. Not only is this not scientifically sound or supported, it defies common sense and logic. Defining the analysis area for fish and wildlife habitat as the 500 foot wide site boundary—and limiting habitat categorization to the area therein—cannot be consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025, which seeks maximum avoidance of Category 1 habitat, and consideration of alternatives for all categories, and thus the application cannot comply with OAR 345-022-0060.

C. The Information in IPC’s Application for Site Certificate is Inaccurate and Unreliable.

Idaho Power Company’s Application for Site Certificate is fraught with inaccuracies, flawed analyses, and misleading and false information.

As a multibillion dollar for-profit energy company, IPC has a financial interest in ensuring construction of the Project. There is no evidence that a non-interested third party has confirmed the veracity of IPC’s representation or information contained within the ASC. However, contrary to confirming accuracy, many parties have identified that the ASC consists of flawed analyses, inconsistencies, and inaccurate, misleading and false representations. For example: IPC falsely represents that the Morgan Lake Park and the Twin Lake wetlands is entirely outside the site boundary of its Morgan Lake Alternative Route;39 IPC falsely claims the

39 See McAllister Opposition to IPC MSD on R-2 and supporting McAllister Affidavit.
Mill Creek Route—for which it applied—is the route the BLM identified in its Final Environmental Impact Statement (it is not) while at the same time falsely claiming that the actual Agency-preferred route (the Glass Hill Alternative) “was not carried forward by BLM as the agency preferred route”;\textsuperscript{40} IPC misrepresents the boundary of Morgan Lake Park;\textsuperscript{41} IPC’s conclusions in ASC Exhibit T are premised on flawed methodologies, and unsupported assumptions.\textsuperscript{42} This is far from an exhaustive list and is further supplemented by information in the many party responses opposing summary determination in this matter.

The unreliability of the information, representation, and analyses in the ASC upon which IPC relies creates a genuine dispute of material fact.

**Conclusion**

For the foregoing reasons the ALJ should deny IPC’s Motion for Summary Determination on Issue FW-13 and SP-2.

\textit{\text_barthline \textbar} Michael McAllister \textbar Date: July 9, 2021

Michael McAllister

\textit{\footnotesize \textsuperscript{40} ASC Exhibit B at B-39 (Table B-6) (ODOE - B2HAPPDoc3-3 ASC 02a_Exhibit_B_Project Description_ASC 2018-09-28. Page 45 of 96); McAllister Affidavit 1, Ex. 6, attached hereto in support of this Opposition.}

\textit{\footnotesize \textsuperscript{41} See McAllister Opposition to IPC’s MSD of R-2 (Submitted 6/25/21) at 15; ASC Exhibit T, Attachment T-4-57 (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28. Page 156 of 291).}

\textit{\footnotesize \textsuperscript{42} See McAllister Opposition to IPC’s MSD of R-2 (submitted and served 6/25/21) at 13-19; See generally, Barry Opposition to IPC MSD on Issue SR-6 (submitted and served 6/25/21).}
CERTIFICATE OF MAILING

On July 9, 2021, I served the foregoing Opposition to Motion for Summary Determination in Case No. OAH Case No. 2019-ABC-02833 on the following recipients:

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"McAllister Affidavit 2"

McAllister Affidavit in Support of Opposition to Idaho Power Company and Oregon Department of Energy Motions for Summary Determination

FW-13 and SP-1

(McAllister Affidavit 2)
I, Michael McAllister, state and declare as follow:

1. I submit this Affidavit in support of my Oppositions to Idaho Power Company and Oregon Department of Energy’s Motion for Summary Determination on FW-13 and SP-2.

2. I am a lifelong outdoorsman and the son of Oregon’s widely respected outdoorsman and journalist, Thomas H. McAllister (Tom), whose job consisted of writing about Oregon’s natural places for the Oregon Journal (which merged with the Oregonian). As a result, I grew up exploring every corner of Oregon’s natural settings. I first visited Morgan Lake Park in the late 1960s when Tom took the family to La Grande to cover the story of the joint effort to establish the Park as a cooperative city/state/federally funded project. I remember vividly the diverse and unique assemblage of birds at that time which included the first Black Turn that I had ever seen.

3. I pursued natural resource management as my career and obtained a B.S. in Wildlife Resources and Communications from the University of Idaho.
4. I have lived on and managed natural resources across the subject landscape for over 40 years. As an independent natural resource contractor, I have made a career specializing in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data that is used for planning purposes, most often for National Environmental Policy Act (NEPA) analyses.

5. Using my professional skills and knowledge, I have surveyed and studied the Twin Lake wetlands and surrounding area. At approximately 4,100 feet in elevation, these lakes are shallow depressions atop a basalt plateau. Outflow from these lakes is restricted to the spring runoff period such that minerals and sediment is accumulating over time. Twin Lake is shallow; the majority of the surface supports floating emergent vegetation mats that are unique within this largest of Oregon’s nine ecoregions. As to the site-specific nature of Twin Lake unique habitats, both the submerged and the emergent vegetation communities are distinctly rich. Significantly, the Twin Lake area exhibits six of the eight conservation strategy habitats identified in the Blue Mountain Ecoregion. These strategy habitats include aspen woods, late successional mixed conifer forests, natural lakes, grasslands, ponderosa pine woodlands, and wetlands. The continuum of vegetation, from aquatic, to emergent, to wet meadow, to dry meadow, to mixed conifer forest is distinctly unique and limited at both the physiographic province and on a site-specific basis. The diversity of wildlife species that occupy this complex habitat matrix is perhaps unprecedented in the province. The Twin Lake wetlands specifically is 27 acres of continuous wetlands extending into the B2H site boundary.

6. I surveyed the portion of wetland habitat that falls within Idaho Power Company’s site boundary. Based on the ASC Attachment P1-8, Habitat Categorization, Union County, Map 157, I identified the acreage of the Twin Lake wetland that falls within the City of La Grande’s Morgan Lake Park boundary. On the ground, I transcribed the eastern site boundary on the ground in relation to the Morgan Lake Park property corner at GPS coordinates; 45 degrees, 17 minutes, 57.7 seconds / 118 degrees, 08 minutes, 44.0 seconds. On the northing, the site boundary is 202 feet into the park. On easting, the site boundary is 331 feet into the park.
boundary. From this the calculated overlap of the site boundary is 0.77 acres of predominantly wetland habitat.

7. As someone who is intimately familiar with natural resources and the many landscapes, habitats, and outdoor opportunities in Oregon, I purchased my home and property over 30 years ago, approximately one quarter mile from Morgan Lake Park, precisely because of the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan Lake Wetlands in Morgan Lake Park.

8. Based on my extensive professional and personal experience with the natural settings of Oregon, the Twin Lake Wetlands in Morgan Lake Park and the surrounding area are rare, remarkable, and irreplaceable for many reasons.

9. Within the entirety of the Blue Mountains Physiographic Province, there are no other montane, ridgetop wetland lakes that are represented by such a diverse assemblage of both vegetation and wildlife species. Attached as Exhibit 4 to this Affidavit is a non-comprehensive list plant species identified at Morgan Lake Park developed by Dr. Karen Antell, Professor of Biology, and Susan Geer, botanist.

10. Discovery. I responded to Idaho Power’s Company’s discovery requests on February 5, 2021, the same day IPC and ODOE responded to my discovery. I objected to IPC’s interrogatories. IPC never clarified its requests, responded, or sought a discovery order. In response to my requests for documents, IPC provided a single document. While IPC initially offered to provide responsive GIS data, it later reneged and did not provide the information.

11. Oregon Department of Energy never served any discovery on me.

12. Because I, and other parties, had identified significant false information in IPC’s application for site certificate, I asked ODOE in discovery to identify any specific steps it took in this matter to confirm the information in the ASC, on which it relied in the Proposed Order, was accurate. ODOE identified no action specific to the B2H application.

13. Attached as Exhibit 1 to this Affidavit is a true and correct copy of an email response I received from the Oregon Department of Fish and Wildlife regarding its interpretation of “unique assemblage.” I provided this document to IPC in response to discovery requests.
14. Attached as Exhibit 2 is a true and accurate copy of my discovery requests to Idaho Power Company.

15. Attached as Exhibit 3 is a true and accurate copy of Idaho Power Company’s Responses to my discovery requests.

16. Attached as Exhibit 4 is a true and accurate copy of a species list provided to me by Dr. Karen Antell.

17. Attached as Exhibit 5 is a true and accurate copy of the discovery requests I served on ODOE.

18. Attached as Exhibit 6 is a true and accurate copy of ODOE’s discovery responses.

19. Attached as Exhibit 7 is a true and accurate copy of my discovery responses to IPC’s discovery requests.

July__, 2021

[Signature]
Michael McAllister

Signed before me this ____ day of July__, 2021 by Charles H. Gillis

[Stamp]
Barbara Peden, Notary Public for Oregon
My Commission expires: 9-24-24
May 8, 2021

VIA EMAIL

Jocelyn Pease, jocelyn@mrg-law.com; and Lisa Rackner, lisa@mrg-law.com; and David Stanish, dstanish@idahopower.com.

McDowell Rackner Gibson
419 SW 11th Ave
Suite 400
Portland OR, 97205

Re: OAH Case No. 2019-ABC-02833 – Boardman to Hemingway Transmission Line – McAllister First Supplemental Responses to IPC Interrogatory Nos. 1-5, Request for Production Nos. 1-2

Please find supplemental responses to Idaho Power’s discovery requests, identified below and attached.


Birds of Northeast Oregon, A Grande Ronde Bird Club, Oregon Department of Fish & Wildlife Publication.

Sincerely,

Michael McAllister
Michael:

Answers to the two questions you outlined in your email:

1) Has the State Game Refuge state for Morgan Lake Park ever been formally dissolved?

Yes, the agreement that you provided in your email expired in 1976 (see bottom of first page you sent). In 1977 there was a new agreement that ended in 1982 and at that time the agreement was never renewed.

2) Can you please provide information regarding how ODFW identifies and/or interprets a "unique assemblage" as the term is used for purposes of Rule 635-415-0025 (Implementation of Department Habitat Mitigation Recommendation)?

ODFW does not define unique assemblage in statute or rule. In general terms, ODFW interprets an assemblage as a group of species that exist in a particular habitat. For example and in the context of the Division 415 ODFW Fish and Wildlife Habitat Mitigation Policy, habitat categorization might be based on an individual species/population (e.g., grasshopper sparrows) or an assemblage of species that co-occur within a particular habitat (e.g., grassland birds).

If you have additional question, please address those to Sarah Reif (copied on this email) who is our Energy Coordinator out of our Salem Headquarters Office. She will direct questions to the appropriate staff.

Thank you.

Nick Myatt
Grande Ronde Watershed District Manager
Oregon Department of Fish and Wildlife
107 20th Street
La Grande, OR 97850
(541)962-1824
Date: January 22, 2021

To: Idaho Power Company
   C/O Lisa Rackner (lisa@mrg-law.com)

From: Michael McAllister

Re: Informal Discovery Requests

DEFINITIONS

1. “You” or “Your” means Idaho Power Company, each of its present and former agents and other individuals acting or purporting to act on its behalf.

2. “Document(s)” means physical documents and electronically stored information, including any written, printed, typed, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in the possession, custody, and/or control of Idaho Power or known by Idaho Power to exist, including, but not limited to: papers, letters, internal and external correspondence and communications, electronic files, meta data, emails, messages, and computerized files.

3. “Morgan Lake Park” means the tract of land described as follows:

   Commencing at the Southeast corner of the Southwest quarter of the Southwest quarter of Section 13, in Township 3 South, Range 37 East of the Willamette Meridian; running thence West on the Section line 31.50 chains; then North 15.25 chains; thence West on a line parallel with the section line 21 chains; thence North at right angles to said last line 24.75 chains to the North line of the Southeast quarter of section 14, said Township and Range; thence East on the center line of said Section 14 a distance of 27.50 chains; thence North 10.50 chains; thence East 25 chains to the East line of the Southwest quarter of the Northwest quarter of Section 13, said township and range; thence South 50.50 chains to the place of beginning.

4. “Twin Lake” means the smaller of two lakes within the boundaries of Morgan Lake Park as recognized in the National Wetlands Inventory.

REQUESTS

Compliance with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022 with respect to the Morgan Lake Alternative:
1. Identify all individuals likely to have discoverable information that you may use to support your claim that the Morgan Lake Alternative Route ("MLA") complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

2. Identify: all persons on whose testimony you may rely to support your claims that the Morgan Lake Alternative Route complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022; their professional background; and the substance of their expected testimony.

3. To the extent that you rely on any documents not contained in the Application for Site Certificate (ASC) to support your claim that the MLA complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022, produce all such documents.

4. Please produce all documents, including communications, both internal and external, relating to the development of the Morgan Lake Alternative Route. This includes all documents reflecting internal deliberations relating to the development of the MLA.

5. Identify each landowner with whom you consulted, as stated in your ASC (B-6, pp.1, 9) in developing Idaho Power’s Morgan Lake Alternative.

6. Explain with specificity how you used and/or incorporated the input of landowners in developing the MLA.

7. Produce all documents, including emails and other communications, relating to the input from landowners used to develop the Morgan Lake Alternative. This includes internal communications and other documents reflecting internal deliberations regarding the input of landowners and development of the MLA.

8. Identify each landowner whose input you incorporated to develop the MLA, as you stated in your ASC.

9. Did you consider input from local landowner Michael McAllister regarding mitigation of impacts (as required by OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022) through inclusion of federal Agency Selected (NEPA) Route, identified in green on the interactive map on your website. An image of this route is attached hereto as Ex. A.
a. If not, why not?
b. If yes, explain how you used this input.

10. Produce all documents, including internal and external communications, relating to what you have referred to as the BLM’s Agency Preferred route in Attachment B-6 of the ASC.

11. Please explain why you chose not to pursue the Glass Hill Alternative you reference on p. B-39 of ASC, and that you identify in Request No. 18(a) below, to comply with the mitigation requirements in OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

12. Explain the purpose and significance of your comparison between the Mill Creek Route and the Morgan Lake Alternative found on p.9 of Attachment B-6, 2017 Supplemental Citing Study. Specifically explain why this comparison is included in the ASC and why you compare those two particular routes.

13. Explain the basis for your claim in Attachment B-6 of the ASC that the Mill Creek Route is the Agency Preferred Alternative in the FEIS.
   a. Produce the documents on which you rely to make this claim.

14. Explain the basis of your claim on page B-39 of your ASC that “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route.”
   a. Produce all documents, including communications, in support of your claim that “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route.”

15. In developing your ASC in attempted compliance with mitigation requirements of OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), explain why you did not pursue the “federal Agency Selected Route (NEPA),” identified in green on the interactive map on your website (attached hereto as Ex. A) to meet the mitigation requirements of OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

16. Explain why in your ASC, you compare the Morgan Lake Alternative to the Mill Creek Route rather than to the “federal Agency Selected Route (NEPA) identified on the IPC map referenced in No. 15.
17. Produce all documents, including internal and external communications, relating to your decision not to include federal Agency Selected (NEPA) Route, as identified on Ex. A to these Requests, to comply with the mitigation requirements of OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

18. Idaho Power has failed to use consistent naming conventions over the life of this project and in the documents it has generated. Please clearly identify or produce a map clearly defining what you refer to in your ASC as:

   a. The Glass Hill Alternative
   b. The BLM Agency Preferred Alternative Route
   c. The Mill Creek Route

19. Admit that the BLM’s Agency Preferred Alternative in the FEIS is not the same as the Mill Creek Route.

20. If you deny Request for Admission No. 19, explain the basis for your denial, and produce all documents supporting this position.

21. Admit that the Glass Hill Alternative is the same as the BLM’s Agency Preferred Alternative in the FEIS.

22. If you deny the Request for Admission No. 21, explain the basis for your denial, and produce all documents supporting this position.

OAR-345-022-0060 (Fish and Wildlife Habitat)

23. Produce all documents, including communications, regarding the presence of threatened and endangered species, both federally and state listed, and the Morgan Lake Alternative Route.

24. Produce all internal and external communications, including but not limited to communications with Oregon Department of Energy, Oregon Department of Fish and Wildlife, the U.S. Bureau of Land Management, the U.S. Forest Service, landowners and other private stakeholders, relating to fish and wildlife habitat along the Morgan Lake Alternative.

25. Identify the habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and the basis for that determination:

   a. Morgan Lake Park
b. Twin Lake  
c. Glass Hill Natural Area (encompassing property of Joel Rice)  
d. State-recognized wildlife refuges  

26. Produce all documents relating to your response to No. 25 above.  

27. Identify and describe what, if any, study and analysis has been completed with respect to fish and wildlife habitat within:  
   e. Morgan Lake Park  
   f. One mile of the Park boundary  
   g. Two miles of the Park boundary  

28. Produce all documents relating to your responses to No. 27.  

29. Identify and provide contact information for any individual(s) upon whose analysis you relied for No. 27 above.  

30. Identify the definition and/or interpretation of “unique assemblage” on which you rely for purposes of compliance with OAR-345-022-0060 and the incorporated OAR 635-415-0025.  

31. Identify Idaho Power’s avoidance criteria with respect to bald eagles’ nests.  

32. Explain why the bald eagles’ nests located at (Nest #1) N 45 18 06.6, W 118 08 44.2 (within 12 feet of park boundary, and within 50 feet of Twin Lake, and within approx. 500 feet of nearest tower) and (Nest # 2) N 45 17 47.9, W 118 08 55.0 (within 1200 feet of nearest tower) are not recognized in your ASC, including on Table B-2 in ASC Exhibit B.  

33. Did you consider Morgan Lake Park as a wildlife refuge in your ASC?  

34. Explain why you did not identify Morgan Lake Park, or the encompassed Twin Lake, as environmentally sensitive areas.  
   h. If it is your position that these are not environmentally sensitive areas:  
      i. Explain in detail the basis for this conclusion, including what study was done to arrive at this conclusion; and  
      ii. Produce all documents, including communications, relating to this determination.  

McAllister Informal Discovery Requests to Idaho Power
35. You state in your ASC that “[t]he entire Morgan Lake Route Alternative was considered forested. No other Alternative Routes were considered forested.” (p. R-52). Explain:
   i. Why you have chosen to pursue what you have identified as an entirely forested alternative over non-forested alternatives;
   j. How this is consistent with the habitat mitigation goals of OAR 635-415-0025.

**OAR-345-022-0100 (Recreation)**

36. Produce all internal and external communications, including those from landowners, concerning impacts of the Project on Morgan Lake Park.

37. Produce all documents, including internal and external communications, relating to your determination that the proposed siting of the Morgan Lake Route is consistent with the Morgan Lake Park Recreation Use and Development Plan.

38. Explain in detail how you determined that the Morgan Lake Alternative complies with OAR-345-022-0100 with respect to Morgan Lake Park.

39. Explain in detail the process through which you determined that “[t]he Project will not result in a direct loss of recreation opportunity to the park.” (T-44).
   a. Produce all documents, including communications, relating to your determination that “[t]he Project will not result in a direct loss of recreation opportunity to the park.”

40. Please identify the definition and/or interpretation of “recreation opportunity” on which you rely for purposes of compliance with OAR-345-022-0100 and your claim identified in No. 39 above (ASC, T-44).

41. Identify what you have determined to be the “recreation opportunit[ies]” of Morgan Lake Park.
   a. Explain the process through which you arrived at this determination;
   b. Produce all documents relating to this determination.

42. With respect to Morgan Lake Park, you state in your ASC “[t]he Project will not be visible from primary recreation areas, and therefore visual impacts will not cause adverse impacts to visitor experience at the park.” (T-44); with respect to this claim:
   a. Identify which areas you believe are “primary recreation areas”;
b. Explain in detail the process through which you determined these areas to be the “primary recreation areas”;
c. Produce all documents relating to your claim that these are the primary recreation areas.

43. Identify and describe what, if any, study and analysis has been completed with respect to recreation within:
   k. Morgan Lake Park
   l. One mile of the Park boundary
   m. Two miles of the Park boundary

44. Produce all documents relating to No 43.

45. Explain why the MLA was not presented for public comment.

46. Explain how you believe you have complied with OAR-021-0010(b)(D).

Cc:
ODOE – C/O Rowe Patrick G (Patrick.G.Rowe@doj.state.or.us)
Colin Andrew
Kathryn Andrew
Irene Gilbert
Karen Antell
Louis Squire
Lois Barry
Anne March
Kevin March
Susan Geer
STOP B2H
Issue No. FW-13

MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 25:

Identify the habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and the basis for that determination:

a. Morgan Lake Park
b. Twin Lake
c. Glass Hill Natural Area (encompassing property of Joel Rice)
d. State-recognized wildlife refuges

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 25:

a. Morgan Lake Park - This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

b. Twin Lake - This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

c. Glass Hill Natural Area (Joel Rice property) – The portion of Joel Rice’s property that is within the Site Boundary was not field surveyed, because Mr. Rice denied Idaho Power’s requests for right-of-entry. Accordingly, Idaho Power characterized the habitat remotely pursuant to the methods described in the Habitat Categorization Matrix, Exhibit P1, Attachment P1-1. The habitat categorization of temporary and permanent impact areas on this property are associated with the Morgan Lake Alternative and are as follows:

- Category 6 habitat: 1.8 acres of permanent disturbance to Developed habitat type. This is an existing road to be improved. Within Category 3 Elk Summer Range; however, developed habitats do not get modified based on overlap with wildlife habitat overlays.
- Category 3 habitat: 1.9 acres of permanent disturbance and 8.2 acres of temporary disturbance to Douglas Fir/Mixed Grand Fir habitat type. Within Elk Summer Range.
- Category 2 habitat: 0.04 acres of permanent and 0.01 acres of temporary disturbance to Perennial Stream habitat type. These disturbances are from an existing road that would be improved that is adjacent to Sheep Creek.

d. State-recognized wildlife refuges – Idaho Power objects to this request as vague and ambiguous, because the term “state-recognized wildlife refuges” is undefined and could be referring to any number of refuges throughout the state. Without waiving that objection, Idaho Power provides the following information regarding the Ladd Marsh Wildlife Area. No field surveys were performed on this property, so habitat categorization was done remotely. The habitat categorization of temporary and permanent impact areas on Ladd Marsh are associated with the Mill Creek Route and are as follows:

- Category 6 habitat: 1.1 acres of permanent disturbance to Developed habitat type. This is an existing road to be improved. Within Category 2 Elk Winter Range and Category 2 Mule Deer Winter Range; however, developed habitats do not get modified based on overlap with wildlife habitat overlays.
- Category 2 habitat: 1.0 acres of permanent and 7.1 acres of temporary disturbance in Shrub-Steppe without Big Sage; 4.4 acres of permanent disturbance in Ponderosa Pine; trace acres of temporary and permanent disturbance in Native Grassland; trace acres of temporary and permanent disturbance in Intermittent Stream. These disturbances are associated with 3 tower locations, temporary work areas, existing roads needing
improvement, and clearance of the ROW in forested areas. These areas are within Category 2 Elk Winter Range and Category 2 Mule Deer Winter Range.
<table>
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<th>Common Name</th>
<th>Native or Introduced</th>
<th>Wetland Status</th>
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<td>OBL</td>
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<td>Cow-parsnip</td>
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<td>Senecio integerrimus</td>
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<td>Wheatgrass, Slender</td>
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<td>Festuca idahoensis</td>
<td>Fescue, Idaho</td>
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<td>Glyceria grandis</td>
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<td>Glyceria striata</td>
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<td>Koeleria macrantha</td>
<td>Junegrass, Prairie</td>
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<td>Lolium perenne</td>
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<td>Scientific Name</td>
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<td>Melica subulata</td>
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<td>Poa bulbosa</td>
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<td>Poa compressa</td>
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<td>Poa palustris</td>
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<td>Ventenata dubia</td>
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**POLEMONIACEAE**

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<td>Navarettia intertexta</td>
<td>Navarettia, Needle-leaf</td>
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<td>Phlox caespitosa</td>
<td>Phlox, Tufted</td>
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<td>Phlox hoodii</td>
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<td>Phlox longifolia</td>
<td>Phlox, Long-leaf</td>
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<td>Phlox viscida</td>
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**POLYGONACEAE**

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<td>Polygonum ramosissimum</td>
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<tr>
<td>Rumex salicifolius</td>
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<td>Aquilegia formosa</td>
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<td>Clematis hirtusissima</td>
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<td>Delphinium nuttallianum</td>
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<td>Ranunculus glaberrimus</td>
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<td>Ranunculus orthorhynchus</td>
<td>Buttercup, Straight-beak</td>
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<td>Thalictrum occidentale</td>
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**ROSACEAE**

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<td>Geum macrophyllum</td>
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<td>Potentilla recta</td>
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<td>Poterium sanguisorba (Sanguisorba occidentalis)</td>
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<td>Prunus emarginata</td>
<td>Cherry, Bitter</td>
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<td>Prunus Virginians</td>
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<td>Rosa nutkana</td>
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<td>Rose, Wood’s</td>
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**RUBIACEAE**

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<td>Family</td>
<td>Species</td>
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<td>SALICACEAE</td>
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<td>Viola glabella</td>
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<td></td>
<td>Viola purpurea</td>
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</tbody>
</table>
Date: January 22, 2021

To: Oregon Department of Energy
   C/O Rowe Patrick G (Patrick.G.Rowe@doj.state.or.us)

From: Michael McAllister

Re: Informal Discovery Requests

DEFINITIONS

1. “You” or “Your” or “ODOE” means Oregon Department of Energy, each of its present and former agents and other individuals acting or purporting to act on its behalf.

2. “Document(s)” means physical documents and electronically stored information, including any written, printed, typed, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in the possession, custody, and/or control of ODOE or known by ODOE to exist, including, but not limited to: papers, letters, internal and external correspondence and communications, electronic files, meta data, emails, messages, and computerized files.

3. “Morgan Lake Park” means the tract of land described as follows:

   Commencing at the Southeast corner of the Southwest quarter of the Southwest quarter of Section 13, in Township 3 South, Range 37 East of the Willamette Meridian; running thence West on the Section line 31.50 chains; then North 15.25 chains; thence West on a line parallel with the section line 21 chains; thence North at right angles to said last line 24.75 chains to the North line of the Southeast quarter of section 14, said Township and Range; thence East on the center line of said Section 14 a distance of 27.50 chains; thence North 10.50 chains; thence East 25 chains to the East line of the Southwest quarter of the Northwest quarter of Section 13, said township and range; thence South 50.50 chains to the place of beginning.

4. “Twin Lake” means the smaller of two lakes within the boundaries of Morgan Lake Park as recognized in the National Wetlands Inventory.

REQUESTS

Compliance OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022 with respect to the Morgan Lake Alternative:
1. Identify all individuals likely to have discoverable information that you may use to support ODOE’s position that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

2. Identify: all persons on whose testimony you may rely to support your position that the Morgan Lake Alternative Route complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022; their professional background; and the substance of their expected testimony.

3. Please produce all documents including, communications, both internal and external, relating to the Morgan Lake Alternative Route (“MLA”).

4. Produce all communications with landowners relating to the MLA.

5. Describe ODOE’s process for evaluating the accuracy and validity of Applicant Idaho Power’s representations in its Application for Site Certificate (“ASC”).
   a. Do you conduct independent study to confirm that the representations in the ASC are accurate? If so, describe this process with respect to the Morgan Lake Alternative.

6. Does the ODOE recognize Applicant’s Mill Creek segment of the proposed route as the BLM’s FEIS agency preferred alternative, as Applicant represented in its ASC, (Attachment B-6 pp.1-3) and in its comparison of the corridor variations of the Morgan Lake Alternative and the Mill Creek (alleged FEIS) routes?
   a. What steps, if any, did you take to confirm the veracity of Applicant’s representation that the Mill Creek Route is the “BLM’s Agency Preferred Alternative in the FEIS.” (See Attachment B-6, Table 3.1-1).

7. Please identify, through production of or reference to a map, what ODOE recognizes as “BLM’s Agency Preferred Alternative in the FEIS” and what ODOE recognizes as the “Morgan Lake Alternative.”

8. Explain the purpose and significance of the comparison between the Mill Creek Route and the Morgan Lake Alternative found on Attachment B-6 2017, p. 9 Supplemental Citing Study.
   a. Did ODOE consider this comparison in making its determinations and if so how?
9. Idaho Power has failed to use consistent naming conventions over the life of this project and in the documents it has generated. Please clearly identify or produce a map clearly defining what ODOE understands to be:
   a. The Glass Hill Alternative
   b. The BLM Agency Preferred Alternative Route
   c. The Mill Creek Route

10. Admit that the BLM’s Agency Preferred Alternative in the FEIS is not the same as the Mill Creek Route referenced in the ASC.

11. If you deny Request for Admission No. 10, explain the basis for your denial, and produce all documents supporting this position.

12. Admit that the Glass Hill Alternative is the same as the BLM’s Agency Preferred Alternative in the FEIS.

13. If you deny the Request for Admission No. 12, explain the basis for your denial, and produce all documents supporting this position.

14. Admit that comparative analyses are relevant to evaluating compliance with, and appropriate mitigation required by, OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

15. If you deny Request for Admission No. 14, explain the basis for your denial.

16. Admit that consideration of alternative routes is relevant to compliance with, and appropriate mitigation required by, OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

17. If you deny Request for Admission No. 16, explain the basis for your denial.

18. Explain why Idaho Power was not required to present the MLA for public comment.

**OAR-345-022-0060 (Fish and Wildlife Habitat)**

19. Produce all internal and external communications, including but not limited to communications with Applicant Idaho Power, Oregon Department of Fish and Wildlife, the U.S. Bureau of Land Management, the U.S. Forest Service, landowners and other
private stakeholders, relating to fish and wildlife habitat along the Morgan Lake Alternative in the ASC.

20. Identify and describe what, if any, analysis has been completed with respect to the habitat of Morgan Lake Park, including Twin Lake.

21. Please identify which habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and explain the basis for this determination:
   a. Morgan Lake Park
   b. Twin Lake
   c. Glass Hill Natural Area (encompassing property of Joel Rice)
   d. State-recognized wildlife refuges

22. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) with respect to the Morgan Lake Alternative, and identify the specific documents on which you relied.

23. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) with respect to the habitat of Morgan Lake Park, and identify the specific documents on which you relied.
   a. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) specifically with respect to the habitat of Twin Lake, and identify the specific documents on which you relied.

24. To the extent you considered information not contained in the ASC for Nos. 22-23 above, please produce such information.

25. Identify the definition and/or interpretation of “unique assemblage” on which you rely for purposes of determining compliance with OAR-345-022-0060 and the incorporated OAR 635-415-0025.

26. In the ASC, Idaho Power states that “[t]he entire Morgan Lake Route Alternative was considered forested. No other Alternative Routes were considered forested…” (p. R-52). Please explain your determination that the Applicant’s pursuit of the only entirely forested alternative is consistent with the habitat mitigation goals of OAR 635-415-0025.
27. Produce all documents, including communications, regarding the presence of threatened and endangered species, both federally and state listed, along the Morgan Lake Alternative Route.

OAR-345-022-0100 (Recreation)

28. Produce all internal and external communications, including those from landowners, concerning impacts of the Project on Morgan Lake Park.

29. Explain in detail how you determined that the Morgan Lake Alternative complies with OAR-345-022-0100 with respect to Morgan Lake Park.

30. Identify the specific documentation on which you relied in determining the Morgan Lake Alternative complied with OAR-345-022-0100 with respect to Morgan Lake Park Recreation Area.

   a. To the extent you considered information not contained in the ASC, please produce such information.

31. Explain how you determined the proposed siting of the transmission line is consistent with objectives of the local government’s Morgan Lake Park Recreation Use and Development Plan (ASC, R-13).

32. Produce all documents, including internal and external communications, relating to your determination that the proposed siting of the MLA is consistent with the Morgan Lake Park Recreation Use and Development Plan.

Cc:
Idaho Power Company C/O Lisa Rackner (lisa@mrg-law.com)
Colin Andrew
Kathryn Andrew
Irene Gilbert
Karen Antell
Louis Squire
Lois Barry
Anne March
Kevin March
and Administrative Project Record. Subject to and without waiving this objection, the Department refers Mr. McAllister to the resources referenced above in ODOE Response to Question 1.

**McAllister Question 4:** Produce all communications with landowners relating to the MLA.

**ODOE Response to Question 4:** ODOE objects to this request because the relevance of the requested discovery is not apparent related to Issues FW-13, SP-2 or R-2. ODOE objects to this request on the basis that it is not reasonably likely to produce information that is generally relevant to Issues FW-13, SP-2 or R-2. Moreover, the information requested is outside of EFSC jurisdiction, is not required by Division 21 application requirements under 345-021-0010(1), and/or is not necessary to meet an applicable EFSC standard.

**McAllister Question 5:** Describe ODOE’s process for evaluating the accuracy and validity of Applicant Idaho Power’s representations in its Application for Site Certificate (“ASC”).

**ODOE Response to Question 5:** The Department’s senior sting staff review all of the exhibits submitted in a preliminary ASC (pASC) and ASC against the applicable OAR Division 21 application requirements and issue requests for additional information if additional information is needed. The Department sends review requests to reviewing agencies, Special Advisory Groups, and Tribal Governments requesting comments on a pASC and ASC. As necessary, the Department may contract with an EFSC-approved consultant to assist in the technical review of an application Exhibit. An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the
application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010. OAR 345-015-0190(5).

**McAllister Question 5(a):** Do you conduct independent study to confirm that the representations in the ASC are accurate? If so, describe this process with respect to the Morgan Lake Alternative.

**ODOE Response to Question 5(a):** ODOE objects to this request because the relevance of the requested discovery is not apparent, and it is unclear how the request should be responded to related to Issues FW-13, SP-2 or R-2. Further, ODOE objects to this request on the basis that it is not reasonably likely to produce information that is generally relevant to Issues FW-13, SP-2 or R-2. Subject to and without waiving this objection, the Department reiterates that the summary of the ODOE application review process provided above in ODOE Response to Question 5 does not require “independent studies” or contracting with consultants to evaluate application materials. Further, if consultants are contracted with to assist in review of application materials they would be specific to an ASC Exhibit, impact, or other narrow question of interest rather than an independent study of an entire route or alternative route for potential impacts to all resources.

**McAllister Question 6:** Does the ODOE recognize Applicant’s Mill Creek segment of the proposed route as the BLM’s FEIS agency preferred alternative, as Applicant represented in its ASC, (Attachment B-6 pp.1-3) and in its comparison of the corridor variations of the Morgan Lake Alternative and the Mill Creek (alleged FEIS) routes?

**ODOE Response to Question 6:** ODOE objects to this request because the relevance of the requested discovery is not apparent, and it is unclear how the request is related to Issues FW-13, SP-2 or R-2. Further, ODOE objects to this request on the basis that it is not reasonably
February 5, 2021

VIA EMAIL

Jocelyn Pease, jocelyn@mrg-law.com; and Lisa Rackner, lisa@mrg-law.com; and David Stanish, dstanish@idahopower.com.

McDowell Rackner
Gibson 419 SW 11th Ave
Suite 400
Portland OR, 97205

Re: OAH Case No. 2019-ABC-02833 – Boardman to Hemingway Transmission Line – McAllister Responses to IPC Interrogatory Nos. 1-5, Request for Production Nos. 1-2

PRELIMINARY STATEMENT

Discovery in this matter is currently ongoing. Each and every following response is rendered and based upon information reasonably available at the time of preparation of these responses. I (Michael McAllister) reserve the right to amend these responses to these Document Requests and Interrogatories. I will provide supplemental responses in the event any further responsive material comes within my knowledge, possession, custody or control.

I have not completed my respective discovery in this action. I, therefore, specifically reserve the right to introduce any evidence from any source that may hereinafter be discovered in documents or other discovery produced and testimony from any witness whose identity may hereafter be discovered.

Idaho Power Discovery Requests:

Interrogatory No. 1

Identify each expert witness you intend to provide testimony on your behalf in this matter and for each expert witness state the following:

a. Full name;
b. Address;
c. Qualifications, including a list of all publications authored by the witness within the preceding ten years; and
d. The subject matter on which the witness is expected to testify.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and the I am still in the process of obtaining further information relating to my issues and determining witnesses from
whom I will provide testimony. Subject to and without waiving this objection, I respond as follows:

1) Witness
   a. Michael McAllister, Landscape Ecologist
   b. 60069 Morgan Lake Road, La Grande, Oregon, 97850.
   c. Qualifications
      i. Bachelor of Science from the University of Idaho in Wildlife Resources with emphasis in Communications.
      ii. Professional Natural Resource Inventory Consultant since ~1990.
      iii. Owner of Wildland Resource Enterprises (assumed business name with State of Oregon since 1984), specializing in contracted protocol survey methodologies for fisheries, forest, fuels, vegetation, and wildlife inventories across private, state, federal and tribal ownerships.
      iv. Michael McAllister has lived on the Glass Hill Monocline near Morgan Lake since 1979. Michael first approached Idaho Power Corporation in 2007 extending his professional expertise in a good-faith effort to site the B2H Transmission Line so-as-to minimize the direct and indirect impacts on the natural resources along the Glass Hill Monocline.
   d. All aspects of his qualified subject matter issues: FW-13, R-2, and SP-2.

2) Witness
   a. Susan Geer (as a private citizen, not representing USFS)
   b. 906 Penn Ave. La Grande OR 97850
   c. Botanist/Ecologist; MS Ecology Utah State U 1993, BS Knox College 1988; Currently WWNF Forest Long term Range Monitoring Coordinator; 28 years working for Wallowa Whitman NF, PNW Lab, Deschutes NF, Sevilleta LTER, Idaho Fish and Game; The Nature Conservancy; Long term vegetation monitoring, biological evaluations, rare plant surveys and monitoring, data collection, analysis and summaries for land management.
   d. All aspects of her qualified subject matter relating issues: FW-13, R-2, and SP-2.

3) Witness
   e. Dr. Karen Antell
   f. Dr. Karen Antell, PhD, Science Office, Eastern Oregon University One University Blvd, La Grande, OR 97850
   g. Qualifications:
      i. Bachelor of Science in Botany, University of California, Santa Barbara, 1979; PhD in Botany, Washington State University, Pullman, WA, 1985; Professor of Biology, Eastern Oregon University, La Grande, OR from 1989-present; Courses taught include:
         1. BIOL 111 Environmental Biology
         2. BIOL 211, 212, 213 Principles of Biology (majors Biology sequence)
         3. BOT 201, 202, 203 Plant Biology
         4. BIOL 313 Riparian Biology
         5. BIOL 334 Plant Taxonomy
6. BIOL 415 Forest Ecology
7. BIOL 421 Agrostology
8. BIOL 433 Plant Physiology

Interrogatory No. 2

Identify each witness (other than those expert witness(es) you identified in response to Interrogatory No. 1) you intend to provide testimony on your behalf in this matter and for each witness state the following:
   a. Full name;
   b. Address; and
   c. The subject matter on which the witness is expected to testify.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and determining witnesses from whom I will provide testimony. Subject to and without waiving this objection, I respond as follows:

1) Witness
   h. John Williams
   i. Landowner 2500 acres adjacent to Morgan Lake Park, Box 1384, La Grande OR, 97850.
   j. Morgan Lake Alternative Route; integrity of twin lakes habitat; Morgan Lake Park Recreation Area; empirical knowledge of wildlife and habitat within the Morgan Lake Park and adjacent land under his ownership.

2) Witness
   k. Michael McAllister (for non-expert testimony)
   l. See above
   m. FW-13, R-2, and SP-2.

3) I also anticipate testimony from additional local landowners and Union County community members with interests affected by the Morgan Lake Alternative Route.

Interrogatory No. 3

Identify any and all documents (see definition of document below) or other exhibits you plan to offer as evidence in this matter, whether offered with filed testimony or at hearing.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues. Subject to and without waiving this objection, I respond as follows:
1. DPO comments and attachments/exhibits
2. Documents I submitted during the course of this contested case, including Petition for Party Status and attachments
3. Public Comment to Oregon Public Utility Commission and attachments
4. ODOE’s Proposed Order for the B2H Transmission Line and attachments/exhibits
5. ODOE Project Orders throughout the life of B2H Project
6. Idaho Power Company’s Application for Site Certificate and attachments/exhibits
8. Bureau of Land Management Final Environmental Impact Statement
9. Morgan Lake Park Recreational Use and Development Plan
10. Union County members’ letters regarding the B2H Transmission Line Project
11. Letters from Union County Land Owners to Idaho Power

24. Documents produced in response to Idaho Power’s Requests for Production
Interrogatory No. 4

Issue SP-2: Refer to page four of the comments that you submitted to the Oregon Department of Energy on December 21, 2018. Please identify with specificity the basis for your assertion that the Morgan Lake Alternative does not comply with the Energy Facility Siting Council’s Soil Protection Standard.

McAllister Response:

I object to this request as outside the scope of issues to be tried in this contested case. The content of my public comment relates to the threshold issue of my standing in this case and does not limit my evidence or argument to assertions in my DPO comments. Energy Facility Siting Counsel (EFSC) has already determined my standing with respect to certain issues raised in my public comments. As such, I further object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and the basis of my assertion that the Morgan Lake Alternative does not comply with EFSC standards continues to be informed by information and documents produced in ongoing discovery. Subject to and without waiving this objection, I respond as follows:

The composition and productivity of the soil impacted by the Morgan Lake Alternative is significant because the site potential of that soil is great. See Agricultural Experiment Station, and United States. Soil Conservation Service. Soil Survey of Union County Area, Oregon. [Washington, D.C.?]: The Service, 1985. I reviewed detailed soil-map units categorizing the soils impacted on both the Morgan Lake Route and the Glass Hill Alternative (which became the BLM’s Agency Preferred Alternative in both the DEIS and the FEIS). The plant communities and plant associations reflect that potential of the soil impacted by the Morgan Lake Alternative Route. The basis of my assertion is that the Project will have significant adverse impacts to soil. The significance of the impacts are demonstrated through comparison (see, e.g. Application for Site Certificate, Ex. B-6). I conducted a comparative analysis, which included EFSC’s soil standard, to demonstrate that the impacts are significant as demonstrated through comparative analysis (see BLM identified the environmentally preferred route in FEIS; discussed in analysis).

Also refer to EFSC Hearing on Appeal of Denial of Issues for Party Status, Nov. 20, 2020 https://soundcloud.com/odoe/november-energy-facility

Interrogatory No. 5

Issue FW-13: Refer to pages three and four of the comments that you submitted to the Oregon Department of Energy on December 21, 2018. Please identify with specificity the basis for your assertion that the Morgan Lake Alternative does not comply with the Oregon Department of Fish and Wildlife habitat mitigation goals and standards identified in OAR 635-415-0025(1) through (6).
McAllister Response:

I first object that it is unclear which document you refer to in this interrogatory. The date December 21, 2018 does not appear in my public comments. In addition, I object to this request as outside the scope of issues to be tried in this contested case. The content of my public comment relates to the threshold issue of my standing in this case and does not limit my evidence or argument to assertions in my DPO comments. EFSC has already determined my standing with respect to certain issues raised in my public comments. As such, I further object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and the basis of my assertion that the Morgan Lake Alternative does not comply with EFSC standards continues to be informed by information and documents produced in ongoing discovery.

See EFSC Hearing on Appeal of Denial of Issues for Party Status, Nov. 20, 2020
https://soundcloud.com/odoe/november-energy-facility

Request for Production No. 1

Please provide a copy of any and all documents (see definition of document below) on which you rely to support the positions you plan to take on the issues for which you have been granted Limited Party Status, including any exhibits, appendices, or attachments you intend to provide with the testimony of any witnesses you will be submitting in this case.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further documents relating to my issues. I further object to this request on the grounds that many of the documents that are responsive to this request are already in the possession of Idaho Power or are publicly available through online sources, (e.g. Final Environmental Impact Statement). I further object on the grounds that producing all documents on which I will rely identified in my Response to Interrogatory No. 3 (such as books or other voluminous resources or materials) would be unduly burdensome. Subject to and without waiving this objection, see McAllister documents produced on February 5, 2021 with these writing responses.

Request for Production No. 2

Please provide a copy of any and all documents (see definition of document below) received pursuant to all public records requests relevant to the issues in this contested case for which you have been granted Limited Party Status.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further documents relating to my issues. Subject to and without waiving this
objection, I respond as follows:

I have not at this time received documents from public records requests.
"McAllister Affidavit 1"

Affidavit Submitted in Support of All McAllister Oppositions to Motions for Summary Determination (R-2, F-13, SP-2)
I, Michael McAllister, state and declare as follow:

1. I submit this Affidavit in support of my Opposition to Idaho Power Company’s Motion for Summary Determination.

2. I am a lifelong outdoorsman and the son of Oregon’s widely respected outdoorsman and journalist, Thomas H. McAllister (Tom), whose job consisted of writing about Oregon’s natural places for the Oregon Journal (which merged with the Oregonian). As a result, I grew up exploring every corner of Oregon, its natural settings, and the recreational opportunities this state provides. I first visited Morgan Lake Park in 1967 when Tom took the family to La Grande to cover the story of the joint effort to establish the Park as a cooperative city/state/federally funded project. I remember vividly the diverse and unique assemblage of birds at that time which included the first Black Turn that I had ever seen.

3. I obtained a B.S. in Wildlife Resources and Communications from the University of Idaho.

4. I have lived on and managed natural resources across the subject landscape for over 40 years. As an independent natural resource contractor, I have made a career specializing
in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data that is used for planning purposes, most often for National Environmental Policy Act (NEPA) analysis.

5. As someone who is intimately familiar with natural resources and the many landscapes, habitats, and outdoor opportunities in Oregon, I purchased my home and property over 30 years ago, approximately one quarter mile from Morgan Lake Park, precisely because of the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan Lake Wetlands in Morgan Lake Park.

6. Based on my extensive experience in the natural settings of Oregon, Morgan Lake Park and the surrounding area is a rare, remarkable, irreplaceable gem for many reasons:
   a. Within the entirety of the Blue Mountains Physiographic Province, there are no other montane, ridgetop wetland lakes that are represented by such a diverse assemblage of both vegetation and wildlife species.
   b. A ten-minute drive from downtown La Grande brings you to the top of the Blue Mountains at Morgan Lake Park, which is situated on a Columbia River basalt plateau. As you approach from the east on Morgan Lake Road, the view to the west is to the distant horizon (25 miles) which is the divide between the Grande Ronde River Basin and the John Day River Basin. From where you turn right off the Morgan Lake Road and into the park, the transmission line will be within 500 feet, and grossly dominant to this sunset view scape. At 4,500 feet elevation, the expansive view shed is unprecedented. To the north, you look at the shield volcano complex, included: Mahogany Mountain, Sugarloaf Mountain, Green Mountain, Mount Emily, Thimbleberry Mountain, and Black Mountain at 25 miles distance. To the east, you view across the Grande Ronde Valley (largest in North America) to the Wallowa Mountains ("the Alps of the West") where the Eagle Cap is visible on a clear day. To the south, you see into the drainages of Sheep Creek, Rock Creek, Graves Creek, Whiskey Creek, Jordan Creek, and Beaver Creek. These view sheds from the Morgan Lake area are little modified
since 1812 when Robert Stewart first described (in journal) this landscape. This, as he and five others made the first cross-country trip from Astoria to St. Lewis, “discovering the Oregon Trail.” In the dark of night, the only lights to be seen in any direction are the very distant lights of traffic on interstate 84 towards Pendleton. The undeveloped natural integrity is central to the important recreational opportunities the Park provides. As a result, maintaining the maximum natural integrity is crucial to the unique and important recreational opportunities this Park provides to both to locals and travelers alike.

7. In the 30 years I have spent living below Morgan Lake Park, I have watched this nearly untouched landscape be enjoyed by thousands of visitors every year who engage in a variety of activities that rely on the natural setting. These have included, but are by no means limited to:

a. Elk Viewing, where herds (many hundreds) of elk grazing the vast mountain prairies that can be viewed from the park. These are views that, if constructed, would be polluted by B2H towers and the crackling buzz of the transmission line.

b. Star gazing. At the junction of the Morgan Lake County Road and the park entrance road, 20-30 cars will park for even the minor celestial events; eclipses can draw much greater attendance. The Project, if constructed, will ruin such activities as the currently unobstructed sky, which is necessary for the activity, will be polluted by 200 feet tall transmission towers within 500 feet distance. The silence of the night sky will be buzzing at Union County’s “#1 Hotspot Destination.”

c. Bird watching. Because of the unique and rare type of wetland habitat Twin Lake provides, Twin Lake is a common destination for birders, including myself. Recently, while watching from the south shore of Twin Lake, I watched a pair of mating sand hill cranes fly in, land, and do their courtship dance at the north edge of Twin Lake. I reported this observation to ODFW’s Kathy Nowak (pers. com) and she informed me that this pair of Cranes is banded with radio tracking, and
that the birds are nesting at Twin Lake this year. For the past six years a pair of bald eagles have nested in the vicinity of Twin Lake, where they have fledged young in each year. From Twin Lake, the view of the eagle’s current nest will be obstructed by a tower after construction, per Idaho Power’s tower maps in the ASC. What is most extraordinary about the birding at Morgan Lake Park is the extreme diversity of species that occupy the continuum of habitats: aquatic, emergent vegetation, wet meadow, dry meadow, mixed shrub, aspen, cottonwood, and old-growth ponderosa pine to Douglas-fir communities. It is noteworthy that the unique richness of this park was fully embraced by the City of La Grande when they developed the first Morgan Lake Park Recreational Use and Development Plan. Oregon Department of Fish and Wildlife started keeping creel census data for the park in 1960, and today the Park perimeter fence is still posted (30 plus metal signs) as a State Game Refuge, which I recently counted. The local residence and the people of Union County still understand Morgan Lake Park to be a State Game Refuge. Idaho Power also refers to Morgan Lake Park as a wildlife refuge in identifying its “designation or management.” (ASC Exhibit T, Attachment T-3-2 (ODOE - B2HAPDoc3-37 ASC 20_Exhibit T_Recreeation_ASC 2018-09-28. Page 89 of 291.).

d. Hiking around the perimeter of both Morgan Lake and Twin Lake, which are hikes that currently provide undeveloped natural settings. If the Project is constructed, these hikes will no longer consist of natural settings as the towers would be in view.

8. As a La Grande local who enjoys nature, I am a “typical” visitor to the park. I enjoy the recreational opportunities I can pursue at Morgan Lake Park precisely because there is no development. My enjoyment of the activities I engage in at the Park, including wildlife viewing, bird watching, hiking, and star gazing are dependent on the natural setting and integrity, which has to date been preserved. The recreational opportunity of viewing wildlife in unadulterated natural setting cannot exist under, or adjacent to development such as B2H.
9. Using my professional skills and knowledge, and based on the ASC Attachment P1-8, Habitat Categorization, Union County, Map 157, I identified the acreage of the Twin Lake wetland that falls within the City of La Grande’s Morgan Lake Park boundary. On the ground, I transcribed the eastern site boundary on the ground in relation to the Morgan Lake Park property corner at GPS coordinates; 45 degrees, 17 minutes, 57.7 seconds / 118 degrees, 08 minutes, 44.0 seconds. On the northing, the site boundary is 202 feet into the park. On easting, the site boundary is 331 feet into the park boundary. From this the calculated overlap of the site boundary is 0.77 acres of wetland habitat affected.

10. Attached as Exhibit 1 to this affidavit is a true and accurate copy of the August 31, 2017 City of La Grande Comments from La Grande City Manager regarding B2H project.

11. Attached as Exhibit 2 to this affidavit is a true and accurate copy of the April 27, 2018 City of La Grande Comments from La Grande City Manager regarding B2H project.

12. Attached as Exhibit 3 to this affidavit is a true and accurate copy of the 2019 City of La Grande Proclamation Declaring and Clarifying Opposition to the Boardman to Hemingway Powerline Project.

13. Attached as Exhibit 4 is a true and accurate copy of a Map Idaho Power created (Map 65) depicting Union County land parcels and the project cite boundary and where the site boundary crosses Morgan Lake Park.

14. Attached as Exhibit 5 is a true and accurate copy of a map Idaho Power Map that Idaho Power provided to my neighbor John Williams.

15. Attached as Exhibit 6 is a true and correct copy of my response to Idaho Power’s ex parte communications with the Council, submitted to the Office of Administrative Hearings on May 28, 2021.

June 24, 2021

[Signature]

Michael McAllister

McAllister Affidavit Page 5
Signed before me this 24th day of June, 2021 by Michael McAllister.

Charles H. Gillis, Notary Public for Oregon
My Commission Expires: June 19, 2023
MEMORANDUM

TO: Kellen Tardaewether  
Oregon Department of Energy  
550 Capitol St. N.E., 1st Floor  
Salem, OR 97301

FROM: Robert A. Strope, City Manager  
City of La Grande, Oregon  
P.O. Box 670  
1000 Adams Avenue  
La Grande, OR 97850  
(541) 962-1309  
rstrobe@cityoflagrande.org

DATE: August 31, 2017

RE: City of La Grande Comments on the Amended Preliminary Application for Site Certification for the Boardman to Hemingway Transmission Line

General Comments: The La Grande City Council, in partnership with the Union County Commissioners conducted two public meetings to listen to comments from residents regarding this project as part of the review of the Amended Preliminary Application referenced above. The public sentiment expressed at those meetings was overwhelming in opposition to the Boardman to Hemingway Transmission Line. The basis for that opposition included, but was not limited to reduced property values to homes along the proposed route; view shed impacts throughout the area; environmental impacts both during construction and when the transmission line becomes operational; impacts to recreational facilities such as Morgan Lake; and a lack of public notice and involvement throughout the process. Of particular concern to the City Council was the decision by the applicant not to submit the BLM preferred route as the proposed route, or at the very least an alternative for consideration for Site Certification. Of the two routes identified in the application, the applicant selected the most impactful to the City of La Grande of those two as their proposed route.

As a general observation, the application is missing information in several areas and therefore is incomplete. These areas are identified in our review. The document also appears to be a boiler plate product that addresses general items, with no resolutions for local government regarding the negative impacts that come with it, and therefore it leaves the burden to the local government (cities and counties) to deal with. It also doesn’t recognize approved master
planning studies done by local governments where the submitted site location may create conflicts within such studies. The submitted sites appear to be a “copy and paste version” for a considerable amount of the document and replicates information that doesn’t apply to the area they are addressing. This document was extremely difficult to maneuver through to find information. Also, with such a major project of this nature, the limited amount of time allowed to review the information submitted was inadequate, particularly given the way the materials are organized.

Later in this review we touch on infrastructure impacts which are largely unknown due to the lack of specificity in the application. Based on this, we would ask that a condition of any approval include that the applicant be required to mitigate any adverse impacts to the City’s infrastructure related to the project, particularly those related to the use of City roads that are not well suited for the anticipated heavy vehicle traffic.

The City of La Grande’s comments are provided in part as general comments and in part using the table provided where we were able to identify specific sections of the Application that correlate to our comments. Our inability to specifically link some of our general comments to page and paragraph in the application is directly related to the short timeframe provided for our review and the manner in which the information is scattered throughout the over 17,000 pages in the document. We have done our best with the limited time and would ask that we not be penalized for the placement of our comments and that all our comments be given due consideration.

**Geological Review** – The south and west hills of La Grande have been classified by the adopted engineering report titled “Engineering Geology of the La Grande Area, Union County, Oregon”, dated 1971, as a geological hazard area. The study addresses numerous fault lines from Sheep Creek to and through the La Grande area, which covers the area submitted for site selection. That document is attached and supports concerns for all work proposed within the submitted study area. This plan is addressed in the City of La Grande Comprehensive Plan in addressing Goal 7.

There is nothing that could be found addressing storm sewer treatment, storm water volume control for impervious areas or dust control. Waters from the south and west hills around La Grande flow directly into and through the City. La Grande has numerous inversions, creating air quality problems, and is recognized by the Department of Environmental Quality as a nonattainment city. These health and environmental hazards should have been addressed.

**Exhibit T – Recreation.**

**View Shed Concerns of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Morgan Lake Park is the City of La Grande’s only campground and is heavily used by local and regional day users as well as out of state, local, and regional campers. The park is open from late April thru October and boasts an average of over 50 vehicles per day and thousands of park visitors per year. Park users currently participate in a variety of recreational activities including; camping, fishing, non-motorized boating, bird watching, wildlife viewing, star gazing, paddle boarding, swimming, and more.

There is one route to the park via Morgan Lake Road that crests at the top of the ridge where an access road enters the park. This coincidentally is the only exit to the park as well. Currently, park users experience vast views of mountain prairies and mature stands of Ponderosa Pine and Douglas Fir.
In addition to the environmental impacts Karen Antell details in her report below, the Morgan Lake alternative proposed route that travels through the park boundary, close to Little Morgan or Twin Lake would severely impact the view shed and recreational experience of park users. The first and last impression of the park would be the view of the power lines. The noise created from the lines will affect the peaceful outdoor recreation experience for all park users.

This heavily used park is a quiet sanctuary only minutes from town where thousands of local, regional, and out of state visitors come to enjoy their favorite outdoor recreational activities. The noise and the view shed and environmental impact will cripple our efforts to provide the same outdoor recreation experience for our park visitors.

Given Idaho Power elected not to include the BLM preferred route, the impacts to the City of La Grande, particularly as they relate to the view shed and recreational amenities are much more significant than they otherwise would have been. Accordingly, if the proposed and/or alternate route are approved it would be appropriate for the applicant to mitigate these adverse impacts by improving and enhancing the recreational facilities that will be degraded.

Assessment of the natural qualities of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:

Dr. Karen Antell, PhD, Professor of Biology, Eastern Oregon University prepared the following summary of the ecological qualities of the Morgan Lake area and is incorporated as part of the City’s review:

I have a PhD in Botany, and have been employed as Professor of Biology at Eastern Oregon University since 1987. Over the past 30 years, I have developed extensive knowledge of the biological diversity exhibited at Morgan Lake and the associated wetlands surrounding Twin Lake (a.k.a. Little or Lower Morgan Lake), with primary emphasis on vegetation, Lepidopterans (butterflies and moths), birds, and amphibians.

Introduction: Morgan Lake Park was created by the City of La Grande in 1967 and a plan was adopted as a guiding document for management of the park. The Morgan Lake Park Recreational Use and Development Plan states that “A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users.” Additionally, the “Little Morgan Lake area” (a.k.a. Twin Lake) “should be left as a natural habitat for birds and animals with little change or interference from man’s activities.” The area has been managed with an emphasis on development of recreational uses such as “fishing, bird watching, nature study,” and non-motorized boating. Domestic livestock are not allowed within the park.

Morgan Lake Park has existed essentially unchanged since the mid-1970s. To my knowledge, external threats to the natural and recreational values of the lake (other than wildfire) have not previously been identified, and no comprehensive biological inventories have been completed. The possibility of development of the B2H power line in close proximity to the park warrants an assessment of potential impact to the natural and recreational qualities of the area.

This report summarizes some of the unique natural qualities of Morgan and Twin Lakes that may be altered due to construction of the B2H power line in close proximity to the park.
1. Ecological Uniqueness and Importance of Morgan Lake Park

Morgan Lake and its neighboring environs constitute an area of significant geologic and biological importance. The perennial wetlands are snowmelt and spring fed with no stream-flow inlets or outlets. The presence of these wetlands on the top of the Glass Hill ridge is both unique and of enormous ecological importance. There are no other montane, ridge top wetlands of its size or ecological significance in the area.

Prior to its acquisition as a city park, a dam was constructed on the north side of Morgan Lake in order to store water for both hydropower generation and agricultural use. Consequently, what originally would have been a palustrine wetland was developed into a perennial lake, with relatively little surface fluctuation. The lakeshore edge has been altered with introduction of rock revetments in some areas. Although the ecological qualities of this lake have been altered significantly over time, the lake remains a permanent water source with aquatic insect and introduced fish populations that sustain diverse bird species that otherwise are rare on Glass Hill.

Twin Lake is located west of Morgan Lake (Fig. 1). This lower-lying area has not been damned or physically altered. There are no stream inlets or outlets. Water levels fluctuate throughout the year, creating a variety of habitats for many different species. Soft edges harbor diverse emergent vegetation as well as submerged aquatic species. This wetland serves as a highly productive water source for amphibian reproduction and nesting waterfowl.

![Google Earth image of Morgan Lake and Twin Lake, 16 August 2017.](image)

2. Biological Diversity at Morgan Lake and Twin Lake Area

Morgan Lake Park hosts a maturing Ponderosa pine/Douglas-fir forest. Timber harvest is not prescribed in the Recreational Use and Development Plan, and tree cutting has been
limited to removal of diseased or hazard trees. No commercial logging has occurred since at least 1967. In addition to the development of this maturing forest on deeper-soiled sites, the area also hosts an outstanding diversity of understory and herbaceous vegetation. Because of exclusion of livestock since establishment of the city park, the area has been less impacted by soil disturbance and invasive weed incursion than surrounding private lands.

Twin Lake represents a rare palustrine wetland that remains in excellent condition. Virtually the entire northern half of Glass Hill is in private ownership, where most wet meadows have been highly impacted by livestock grazing. Twin Lake has not been drained or otherwise “managed”, and the diverse aquatic and emergent wetland plants native to the area are still almost entirely intact.

Following is a summary of some of the most unique or ecologically significant qualities of Morgan Lake Park, emphasizing the following: forested areas; understory/herbaceous vegetation; birds; amphibians; and Lepidopterans (butterflies and moths).

Maturing Ponderosa pine/Douglas-fir forest: The forest surrounding the lake includes a mixed stand of maturing trees and smaller diameter stock. There are scattered downed trees and snags, however campers have scavenged much of the dead wood for firewood over the years. Visitors have the opportunity to experience a forest with diverse understory, unimpacted by grazing, and that is developing mature qualities. Although many visitors may not be able to articulate that this is why they love to come to Morgan Lake, nevertheless, this small pocket of high-quality forest draws a large number of visitors throughout the year because they just “love going up there”.

Because of intense commercial logging throughout much of Glass Hill, these large trees represent significant potential for wildlife use. Nesting species that require larger-diameter trees that frequently are observed at Morgan Lake include: Great Horned Owl, American Bald Eagle, and Osprey.

Other cavity nesting species typically require not only snags, but also abundant insect populations to support the high protein requirements for rearing young nestlings. Morgan Lake produces hatches of aquatic insects that sustain active breeding populations of the following species: Violet-green Swallow, Tree Swallow, Western bluebird, Mountain bluebird, several flycatcher species.

Mature conifers also provide food resources for seed eating bird species as well, including Red, and White-winged crossbills, a variety of finches, Pine siskins, Black-capped and Mountain chickadees.

Aspen, Cottonwood and Willow: In addition to coniferous forest trees, the park also sustains a few small groves of Quaking aspen, which are otherwise rare on Glass Hill. Large, Black cottonwoods are found at the north end of the lake. These fast-growing, native trees provide nesting and roosting habitat for a wide variety of bird species. They also harbor insects that provide food to migratory and residential bird populations. Willow thickets occur around the perimeters of both Morgan Lake and Twin Lake. Their dense vegetation provides essential cover for
successful nesting of many birds, especially neo-tropical migratory species, such as warblers and Western tanagers.

**Understory/Herbaceous Vegetation:**
Shrub and forb species diversity at Morgan Lake Park is very high. Open, thin-soiled areas support a healthy example of Palouse Prairie type native grassland. In addition to native grasses, such as Sandberg’s bluegrass and Oatgrass (Danthonia) species, the area hosts many flowering forbs, including Lomatium, Mariposa lily, Prairie smoke, Larkspur, and Phlox.

Forested areas are dominated by Idaho fescue, Snowberry, Mule-ears, Chokecherry, Elderberry, Ocean spray, and Wild rose. Other flowering species include Lupine, Golden pea, Goldenrod, Sugarbowls, Buttercups and sedges. Examples of birds supported by fruiting shrubs at Morgan Lake include: Black-headed grosbeak, Spotted towhee, American robin, and waxwings.

**Aquatic Vegetation:**
Twin Lake is notorious for its lush “forest” of native Yellow pond (water) lily. This dense vegetation provides excellent cover for a wide variety of nesting waterfowl, including ducks, geese, grebes, coots, and others. Other unusual and interesting aquatic plants that can be seen at Twin Lake (and nowhere else on Glass Hill) include Bogbean (*Menyanthes*) and Bladderwort (*Utricularia*), an insectivorous plant.

**Birds:**
An enormous diversity of bird species utilizes the Morgan Lake area, both for nesting and feeding. Raptors hunt the open areas, and forest dwellers occupy the timber. Waterfowl utilize both Morgan Lake (feeding) and Twin Lake (nesting). Morgan Lake is a stopover for migratory diving birds that require deeper water than is found elsewhere in the area. For example, Common loons are typically found at Morgan Lake in fall and spring, but not in other areas of Union County. Cormorants and even Great blue herons also have become a common sight around the lake.

Habitat for woodpeckers is especially important at Morgan Lake. Several species of woodpeckers that are on the ODFW Sensitive-critical species list for Oregon have been detected at the park, including Lewis’ woodpecker, Pileated woodpecker, and White-headed woodpecker.

Other bird species that now are rare or extirpated from western Oregon, but persist at Morgan Lake Park, include Common nighthawks and Western meadowlarks, both of which currently are listed as sensitive species in Oregon.

**Amphibians:**
Native amphibian populations have been decimated throughout the Grande Ronde Valley due to a combination of habitat loss, invasive Bullfrogs and, likely the Chytrid or BT fungus. The Morgan Lake system, so far, has avoided bullfrog infestation, and still supports healthy native frog populations. Twin Lake is a critical breeding area for Pacific chorus frogs. Columbia spotted frogs (Sensitive-critical species status) have been documented at Morgan Lake, and therefore must be breeding in the area. Suitable habitat for Long-toed salamanders and Western toads (Sensitive species status) also exists.
**Lepidopterans (butterflies and moths):**
I have conducted nighttime surveys of moth species at Morgan Lake annually since 2014. The area hosts a surprisingly diverse and unique assemblage of species that is not replicated on other areas of Glass Hill. Many lepidopterans, especially moths, require specific host plant species in order to rear their larvae. Therefore, the high diversity of herbaceous plant species translates into a very high diversity of butterfly and moth species. After hatching, adult butterflies and some moths require nectar sources for feeding until they have reached reproductive maturity and produced eggs. The variety of flowering shrubs and herbaceous plant species at Morgan Lake provides critical feeding habitat for both larval and adult butterflies and moths, and sustains an exceptional level of species diversity. Healthy populations of Lepidopterans in turn support many species of birds and bats that feed on these insects throughout all seasons of the year.

**Bats:**
Although I am unaware of any bat surveys that may have been conducted in the Morgan Lake area, it is possible that some data exist. Morgan and Twin Lakes, and their surrounding forested habitat, constitute exceptionally important roosting, breeding and feeding habitat for a wide variety of bat species, some of which no doubt are listed as sensitive and/or critical species in Oregon.

**Conclusions:** In conclusion, Morgan Lake Park represents a unique area on the Glass Hill ridge because of a combination of several features: public ownership, no recent commercial timber harvest, no livestock grazing, and management for quiet recreation. The area currently is free from intrusion of man-made infrastructure except for limited access roads. Construction of a 500 kV power line within close proximity to the park would result in degradation of the natural qualities of the area, including wide-spread impacts to the wildlife, and plant life. In addition to the visual impact of the power lines themselves, significant impacts due to tower footprint construction, construction and maintenance of access roads, and herbicide use, could have profound impact on water quality of Twin Lake. Introduction of invasive plant species could have irreversible impact on the health and diversity of the native flora and all of the bird, insect and mammal species that depend on these resources.

Developing a well-informed understanding of the risks and possible outcomes of power line construction in the area should be a high priority for the city. No matter how well intentioned, mitigation efforts seldom replace or restore the qualities that have been lost or damaged to their previous condition. The City of La Grande is very concerned about any alteration to the sensitive, outstanding and unique qualities of Morgan Lake Park (Fig 2).
Figure 2. Morgan Lake alternative (left) and Mill Creek alternative (right) routes near Morgan Lake Park.
MEMORANDUM

TO: Kellen Tardaewether  
Oregon Department of Energy  
550 Capitol St. N.E., 1st Floor  
Salem, OR 97301

FROM: Robert A. Strope, City Manager  
City of La Grande, Oregon  
P.O. Box 670  
1000 Adams Avenue  
La Grande, OR 97850  
(541) 962-1309  
rstrope@cityoflagrande.org

DATE: April 27, 2018

RE: Idaho Power Responses to City of La Grande Comments on the Amended Preliminary Application for Site Certification for the Boardman to Hemingway Transmission Line

General Comments: The La Grande City Council renews our objection to the Proposed Route in the preliminary application and again strongly requests that Idaho Power remove the Proposed Route from their application and instead use the Morgan Lake Alternative or ideally reconsider the BLM preferred route. As we stated previously, of the two routes identified in the application, the applicant selected the one most impactful to the City of La Grande as their Proposed Route. In their response Idaho Power states they intend to construct on the route that has the most support from the local community. The local community does not support the B2H project as evidenced by the overwhelming adverse public response each time the topic is on an agenda. Therefore Idaho Power is unlikely to get community support for any route as it will be perceived as support for the project. Perhaps another way to put it, the La Grande City Council, which represents over the more than 13,000 residents who are in closest proximity to B2H, has stated they object more to the Proposed Route than the Morgan Lake Alternative. This should be more than sufficient for Idaho Power to remove the Proposed Route from their application.

The City of La Grande is disappointed that the Idaho Power response to our comments repeatedly reference a lack of specific deficiencies given one of the main points we and other jurisdictions have made is the preliminary application itself does not provide sufficient information in many areas to adequately review what they are proposing to construct as we would with a normal land use application that had detailed site plans.
Given the lack of detail contained in the preliminary application, we would ask that conditions of approval be included to protect the City’s interests and avoid any disputes in the future should the project be approved. Some specific conditions we are requesting are shown in bold in the following paragraphs. Idaho Power could also revise their application to include these to streamline the process.

Below are additional comments regarding the Idaho Power response:

Exhibit T – Recreation.

View Shed Concerns of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:
Despite the detailed information provided by Dr. Karen Antell, PhD, Professor of Biology, Eastern Oregon University in our previous submission, Idaho Power’s states that we have not provided evidence of impacts the line may have on Morgan Lake. It is difficult to be more precise on impacts given the lack of detail in the Idaho Power preliminary application that we pointed out. Their submission lacks details regarding how they plan to access the line during construction, the types and quantities of equipment that will travel up Morgan Lake Road during construction. Idaho Power’s staff acknowledged during public meetings that the towers would be an impact on the view shed but that people would get used to it over time. We would ask that Idaho Power be required to provide evidence that such a project does not adversely impact an amenity such as Morgan Lake. Another option would be for Idaho Power to consider physical improvements at Morgan Lake to enhance the recreational experience and help offset the view shed impacts.

At a minimum, the City would ask that if the project is approved, a condition of approval would include that for the approximately 1.5 miles of the line that would be in view from Morgan Lake that H Frame towers be used to help mitigate the adverse impact to the view shed. If the Proposed Route is selected instead of the Morgan Lake Alternative, a condition of approval should be added to require H Frame towers in the view shed visible from the City of La Grande. Again, the City of La Grande adamantly opposes the Proposed Route and would ask Idaho Power to remove it from their application.

Exhibit U – Public Services include utilities such as road systems, water, sanitation services, power, and other amenities necessary for the construction.

If Morgan Lake Road will be used for construction access, for the safety of the public and Idaho Power’s construction crews, the City of La Grande requests that a condition of approval be included to require Idaho Power to widen Morgan Lake Road to a standard 22 foot width from the end of the asphalt in the vicinity of 91 Walnut to the end of the road with guardrails from Skyline Drive to Marvin Road. Given the grade and winter conditions, asphalt would not be the preferred surface, but rather a minimum 6 inch thick rock and gravel surface using base rock from Harney Rock & Paving Company, Haines, Oregon, which has proven to be ideally suited to the existing conditions on this road. If Glass Hill will be used for construction access, it would also need to be improved to these same standards with the addition of improving the intersection of Glass Hill and Morgan Lake Road to allow for left turns from Glass Hill onto Morgan Lake Road. Glass Hill would not require guard rails. Soil stabilization, slide areas, and improved drainage will be required to be addressed as part of needed improvements to accommodate construction traffic, as well as the use of Mag Chloride...
for dust control and to aid in the stabilization. Union County Public Works can provide more detailed information regarding the standards.

Route for construction traffic, both proposed and Morgan Lake Alternative: If the project is approved, in addition to the actions Idaho Power stated they would be taking regarding traffic, the City would ask that as a condition of approval Idaho Power will use the following route: From Highway 30 to Gekeler Lane to C Avenue to Walnut Street to Morgan Lake Road to Glass Hill Road. Further, that prior to the start of construction, the section of C Avenue from the intersection of C Avenue and Sunset and the section of Walnut from Morgan Lake Road to C Avenue be improved to City of La Grande Class I standards to accommodate the construction traffic and restored if needed upon completion of the project. Also, that Idaho Power be required as a condition of approval to repair any damage resulting from their vehicles and equipment that occur during construction and that upon completion of construction all infrastructure be restored to as good or better than it was prior to construction.
McAllister Affidavit

EXHIBIT 3
CITY OF LA GRANDE
PROCLAMATION

Declaring and Clarifying Opposition to the
Boardman to Hemingway Powerline Project
2019

Whereas, the City of La Grande is the only community of its size along the entire route of the proposed Boardman to Hemingway (B2H) Powerline where view shed and infrastructure impacts would be direct; and

Whereas, the over 13,000 citizens of La Grande will not receive any direct benefit of any nature from the B2H Powerline; and

Whereas, the City of La Grande has repeatedly expressed concerns that the most impactful route to the City of La Grande was selected as the Proposed Route despite the fact that it would have the most adverse impacts to the City of La Grande including but not limited to view shed; reduced property values of homes in the vicinity of the Proposed Route; environmental impacts during construction and when the transmission line becomes operational; and proximity to City water infrastructure; and

Whereas, the Morgan Lake Alternative would adversely impact the view shed of the City’s Morgan Lake Park and could adversely impact the experience of visitors to this unique Park; and

Whereas, during construction, certain residential and arterial streets within La Grande City limits used to access property outside the City limits could experience damage from hauling loads that may exceed road standards; and

Whereas, the City believes the BLM Preferred Route is a viable option that would not impact the City of La Grande;

Now Therefore, I, Mayor Stephen E. Clements, on behalf of the City Council of La Grande, Union County, Oregon, do hereby declare we oppose the construction of the B2H Powerline, and further request that Idaho Power and its collaborators withdraw their application to construct the powerline. If the application is not withdrawn, we request the application be revised to include the BLM Preferred Route as the only route in the vicinity of La Grande; or at worst, the application be modified to remove the Proposed Route from consideration. The City Council also recognizes the ultimate decision regarding placement and construction of the B2H powerline lies solely with the State of Oregon, and recognizing such, will continue to request that if the Oregon Department of Energy ultimately approves the application, that they impose conditions of approval that address the actual and potential impacts to the City of La Grande to mitigate those impacts.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of La Grande, Union County, Oregon, this Third (3rd) day of April, 2019.

Stephen E. Clements
Mayor

ATTEST:

Kayla M. Nichols
City Recorder
McAllister Affidavit

EXHIBIT 4

EXHIBIT 4
McAllister Affidavit

EXHIBIT 5
McAllister Affidavit

EXHIBIT 6

EXHIBIT 6
May 28, 2021

Alison Greene Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list


Dear ALJ Green Webster,

I greatly appreciate the opportunity to respond to Idaho Power Company’s (IPC) improper ex parte communication to the Energy Facility Siting Council (EFSC) seeking to influence the outcome of this case. It is troubling that IPC presumably regarded such attempts to influence the decision-maker on matters directly related to issues parties are currently litigating to be appropriate and raises further concerns of undisclosed past conduct and communications, which have been sought and denied in discovery. Here, IPC not only asks EFSC to halt its rulemaking duties, but to ensure that Oregon Department of Energy (ODOE) will not interfere with IPC’s transmission line to the detriment of Oregon’s protected areas, scenic resources, recreation resources, and the interests of its residents.

IPC Misconstrues the Project History to Claim Unfair Surprise.

IPC’s most recent ex parte attempt to improperly influence the outcome of this case is consistent with a past pattern of misconstruing facts, the record, and the history of this project in order to achieve IPC objectives that provide no benefit to the Oregon public. Significantly here, while IPC claims the rulemaking in question would unfairly prejudice IPC such that the Council should “pause the rulemaking entirely” and direct ODOE staff to ensure that the B2H project is not impacted, any prejudice IPC suffers is a result of its own making. Not only has IPC long been aware of the issues relating to Protected Areas, Scenic Resources, and Recreation on the Morgan Lake Alternative, which petitioners are now litigating in this case, it chose to pursue this high impact route instead of the Bureau of Land Management’s (BLM) Agency Preferred Route—identified as the Agency Preferred Alternative since 2014—that obviates the issues IPC details in its ex parte communication.

I sought such communications in my discovery requests and subsequent motion for discovery order, which was denied on the basis of relevance. IPC’s April 22, 2021 letter to EFSC underscores the relevance of communications I requested but have been withheld. I respectfully request that the ALJ reconsider my Motion for Discovery Order with respect to my requests for IPC communications.

1I sought such communications in my discovery requests and subsequent motion for discovery order, which was denied on the basis of relevance. IPC’s April 22, 2021 letter to EFSC underscores the relevance of communications I requested but have been withheld. I respectfully request that the ALJ reconsider my Motion for Discovery Order with respect to my requests for IPC communications.
Among material misrepresentations IPC has made in its Application for Site Certificate (ASC) relevant to its current claim of unfair prejudice are those found in **IPC’s Application for Site Certificate, Exhibit B Project Description**, and the associated **Attachment B-6 2017 Supplemental Siting Study**. Indeed, the entire Supplemental Siting Study as it relates to the routes with which IPC’s ex parte communication is concerned (Mill Creek and Morgan Lake Alternative) is founded on false premises including that (1) the Mill Creek route was the BLM’s agency preferred route in its FEIS (it was not), and (2) that the actual Agency Preferred Route in the FEIS, the Glass Hill Alternative, was not carried forward (it was). Here, IPC misrepresents, among other things: the origin of both its Proposed Mill Creek Route and its Morgan Lake Alternative; the BLM’s study of identified routes; the BLM’s conclusions in its Final Environmental Impact Statement (FEIS); and the BLM’s fundamental role in this process, falsely claiming the BLM developed the Mill Creek route.\(^2\) Importantly, IPC’s concerns expressed in its April 22, 2021 ex parte communication primarily, if not entirely, pertain to this stretch of the transmission line through Union County and the contested case issues relating to Protected Areas, Scenic Resources, and Recreation on this segment—the standards subject to the current rulemaking with which IPC is concerned.

Understanding the significance of the falsehoods contained in **Attachment B-6 2017 Supplemental Siting Study** requires explanation. In December of 2014, the BLM identified the Glass Hill Alternative Route (referenced in the ASC) as the Agency Preferred Alternative for this project. In November 2016, the BLM identified this same route as its Agency Preferred Alternative pursuant to its analysis of proposed routes under National Environmental Policy Act (NEPA). Contrary to this well-documented fact, IPC represents in its 2018 Exhibit B Project Description that the “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route” as its “Basis for Corridor Change.” See Table B-6, Page B-39 of **Exhibit B (IPC Basis for Corridor Change)**. This is patently false. In fact, the Glass Hill Alternative Corridor, has been the Agency Preferred Route since 2014 when it was identified as the NEPA preliminary preferred alternative in the Draft Environmental Impact Statement (DEIS).

Further, IPC falsely represents that the Mill Creek Route (rather than the Glass Hill Route) is the BLM’s Agency Preferred NEPA Alternative. For example, Table 3.1.1 “Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC” (Attachment B-6 at p. 3) represents the following:

---
\(^2\) The BLM did not “develop” any routes for this project. The BLM only evaluated routes that were developed by others and presented for comparative analysis.
As stated above, Mill Creek is not the BLM’s Agency Preferred Alternative in the FEIS. The BLM did not analyze this route. IPC further states that “In Union County, the Proposed Route includes portions of the Proposed Route that were included in the Draft Amended pASC and the Mill Creek Route that was developed by the BLM.” (Exhibit B, Attachment B-6 at p.9) This is, again, a gross misrepresentation of the Mill Creek (IPC Proposed) Route. Not only is the Mill Creek Route not the Agency Preferred Alternative, as conveyed throughout IPC’s ASC, the Mill Creek route was not developed by the BLM. As stated above, the BLM did not “develop” routes for this project, but evaluated routes presented, which did not include either the Mill Creek or Morgan Lake Route.

IPC has since acknowledged in its discovery responses that the Mill Creek Route is **not the BLM’s Agency Preferred Alternative** in the FEIS, as it falsely claimed in its ASC. Specifically, in response to McAllister Request No. 13, IPC states “Table 3.1-1 indicating that the Mill Creek route was part of BLM's agency preferred alternative in the Final EIS, that statement is incorrect.” (See attached Exhibit 1, IPC Discovery Responses). IPC has also represented to the Hearing Officer that this is a “typographical error.” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as the misrepresentation is consistently perpetuated throughout the Exhibit B Project Description (2018) and Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at p.1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route). Thus, IPC’s claim this is a typo is not credible and implies that either IPC is unaware of the of the contents of its own application or that it purposefully misrepresented this fact to ODOE.

Table 3.1-1. Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC

<table>
<thead>
<tr>
<th>Route Originator</th>
<th>Route Designation</th>
<th>EFSC Status</th>
<th>Status in FEIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union County</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IPC</td>
<td>Proposed Route</td>
<td>Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
<tr>
<td>IPC</td>
<td>Morgan Lake</td>
<td>Not Analyzed in the Draft Amended pASC. IPC Alternative Route in the Amended pASC.</td>
<td>Not Analyzed in the FEIS.</td>
</tr>
<tr>
<td>BLM</td>
<td>Mill Creek</td>
<td>Not Analyzed in the Draft Amended pASC. Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
</tbody>
</table>

As stated above, Mill Creek is not the BLM’s Agency Preferred Alternative in the FEIS. The BLM did not analyze this route. IPC further states that “In Union County, the Proposed Route includes portions of the Proposed Route that were included in the Draft Amended pASC and the Mill Creek Route that was developed by the BLM.” (Exhibit B, Attachment B-6 at p.9) This is, again, a gross misrepresentation of the Mill Creek (IPC Proposed) Route. Not only is the Mill Creek Route not the Agency Preferred Alternative, as conveyed throughout IPC’s ASC, the Mill Creek route was not developed by the BLM. As stated above, the BLM did not “develop” routes for this project, but evaluated routes presented, which did not include either the Mill Creek or Morgan Lake Route.

IPC has since acknowledged in its discovery responses that the Mill Creek Route is **not the BLM’s Agency Preferred Alternative** in the FEIS, as it falsely claimed in its ASC. Specifically, in response to McAllister Request No. 13, IPC states “Table 3.1-1 indicating that the Mill Creek route was part of BLM’s agency preferred alternative in the Final EIS, that statement is incorrect.” (See attached Exhibit 1, IPC Discovery Responses). IPC has also represented to the Hearing Officer that this is a “typographical error.” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as the misrepresentation is consistently perpetuated throughout the Exhibit B Project Description (2018) and Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at p.1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route). Thus, IPC’s claim this is a typo is not credible and implies that either IPC is unaware of the of the contents of its own application or that it purposefully misrepresented this fact to ODOE.
IPC further falsely claims in its Supplemental Siting Study that “The Morgan Lake Alternative was developed by IPC with input from local Land owners” (Attachment B-6 at p. 9, 3.2.3.3 IPC’s Morgan Lake Alternative). In reality, the majority of landowners opposed the Morgan Lake Alternative due to impacts on the natural resources, including Scenic Resources, Recreation Resources, and land meeting Protected Area criteria. Troublingly, a single landowner, who had recently acquired land in the area, developed and proposed the Morgan Lake Route, which IPC readily adopted and has since pursued. This fact is reflected in IPC’s private correspondence with this landowner, attached hereto as Exhibit 2, stating IPC intended to adopt the route the landowner proposed (now called the Morgan Lake Alternative). While the Glass Hill Alternative was developed to minimize impacts on sensitive resources including Protected Areas, Scenic Resources, and Recreation, the Morgan Lake Alternative was developed to minimize impacts to one new landowner’s personal interest. And, unlike the Glass Hill Alternative, IPC’s Morgan Lake Route was not studied or subjected to public comment.

IPC’s misrepresentations outlined above and its course of action during the application process undermine its claims of unfair prejudice if EFSC continues with “the current direction of the rulemaking to update the standards related to Protected Areas, Scenic Resources, and Recreation Resources.” For reasons that remain unclear, IPC chose to exclude the actual Agency Preferred Alternative identified in the FEIS and evaluated pursuant to NEPA from its application, while at the same time falsely representing to ODOE that the Mill Creek Route (for which it has applied) was the Agency Preferred Route in the FEIS. In reality, in the eleventh hour of the project, IPC opted to apply for multiple routes through Union County that had never been studied, and remain unevaluated by the BLM. IPC chose to pursue one of these unevaluated routes, the Morgan Lake Alternative, in favor of a single land owner who proposed the route to IPC.

Significantly, the concerns IPC raised to the Council in its ex parte communication would be moot if IPC had pursued the route the reviewing federal agency identified pursuant to NEPA analysis. NEPA’s stated purpose is to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 USC § 4321. This is consistent with ODOE’s stated mission and values, the purpose of EFSC oversight which seeks to “ensure that Oregon has an adequate energy supply while protecting Oregon’s environment and public safety,” and the discussed updates to EFSC’s Protected Areas, Scenic Resources, and Recreation standards that IPC contests.

Contrary to IPC’s claims, “the current direction of the rulemaking” does not unfairly prejudice IPC. IPC chose to (1) exclude the BLM’s agency evaluated and preferred route from the ASC,
(2) include routes that have not been studied, and (3) pursue a route that has been the source of public concern since it became known to the public due to its impacts on, among other things, Scenic Resources, Recreation Resources, and sensitive areas that meet the Protected Area criteria. IPC and ODOE have advanced the position that an applicant may apply for any route it chooses, regardless of NEPA and the federal agency review—or the underlying motives driving selection of a specific route—so long as the applied for route comports with EFSC standards. According to IPC and ODOE, an applicant may apply for any route it chooses, regardless of NEPA and the federal agency review—or the underlying motives driving selection of a specific route—so long as the applied for route comports with EFSC standards.

Accordingly, IPC must accept the outcomes of its decision to apply for, or not apply for, a particular route. Now, after excluding the actual Agency Preferred Route evaluated pursuant to NEPA, which obviates the issues giving rise to IPC’s current concerns, IPC asks that EFSC conform its standards and rulemaking procedures to ensure IPC’s success to the detriment of Oregon’s protected areas, scenic resources, recreational resources, and the interests of its residents. Oregonians should not suffer the consequences of IPC’s poor business decisions.

IPC’s Claims Regarding “Other Problems with ODOE’s Proposals” are Baseless.

Finally, IPC’s contentions in Section III of its April 22, 2021 ex parte communication further undermine IPC’s credibility and expose IPC’s claims of potential prejudice as a red herring. Here, IPC appears to purport that it relied on an absurd interpretation of OAR 345-022-0040(2) in its Alternative Route Analysis, which runs counter to the interpretation ODOE provided to IPC in the Second Amended Project Order. Specifically, ODOE states:

Note that OAR 345-022-0040(1) generally prohibits siting of transmission lines through protected areas, which include state parks. However, under OAR 345-022-0040(2), EFSC may approve a route that passes through a protected area if the council determines that other routes outside the protected area would “have greater impacts.” If the transmission line routing proposed by the applicant will pass through a protected area, the applicant shall describe in detail the alternative routes it studied and provide analysis in the application to support a finding that routing the transmission line through the protected area would have less impacts than the alternatives. (Second Amended Project Order, July 26, 2018, at p. 14).

In the subsequent ODOE rulemaking project that IPC contests, ODOE explains that “Staff believes this rule is intended to allow a transmission line...to pass through a protected area when greater impacts cannot be avoided, but the construction implies that a linear facility could be sited on a protected area when other lesser impact alternatives may be available.” (October 22-23 EFSC Meeting, Agenda Item D (October 9, 2020)). The proposed amendment only seeks to clarify that the original intent of the rule is to allow the project to pass through a protected area only when Council finds that no alternative routes or sites would have lesser impacts, which is the logical interpretation.

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6 This position conflicts with ORS 469.370(13) requiring that the council shall conduct its site certificate review...in a manner that is consistent with and does not duplicate federal agency review, including development with the federal agency and reliance on a joint records to address applicable council standards.
The analytical framework has never changed. Rather, ODOE seeks to clarify the construction of the language so as not to achieve an absurd result. IPC appears to argue that the proper analytical framework is to conclude that an alternative may pass through protected areas if that alternative has greater impacts than other routes. This is nonsensical and has clearly never been the intent of OAR 345-022-0040(2). If IPC relied on this perverse interpretation, as it appears to claim, this exposes troubling fundamental issues with its route analysis.

IPC’s ex parte communication asking EFSC to halt required, common-sense rulemaking claiming unfair prejudice, at its core, intends to obscure the fact that, in the eleventh hour of what IPC points out was a 12-year process, it added new routes that had never been studied, while excluding the Agency Preferred NEPA route, which adequately addressed the issues of Protected Areas, Scenic Resources, and Recreation that are the basis of IPC’s current concern. EFSC should not bend standards and procedures to suit the needs of an Idaho corporation at the expense of Oregon’s natural resources and the public interest of Oregonians.

Sincerely,

Michael McAllister
Petitioner
EXHIBIT 1
February 5, 2021


Issue No. R-2, SP-2, FW-13

MICHAEL McALLISTER’S DISCOVERY REQUEST NO. 1:

Identify all individuals likely to have discoverable information that you may use to support your claim that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

IDAHO POWER’S RESPONSE TO MICHAEL McALLISTER’S DISCOVERY REQUEST NO. 1:

Idaho Power objects to this request as vague, ambiguous, and overbroad. Without waiving this objection, Idaho Power identified its witnesses for these issues (to the extent the identity of such witnesses is known at this time) below in response to Question 2.
Issue No. R-2, SP-2, FW-13

MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 13:

Explain the basis for your claim in Attachment B-6 of the ASC that the Mill Creek Route is the Agency Preferred Alternative in the FEIS.

a. Produce the documents on which you rely to make this claim.

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 13:

Idaho Power objects to this request as vague and ambiguous, as it is unclear what statement in Attachment B-6 you are referring to.

Without waiving that objection, if this request is referring to the statement in Table 3.1-1 indicating that the Mill Creek route was part of BLM’s agency preferred alternative in the Final EIS, that statement is incorrect and an error on Idaho Power’s part. For the Blues Mountain segment of the project, in the Final EIS, BLM identified the Glass Hill Alternative as modified by route variations S2-A2, S2-D2, and S2-F2 as the Environmentally Preferable Action Alternative Route and BLM’s Agency Preferred Alternative Route.
EXHIBIT 2
27 February 2015

Brad Allen
Via electronic mail

Subject: **Elk Song Ranch Alternative Routes**

Dear Brad and June Allen:

Thank you for providing an alternative route for Boardman to Hemingway Transmission Line Project where it crosses your property known as the Elk Song Ranch. We took your proposed route and modified it slightly to avoid known constraints in the area. Both your proposed route (red dashed line) and the modified routes (orange line and yellow line) are shown on the attached map and explained below.

Your proposed route follows the general route of the Glass Hill Road area you state has a higher human presence than the location of the proposed route. In the siting of a transmission line we must consider the impacts to the human as well as the natural environment. We modified your proposed route to avoid passing over several structures and to be further away from Morgan Lake, a local recreation site. We also developed an alternative route (yellow line) that would further reduce impacts to Morgan Lake. The above recommendations reflect the same methodology we used for routing along the entire length of the project.

A site visit to the area by Idaho Power transmission engineers and final design of the transmission line could result in further refinement of the modified route on the Elk Song Ranch. Please contact me if you would like to discuss any aspect of the routing.

Regards,

Todd Adams
B2H Project Leader

Enc: map

cc: D Gonzalez BLM
    T Gertch BLM
    R Straub BLM
    Z Funkhouser IPC
    M Colburn IPC
-----Original Message-----
From: Brad Allen <bradallen4030@hotmail.com>
To: wildlandmm@netscape.net <wildlandmm@netscape.net>
Sent: Sat, Mar 7, 2015 9:09 am
Subject: Fwd: B2H Elk Song Ranch Alternative Route

Sent from my iPhone

Begin forwarded message:

From: "Adams, Todd" <TAdams@idahopower.com>
To: "bradallen4030@hotmail.com" <bradallen4030@hotmail.com>
Cc: Don Gonzalez <dgonzalez@blm.gov>, "Gertsch, Tamara" <tgertsch@blm.gov>, "Funkhouser, Zach" <ZFunkhouser@idahopower.com>, "Colburn, Mitchel" <MColburn@idahopower.com>
Subject: B2H Elk Song Ranch Alternative Route

Brad,

Attached please find a map showing your alternative route as you proposed along with a suggested route variation as explained in the letter. Don’t hesitate to contact me if you have any questions.

Regards,

Todd Adams

This transmission may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether electronic or hard copy format. Thank you.

2 Attachments
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENERGY

IN THE MATTER OF: ) DECLARATION OF Susan Geer
THE APPLICATION FOR SITE ) IN SUPPORT OF PARTY
CERTIFICATE FOR THE BOARDMAN ) McAllister’s OPPOSITION TO
TO HEMINGWAY TRANSMISSION ) IDAHO POWER COMPANY
LINE ) AND OREGON DEPARTMENT
OF ENERGY’S MOTIONS FOR
SUMMARY DETERMINATION
OF CONTESTED CASE ISSUE
FW-13

OAH Case No. 2019-ABC-02833

I, Susan Geer, state and declare as follow:

1. I submit this Declaration in support of Michael McAllister’s Opposotions to Idaho Power Company and Oregon Department of energy Motion for Summary Determination on FW-13.

2. I am a professional botanist and vegetation ecologist with a B.A. in Biology from Knox College and M.S. in Ecology from Utah State University, and 29 years professional experience for the most part in northeast Oregon. Most of my career has been with the USFS, but I have also worked for The Nature Conservancy, Idaho Fish and Game, Union County SWCD, and National Park Service. In this declaration I am not officially representing any agency, only myself.

3. I have lived in La Grande since 2003 and have visited Twin Lake several times to enjoy the peaceful natural setting and observe birds and animals. Only recently we have become aware that the unique setting and rich habitat are in peril.

Geer Declaration in support of McAllister  Page 1
4. Several of my professional experiences have exposed me to gathering data in wetland areas, in particular my current position conducting Multiple Indicator Monitoring of riparian areas and rare plant surveys including wetlands. In previous years I have assisted in the inventory of wetland Research Natural Areas on Forest Service lands. Other notable examples: In 2007 I categorized and ranked riparian wetlands for the Idaho Heritage Program; in 2004 I inventoried plants of wetlands and riparian areas on Zumwalt Preserve of The Nature Conservancy in Oregon; and in 1996 I inventoried the newly acquired Sharon Fen preserve for The Nature Conservancy of Oregon.

5. In my professional estimation, Twin Lake appears to be a unique and irreplaceable wetland. Twin Lake is connected hydrologically to Morgan Lake but offers a different set of vegetation and habitat types to wildlife. The lacustrine system contains an amazing amount of vegetation including shoreline, emergent, and aquatic bed vegetation types; in fact, the entire lake is in a shallow depression and covered with floating vegetation which is absolutely teeming with wildlife, particularly birds and amphibians. I have read that these systems are on average more productive and store more carbon than an old growth forest. Last year on a visit with wildlife biologist Laura Navarrete we heard Columbia spotted frogs, and recently I saw sandhill cranes and bald eagles nesting.

6. I visited the portion of wetland habitat that falls within Idaho Power Company’s site boundary with Michael McAllister in June 2021. The lake and associated vegetation types are surrounded by a basalt rim topped with upland forest. There is an outflow area on the hillside below emerging as a spring/seep area of facultative and obligate wetland vegetation including a variety of sedges and rushes as a previously undocumented occurrence of *Trifolium douglasii*, a rare plant. This outflow area is within Idaho Power’s site boundary.

7. Dr. Karen Antell and I recognize the unique vegetative and geologic features of Twin Lake and have started a preliminary list of vegetation (attached) in our spare time. This list is only a start, by no means a complete list, but it gives a hint of the diversity of vegetation. We hope to engage other natural resources specialists to aid in inventory and aspire to convince the City of La Grande to enroll the lake in the State’s Natural Areas program. Twin Lake is a the Geer Declaration in support of McAllister Page 2
best representative I have seen, of a plant community unprotected in the Natural Areas program Blue Mountains ecoregion: (93) Freshwater lake with aquatic beds and marshy shore (Oregon State Natural Areas Plan 2020, page 133).

8. Based on my observations at Twin Lake, the area contains an incredible density of birds, bats, and insects often in flight above and around the lake. These have not been inventoried. It appears to me that the placement of Idaho Power’s transmission line next to Twin Lake would cause grave problems for the birds and bats, not to mention the insects, of Morgan Lake Park. The lines themselves would surely be deadly, and the noise has got to be detrimental as well.

9. I believe that without question, the vegetation of Twin Lake is a “unique assemblage” and absolutely must be Category 1 Habitat of ODFW. I have found no evidence in the ASC or elsewhere, that Idaho Power or ODFW has completed an inventory of the area adequate to declare otherwise. To my knowledge, the vegetation inventory started by myself and Dr. Antell is the first of its kind. While I have heard there are likely great amateur bird inventories that exist within our community, a complete inventory has not been assembled. When it is, I am confident it will show Morgan Lake Park is a nexus of bird diversity and numbers. The same is true for other wildlife species.

July 9, 2021

[Signature]

Susan Geer
I. INTRODUCTION

Contrary to Oregon Department of Energy’s (“ODOE”) claims, genuine issues of material fact exist with respect to Party Michael McAllister’s (“Mr. McAllister”) case (Issue SP-2) under the Energy Facility Siting Council (“EFSC” or “Council”) Soil Protection Standard.\(^1\) The ALJ/EFSC granted Mr. McAllister standing to challenge whether Idaho Power Company’s (“IPC”) Application for Site Certificate (“ASC”) comports with this standard after he met the threshold requirements to participate as a party in this matter. Having served no discovery on Mr. McAllister, ODOE now claims that there are no possible factual disputes that could be relevant to whether the facility complies with OAR 345-022-0022. This is incorrect.

The ALJ should deny ODOE’s Motion for Summary Determination (“MSD”) on issue SP-2 because: (1) Mr. McAllister is not limited to facts in his petition or public comment, (2) ODOE based its findings on flawed analyses and inaccurate and unreliable information in the

\(^1\) OAR 345-022-0022.
ASC such that its findings—based on the unreliable ASC—cannot constitute undisputed facts, and (3) there are disputes of material fact as to IPC’s compliance with OAR 345-022-0022 with respect to the Morgan Lake Alternative Route that IPC is currently pursuing.

II. RELEVANT FACTUAL BACKGROUND

A. The Council Determined that Petitioner McAllister Raised the Issue of the Morgan Lake Alternative Route’s Failure to Comport with the Council’s Soil Protection Standard and was Granted Standing to Challenge Compliance with this Standard.

During the applicable public comment period, Mr. McAllister provided public comment raising numerous concerns with Idaho Power Company’s Morgan Lake Alternative Route (which IPC applied for and is currently pursuing) citing facts exemplifying, and in support of, his concerns in addition to citing the relevant EFSC standards. (See Exhibit A to McAllister Petition for Party Status submitted to OAH Aug. 27, 2020). In the Amended Order on Petitions for Party Status issued December 4, 2020 after Mr. McAllister’s appeal to the Council, the Office of Administrative Hearings (“OAH”) determined Mr. McAllister had properly raised issues concerning the Morgan Lake Alternative Route’s impact to soils and granted standing to participate in the contested case under this EFSC Soil Protection standard, OAR 345-022-0022. (OAH December 4, 2020 Order at 62-63).

B. ODOE Refused to Provide Specific Facts or Evidence about How it Evaluated the Accuracy and Validity of Applicant Idaho Power’s Representations in the Application for Site Certificate.

On January 22, 2021, Mr. McAllister served written discovery on ODOE. Request No. 5 asks that ODOE:

Describe [its] process for evaluating the accuracy and validity of Applicant Idaho Power’s representations in its Application for Site Certificate (“ASC”).

a. Do you conduct independent study to confirm that the representations in the ASC are accurate? If so, describe this process with respect to the Morgan Lake Alternative.
In response, ODOE provided no facts or information regarding any steps or action, specific to the ASC at issue, that it took to verify IPC’s representation and provided that ODOE application review process does not require that ODOE conduct any study to evaluate the contents of the ASC. McAllister Affidavit 2, Ex. 6 (ODOE Responses to Discovery).

III. ARGUMENT

A. ODOE’s Arguments Lack Merit and there are Disputes of Fact Relevant to whether Applicant Complies with the Soil Protection Standard.

Disputes of fact exist regarding whether the pursued route in Union County (the Morgan Lake Alternative) complies with the Council’s Soil Protection standard. ODOE asserts that there are no possible factual disputes that could be introduced into the record relevant to whether the facility complies with OAR 345-022-0022 (ODOE MSD at 2). ODOE makes this sweeping claim having never issued any discovery to Mr. McAllister. McAllister Affidavit 2, ¶ 11. In arguing that it is entitled to a favorable ruling as a matter of law, the only evidence or “facts” ODOE references to support this claim is the ASC and ODOE’s Proposed Order based on the error-ridden ASC. However, as parties to this case have repeatedly raised, the ASC consists of unreliable information and flawed analyses that ODOE has not itself verified. The representations in the ASC on which ODOE relies are very much disputed.

1. Party McAllister is not limited to facts in petition or public comment to prove the merits of his case that Morgan Lake Alternative does not comply with OAR 345-022-0022.

The applicable procedural rules do not require that potential parties allege every fact upon which they may rely in a contested case at the public comment stage. Thus, ODOE’s reliance on Mr. McAllister’s public comment to claim that there are no facts that could be introduced into the record to dispute its findings based on IPC’s representations in the ASC is
misplaced, particularly because ODOE served no discovery. Such requirements would obviate the purpose of the contested case process. The ALJ/EFSC found that Mr. McAllister has met the above requirements to establish the right to participate in this contested case and nothing in the rules limits the facts Mr. McAllister may use to prove the merits of his case to those raised in public comment.

2. **ODOE based its findings on inaccurate and unreliable information in Idaho Power Company’s Application for Site Certificate.**

Idaho Power Company’s Application for Site Certificate is fraught with inaccuracies, flawed analyses, misleading and false information, and missing information.

The only evidence or facts ODOE references to support its claim that it is entitled to summary decision is the ASC and ODOE’s own Proposed Order based on the unreliable ASC. ODOE’s motion must fail because it is the ASC, and the representations therein, that are at issue here. As parties have repeatedly raised, the ASC consists of flawed analyses, inconsistencies, inaccurate, misleading and false representations, and incomplete information. For example, IPC falsely represents that the Morgan Lake Park and the Twin Lake wetlands are entirely outside the site boundary of its Morgan Lake Alternative Route.\(^2\) Not only does the site boundary cross Morgan Lake Park, specifically 0.77 acres of the Twin Lake wetland habitat is within the site boundary. McAllister Affidavit 1 ¶ 9. Further, IPC falsely claims the Mill Creek Route—for which it applied—is the route the BLM identified in its Final Environmental Impact Statement (it is not) while at the same time falsely claiming that the actual Agency-preferred route (the Glass Hill Alternative) “was not carried forward by BLM as the agency preferred route” (it was);\(^3\) IPC

\(^2\)See McAllister Opposition to IPC MSD on R-2 and supporting McAllister Affidavit.

\(^3\) ASC Exhibit B at B-39 (Table B-6) (ODOE - B2HAPPDoc3-3 ASC 02a_Exhibit_B_Project Description_ASC 2018-09-28. Page 45 of 96); McAllister Affidavit 1, Ex. 6.
misrepresents the boundary of Morgan Lake Park;\(^4\) IPC’s conclusions in ASC Exhibit T are premised on flawed methodologies, and unsupported assumptions.\(^5\) This is far from an exhaustive list and is further supplemented by information in the many party responses opposing summary determination in this matter.

Accordingly, ODOE’s reliance on the inaccurate ASC to support its recommended findings in its Proposed Order render ODOE’s “findings of fact” also flawed and unreliable. Thus, these findings cannot constitute undisputed facts.

3. **There are disputes of material fact regarding the Morgan Lake Alternative Route’s compliance with OAR 345-022-0022.**

Disputes of material fact exist with respect whether the Morgan Lake Alternative Route complies with the Council’s Soil Protection standard, which requires the Council find “that the design, construction, and operation of the facility are not likely to result in a significant adverse impact to soils included, but not limited to, erosion and chemical factors such as salt deposition cooling towers, land application of liquid effluent, and chemical spills.” OAR 345-022-0022.

Contrary to IPC’s conclusions based on flawed analyses, and as parties have raised, this project will have significant adverse impacts on soils. As Mr. McAllister, whose profession and expertise is natural resource management, specializing in surveys for impact analyses, stated in discovery response to IPC:

> The composition and productivity of the soil impacted by the Morgan Lake Alternative is significant because the site potential of that soil is great. See Agricultural Experiment Station, and United States. Soil Conservation Service. Soil Survey of Union County Area, Oregon… The plant communities and plant associations reflect that potential of the soil


impacted by the Morgan Lake Alternative Route…The significance of the impacts are demonstrated through comparison (see, e.g. Application for Site Certificate, Ex. B-6). I conducted a comparative analysis, which included EFSC’s soil standard, to demonstrate that the impacts are significant as demonstrated through comparative analysis.⁶

Specific facts supporting this claim are encompassed in the remarks of Hydrologist/Soils Specialist, Dr. Suzanne Fouty. In her comments, Dr. Fouty raises myriad issues of fact relating to compliance with the Council’s Soil Protection standard.⁷ These facts raised by Dr. Fouty are relevant to Mr. McAllister’s soil issue. As discussed above, Mr. McAllister is not limited to presenting facts that he raised in his public comment to prove, at the merits stage, whether the Morgan Lake Alternative Route complies with OAR 365-022-0022.

⁴. **ODOE’s limited “Analysis Area” for Soil Protection cannot adequately assess impact on soils.**

ODOE and IPC incorrectly limit the Analysis Areas for Soil Protection to the area within the site boundary.⁸ IPC has inadequately analyzed the effects of their project because they have too narrowly defined the area and nature of the impacts and their cumulative effect. As Soils Specialist Dr. Fouty states:

> Any cumulative effects analysis must include the impacts of decreased existing carbon sequestration and future potential carbon sequestration, because the effects of decreased soil productivity and carbon sequestration related to the project overlap in time and space with the impacts of other human land uses changes and interact synergistically with them.⁹

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⁶ Significantly, IPC’s contractor, Tetra Tech, also uses such comparative analyses in its materials produced for IPC.
In sum, the analysis area defined for purposes of determining whether the Project will result in significant adverse impacts on soil is inadequate. Accordingly, soil impacts have not properly been assessed for purposes of OAR 345-022-0022.

5. ODOE’s request that the “Council find that the proposed facility, including the proposed and alternative routes, would comply with the Council’s Soil Protection standard” is overbroad and premature.

There are multiple parties challenging whether the Project complies with OAR 345-022-0022. (December 4, 2020 Amended Order on Party Status). Neither IPC nor ODOE moved for summary determination on soils issue SP-1. In ODOE’s instant motion on SP-2, it asks that the Council find “that the proposed facility, including the proposed and alternative routes, would comply with the Council’s Soil Protection standard.” (ODOE MSD on SP-2 at 11). Such request is overbroad and premature because, even if the decision-maker were to find in favor of ODOE with respect to SP-2, there is at least one additional issue outstanding in the contested case challenging compliance with the Council’s Soil Protection standard, which precludes an overarching finding that all proposed and alternative routes comply with OAR 345-022-0022, the Council’s Soil Protection standard.

Finally, in its Motion ODOE troublingly states that the portion of the route through Union County that IPC currently plans to build need not comply with the EFSC standards. Specifically, ODOE states, “The standard does not require a finding of compliance related to particular portion of a facility, such as the Morgan Lake alternative.” (ODOE MSD on SP-2 at 2). Thus, ODOE’s position is that impacts along IPC’s Morgan Lake Alternative Route, which IPC currently intends to build—i.e., precisely where soil, habit, recreation, etc. will be most

10 Dr. Suzanne Fouty and Stop B2H have been granted standing under SP-1.
affected—need not be assessed and compliance with the Council’s standard becomes irrelevant for this segment. This position cannot be reconciled with the requirements of any EFSC standard and would deprive Union County’s natural resources and residents of any protections the EFSC standards are meant to provide.

The question is whether design, construction and operation of the facility complies with EFSC standards. IPC has applied for the Morgan Lake Alternative Route where it now intends to construct the facility. Thus, the Council must find that design, construction, and operation of the facility along that selected route complies with OAR 345-022-0022.

**Conclusion**

For the foregoing reasons the ALJ should deny ODOE’s Motion for Summary Determination on Issue SP-2.

/{s/ Michael McAllister} 
Michael McAllister

Date: July 9, 2021
CERTIFICATE OF MAILING

On July 9, 2021, I served the foregoing Opposition to Motion for Summary Determination in Case No. OAH Case No. 2019-ABC-02833 on the following recipients:

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PO Box 1384
La Grande, OR 97850

By: Electronic Mail:
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Idaho Power Company
dstanish@idahopower.com

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By: /s/Michael McAllister
Michael McAllister
"McAllister Affidavit 2"

McAllister Affidavit in Support of Opposition to Idaho Power Company and Oregon Department of Energy Motions for Summary Determination

FW-13 and SP-1

(McAllister Affidavit 2)
I, Michael McAllister, state and declare as follow:

1. I submit this Affidavit in support of my Oppositions to Idaho Power Company and Oregon Department of Energy’s Motion for Summary Determination on FW-13 and SP-2.

2. I am a lifelong outdoorsman and the son of Oregon’s widely respected outdoorsman and journalist, Thomas H. McAllister (Tom), whose job consisted of writing about Oregon’s natural places for the Oregon Journal (which merged with the Oregonian). As a result, I grew up exploring every corner of Oregon’s natural settings. I first visited Morgan Lake Park in the late 1960s when Tom took the family to La Grande to cover the story of the joint effort to establish the Park as a cooperative city/state/federally funded project. I remember vividly the diverse and unique assemblage of birds at that time which included the first Black Turn that I had ever seen.

3. I pursued natural resource management as my career and obtained a B.S. in Wildlife Resources and Communications from the University of Idaho.
4. I have lived on and managed natural resources across the subject landscape for over 40 years. As an independent natural resource contractor, I have made a career specializing in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data that is used for planning purposes, most often for National Environmental Policy Act (NEPA) analyses.

5. Using my professional skills and knowledge, I have surveyed and studied the Twin Lake wetlands and surrounding area. At approximately 4,100 feet in elevation, these lakes are shallow depressions atop a basalt plateau. Outflow from these lakes is restricted to the spring runoff period such that minerals and sediment is accumulating over time. Twin Lake is shallow; the majority of the surface supports floating emergent vegetation mats that are unique within this largest of Oregon’s nine ecoregions. As to the site-specific nature of Twin Lake unique habitats, both the submerged and the emergent vegetation communities are distinctly rich. Significantly, the Twin Lake area exhibits six of the eight conservation strategy habitats identified in the Blue Mountain Ecoregion. These strategy habitats include aspen woods, late successional mixed conifer forests, natural lakes, grasslands, ponderosa pine woodlands, and wetlands. The continuum of vegetation, from aquatic, to emergent, to wet meadow, to dry meadow, to mixed conifer forest is distinctly unique and limited at both the physiographic province and on a site-specific basis. The diversity of wildlife species that occupy this complex habitat matrix is perhaps unprecedented in the province. The Twin Lake wetlands specifically is 27 acres of continuous wetlands extending into the B2H site boundary.

6. I surveyed the portion of wetland habitat that falls within Idaho Power Company’s site boundary. Based on the ASC Attachment P1-8, Habitat Categorization, Union County, Map 157, I identified the acreage of the Twin Lake wetland that falls within the City of La Grande’s Morgan Lake Park boundary. On the ground, I transcribed the eastern site boundary on the ground in relation to the Morgan Lake Park property corner at GPS coordinates; 45 degrees, 17 minutes, 57.7 seconds / 118 degrees, 08 minutes, 44.0 seconds. On the northing, the site boundary is 202 feet into the park. On easting, the site boundary is 331 feet into the park.
boundary. From this the calculated overlap of the site boundary is 0.77 acres of predominantly wetland habitat.

7. As someone who is intimately familiar with natural resources and the many landscapes, habitats, and outdoor opportunities in Oregon, I purchased my home and property over 30 years ago, approximately one quarter mile from Morgan Lake Park, precisely because of the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan Lake Wetlands in Morgan Lake Park.

8. Based on my extensive professional and personal experience with the natural settings of Oregon, the Twin Lake Wetlands in Morgan Lake Park and the surrounding area are rare, remarkable, and irreplaceable for many reasons.

9. Within the entirety of the Blue Mountains Physiographic Province, there are no other montane, ridgetop wetland lakes that are represented by such a diverse assemblage of both vegetation and wildlife species. Attached as Exhibit 4 to this Affidavit is a non-comprehensive list plant species identified at Morgan Lake Park developed by Dr. Karen Antell, Professor of Biology, and Susan Geer, botanist.

10. Discovery. I responded to Idaho Power’s Company’s discovery requests on February 5, 2021, the same day IPC and ODOE responded to my discovery. I objected to IPC’s interrogatories. IPC never clarified its requests, responded, or sought a discovery order. In response to my requests for documents, IPC provided a single document. While IPC initially offered to provide responsive GIS data, it later reneged and did not provide the information.

11. Oregon Department of Energy never served any discovery on me.

12. Because I, and other parties, had identified significant false information in IPC’s application for site certificate, I asked ODOE in discovery to identify any specific steps it took in this matter to confirm the information in the ASC, on which it relied in the Proposed Order, was accurate. ODOE identified no action specific to the B2H application.

13. Attached as Exhibit 1 to this Affidavit is a true and correct copy of an email response I received from the Oregon Department of Fish and Wildlife regarding its interpretation of “unique assemblage.” I provided this document to IPC in response to discovery requests.

McAllister Affidavit 2 Page 3
14. Attached as Exhibit 2 is a true and accurate copy of my discovery requests to Idaho Power Company.

15. Attached as Exhibit 3 is a true and accurate copy of Idaho Power Company's Responses to my discovery requests.

16. Attached as Exhibit 4 is a true and accurate copy of a species list provided to me by Dr. Karen Antell.

17. Attached as Exhibit 5 is a true and accurate copy of the discovery requests I served on ODOE.

18. Attached as Exhibit 6 is a true and accurate copy of ODOE's discovery responses.

19. Attached as Exhibit 7 is a true and accurate copy of my discovery responses to IPC's discovery requests.

July__, 2021

Michael McAllister

Signed before me this ___ day of July__, 2021 by Charles H. Gillis

Barbara Peden, Notary Public for Oregon
My Commission expires: 9-24-24
May 8, 2021

VIA EMAIL

Jocelyn Pease, jocelyn@mrg-law.com; and Lisa Rackner, lisa@mrg-law.com; and David Stanish, dstanish@idahopower.com.

McDowell Rackner Gibson
419 SW 11th Ave
Suite 400
Portland OR, 97205

Re: OAH Case No. 2019-ABC-02833 – Boardman to Hemingway Transmission Line – McAllister First Supplemental Responses to IPC Interrogatory Nos. 1-5, Request for Production Nos. 1-2

Please find supplemental responses to Idaho Power’s discovery requests, identified below and attached.


Birds of Northeast Oregon, A Grande Ronde Bird Club, Oregon Department of Fish & Wildlife Publication.

Sincerely,

Michael McAllister
Michael:

Answers to the two questions you outlined in your email:

1) Has the State Game Refuge state for Morgan Lake Park ever been formally dissolved?

Yes, the agreement that you provided in your email expired in 1976 (see bottom of first page you sent). In 1977 there was a new agreement that ended in 1982 and at that time the agreement was never renewed.

2) Can you please provide information regarding how ODFW identifies and/or interprets a "unique assemblage" as the term is used for purposes of Rule 635-415-0025 (Implementation of Department Habitat Mitigation Recommendation)?

ODFW does not define unique assemblage in statute or rule. In general terms, ODFW interprets an assemblage as a group of species that exist in a particular habitat. For example and in the context of the Division 415 ODFW Fish and Wildlife Habitat Mitigation Policy, habitat categorization might be based on an individual species/population (e.g., grasshopper sparrows) or an assemblage of species that co-occur within a particular habitat (e.g., grassland birds).

If you have additional question, please address those to Sarah Reif (copied on this email) who is our Energy Coordinator out of our Salem Headquarters Office. She will direct questions to the appropriate staff.

Thank you.

Nick Myatt
Grande Ronde Watershed District Manager
Oregon Department of Fish and Wildlife
107 20th Street
La Grande, OR 97850
(541)962-1824
EXHIBIT 2
Date: January 22, 2021

To: Idaho Power Company
    C/O Lisa Rackner (lisa@mrg-law.com)

From: Michael McAllister

Re: Informal Discovery Requests

**DEFINITIONS**

1. “You” or “Your” means Idaho Power Company, each of its present and former agents and other individuals acting or purporting to act on its behalf.

2. “Document(s)” means physical documents and electronically stored information, including any written, printed, typed, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in the possession, custody, and/or control of Idaho Power or known by Idaho Power to exist, including, but not limited to: papers, letters, internal and external correspondence and communications, electronic files, metadata, emails, messages, and computerized files.

3. “Morgan Lake Park” means the tract of land described as follows:

   Commencing at the Southeast corner of the Southwest quarter of the Southwest quarter of Section 13, in Township 3 South, Range 37 East of the Willamette Meridian; running thence West on the Section line 31.50 chains; then North 15.25 chains; thence West on a line parallel with the section line 21 chains; thence North at right angles to said last line 24.75 chains to the North line of the Southeast quarter of section 14, said Township and Range; thence East on the center line of said Section 14 a distance of 27.50 chains; thence North 10.50 chains; thence East 25 chains to the East line of the Southwest quarter of the Northwest quarter of Section 13, said township and range; thence South 50.50 chains to the place of beginning.

4. “Twin Lake” means the smaller of two lakes within the boundaries of Morgan Lake Park as recognized in the National Wetlands Inventory.

**REQUESTS**

Compliance with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022 with respect to the Morgan Lake Alternative:
1. Identify all individuals likely to have discoverable information that you may use to support your claim that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

2. Identify: all persons on whose testimony you may rely to support your claims that the Morgan Lake Alternative Route complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022; their professional background; and the substance of their expected testimony.

3. To the extent that you rely on any documents not contained in the Application for Site Certificate (ASC) to support your claim that the MLA complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022, produce all such documents.

4. Please produce all documents, including communications, both internal and external, relating to the development of the Morgan Lake Alternative Route. This includes all documents reflecting internal deliberations relating to the development of the MLA.

5. Identify each landowner with whom you consulted, as stated in your ASC (B-6, pp.1, 9) in developing Idaho Power’s Morgan Lake Alternative.

6. Explain with specificity how you used and/or incorporated the input of landowners in developing the MLA.

7. Produce all documents, including emails and other communications, relating to the input from landowners used to develop the Morgan Lake Alternative. This includes internal communications and other documents reflecting internal deliberations regarding the input of landowners and development of the MLA.

8. Identify each landowner whose input you incorporated to develop the MLA, as you stated in your ASC.

9. Did you consider input from local landowner Michael McAllister regarding mitigation of impacts (as required by OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022) through inclusion of federal Agency Selected (NEPA) Route, identified in green on the interactive map on your website. An image of this route is attached hereto as Ex. A.
a. If not, why not?
b. If yes, explain how you used this input.

10. Produce all documents, including internal and external communications, relating to what you have referred to as the BLM’s Agency Preferred route in Attachment B-6 of the ASC.

11. Please explain why you chose not to pursue the Glass Hill Alternative you reference on p. B-39 of ASC, and that you identify in Request No. 18(a) below, to comply with the mitigation requirements in OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

12. Explain the purpose and significance of your comparison between the Mill Creek Route and the Morgan Lake Alternative found on p.9 of Attachment B-6, 2017 Supplemental Citing Study. Specifically explain why this comparison is included in the ASC and why you compare those two particular routes.

13. Explain the basis for your claim in Attachment B-6 of the ASC that the Mill Creek Route is the Agency Preferred Alternative in the FEIS.

   a. Produce the documents on which you rely to make this claim.

14. Explain the basis of your claim on page B-39 of your ASC that “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route.”

   a. Produce all documents, including communications, in support of your claim that “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route.”

15. In developing your ASC in attempted compliance with mitigation requirements of OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), explain why you did not pursue the “federal Agency Selected Route (NEPA),” identified in green on the interactive map on your website (attached hereto as Ex. A) to meet the mitigation requirements of OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

16. Explain why in your ASC, you compare the Morgan Lake Alternative to the Mill Creek Route rather than to the “federal Agency Selected Route (NEPA) identified on the IPC map referenced in No. 15.
17. Produce all documents, including internal and external communications, relating to your decision not to include federal Agency Selected (NEPA) Route, as identified on Ex. A to these Requests, to comply with the mitigation requirements of OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022.

18. Idaho Power has failed to use consistent naming conventions over the life of this project and in the documents it has generated. Please clearly identify or produce a map clearly defining what you refer to in your ASC as:

   a. The Glass Hill Alternative
   b. The BLM Agency Preferred Alternative Route
   c. The Mill Creek Route

19. Admit that the BLM’s Agency Preferred Alternative in the FEIS is not the same as the Mill Creek Route.

20. If you deny Request for Admission No. 19, explain the basis for your denial, and produce all documents supporting this position.

21. Admit that the Glass Hill Alternative is the same as the BLM’s Agency Preferred Alternative in the FEIS.

22. If you deny the Request for Admission No. 21, explain the basis for your denial, and produce all documents supporting this position.

OAR-345-022-0060 (Fish and Wildlife Habitat)

23. Produce all documents, including communications, regarding the presence of threatened and endangered species, both federally and state listed, and the Morgan Lake Alternative Route.

24. Produce all internal and external communications, including but not limited to communications with Oregon Department of Energy, Oregon Department of Fish and Wildlife, the U.S. Bureau of Land Management, the U.S. Forest Service, landowners and other private stakeholders, relating to fish and wildlife habitat along the Morgan Lake Alternative.

25. Identify the habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and the basis for that determination:

   a. Morgan Lake Park
b. Twin Lake

c. Glass Hill Natural Area (encompassing property of Joel Rice)

d. State-recognized wildlife refuges

26. Produce all documents relating to your response to No. 25 above.

27. Identify and describe what, if any, study and analysis has been completed with respect to fish and wildlife habitat within:

   e. Morgan Lake Park

   f. One mile of the Park boundary

   g. Two miles of the Park boundary

28. Produce all documents relating to your responses to No. 27.

29. Identify and provide contact information for any individual(s) upon whose analysis you relied for No. 27 above.

30. Identify the definition and/or interpretation of “unique assemblage” on which you rely for purposes of compliance with OAR-345-022-0060 and the incorporated OAR 635-415-0025.

31. Identify Idaho Power’s avoidance criteria with respect to bald eagles’ nests.

32. Explain why the bald eagles’ nests located at (Nest #1)

   N 45 18 06.6, W 118 08 44.2 (within 12 feet of park boundary, and within 50 feet of Twin Lake, and within approx. 500 feet of nearest tower) and (Nest # 2)

   N 45 17 47.9, W 118 08 55.0 (within 1200 feet of nearest tower) are not recognized in your ASC, including on Table B-2 in ASC Exhibit B.

33. Did you consider Morgan Lake Park as a wildlife refuge in your ASC?

34. Explain why you did not identify Morgan Lake Park, or the encompassed Twin Lake, as environmentally sensitive areas.

   h. If it is your position that these are not environmentally sensitive areas:

      i. Explain in detail the basis for this conclusion, including what study was done to arrive at this conclusion; and

      ii. Produce all documents, including communications, relating to this determination.
35. You state in your ASC that “[t]he entire Morgan Lake Route Alternative was considered forested. No other Alternative Routes were considered forested.” (p. R-52). Explain:
   i. Why you have chosen to pursue what you have identified as an entirely forested alternative over non-forested alternatives;
   j. How this is consistent with the habitat mitigation goals of OAR 635-415-0025.

**OAR-345-022-0100 (Recreation)**

36. Produce all internal and external communications, including those from landowners, concerning impacts of the Project on Morgan Lake Park.

37. Produce all documents, including internal and external communications, relating to your determination that the proposed siting of the Morgan Lake Route is consistent with the Morgan Lake Park Recreation Use and Development Plan.

38. Explain in detail how you determined that the Morgan Lake Alternative complies with OAR-345-022-0100 with respect to Morgan Lake Park.

39. Explain in detail the process through which you determined that “[t]he Project will not result in a direct loss of recreation opportunity to the park.” (T-44).
   a. Produce all documents, including communications, relating to your determination that “[t]he Project will not result in a direct loss of recreation opportunity to the park.”

40. Please identify the definition and/or interpretation of “recreation opportunity” on which you rely for purposes of compliance with OAR-345-022-0100 and your claim identified in No. 39 above (ASC, T-44).

41. Identify what you have determined to be the “recreation opportunit[ies]” of Morgan Lake Park.
   a. Explain the process through which you arrived at this determination;
   b. Produce all documents relating to this determination.

42. With respect to Morgan Lake Park, you state in your ASC “[t]he Project will not be visible from primary recreation areas, and therefore visual impacts will not cause adverse impacts to visitor experience at the park.” (T-44); with respect to this claim:
   a. Identify which areas you believe are “primary recreation areas”;
b. Explain in detail the process through which you determined these areas to be the “primary recreation areas”;
c. Produce all documents relating to your claim that these are the primary recreation areas.

43. Identify and describe what, if any, study and analysis has been completed with respect to recreation within:
   k. Morgan Lake Park
   l. One mile of the Park boundary
   m. Two miles of the Park boundary

44. Produce all documents relating to No 43.

45. Explain why the MLA was not presented for public comment.

46. Explain how you believe you have complied with OAR-021-0010(b)(D).

Cc:
ODOE – C/O Rowe Patrick G (Patrick.G.Rowe@doj.state.or.us)
Colin Andrew
Kathryn Andrew
Irene Gilbert
Karen Antell
Louis Squire
Lois Barry
Anne March
Kevin March
Susan Geer
STOP B2H
EXHIBIT 3
February 5, 2021

Issue No. FW-13

MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 25:

Identify the habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and the basis for that determination:

a. Morgan Lake Park
b. Twin Lake
c. Glass Hill Natural Area (encompassing property of Joel Rice)
d. State-recognized wildlife refuges

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 25:

a. Morgan Lake Park - This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

b. Twin Lake - This parcel is not within the Site Boundary and therefore it was not categorized per OAR 635-415-0025.

c. Glass Hill Natural Area (Joel Rice property) – The portion of Joel Rice’s property that is within the Site Boundary was not field surveyed, because Mr. Rice denied Idaho Power’s requests for right-of-entry. Accordingly, Idaho Power characterized the habitat remotely pursuant to the methods described in the Habitat Categorization Matrix, Exhibit P1, Attachment P1-1. The habitat categorization of temporary and permanent impact areas on this property are associated with the Morgan Lake Alternative and are as follows:

• Category 6 habitat: 1.8 acres of permanent disturbance to Developed habitat type. This is an existing road to be improved. Within Category 3 Elk Summer Range; however, developed habitats do not get modified based on overlap with wildlife habitat overlays.
• Category 3 habitat: 1.9 acres of permanent disturbance and 8.2 acres of temporary disturbance to Douglas Fir/Mixed Grand Fir habitat type. Within Elk Summer Range.
• Category 2 habitat: 0.04 acres of permanent and 0.01 acres of temporary disturbance to Perennial Stream habitat type. These disturbances are from an existing road that would be improved that is adjacent to Sheep Creek.

d. State-recognized wildlife refuges – Idaho Power objects to this request as vague and ambiguous, because the term “state-recognized wildlife refuges” is undefined and could be referring to any number of refuges throughout the state. Without waiving that objection, Idaho Power provides the following information regarding the Ladd Marsh Wildlife Area. No field surveys were performed on this property, so habitat categorization was done remotely. The habitat categorization of temporary and permanent impact areas on Ladd Marsh are associated with the Mill Creek Route and are as follows:

• Category 6 habitat: 1.1 acres of permanent disturbance to Developed habitat type. This is an existing road to be improved. Within Category 2 Elk Winter Range and Category 2 Mule Deer Winter Range; however, developed habitats do not get modified based on overlap with wildlife habitat overlays.
• Category 2 habitat: 1.0 acres of permanent and 7.1 acres of temporary disturbance in Shrub-Steppe without Big Sage; 4.4 acres of permanent disturbance in Ponderosa Pine; trace acres of temporary and permanent disturbance in Native Grassland; trace acres of temporary and permanent disturbance in Intermittent Stream. These disturbances are associated with 3 tower locations, temporary work areas, existing roads needing
improvement, and clearance of the ROW in forested areas. These areas are within Category 2 Elk Winter Range and Category 2 Mule Deer Winter Range.
EXHIBIT 4
### Vascular Plants of Morgan Lake Park
#### City of La Grande
#### Union County, Oregon

Compiled by Karen Antell, Eastern Oregon University and Susan Geer, US Forest Service
June/July 2021

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
<th>Native or Introduced</th>
<th>Wetland Status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACERACEAE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acer glabrum</td>
<td>Maple, Rocky Mountain</td>
<td>N</td>
<td>FAC</td>
</tr>
<tr>
<td><strong>ADOXACEAE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sambucus cerulea</td>
<td>Elder, Blue</td>
<td>N</td>
<td>FACU</td>
</tr>
<tr>
<td><strong>ALISMATACEAE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alisma triviale</td>
<td>Water-plantain</td>
<td>N</td>
<td>OBL</td>
</tr>
<tr>
<td><strong>AMARYLLIDACEAE</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Allium accuminatum</td>
<td>Onion, Hooker’s</td>
<td>N</td>
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<tr>
<td>Allium fibrillum</td>
<td>Onion, Fringed</td>
<td>N</td>
<td></td>
</tr>
<tr>
<td><strong>APIACEAE</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Anthriscus caucalis</td>
<td>Chervil, Bur</td>
<td>I</td>
<td></td>
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<tr>
<td>Cicuta douglasii</td>
<td>Water-hemlock, Douglas’s</td>
<td>N</td>
<td>OBL</td>
</tr>
<tr>
<td>Heracleum maximum</td>
<td>Cow-parsnip</td>
<td>N</td>
<td>FAC+</td>
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<td>Ligustrum canbyi</td>
<td>Lovage, Canby’s</td>
<td>N</td>
<td>FAC</td>
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<tr>
<td>Lomatium ambiguum</td>
<td>Biscuit-root, Wyeth</td>
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<td>Lomatium dissectum</td>
<td>Biscuit-root, Fernleaf</td>
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<td>Lomatium grayi</td>
<td>Biscuit-root, Gray’s</td>
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<td>Lomatium leptocarpum</td>
<td>Biscuit-root, Gumbo</td>
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<tr>
<td>Lomatium macrocarpum</td>
<td>Biscuit-root, Bigseed</td>
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<td>Scientific Name</td>
<td>Common Name</td>
<td>Fac</td>
<td>Note</td>
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<td>Lomatium triternatum (?)</td>
<td>Biscuit-root, Trternate</td>
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<td>Osmorhiza berteroi (chilensis)</td>
<td>Sweet-cicely, Mountain</td>
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<td>Osmorhiza occidentalis</td>
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<td>Perideridia montana</td>
<td>Yampah, Gairdner’s</td>
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<td><strong>APOCYNACEAE</strong></td>
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<td>Apocynum androsaemifolium</td>
<td>Dogbane, Spreading</td>
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<td>FAC</td>
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<tr>
<td>Asclepias speciosa (?)</td>
<td>Milkweed, Showy</td>
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<td><strong>ARACEAE</strong></td>
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<tr>
<td>Lemna spp.</td>
<td>Duckweed</td>
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<tr>
<td><strong>ASPARAGACEAE</strong></td>
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<tr>
<td>Camassia quamash</td>
<td>Camas, Common</td>
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<td>FACW*</td>
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<tr>
<td>Maianthemum (both racemosum and stellatum?)</td>
<td>False Solomon’s Seal</td>
<td>N</td>
<td>FAC</td>
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<tr>
<td>Triteleia grandiflora</td>
<td>Triteleia, Large-flowered</td>
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<tr>
<td><strong>ASTERACEAE</strong></td>
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<td>Achillea millefolia</td>
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<td>Agoseris glauca</td>
<td>False-dandelion, Pale</td>
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<td>Antennaria luzuloides</td>
<td>Pussy-toes, Woodrush</td>
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<td>Arnica cordifolia</td>
<td>Arnica, Heart-leaf</td>
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<td>Arnica sororia</td>
<td>Arnica, Twin</td>
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<td>Eurybia conspicua</td>
<td>Aster, Showy</td>
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<td>Balsamorhiza incana</td>
<td>Balsamorhiza, Hoary</td>
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<td>Balsamorhiza sagittata</td>
<td>Balsamorhiza, Arrowleaf</td>
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<tr>
<td>Cirsium arvense</td>
<td>Thistle, Field</td>
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<td>Helianthella uniflora</td>
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<tr>
<td>Madia glomerata</td>
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<td>Pyrrocoma racemosa</td>
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<td>Senecio hydrophiloides</td>
<td>Butterweed, Sweetmarsh</td>
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<td>Senecio integerrimus</td>
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<td>Symphyotrichum foliaceum</td>
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<td>Taraxacum officinale</td>
<td>Dandelion</td>
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<td>Tragopogon dubius</td>
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<td>Wyethia amplexicaulis</td>
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<td>Xanthium strumarium (?)</td>
<td>Cockle-bur, Rough</td>
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**BERBERIDACEAE**

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<tr>
<td>Berberis repens</td>
<td>Oregon-grape, Creeping</td>
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**BETULACEAE**

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<th>Common Name</th>
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<tr>
<td>Betula occidentalis (?)</td>
<td>Birch, Spring</td>
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**BORAGINACEAE**

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<th>Scientific Name</th>
<th>Common Name</th>
<th>Habit</th>
<th>FACW</th>
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<tbody>
<tr>
<td>Amsinckia spp. (intermedia, lycopsoides, retrorsa)</td>
<td>Tarweed</td>
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<td>Buglossoides arvensis</td>
<td>Gromwell, Field</td>
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<td>Cynoglossum officinale</td>
<td>Hound’s-tongue, Common</td>
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<td>Lithospermum ruderale</td>
<td>Stoneseed, Western</td>
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<td>Mertensia longiflora</td>
<td>Bluebells, Long-flowered</td>
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<td>Myosotis discolor</td>
<td>Forget-me-not, Yellow and Blue</td>
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<td>Myosotis micrantha</td>
<td>Scorpion-grass, Blue</td>
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**BRASSICACEAE**

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<tr>
<td>Lepidium spp.</td>
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**CAMPANULACEAE**

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<td>Downingia elegans</td>
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**CAPRIFOLIACEAE**

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<td>Caryophyllaceae</td>
<td>Dianthus armeria</td>
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<td>Silene oregana</td>
<td>Catchfly, Oregon</td>
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<td>Comandraceae</td>
<td>Comandra umbellata</td>
<td>Bastard Toadflax, Umbellate</td>
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<td>Convolvulaceae</td>
<td>Convolvulus arvensis</td>
<td>Bindweed, Small</td>
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<td>Cornaceae</td>
<td>Cornus stolonifera</td>
<td>Dogwood, Red-osier</td>
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<td>Crassulaceae</td>
<td>Sedum stenopetalum</td>
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<td>Cupressaceae</td>
<td>Juniperus scopulorum (?)</td>
<td>Juniper, Rocky Mountain</td>
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<td>Cyperaceae</td>
<td>Carex atherodes</td>
<td>Sedge, Slough</td>
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<td>Carex bebbii</td>
<td>Sedge, Bebb’s</td>
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<td>Carex geyeri</td>
<td>Sedge, Geyer’s</td>
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<tr>
<td></td>
<td>Carex lenticulatis var. impressa</td>
<td>Sedge, Shore</td>
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<tr>
<td></td>
<td>Carex nebrascensis</td>
<td>Sedge, Nebraska</td>
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<td>Carex stipata</td>
<td>Sedge, Awl-fruit</td>
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<td>Sedge, Inflated</td>
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<td>Eleocharis palustris</td>
<td>Spikerush, Creeping</td>
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<td>Cystopteridaceae</td>
<td>Cystopteris fragilis</td>
<td>Fern, Brittle</td>
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<td>Dennstaedtiaceae</td>
<td>Pteridium aquilinum</td>
<td>Fern, Bracken</td>
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<td>Poa palustris</td>
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<td>Vahlodea atropurpurea</td>
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<td>Ventenata dubia</td>
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**POLEMONIACEAE**

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<td>Microsteris gracilis</td>
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<td>Navarettia intertexta</td>
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<td>Phlox caespitosa</td>
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<td>Phlox hoodii</td>
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<td>Phlox longifolia</td>
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**POLYGONACEAE**

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<td>Eriogonum heracleoides</td>
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<td>Polygonum ramosissimum</td>
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**PRIMULACEAE**

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**RANUNCULACEAE**

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<td>Aquilegia formosa</td>
<td>Columbine, Crimson</td>
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| Common Name                        | Scientific Name                  | Family     | Status  
|-----------------------------------|----------------------------------|------------|---------
| Sugarbowls                        | Clematis hirtusissima            | N          |         
| Larkspur, Dward                   | Delphinium depauperatum          | N          |         
| Larkspur, Nuttall’s               | Delphinium nuttallianum          | N          |         
| Buttercup, Sagebrush              | Ranunculus glaberrimus           | N          | FACU    
| Buttercup, Straight-beak          | Ranunculus orthorhynchus         | FACW-      |         
| Meadow-rue, Western               | Thalictrum occidentale           | N          | FACU*   

**ROSACEAE**

| Common Name                        | Scientific Name                  | Family     | Status  
|-----------------------------------|----------------------------------|------------|---------
| Serviceberry                      | Amelanchier alnifolia            | N          |         
| Hawthorn, Douglas’s               | Crataegus douglasii              | N          |         
| Cinquefoil                        | Drymocallis glandulosa           | N          |         
| Strawberry, Woodland              | Fragaria vesca                   | N          |         
| Strawberry, Mountain              | Fragaria virginiana              | N          |         
| Avens, Large-leaved               | Geum macrophyllum                | N          |         
| Prairie Smoke                     | Geum triflorum                   | N          |         
| Ocean-spray                       | Holodiscus discolor              | N          |         
| Ninebark, Mallow                  | Physocarpus malvaceus            | N          |         
| Cinquefoil, Slender               | Potentilla gracilis              | N          |         
| Cinquefoil, Sulphur               | Potentilla recta                 | I          |         
| Burnet                            | Poterium sanguisorba (Sanguisorba occidentalis) |         |         
| Cherry, Bitter                    | Prunus emarginata                | N          |         
| Chokecherry                       | Prunus Virginians                | N          |         
| Rose, Baldhip                     | Rosa gymnocarpa                  | N          |         
| Rose, Nootka                      | Rosa nutkana                     | N          |         
| Rose, Wood’s                      | Rosa woodsii                     | N          |         

**RUBIACEAE**

| Common Name                        | Scientific Name                  | Family     | Status  
|-----------------------------------|----------------------------------|------------|---------
| Bedstraw, Catchweed               | Galium aparine                   |            |         
| Bedstraw, Northern                | Galium boreale                   |            |         

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| Populus tremuloides     | Aspen, Quaking               | N   | FAC+  
| Populus trichocarpa     | Cottonwood, Black           | N   | FAC  
| Salix spp.              |                              |     |  
|                         |                              |     |  

<table>
<thead>
<tr>
<th><strong>SCROPHULARIACEAE</strong></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Verbascum thapsus</td>
<td>Mullein, Flannel</td>
<td>I</td>
</tr>
</tbody>
</table>
| Veronica anagalis-aquatica | Speedwell, Water         | N   | OBL  
| Veronica scutellata     | Speedwell, Marsh             | N   | OBL  

<table>
<thead>
<tr>
<th><strong>TYPHACEAE</strong></th>
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<th></th>
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</thead>
</table>
| Typha latifolia         | Cattail, Broad-leaf          | N   | OBL  

<table>
<thead>
<tr>
<th><strong>VIOLACEAE</strong></th>
<th></th>
<th></th>
</tr>
</thead>
</table>
| Viola adunca            | Violet, Dog                  |     | FAC  
| Viola glabella          | Violet, Stream               | N   | FACW+  
| Viola purpurea          | Violet, Mountain             | N   |  

Date: January 22, 2021

To: Oregon Department of Energy
   C/O Rowe Patrick G (Patrick.G.Rowe@doj.state.or.us)

From: Michael McAllister

Re: Informal Discovery Requests

DEFINITIONS

1. “You” or “Your” or “ODOE” means Oregon Department of Energy, each of its present and former agents and other individuals acting or purporting to act on its behalf.

2. “Document(s)” means physical documents and electronically stored information, including any written, printed, typed, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in the possession, custody, and/or control of ODOE or known by ODOE to exist, including, but not limited to: papers, letters, internal and external correspondence and communications, electronic files, meta data, emails, messages, and computerized files.

3. “Morgan Lake Park” means the tract of land described as follows:

   Commencing at the Southeast corner of the Southwest quarter of the Southwest quarter of Section 13, in Township 3 South, Range 37 East of the Willamette Meridian; running thence West on the Section line 31.50 chains; then North 15.25 chains; thence West on a line parallel with the section line 21 chains; thence North at right angles to said last line 24.75 chains to the North line of the Southeast quarter of section 14, said Township and Range; thence East on the center line of said Section 14 a distance of 27.50 chains; thence North 10.50 chains; thence East 25 chains to the East line of the Southwest quarter of the Northwest quarter of Section 13, said township and range; thence South 50.50 chains to the place of beginning.

4. “Twin Lake” means the smaller of two lakes within the boundaries of Morgan Lake Park as recognized in the National Wetlands Inventory.

REQUESTS

Compliance OAR-345-022-0100, OAR-345-022-0060 (and incorporated OAR 635-415-0025), and OAR-345-022-0022 with respect to the Morgan Lake Alternative:
1. Identify all individuals likely to have discoverable information that you may use to support ODOE’s position that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

2. Identify: all persons on whose testimony you may rely to support your position that the Morgan Lake Alternative Route complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022; their professional background; and the substance of their expected testimony.

3. Please produce all documents including, communications, both internal and external, relating to the Morgan Lake Alternative Route (“MLA”).

4. Produce all communications with landowners relating to the MLA.

5. Describe ODOE’s process for evaluating the accuracy and validity of Applicant Idaho Power’s representations in its Application for Site Certificate (“ASC”).
   a. Do you conduct independent study to confirm that the representations in the ASC are accurate? If so, describe this process with respect to the Morgan Lake Alternative.

6. Does the ODOE recognize Applicant’s Mill Creek segment of the proposed route as the BLM’s FEIS agency preferred alternative, as Applicant represented in its ASC, (Attachment B-6 pp.1-3) and in its comparison of the corridor variations of the Morgan Lake Alternative and the Mill Creek (alleged FEIS) routes?
   a. What steps, if any, did you take to confirm the veracity of Applicant’s representation that the Mill Creek Route is the “BLM’s Agency Preferred Alternative in the FEIS.” (See Attachment B-6, Table 3.1-1).

7. Please identify, through production of or reference to a map, what ODOE recognizes as “BLM’s Agency Preferred Alternative in the FEIS” and what ODOE recognizes as the “Morgan Lake Alternative.”

8. Explain the purpose and significance of the comparison between the Mill Creek Route and the Morgan Lake Alternative found on Attachment B-6 2017, p. 9 Supplemental Citing Study.
   a. Did ODOE consider this comparison in making its determinations and if so how?
9. Idaho Power has failed to use consistent naming conventions over the life of this project and in the documents it has generated. Please clearly identify or produce a map clearly defining what ODOE understands to be:
   a. The Glass Hill Alternative
   b. The BLM Agency Preferred Alternative Route
   c. The Mill Creek Route

10. Admit that the BLM’s Agency Preferred Alternative in the FEIS is not the same as the Mill Creek Route referenced in the ASC.

11. If you deny Request for Admission No. 10, explain the basis for your denial, and produce all documents supporting this position.

12. Admit that the Glass Hill Alternative is the same as the BLM’s Agency Preferred Alternative in the FEIS.

13. If you deny the Request for Admission No. 12, explain the basis for your denial, and produce all documents supporting this position.

14. Admit that comparative analyses are relevant to evaluating compliance with, and appropriate mitigation required by, OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

15. If you deny Request for Admission No. 14, explain the basis for your denial.

16. Admit that consideration of alternative routes is relevant to compliance with, and appropriate mitigation required by, OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

17. If you deny Request for Admission No. 16, explain the basis for your denial.

18. Explain why Idaho Power was not required to present the MLA for public comment.

**OAR-345-022-0060 (Fish and Wildlife Habitat)**

19. Produce all internal and external communications, including but not limited to communications with Applicant Idaho Power, Oregon Department of Fish and Wildlife, the U.S. Bureau of Land Management, the U.S. Forest Service, landowners and other
private stakeholders, relating to fish and wildlife habitat along the Morgan Lake Alternative in the ASC.

20. Identify and describe what, if any, analysis has been completed with respect to the habitat of Morgan Lake Park, including Twin Lake.

21. Please identify which habitat category, as defined by Rule 635-415-0025, you consider each of the following to be and explain the basis for this determination:
   a. Morgan Lake Park
   b. Twin Lake
   c. Glass Hill Natural Area (encompassing property of Joel Rice)
   d. State-recognized wildlife refuges

22. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) with respect to the Morgan Lake Alternative, and identify the specific documents on which you relied.

23. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) with respect to the habitat of Morgan Lake Park, and identify the specific documents on which you relied.
   a. Explain how you determined that Idaho Power has met the mitigation requirements of OAR-345-022-0060 (and incorporated OAR 635-415-0025) specifically with respect to the habitat of Twin Lake, and identify the specific documents on which you relied.

24. To the extent you considered information not contained in the ASC for Nos. 22-23 above, please produce such information.

25. Identify the definition and/or interpretation of “unique assemblage” on which you rely for purposes of determining compliance with OAR-345-022-0060 and the incorporated OAR 635-415-0025.

26. In the ASC, Idaho Power states that “[t]he entire Morgan Lake Route Alternative was considered forested. No other Alternative Routes were considered forested…” (p. R-52). Please explain your determination that the Applicant’s pursuit of the only entirely forested alternative is consistent with the habitat mitigation goals of OAR 635-415-0025.
27. Produce all documents, including communications, regarding the presence of threatened and endangered species, both federally and state listed, along the Morgan Lake Alternative Route.

**OAR-345-022-0100 (Recreation)**

28. Produce all internal and external communications, including those from landowners, concerning impacts of the Project on Morgan Lake Park.

29. Explain in detail how you determined that the Morgan Lake Alternative complies with OAR-345-022-0100 with respect to Morgan Lake Park.

30. Identify the specific documentation on which you relied in determining the Morgan Lake Alternative complied with OAR-345-022-0100 with respect to Morgan Lake Park Recreation Area.

   a. To the extent you considered information not contained in the ASC, please produce such information.

31. Explain how you determined the proposed siting of the transmission line is consistent with objectives of the local government’s Morgan Lake Park Recreation Use and Development Plan (ASC, R-13).

32. Produce all documents, including internal and external communications, relating to your determination that the proposed siting of the MLA is consistent with the Morgan Lake Park Recreation Use and Development Plan.

Cc:
Idaho Power Company C/O Lisa Rackner ([lisa@mrg-law.com](mailto:lisa@mrg-law.com))
Colin Andrew
Kathryn Andrew
Irene Gilbert
Karen Antell
Louis Squire
Lois Barry
Anne March
Kevin March
Susan Geer
STOP B2H
EXHIBIT 6
and Administrative Project Record. Subject to and without waiving this objection, the Department refers Mr. McAllister to the resources referenced above in ODOE Response to Question 1.

**McAllister Question 4:** Produce all communications with landowners relating to the MLA.

**ODOE Response to Question 4:** ODOE objects to this request because the relevance of the requested discovery is not apparent related to Issues FW-13, SP-2 or R-2. ODOE objects to this request on the basis that it is not reasonably likely to produce information that is generally relevant to Issues FW-13, SP-2 or R-2. Moreover, the information requested is outside of EFSC jurisdiction, is not required by Division 21 application requirements under 345-021-0010(1), and/or is not necessary to meet an applicable EFSC standard.

**McAllister Question 5:** Describe ODOE’s process for evaluating the accuracy and validity of Applicant Idaho Power’s representations in its Application for Site Certificate (“ASC”).

**ODOE Response to Question 5:** The Department’s senior sting staff review all of the exhibits submitted in a preliminary ASC (pASC) and ASC against the applicable OAR Division 21 application requirements and issue requests for additional information if additional information is needed. The Department sends review requests to reviewing agencies, Special Advisory Groups, and Tribal Governments requesting comments on a pASC and ASC. As necessary, the Department may contract with an EFSC-approved consultant to assist in the technical review of an application Exhibit. An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the
application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010. OAR 345-015-0190(5).

**McAllister Question 5(a):** Do you conduct independent study to confirm that the representations in the ASC are accurate? If so, describe this process with respect to the Morgan Lake Alternative.

**ODOE Response to Question 5(a):** ODOE objects to this request because the relevance of the requested discovery is not apparent, and it is unclear how the request should be responded to related to Issues FW-13, SP-2 or R-2. Further, ODOE objects to this request on the basis that it is not reasonably likely to produce information that is generally relevant to Issues FW-13, SP-2 or R-2. Subject to and without waiving this objection, the Department reiterates that the summary of the ODOE application review process provided above in ODOE Response to Question 5 does not require “independent studies” or contracting with consultants to evaluate application materials. Further, if consultants are contracted with to assist in review of application materials they would be specific to an ASC Exhibit, impact, or other narrow question of interest rather than an independent study of an entire route or alternative route for potential impacts to all resources.

**McAllister Question 6:** Does the ODOE recognize Applicant’s Mill Creek segment of the proposed route as the BLM’s FEIS agency preferred alternative, as Applicant represented in its ASC, (Attachment B-6 pp.1-3) and in its comparison of the corridor variations of the Morgan Lake Alternative and the Mill Creek (alleged FEIS) routes?

**ODOE Response to Question 6:** ODOE objects to this request because the relevance of the requested discovery is not apparent, and it is unclear how the request is related to Issues FW-13, SP-2 or R-2. Further, ODOE objects to this request on the basis that it is not reasonably
February 5, 2021

Via Email

Jocelyn Pease, jocelyn@mrg-law.com; and Lisa Rackner, lisa@mrg-law.com; and David Stanish, dstanish@idahopower.com.

McDowell Rackner
Gibson 419 SW 11th Ave
Suite 400
Portland OR, 97205

Re: OAH Case No. 2019-ABC-02833 – Boardman to Hemingway Transmission Line – McAllister Responses to IPC Interrogatory Nos. 1-5, Request for Production Nos. 1-2

Preliminary Statement

Discovery in this matter is currently ongoing. Each and every following response is rendered and based upon information reasonably available at the time of preparation of these responses. I (Michael McAllister) reserve the right to amend these responses to these Document Requests and Interrogatories. I will provide supplemental responses in the event any further responsive material comes within my knowledge, possession, custody or control.

I have not completed my respective discovery in this action. I, therefore, specifically reserve the right to introduce any evidence from any source that may hereinafter be discovered in documents or other discovery produced and testimony from any witness whose identity may hereafter be discovered.

Idaho Power Discovery Requests:

Interrogatory No. 1

Identify each expert witness you intend to provide testimony on your behalf in this matter and for each expert witness state the following:
   a. Full name;
   b. Address;
   c. Qualifications, including a list of all publications authored by the witness within the preceding ten years; and
   d. The subject matter on which the witness is expected to testify.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and the I am still in the process of obtaining further information relating to my issues and determining witnesses from
whom I will provide testimony. Subject to and without waiving this objection, I respond as follows:

1) Witness
   a. Michael McAllister, Landscape Ecologist
   b. 60069 Morgan Lake Road, La Grande, Oregon, 97850.
   c. Qualifications
      i. Bachelor of Science from the University of Idaho in Wildlife Resources with emphasis in Communications.
      ii. Professional Natural Resource Inventory Consultant since ~1990.
      iii. Owner of Wildland Resource Enterprises (assumed business name with State of Oregon since 1984), specializing in contracted protocol survey methodologies for fisheries, forest, fuels, vegetation, and wildlife inventories across private, state, federal and tribal ownerships.
      iv. Michael McAllister has lived on the Glass Hill Monocline near Morgan Lake since 1979. Michael first approached Idaho Power Corporation in 2007 extending his professional expertise in a good-faith effort to site the B2H Transmission Line so-as-to minimize the direct and indirect impacts on the natural resources along the Glass Hill Monocline.
   d. All aspects of his qualified subject matter issues: FW-13, R-2, and SP-2.

2) Witness
   a. Susan Geer (as a private citizen, not representing USFS)
   b. 906 Penn Ave. La Grande OR 97850
   c. Botanist/Ecologist; MS Ecology Utah State U 1993, BS Knox College 1988; Currently WWNF Forest Long term Range Monitoring Coordinator; 28 years working for Wallowa Whitman NF, PNW Lab, Deschutes NF, Sevilleta LTER, Idaho Fish and Game; The Nature Conservancy; Long term vegetation monitoring, biological evaluations, rare plant surveys and monitoring, data collection, analysis and summaries for land management.
   d. All aspects of her qualified subject matter relating issues: FW-13, R-2, and SP-2.

3) Witness
   e. Dr. Karen Antell
   f. Dr. Karen Antell, PhD, Science Office, Eastern Oregon University One University Blvd, La Grande, OR 97850
   g. Qualifications:
      i. Bachelor of Science in Botany, University of California, Santa Barbara, 1979; PhD in Botany, Washington State University, Pullman, WA, 1985; Professor of Biology, Eastern Oregon University, La Grande, OR from 1989-present; Courses taught include:
         1. BIOL 111 Environmental Biology
         2. BIOL 211, 212, 213 Principles of Biology (majors Biology sequence)
         3. BOT 201, 202, 203 Plant Biology
         4. BIOL 313 Riparian Biology
         5. BIOL 334 Plant Taxonomy
Interrogatory No. 2

Identify each witness (other than those expert witness(es) you identified in response to Interrogatory No. 1) you intend to provide testimony on your behalf in this matter and for each witness state the following:
   a. Full name;
   b. Address; and
   c. The subject matter on which the witness is expected to testify.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and determining witnesses from whom I will provide testimony. Subject to and without waiving this objection, I respond as follows:

1) Witness
   h. John Williams
      i. Landowner 2500 acres adjacent to Morgan Lake Park, Box 1384, La Grande OR, 97850.
      j. Morgan Lake Alternative Route; integrity of twin lakes habitat; Morgan Lake Park Recreation Area; empirical knowledge of wildlife and habitat within the Morgan Lake Park and adjacent land under his ownership.

2) Witness
   k. Michael McAllister (for non-expert testimony)
      l. See above
      m. FW-13, R-2, and SP-2.

3) I also anticipate testimony from additional local landowners and Union County community members with interests affected by the Morgan Lake Alternative Route.

Interrogatory No. 3

Identify any and all documents (see definition of document below) or other exhibits you plan to offer as evidence in this matter, whether offered with filed testimony or at hearing.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues. Subject to and without waiving this objection, I respond as follows:
1. DPO comments and attachments/exhibits
2. Documents I submitted during the course of this contested case, including Petition for Party Status and attachments
3. Public Comment to Oregon Public Utility Commission and attachments
4. ODOE’s Proposed Order for the B2H Transmission Line and attachments/exhibits
5. ODOE Project Orders throughout the life of B2H Project
6. Idaho Power Company’s Application for Site Certificate and attachments/exhibits
8. Bureau of Land Management Final Environmental Impact Statement
9. Morgan Lake Park Recreational Use and Development Plan
10. Union County members’ letters regarding the B2H Transmission Line Project
11. Letters from Union County Land Owners to Idaho Power

24. Documents produced in response to Idaho Power’s Requests for Production
Interrogatory No. 4

Issue SP-2: Refer to page four of the comments that you submitted to the Oregon Department of Energy on December 21, 2018. Please identify with specificity the basis for your assertion that the Morgan Lake Alternative does not comply with the Energy Facility Siting Council’s Soil Protection Standard.

McAllister Response:

I object to this request as outside the scope of issues to be tried in this contested case. The content of my public comment relates to the threshold issue of my standing in this case and does not limit my evidence or argument to assertions in my DPO comments. Energy Facility Siting Counsel (EFSC) has already determined my standing with respect to certain issues raised in my public comments. As such, I further object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and the basis of my assertion that the Morgan Lake Alternative does not comply with EFSC standards continues to be informed by information and documents produced in ongoing discovery. Subject to and without waiving this objection, I respond as follows:

The composition and productivity of the soil impacted by the Morgan Lake Alternative is significant because the site potential of that soil is great. See Agricultural Experiment Station, and United States. Soil Conservation Service. Soil Survey of Union County Area, Oregon. [Washington, D.C.?]: The Service, 1985. I reviewed detailed soil-map units categorizing the soils impacted on both the Morgan Lake Route and the Glass Hill Alternative (which became the BLM’s Agency Preferred Alternative in both the DEIS and the FEIS). The plant communities and plant associations reflect that potential of the soil impacted by the Morgan Lake Alternative Route. The basis of my assertion is that the Project will have significant adverse impacts to soil. The significance of the impacts are demonstrated through comparison (see, e.g. Application for Site Certificate, Ex. B-6). I conducted a comparative analysis, which included EFSC’s soil standard, to demonstrate that the impacts are significant as demonstrated through comparative analysis (see BLM identified the environmentally preferred route in FEIS; discussed in analysis).

Also refer to EFSC Hearing on Appeal of Denial of Issues for Party Status, Nov. 20, 2020
https://soundcloud.com/odoe/november-energy-facility

Interrogatory No. 5

Issue FW-13: Refer to pages three and four of the comments that you submitted to the Oregon Department of Energy on December 21, 2018. Please identify with specificity the basis for your assertion that the Morgan Lake Alternative does not comply with the Oregon Department of Fish and Wildlife habitat mitigation goals and standards identified in OAR 635-415-0025(1) through (6).
McAllister Response:

I first object that it is unclear which document you refer to in this interrogatory. The date December 21, 2018 does not appear in my public comments. In addition, I object to this request as outside the scope of issues to be tried in this contested case. The content of my public comment relates to the threshold issue of my standing in this case and does not limit my evidence or argument to assertions in my DPO comments. EFSC has already determined my standing with respect to certain issues raised in my public comments. As such, I further object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further information relating to my issues and the basis of my assertion that the Morgan Lake Alternative does not comply with EFSC standards continues to be informed by information and documents produced in ongoing discovery.

See EFSC Hearing on Appeal of Denial of Issues for Party Status, Nov. 20, 2020
https://soundcloud.com/odoe/november-energy-facility

Request for Production No. 1

Please provide a copy of any and all documents (see definition of document below) on which you rely to support the positions you plan to take on the issues for which you have been granted Limited Party Status, including any exhibits, appendices, or attachments you intend to provide with the testimony of any witnesses you will be submitting in this case.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further documents relating to my issues. I further object to this request on the grounds that many of the documents that are responsive to this request are already in the possession of Idaho Power or are publicly available through online sources, (e.g. Final Environmental Impact Statement). I further object on the grounds that producing all documents on which I will rely identified in my Response to Interrogatory No. 3 (such as books or other voluminous resources or materials) would be unduly burdensome. Subject to and without waiving this objection, see McAllister documents produced on February 5, 2021 with these writing responses.

Request for Production No. 2

Please provide a copy of any and all documents (see definition of document below) received pursuant to all public records requests relevant to the issues in this contested case for which you have been granted Limited Party Status.

McAllister Response:

I object to this Request as premature given that discovery is ongoing, and that I am still in the process of obtaining further documents relating to my issues. Subject to and without waiving this
objection, I respond as follows:

I have not at this time received documents from public records requests.
"McAllister Affidavit 1"

Affidavit Submitted in Support of All McAllister Oppositions to Motions for Summary Determination (R-2, F-13, SP-2)
I, Michael McAllister, state and declare as follow:

1. I submit this Affidavit in support of my Opposition to Idaho Power Company’s Motion for Summary Determination.

2. I am a lifelong outdoorsman and the son of Oregon’s widely respected outdoorsman and journalist, Thomas H. McAllister (Tom), whose job consisted of writing about Oregon’s natural places for the Oregon Journal (which merged with the Oregonian). As a result, I grew up exploring every corner of Oregon, its natural settings, and the recreational opportunities this state provides. I first visited Morgan Lake Park in 1967 when Tom took the family to La Grande to cover the story of the joint effort to establish the Park as a cooperative city/state/federally funded project. I remember vividly the diverse and unique assemblage of birds at that time which included the first Black Tern that I had ever seen.

3. I obtained a B.S. in Wildlife Resources and Communications from the University of Idaho.

4. I have lived on and managed natural resources across the subject landscape for over 40 years. As an independent natural resource contractor, I have made a career specializing

McAllister Affidavit Page 1
in natural resources inventory for: federal, state, tribal, and private land stewards. Primarily, I gather data that is used for planning purposes, most often for National Environmental Policy Act (NEPA) analysis.

5. As someone who is intimately familiar with natural resources and the many landscapes, habitats, and outdoor opportunities in Oregon, I purchased my home and property over 30 years ago, approximately one quarter mile from Morgan Lake Park, precisely because of the unique extent of the wildland and diverse native integrity as demonstrated by the Morgan Lake Wetlands in Morgan Lake Park.

6. Based on my extensive experience in the natural settings of Oregon, Morgan Lake Park and the surrounding area is a rare, remarkable, irreplaceable gem for many reasons:

   a. Within the entirety of the Blue Mountains Physiographic Province, there are no other montane, ridgetop wetland lakes that are represented by such a diverse assemblage of both vegetation and wildlife species.

   b. A ten-minute drive from downtown La Grande brings you to the top of the Blue Mountains at Morgan Lake Park, which is situated on a Columbia River basalt plateau. As you approach from the east on Morgan Lake Road, the view to the west is to the distant horizon (25 miles) which is the divide between the Grande Ronde River Basin and the John Day River Basin. From where you turn right off the Morgan Lake Road and into the park, the transmission line will be within 500 feet, and grossly dominant to this sunset view scape. At 4,500 feet elevation, the expansive view shed is unprecedented. To the north, you look at the shield volcano complex, included: Mahogany Mountain, Sugarloaf Mountain, Green Mountain, Mount Emily, Thimbleberry Mountain, and Black Mountain at 25 miles distance. To the east, you view across the Grande Ronde Valley (largest in North America) to the Wallowa Mountains (“the Alps of the West”) where the Eagle Cap is visible on a clear day. To the south, you see into the drainages of Sheep Creek, Rock Creek, Graves Creek, Whiskey Creek, Jordan Creek, and Beaver Creek. These view sheds from the Morgan Lake area are little modified...
since 1812 when Robert Stewart first described (in journal) this landscape. This, as he and five others made the first cross-country trip from Astoria to St. Lewis, “discovering the Oregon Trail.” In the dark of night, the only lights to be seen in any direction are the very distant lights of traffic on interstate 84 towards Pendleton. The undeveloped natural integrity is central to the important recreational opportunities the Park provides. As a result, maintaining the maximum natural integrity is crucial to the unique and important recreational opportunities this Park provides to both to locals and travelers alike.

7. In the 30 years I have spent living below Morgan Lake Park, I have watched this nearly untouched landscape be enjoyed by thousands of visitors every year who engage in a variety of activities that rely on the natural setting. These have included, but are by no means limited to:

a. Elk Viewing, where herds (many hundreds) of elk grazing the vast mountain prairies that can be viewed from the park. These are views that, if constructed, would be polluted by B2H towers and the crackling buzz of the transmission line.

b. Star gazing. At the junction of the Morgan Lake County Road and the park entrance road, 20-30 cars will park for even the minor celestial events; eclipses can draw much greater attendance. The Project, if constructed, will ruin such activities as the currently unobstructed sky, which is necessary for the activity, will be polluted by 200 feet tall transmission towers within 500 feet distance. The silence of the night sky will be buzzing at Union County’s “#1 Hotspot Destination.”

c. Bird watching. Because of the unique and rare type of wetland habitat Twin Lake provides, Twin Lake is a common destination for birders, including myself. Recently, while watching from the south shore of Twin Lake, I watched a pair of mating sand hill cranes fly in, land, and do their courtship dance at the north edge of Twin Lake. I reported this observation to ODFW’s Kathy Nowak (pers. com) and she informed me that this pair of Cranes is banded with radio tracking, and
that the birds are nesting at Twin Lake this year. For the past six years a pair of bald eagles have nested in the vicinity of Twin Lake, where they have fledged young in each year. From Twin Lake, the view of the eagle’s current nest will be obstructed by a tower after construction, per Idaho Power’s tower maps in the ASC. What is most extraordinary about the birding at Morgan Lake Park is the extreme diversity of species that occupy the continuum of habitats: aquatic, emergent vegetation, wet meadow, dry meadow, mixed shrub, aspen, cottonwood, and old-growth ponderosa pine to Douglas-fir communities. It is noteworthy that the unique richness of this park was fully embraced by the City of La Grande when they developed the first Morgan Lake Park Recreational Use and Development Plan. Oregon Department of Fish and Wildlife started keeping creel census data for the park in 1960, and today the Park perimeter fence is still posted (30 plus metal signs) as a State Game Refuge, which I recently counted. The local residence and the people of Union County still understand Morgan Lake Park to be a State Game Refuge. Idaho Power also refers to Morgan Lake Park as a wildlife refuge in identifying its “designation or management.” (ASC Exhibit T, Attachment T-3-2 (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28. Page 89 of 291.).

d. Hiking around the perimeter of both Morgan Lake and Twin Lake, which are hikes that currently provide undeveloped natural settings. If the Project is constructed, these hikes will no longer consist of natural settings as the towers would be in view.

8. As a La Grande local who enjoys nature, I am a “typical” visitor to the park. I enjoy the recreational opportunities I can pursue at Morgan Lake Park precisely because there is no development. My enjoyment of the activities I engage in at the Park, including wildlife viewing, bird watching, hiking, and star gazing are dependent on the natural setting and integrity, which has to date been preserved. The recreational opportunity of viewing wildlife in unadulterated natural setting cannot exist under, or adjacent to development such as B2H.
9. Using my professional skills and knowledge, and based on the ASC Attachment P1-8, Habitat Categorization, Union County, Map 157, I identified the acreage of the Twin Lake wetland that falls within the City of La Grande’s Morgan Lake Park boundary. On the ground, I transcribed the eastern site boundary on the ground in relation to the Morgan Lake Park property corner at GPS coordinates; 45 degrees, 17 minutes, 57.7 seconds / 118 degrees, 08 minutes, 44.0 seconds. On the northing, the site boundary is 202 feet into the park. On easting, the site boundary is 331 feet into the park boundary. From this the calculated overlap of the site boundary is 0.77 acres of wetland habitat affected.

10. Attached as Exhibit 1 to this affidavit is a true and accurate copy of the August 31, 2017 City of La Grande Comments from La Grande City Manager regarding B2H project.

11. Attached as Exhibit 2 to this affidavit is a true and accurate copy of the April 27, 2018 City of La Grande Comments from La Grande City Manager regarding B2H project.

12. Attached as Exhibit 3 to this affidavit is a true and accurate copy of the 2019 City of La Grande Proclamation Declaring and Clarifying Opposition to the Boardman to Hemingway Powerline Project.

13. Attached as Exhibit 4 is a true and accurate copy of a Map Idaho Power created (Map 65) depicting Union County land parcels and the project cite boundary and where the site boundary crosses Morgan Lake Park.

14. Attached as Exhibit 5 is a true and accurate copy of a map Idaho Power Map that Idaho Power provided to my neighbor John Williams.

15. Attached as Exhibit 6 is a true and correct copy of my response to Idaho Power’s ex parte communications with the Council, submitted to the Office of Administrative Hearings on May 28, 2021.

June 24th, 2021

Michael McAllister

McAllister Affidavit Page 5
Signed before me this 24th day of June, 2021 by Michael McAllister.

Charles H. Gillis, Notary Public for Oregon
My Commission Expires: June 19, 2023
McAllister
Affidavit

EXHIBIT 1

EXHIBIT 1
MEMORANDUM

TO: Kellen Tardaewether  
Oregon Department of Energy  
550 Capitol St. N.E., 1st Floor  
Salem, OR  97301

FROM: Robert A. Strope, City Manager  
City of La Grande, Oregon  
P.O. Box 670  
1000 Adams Avenue  
La Grande, OR 97850  
(541) 962-1309  
rstrope@cityoflagrande.org

DATE: August 31, 2017

RE: City of La Grande Comments on the Amended Preliminary Application for Site Certification for the Boardman to Hemingway Transmission Line

General Comments: The La Grande City Council, in partnership with the Union County Commissioners conducted two public meetings to listen to comments from residents regarding this project as part of the review of the Amended Preliminary Application referenced above. The public sentiment expressed at those meetings was overwhelming in opposition to the Boardman to Hemingway Transmission Line. The basis for that opposition included, but was not limited to reduced property values to homes along the proposed route; view shed impacts throughout the area; environmental impacts both during construction and when the transmission line becomes operational; impacts to recreational facilities such as Morgan Lake; and a lack of public notice and involvement throughout the process. Of particular concern to the City Council was the decision by the applicant not to submit the BLM preferred route as the proposed route, or at the very least an alternative for consideration for Site Certification. Of the two routes identified in the application, the applicant selected the most impactful to the City of La Grande of those two as their proposed route.

As a general observation, the application is missing information in several areas and therefore is incomplete. These areas are identified in our review. The document also appears to be a boiler plate product that addresses general items, with no resolutions for local government regarding the negative impacts that come with it, and therefore it leaves the burden to the local government (cities and counties) to deal with. It also doesn’t recognize approved master
planning studies done by local governments where the submitted site location may create conflicts within such studies. The submitted sites appear to be a “copy and paste version” for a considerable amount of the document and replicates information that doesn’t apply to the area they are addressing. This document was extremely difficult to maneuver through to find information. Also, with such a major project of this nature, the limited amount of time allowed to review the information submitted was inadequate, particularly given the way the materials are organized.

Later in this review we touch on infrastructure impacts which are largely unknown due to the lack of specificity in the application. Based on this, we would ask that a condition of any approval include that the applicant be required to mitigate any adverse impacts to the City’s infrastructure related to the project, particularly those related to the use of City roads that are not well suited for the anticipated heavy vehicle traffic.

The City of La Grande’s comments are provided in part as general comments and in part using the table provided where we were able to identify specific sections of the Application that correlate to our comments. Our inability to specifically link some of our general comments to page and paragraph in the application is directly related to the short timeframe provided for our review and the manner in which the information is scattered throughout the over 17,000 pages in the document. We have done our best with the limited time and would ask that we not be penalized for the placement of our comments and that all our comments be given due consideration.

**Geological Review** – The south and west hills of La Grande have been classified by the adopted engineering report titled “Engineering Geology of the La Grande Area, Union County, Oregon”, dated 1971, as a geological hazard area. The study addresses numerous fault lines from Sheep Creek to and through the La Grande area, which covers the area submitted for site selection. That document is attached and supports concerns for all work proposed within the submitted study area. This plan is addressed in the City of La Grande Comprehensive Plan in addressing Goal 7.

There is nothing that could be found addressing storm sewer treatment, storm water volume control for impervious areas or dust control. Waters from the south and west hills around La Grande flow directly into and through the City. La Grande has numerous inversions, creating air quality problems, and is recognized by the Department of Environmental Quality as a nonattainment city. These health and environmental hazards should have been addressed.

**Exhibit T – Recreation.**

**View Shed Concerns of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Morgan Lake Park is the City of La Grande’s only campground and is heavily used by local and regional day users as well as out of state, local, and regional campers. The park is open from late April thru October and boasts an average of over 50 vehicles per day and thousands of park visitors per year. Park users currently participate in a variety of recreational activities including; camping, fishing, non-motorized boating, bird watching, wildlife viewing, star gazing, paddle boarding, swimming, and more.

There is one route to the park via Morgan Lake Road that crests at the top of the ridge where an access road enters the park. This coincidentally is the only exit to the park as well. Currently, park users experience vast views of mountain prairies and mature stands of Ponderosa Pine and Douglas Fir.
In addition to the environmental impacts Karen Antell details in her report below, the Morgan Lake alternative proposed route that travels through the park boundary, close to Little Morgan or Twin Lake would severely impact the view shed and recreational experience of park users. The first and last impression of the park would be the view of the power lines. The noise created from the lines will affect the peaceful outdoor recreation experience for all park users.

This heavily used park is a quiet sanctuary only minutes from town where thousands of local, regional, and out of state visitors come to enjoy their favorite outdoor recreational activities. The noise and the view shed and environmental impact will cripple our efforts to provide the same outdoor recreation experience for our park visitors.

Given Idaho Power elected not to include the BLM preferred route, the impacts to the City of La Grande, particularly as they relate to the view shed and recreational amenities are much more significant than they otherwise would have been. Accordingly, if the proposed and/or alternate route are approved it would be appropriate for the applicant to mitigate these adverse impacts by improving and enhancing the recreational facilities that will be degraded.

Assessment of the natural qualities of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:

Dr. Karen Antell, PhD, Professor of Biology, Eastern Oregon University prepared the following summary of the ecological qualities of the Morgan Lake area and is incorporated as part of the City’s review:

I have a PhD in Botany, and have been employed as Professor of Biology at Eastern Oregon University since 1987. Over the past 30 years, I have developed extensive knowledge of the biological diversity exhibited at Morgan Lake and the associated wetlands surrounding Twin Lake (a.k.a. Little or Lower Morgan Lake), with primary emphasis on vegetation, Lepidopterans (butterflies and moths), birds, and amphibians.

Introduction: Morgan Lake Park was created by the City of La Grande in 1967 and a plan was adopted as a guiding document for management of the park. The Morgan Lake Park Recreational Use and Development Plan states that “A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users.” Additionally, the “Little Morgan Lake area” (a.k.a. Twin Lake) “should be left as a natural habitat for birds and animals with little change or interference from man’s activities.” The area has been managed with an emphasis on development of recreational uses such as “fishing, bird watching, nature study,” and non-motorized boating. Domestic livestock are not allowed within the park.

Morgan Lake Park has existed essentially unchanged since the mid-1970s. To my knowledge, external threats to the natural and recreational values of the lake (other than wildfire) have not previously been identified, and no comprehensive biological inventories have been completed. The possibility of development of the B2H power line in close proximity to the park warrants an assessment of potential impact to the natural and recreational qualities of the area.

This report summarizes some of the unique natural qualities of Morgan and Twin Lakes that may be altered due to construction of the B2H power line in close proximity to the park.
1. Ecological Uniqueness and Importance of Morgan Lake Park

Morgan Lake and its neighboring environs constitute an area of significant geologic and biological importance. The perennial wetlands are snowmelt and spring fed with no stream-flow inlets or outlets. The presence of these wetlands on the top of the Glass Hill ridge is both unique and of enormous ecological importance. There are no other montane, ridge top wetlands of its size or ecological significance in the area.

Prior to its acquisition as a city park, a dam was constructed on the north side of Morgan Lake in order to store water for both hydropower generation and agricultural use. Consequently, what originally would have been a palustrine wetland was developed into a perennial lake, with relatively little surface fluctuation. The lakeshore edge has been altered with introduction of rock revetments in some areas. Although the ecological qualities of this lake have been altered significantly over time, the lake remains a permanent water source with aquatic insect and introduced fish populations that sustain diverse bird species that otherwise are rare on Glass Hill.

Twin Lake is located west of Morgan Lake (Fig. 1). This lower-lying area has not been dammed or physically altered. There are no stream inlets or outlets. Water levels fluctuate throughout the year, creating a variety of habitats for many different species. Soft edges harbor diverse emergent vegetation as well as submerged aquatic species. This wetland serves as a highly productive water source for amphibian reproduction and nesting waterfowl.

Figure 1. Google Earth image of Morgan Lake and Twin Lake, 16 August 2017.

2. Biological Diversity at Morgan Lake and Twin Lake Area

Morgan Lake Park hosts a maturing Ponderosa pine/Douglas-fir forest. Timber harvest is not prescribed in the Recreational Use and Development Plan, and tree cutting has been
limited to removal of diseased or hazard trees. No commercial logging has occurred since at least 1967. In addition to the development of this maturing forest on deeper-soiled sites, the area also hosts an outstanding diversity of understory and herbaceous vegetation. Because of exclusion of livestock since establishment of the city park, the area has been less impacted by soil disturbance and invasive weed incursion than surrounding private lands.

Twin Lake represents a rare palustrine wetland that remains in excellent condition. Virtually the entire northern half of Glass Hill is in private ownership, where most wet meadows have been highly impacted by livestock grazing. Twin Lake has not been drained or otherwise “managed”, and the diverse aquatic and emergent wetland plants native to the area are still almost entirely intact.

Following is a summary of some of the most unique or ecologically significant qualities of Morgan Lake Park, emphasizing the following: forested areas; understory/herbaceous vegetation; birds; amphibians; and Lepidopterans (butterflies and moths).

Maturing Ponderosa pine/Douglas-fir forest:
The forest surrounding the lake includes a mixed stand of maturing trees and smaller diameter stock. There are scattered downed trees and snags, however campers have scavenged much of the dead wood for firewood over the years. Visitors have the opportunity to experience a forest with diverse understory, unimpacted by grazing, and that is developing mature qualities. Although many visitors may not be able to articulate that this is why they love to come to Morgan Lake, nevertheless, this small pocket of high-quality forest draws a large number of visitors throughout the year because they just “love going up there”.

Because of intense commercial logging throughout much of Glass Hill, these large trees represent significant potential for wildlife use. Nesting species that require larger-diameter trees that frequently are observed at Morgan Lake include: Great Horned Owl, American Bald Eagle, and Osprey.

Other cavity nesting species typically require not only snags, but also abundant insect populations to support the high protein requirements for rearing young nestlings. Morgan Lake produces hatches of aquatic insects that sustain active breeding populations of the following species: Violet-green Swallow, Tree Swallow, Western bluebird, Mountain bluebird, several flycatcher species.

Mature conifers also provide food resources for seed eating bird species as well, including Red, and White-winged crossbills, a variety of finches, Pine siskins, Black-capped and Mountain chickadees.

Aspen, Cottonwood and Willow:
In addition to coniferous forest trees, the park also sustains a few small groves of Quaking aspen, which are otherwise rare on Glass Hill. Large, Black cottonwoods are found at the north end of the lake. These fast-growing, native trees provide nesting and roosting habitat for a wide variety of bird species. They also harbor insects that provide food to migratory and residential bird populations. Willow thickets occur around the perimeters of both Morgan Lake and Twin Lake. Their dense vegetation provides essential cover for
successful nesting of many birds, especially neo-tropical migratory species, such as warblers and Western tanagers.

**Understory/Herbaceous Vegetation:**
Shrub and forb species diversity at Morgan Lake Park is very high. Open, thin-soiled areas support a healthy example of Palouse Prairie type native grassland. In addition to native grasses, such as Sandberg’s bluegrass and Oatgrass (Danthonia) species, the area hosts many flowering forbs, including Lomatium, Mariposa lily, Prairie smoke, Larkspur, and Phlox.

Forest areas are dominated by Idaho fescue, Snowberry, Mule-ears, Chokecherry, Elderberry, Ocean spray, and Wild rose. Other flowering species include Lupine, Golden pea, Goldenrod, Sugarbowls, Buttercups and sedges. Examples of birds supported by fruiting shrubs at Morgan Lake include: Black-headed grosbeak, Spotted towhee, American robin, and waxwings.

**Aquatic Vegetation:**
Twin Lake is notorious for its lush “forest” of native Yellow pond (water) lily. This dense vegetation provides excellent cover for a wide variety of nesting waterfowl, including ducks, grebes, coots, and others. Other unusual and interesting aquatic plants that can be seen at Twin Lake (and nowhere else on Glass Hill) include Bogbean (*Menyanthes*) and Bladderwort (*Utricularia*), an insectivorous plant.

**Birds:**
An enormous diversity of bird species utilizes the Morgan Lake area, both for nesting and feeding. Raptors hunt the open areas, and forest dwellers occupy the timber. Waterfowl utilize both Morgan Lake (feeding) and Twin Lake (nesting). Morgan Lake is a stopover for migratory diving birds that require deeper water than is found elsewhere in the area. For example, Common loons are typically found at Morgan Lake in fall and spring, but not in other areas of Union County. Cormorants and even Great blue herons also have become a common sight around the lake.

Habitat for woodpeckers is especially important at Morgan Lake. Several species of woodpeckers that are on the ODFW Sensitive-critical species list for Oregon have been detected at the park, including Lewis’ woodpecker, Pileated woodpecker, and White-headed woodpecker.

Other bird species that now are rare or extirpated from western Oregon, but persist at Morgan Lake Park, include Common nighthawks and Western meadowlarks, both of which currently are listed as sensitive species in Oregon.

**Amphibians:**
Native amphibian populations have been decimated throughout the Grande Ronde Valley due to a combination of habitat loss, invasive Bullfrogs and, likely the Chytrid or BT fungus. The Morgan Lake system, so far, has avoided bullfrog infestation, and still supports healthy native frog populations. Twin Lake is a critical breeding area for Pacific chorus frogs. Columbia spotted frogs (Sensitive-critical species status) have been documented at Morgan Lake, and therefore must be breeding in the area. Suitable habitat for Long-toed salamanders and Western toads (Sensitive species status) also exists.
**Lepidopterans (butterflies and moths):**
I have conducted nighttime surveys of moth species at Morgan Lake annually since 2014. The area hosts a surprisingly diverse and unique assemblage of species that is not replicated on other areas of Glass Hill. Many lepidopterans, especially moths, require specific host plant species in order to rear their larvae. Therefore, the high diversity of herbaceous plant species translates into a very high diversity of butterfly and moth species. After hatching, adult butterflies and some moths require nectar sources for feeding until they have reached reproductive maturity and produced eggs. The variety of flowering shrubs and herbaceous plant species at Morgan Lake provides critical feeding habitat for both larval and adult butterflies and moths, and sustains an exceptional level of species diversity. Healthy populations of Lepidopterans in turn support many species of birds and bats that feed on these insects throughout all seasons of the year.

**Bats:**
Although I am unaware of any bat surveys that may have been conducted in the Morgan Lake area, it is possible that some data exist. Morgan and Twin Lakes, and their surrounding forested habitat, constitute exceptionally important roosting, breeding and feeding habitat for a wide variety of bat species, some of which no doubt are listed as sensitive and/or critical species in Oregon.

**Conclusions:** In conclusion, Morgan Lake Park represents a unique area on the Glass Hill ridge because of a combination of several features: public ownership, no recent commercial timber harvest, no livestock grazing, and management for quiet recreation. The area currently is free from intrusion of man-made infrastructure except for limited access roads. Construction of a 500 kV power line within close proximity to the park would result in degradation of the natural qualities of the area, including wide-spread impacts to the wildlife, and plant life. In addition to the visual impact of the power lines themselves, significant impacts due to tower footprint construction, construction and maintenance of access roads, and herbicide use, could have profound impact on water quality of Twin Lake. Introduction of invasive plant species could have irreversible impact on the health and diversity of the native flora and all of the bird, insect and mammal species that depend on these resources.

Developing a well-informed understanding of the risks and possible outcomes of power line construction in the area should be a high priority for the city. No matter how well intentioned, mitigation efforts seldom replace or restore the qualities that have been lost or damaged to their previous condition. The City of La Grande is very concerned about any alteration to the sensitive, outstanding and unique qualities of Morgan Lake Park (Fig 2).
Figure 2. Morgan Lake alternative (left) and Mill Creek alternative (right) routes near Morgan Lake Park.
McAllister Affidavit

EXHIBIT 2

EXHIBIT 2
MEMORANDUM

TO: Kellen Tardaewether  
Oregon Department of Energy  
550 Capitol St. N.E., 1st Floor  
Salem, OR 97301  

FROM: Robert A. Strope, City Manager  
City of La Grande, Oregon  
P.O. Box 670  
1000 Adams Avenue  
La Grande, OR 97850  
(541) 962-1309  
rstrope@cityoflagrande.org  

DATE: April 27, 2018  

RE: Idaho Power Responses to City of La Grande Comments on the Amended Preliminary Application for Site Certification for the Boardman to Hemingway Transmission Line  

General Comments: The La Grande City Council renews our objection to the Proposed Route in the preliminary application and again strongly requests that Idaho Power remove the Proposed Route from their application and instead use the Morgan Lake Alternative or ideally reconsider the BLM preferred route. As we stated previously, of the two routes identified in the application, the applicant selected the one most impactful to the City of La Grande as their Proposed Route. In their response Idaho Power states they intend to construct on the route that has the most support from the local community. The local community does not support the B2H project as evidenced by the overwhelming adverse public response each time the topic is on an agenda. Therefore Idaho Power is unlikely to get community support for any route as it will be perceived as support for the project. Perhaps another way to put it, the La Grande City Council, which represents over the more than 13,000 residents who are in closest proximity to B2H, has stated they object more to the Proposed Route than the Morgan Lake Alternative. This should be more than sufficient for Idaho Power to remove the Proposed Route from their application. 

The City of La Grande is disappointed that the Idaho Power response to our comments repeatedly reference a lack of specific deficiencies given one of the main points we and other jurisdictions have made is the preliminary application itself does not provide sufficient information in many areas to adequately review what they are proposing to construct as we would with a normal land use application that had detailed site plans.
Given the lack of detail contained in the preliminary application, we would ask that conditions of approval be included to protect the City’s interests and avoid any disputes in the future should the project be approved. Some specific conditions we are requesting are shown in bold in the following paragraphs. Idaho Power could also revise their application to include these to streamline the process.

Below are additional comments regarding the Idaho Power response:

**Exhibit T – Recreation.**

**View Shed Concerns of Morgan Lake Park with respect to possible impacts of B2H power line construction in close proximity to the park:**

Despite the detailed information provided by Dr. Karen Antell, PhD, Professor of Biology, Eastern Oregon University in our previous submission, Idaho Power’s states that we have not provided evidence of impacts the line may have on Morgan Lake. It is difficult to be more precise on impacts given the lack of detail in the Idaho Power preliminary application that we pointed out. Their submission lacks details regarding how they plan to access the line during construction, the types and quantities of equipment that will travel up Morgan Lake Road during construction. Idaho Power’s staff acknowledged during public meetings that the towers would be an impact on the view shed but that people would get used to it over time. We would ask that Idaho Power be required to provide evidence that such a project does not adversely impact an amenity such as Morgan Lake. Another option would be for Idaho Power to consider physical improvements at Morgan Lake to enhance the recreational experience and help offset the view shed impacts.

At a minimum, the City would ask that if the project is approved, a condition of approval would include that for the approximately 1.5 miles of the line that would be in view from Morgan Lake that H Frame towers be used to help mitigate the adverse impact to the view shed. If the Proposed Route is selected instead of the Morgan Lake Alternative, a condition of approval should be added to require H Frame towers in the view shed visible from the City of La Grande. Again, the City of La Grande adamantly opposes the Proposed Route and would ask Idaho Power to remove it from their application.

**Exhibit U – Public Services include utilities such as road systems, water, sanitation services, power, and other amenities necessary for the construction.**

If Morgan Lake Road will be used for construction access, for the safety of the public and Idaho Power’s construction crews, the City of La Grande requests that a condition of approval be included to require Idaho Power to widen Morgan Lake Road to a standard 22 foot width from the end of the asphalt in the vicinity of 91 Walnut to the end of the road with guardrails from Skyline Drive to Marvin Road. Given the grade and winter conditions, asphalt would not be the preferred surface, but rather a minimum 6 inch thick rock and gravel surface using base rock from Harney Rock & Paving Company, Haines, Oregon, which has proven to be ideally suited to the existing conditions on this road. **If Glass Hill will be used for construction access, it would also need to be improved to these same standards with the addition of improving the intersection of Glass Hill and Morgan Lake Road to allow for left turns from Glass Hill onto Morgan Lake Road.** Glass Hill would not require guard rails. Soil stabilization, slide areas, and improved drainage will be required to be addressed as part of needed improvements to accommodate construction traffic, as well as the use of Mag Chloride.
for dust control and to aid in the stabilization. Union County Public Works can provide more
detailed information regarding the standards.

Route for construction traffic, both proposed and Morgan Lake Alternative: If the project is
approved, in addition to the actions Idaho Power stated they would be taking regarding
traffic, the City would ask that as a condition of approval Idaho Power will use the following
route: From Highway 30 to Gekeler Lane to C Avenue to Walnut Street to Morgan Lake
Road to Glass Hill Road. Further, that prior to the start of construction, the section of C
Avenue from the intersection of C Avenue and Sunset and the section of Walnut from
Morgan Lake Road to C Avenue be improved to City of La Grande Class I standards to
accommodate the construction traffic and restored if needed upon completion of the
project. Also, that Idaho Power be required as a condition of approval to repair any damage
resulting from their vehicles and equipment that occur during construction and that upon
completion of construction all infrastructure be restored to as good or better than it was
prior to construction.
McAllister Affidavit

EXHIBIT 3

EXHIBIT 3
CITY OF LA GRANDE
PROCLAMATION

Declaring and Clarifying Opposition to the
Boardman to Hemingway Powerline Project
2019

Whereas, the City of La Grande is the only community of its size along the entire route of the proposed Boardman to Hemingway (B2H) Powerline where view shed and infrastructure impacts would be direct; and

Whereas, the over 13,000 citizens of La Grande will not receive any direct benefit of any nature from the B2H Powerline; and

Whereas, the City of La Grande has repeatedly expressed concerns that the most impactful route to the City of La Grande was selected as the Proposed Route despite the fact that it would have the most adverse impacts to the City of La Grande including but not limited to view shed; reduced property values of homes in the vicinity of the Proposed Route; environmental impacts during construction and when the transmission line becomes operational; and proximity to City water infrastructure; and

Whereas, the Morgan Lake Alternative would adversely impact the view shed of the City’s Morgan Lake Park and could adversely impact the experience of visitors to this unique Park; and

Whereas, during construction, certain residential and arterial streets within La Grande City limits used to access property outside the City limits could experience damage from hauling loads that may exceed road standards; and

Whereas, the City believes the BLM Preferred Route is a viable option that would not impact the City of La Grande;

Now Therefore, I, Mayor Stephen E. Clements, on behalf of the City Council of La Grande, Union County, Oregon, do hereby declare we oppose the construction of the B2H Powerline, and further request that Idaho Power and its collaborators withdraw their application to construct the powerline. If the application is not withdrawn, we request the application be revised to include the BLM Preferred Route as the only route in the vicinity of La Grande; or at worst, the application be modified to remove the Proposed Route from consideration. The City Council also recognizes the ultimate decision regarding placement and construction of the B2H powerline lies solely with the State of Oregon, and recognizing such, will continue to request that if the Oregon Department of Energy ultimately approves the application, that they impose conditions of approval that address the actual and potential impacts to the City of La Grande to mitigate those impacts.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of La Grande, Union County, Oregon, this Third (3rd) day of April, 2019.

[Signature]
Stephen E. Clements
Mayor

ATTEST:

[Signature]
Kayla M. Nichols
City Recorder
McAllister Affidavit

EXHIBIT 4
McAllister
Affidavit

EXHIBIT 5
McAllister Affidavit

EXHIBIT 6
May 28, 2021

Alison Greene Webster, Senior Administrative Law Judge
Oregon Department of Energy
500 Capitol Street NE
Salem OR 97301

SENT VIA EMAIL TO: OED OAH Referral@oregon.gov and service list


Dear ALJ Green Webster,

I greatly appreciate the opportunity to respond to Idaho Power Company’s (IPC) improper ex parte communication to the Energy Facility Siting Council (EFSC) seeking to influence the outcome of this case. It is troubling that IPC presumably regarded such attempts to influence the decision-maker on matters directly related to issues parties are currently litigating to be appropriate and raises further concerns of undisclosed past conduct and communications, which have been sought and denied in discovery.1 Here, IPC not only asks EFSC to halt its rulemaking duties, but to ensure that Oregon Department of Energy (ODOE) will not interfere with IPC’s transmission line to the detriment of Oregon’s protected areas, scenic resources, recreation resources, and the interests of its residents.

IPC Misconstructs the Project History to Claim Unfair Surprise.

IPC’s most recent ex parte attempt to improperly influence the outcome of this case is consistent with a past pattern of misconstruing facts, the record, and the history of this project in order to achieve IPC objectives that provide no benefit to the Oregon public. Significantly here, while IPC claims the rulemaking in question would unfairly prejudice IPC such that the Council should “pause the rulemaking entirely” and direct ODOE staff to ensure that the B2H project is not impacted, any prejudice IPC suffers is a result of its own making. Not only has IPC long been aware of the issues relating to Protected Areas, Scenic Resources, and Recreation on the Morgan Lake Alternative, which petitioners are now litigating in this case, it chose to pursue this high impact route instead of the Bureau of Land Management’s (BLM) Agency Preferred Route—identified as the Agency Preferred Alternative since 2014—that obviates the issues IPC details in its ex parte communication.

I sought such communications in my discovery requests and subsequent motion for discovery order, which was denied on the basis of relevance. IPC’s April 22, 2021 letter to EFSC underscores the relevance of communications I requested but have been withheld. I respectfully request that the ALJ reconsider my Motion for Discovery Order with respect to my requests for IPC communications.

1
Among material misrepresentations IPC has made in its Application for Site Certificate (ASC) relevant to its current claim of unfair prejudice are those found in **IPC’s Application for Site Certificate, Exhibit B Project Description**, and the associated **Attachment B-6 2017 Supplemental Siting Study**. Indeed, the entire Supplemental Siting Study as it relates to the routes with which IPC’s ex parte communication is concerned (Mill Creek and Morgan Lake Alternative) is founded on false premises including that (1) the Mill Creek route was the BLM’s agency preferred route in its FEIS (it was not), and (2) that the actual Agency Preferred Route in the FEIS, the Glass Hill Alternative, was not carried forward (it was). Here, IPC misrepresents, among other things: the origin of both its Proposed Mill Creek Route and its Morgan Lake Alternative; the BLM’s study of identified routes; the BLM’s conclusions in its Final Environmental Impact Statement (FEIS); and the BLM’s fundamental role in this process, falsely claiming the BLM developed the Mill Creek route. Importantly, IPC’s concerns expressed in its April 22, 2021 ex parte communication primarily, if not entirely, pertain to this stretch of the transmission line through Union County and the contested case issues relating to Protected Areas, Scenic Resources, and Recreation on this segment—the standards subject to the current rulemaking with which IPC is concerned.

Understanding the significance of the falsehoods contained in **Attachment B-6 2017 Supplemental Siting Study** requires explanation. In December of 2014, the BLM identified the Glass Hill Alternative Route (referenced in the ASC) as the Agency Preferred Alternative for this project. In November 2016, the BLM identified this same route as its Agency Preferred Alternative pursuant to its analysis of proposed routes under National Environmental Policy Act (NEPA). Contrary to this well-documented fact, IPC represents in its 2018 Exhibit B Project Description that the “Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route” as its “Basis for Corridor Change.” See Table B-6, Page B-39 of **Exhibit B (IPC Basis for Corridor Change)**. This is patently false. In fact, the Glass Hill Alternative Corridor, has been the Agency Preferred Route since 2014 when it was identified as the NEPA preliminary preferred alternative in the Draft Environmental Impact Statement (DEIS).

Further, IPC falsely represents that the Mill Creek Route (rather than the Glass Hill Route) is the BLM’s Agency Preferred NEPA Alternative. For example, Table 3.1.1 “Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC” (Attachment B-6 at p. 3) represents the following:

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2 The BLM did not “develop” any routes for this project. The BLM only evaluated routes that were developed by others and presented for comparative analysis.
As stated above, Mill Creek is not the BLM’s Agency Preferred Alternative in the FEIS. The BLM did not analyze this route. IPC further states that “In Union County, the Proposed Route includes portions of the Proposed Route that were included in the Draft Amended pASC and the Mill Creek Route that was developed by the BLM.” (Exhibit B, Attachment B-6 at p.9) This is, again, a gross misrepresentation of the Mill Creek (IPC Proposed) Route. Not only is the Mill Creek Route not the Agency Preferred Alternative, as conveyed throughout IPC’s ASC, the Mill Creek route was not developed by the BLM. As stated above, the BLM did not “develop” routes for this project, but evaluated routes presented, which did not include either the Mill Creek or Morgan Lake Route.

IPC has since acknowledged in its discovery responses that the Mill Creek Route is not the BLM’s Agency Preferred Alternative in the FEIS, as it falsely claimed in its ASC. Specifically, in response to McAllister Request No. 13, IPC states “Table 3.1-1 indicating that the Mill Creek route was part of BLM’s agency preferred alternative in the Final EIS, that statement is incorrect.” (See attached Exhibit 1, IPC Discovery Responses). IPC has also represented to the Hearing Officer that this is a “typographical error.” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as the misrepresentation is consistently perpetuated throughout the Exhibit B Project Description (2018) and Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at p.1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route). Thus, IPC’s claim this is a typo is not credible and implies that either IPC is unaware of the of the contents of its own application or that it purposefully misrepresented this fact to ODOE.

### Table 3.1-1. Summary of the EFSC and NEPA Status of the Routes and Stations Considered in the Amended pASC

<table>
<thead>
<tr>
<th>Route Originator</th>
<th>Route Designation</th>
<th>EFSC Status</th>
<th>Status in FEIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union County</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IPC</td>
<td>Proposed Route</td>
<td>Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
<tr>
<td>IPC</td>
<td>Morgan Lake</td>
<td>Not Analyzed in the Draft Amended pASC. IPC Alternative Route in the Amended pASC.</td>
<td>Not Analyzed in the FEIS.</td>
</tr>
<tr>
<td>BLM</td>
<td>Mill Creek</td>
<td>Not Analyzed in the Draft Amended pASC. Proposed Route in the Amended pASC.</td>
<td>BLM’s Agency Preferred Alternative in the FEIS.</td>
</tr>
</tbody>
</table>

As stated above, Mill Creek is not the BLM’s Agency Preferred Alternative in the FEIS. The BLM did not analyze this route. IPC further states that “In Union County, the Proposed Route includes portions of the Proposed Route that were included in the Draft Amended pASC and the Mill Creek Route that was developed by the BLM.” (Exhibit B, Attachment B-6 at p.9) This is, again, a gross misrepresentation of the Mill Creek (IPC Proposed) Route. Not only is the Mill Creek Route not the Agency Preferred Alternative, as conveyed throughout IPC’s ASC, the Mill Creek route was not developed by the BLM. As stated above, the BLM did not “develop” routes for this project, but evaluated routes presented, which did not include either the Mill Creek or Morgan Lake Route.

IPC has since acknowledged in its discovery responses that the Mill Creek Route is not the BLM’s Agency Preferred Alternative in the FEIS, as it falsely claimed in its ASC. Specifically, in response to McAllister Request No. 13, IPC states “Table 3.1-1 indicating that the Mill Creek route was part of BLM’s agency preferred alternative in the Final EIS, that statement is incorrect.” (See attached Exhibit 1, IPC Discovery Responses). IPC has also represented to the Hearing Officer that this is a “typographical error.” (See Applicant Idaho Power Company’s Objections to Discovery Requests at p.129, submitted to ALJ March 5, 2021). This is clearly not so, as the misrepresentation is consistently perpetuated throughout the Exhibit B Project Description (2018) and Attachment B-6 Supplemental Siting Study. See Exhibit B at p.40 (omitting that the Glass Hill Alternative was the BLM selected route in the DEIS); p. 41 (inferring that the Glass Hill Alternative was eliminated by the BLM); p. 44 (again failing to recognize the Glass Hill Alternative was identified as the Agency Preferred Alternative); Attachment B-6 at p.1 (falsely asserting that in March 2016, BLM “developed a revised Agency Preferred Alternative” when, in fact, the only route that the BLM has ever identified as its preferred alternative is the Glass Hill Route). Thus, IPC’s claim this is a typo is not credible and implies that either IPC is unaware of the of the contents of its own application or that it purposefully misrepresented this fact to ODOE.
IPC further falsely claims in its Supplemental Siting Study that “*The Morgan Lake Alternative was developed by IPC with input from local Land owners*” (Attachment B-6 at p. 9, 3.2.3.3 IPC’s Morgan Lake Alternative). In reality, the majority of landowners opposed the Morgan Lake Alternative due to impacts on the natural resources, including Scenic Resources, Recreation Resources, and land meeting Protected Area criteria. Troublingly, a single landowner, who had recently acquired land in the area, developed and proposed the Morgan Lake Route, which IPC readily adopted and has since pursued. This fact is reflected in IPC’s private correspondence with this landowner, attached hereto as Exhibit 2, stating IPC intended to adopt the route the landowner proposed (now called the Morgan Lake Alternative). While the Glass Hill Alternative was developed to minimize impacts on sensitive resources including Protected Areas, Scenic Resources, and Recreation, the Morgan Lake Alternative was developed to minimize impacts to one new landowner’s personal interest. And, unlike the Glass Hill Alternative, IPC’s Morgan Lake Route was not studied or subjected to public comment.

IPC’s misrepresentations outlined above and its course of action during the application process undermine its claims of unfair prejudice if EFSC continues with “the current direction of the rulemaking to update the standards related to Protected Areas, Scenic Resources, and Recreation Resources.” For reasons that remain unclear, IPC chose to exclude the actual Agency Preferred Alternative identified in the FEIS and evaluated pursuant to NEPA from its application, while at the same time falsely representing to ODOE that the Mill Creek Route (for which it has applied) was the Agency Preferred Route in the FEIS. In reality, in the eleventh hour of the project, IPC opted to apply for multiple routes through Union County that had never been studied, and remain unevaluated by the BLM. IPC chose to pursue one of these unevaluated routes, the Morgan Lake Alternative, in favor of a single land owner who proposed the route to IPC.

Significantly, the concerns IPC raised to the Council in its ex parte communication would be moot if IPC had pursued the route the reviewing federal agency identified pursuant to NEPA analysis. NEPA’s stated purpose is to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 USC § 4321. This is consistent with ODOE’s stated mission and values, the purpose of EFSC oversight which seeks to “ensure that Oregon has an adequate energy supply while protecting Oregon’s environment and public safety,” and the discussed updates to EFSC’s Protected Areas, Scenic Resources, and Recreation standards that IPC contests.

Contrary to IPC’s claims, “the current direction of the rulemaking” does not unfairly prejudice IPC. IPC chose to (1) exclude the BLM’s agency evaluated and preferred route from the ASC,
(2) include routes that have not been studied, and (3) pursue a route that has been the source of public concern since it became known to the public due to its impacts on, among other things, Scenic Resources, Recreation Resources, and sensitive areas that meet the Protected Area criteria. IPC and ODOE have advanced the position that an applicant may apply for any route it chooses, regardless of NEPA and the federal agency review—or the underlying motives driving selection of a specific route—so long as the applied for route comports with EFSC standards. Accordingly, IPC must accept the outcomes of its decision to apply for, or not apply for, a particular route. Now, after excluding the actual Agency Preferred Route evaluated pursuant to NEPA, which obviates the issues giving rise to IPC’s current concerns, IPC asks that EFSC conform its standards and rulemaking procedures to ensure IPC’s success to the detriment of Oregon’s protected areas, scenic resources, recreational resources, and the interests of its residents. Oregonians should not suffer the consequences of IPC’s poor business decisions.

**IPC’s Claims Regarding “Other Problems with ODOE’s Proposals” are Baseless.**

Finally, IPC’s contentions in Section III of its April 22, 2021 ex parte communication further undermine IPC’s credibility and expose IPC’s claims of potential prejudice as a red herring. Here, IPC appears to purport that it relied on an absurd interpretation of OAR 345-022-0040(2) in its *Alternative Route Analysis*, which runs counter to the interpretation ODOE provided to IPC in the Second Amended Project Order. Specifically, ODOE states:

> Note that OAR 345-022-0040(1) generally prohibits siting of transmission lines through protected areas, which include state parks. However, under OAR 345-022-0040(2), EFSC may approve a route that passes through a protected area if the council determines that other routes outside the protected area would “have greater impacts.” If the transmission line routing proposed by the applicant will pass through a protected area, the applicant shall describe in detail the alternative routes it studied and provide analysis in the application to support a finding that routing the transmission line through the protected area would have less impacts than the alternatives. (Second Amended Project Order, July 26, 2018, at p. 14).

In the subsequent ODOE rulemaking project that IPC contests, ODOE explains that “Staff believes this rule is intended to allow a transmission line…to pass through a protected area when greater impacts cannot be avoided, but the construction implies that a linear facility could be sited on a protected area when other lesser impact alternatives may be available.” (October 22-23 EFSC Meeting, Agenda Item D (October 9, 2020)). The proposed amendment only seeks to clarify that the original intent of the rule is to allow the project to pass through a protected area only when Council finds that no alternative routes or sites would have lesser impacts, which is the logical interpretation.

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*This position conflicts with ORS 469.370(13) requiring that the council *shall* conduct its site certificate review…in a manner that is consistent with and does not duplicate federal agency review, including development with the federal agency and reliance on a joint records to address applicable council standards.*
The analytical framework has never changed. Rather, ODOE seeks to clarify the construction of the language so as not to achieve an absurd result. IPC appears to argue that the proper analytical framework is to conclude that an alternative may pass through protected areas if that alternative has greater impacts than other routes. This is nonsensical and has clearly never been the intent of OAR 345-022-0040(2). If IPC relied on this perverse interpretation, as it appears to claim, this exposes troubling fundamental issues with its route analysis.

IPC’s ex parte communication asking EFSC to halt required, common-sense rulemaking claiming unfair prejudice, at its core, intends to obscure the fact that, in the eleventh hour of what IPC points out was a 12-year process, it added new routes that had never been studied, while excluding the Agency Preferred NEPA route, which adequately addressed the issues of Protected Areas, Scenic Resources, and Recreation that are the basis of IPC’s current concern. EFSC should not bend standards and procedures to suit the needs of an Idaho corporation at the expense of Oregon’s natural resources and the public interest of Oregonians.

Sincerely,

Michael McAllister
Petitioner
February 5, 2021


Issue No. R-2, SP-2, FW-13

MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 1:

Identify all individuals likely to have discoverable information that you may use to support your claim that the Morgan Lake Alternative Route (“MLA”) complies with OAR-345-022-0100, OAR-345-022-0060 (incorporated OAR 635-415-0025), and OAR-345-022-0022.

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 1:

Idaho Power objects to this request as vague, ambiguous, and overbroad. Without waiving this objection, Idaho Power identified its witnesses for these issues (to the extent the identity of such witnesses is known at this time) below in response to Question 2.
Issue No. R-2, SP-2, FW-13

MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 13:

Explain the basis for your claim in Attachment B-6 of the ASC that the Mill Creek Route is the Agency Preferred Alternative in the FEIS.
   a. Produce the documents on which you rely to make this claim.

IDAHO POWER’S RESPONSE TO MICHAEL MCALLISTER’S DISCOVERY REQUEST NO. 13:

Idaho Power objects to this request as vague and ambiguous, as it is unclear what statement in Attachment B-6 you are referring to.

Without waiving that objection, if this request is referring to the statement in Table 3.1-1 indicating that the Mill Creek route was part of BLM’s agency preferred alternative in the Final EIS, that statement is incorrect and an error on Idaho Power’s part. For the Blues Mountain segment of the project, in the Final EIS, BLM identified the Glass Hill Alternative as modified by route variations S2-A2, S2-D2, and S2-F2 as the Environmentally Preferable Action Alternative Route and BLM’s Agency Preferred Alternative Route.
EXHIBIT 2
27 February 2015

Brad Allen
Via electronic mail

Subject: Elk Song Ranch Alternative Routes

Dear Brad and June Allen:

Thank you for providing an alternative route for Boardman to Hemingway Transmission Line Project where it crosses your property known as the Elk Song Ranch. We took your proposed route and modified it slightly to avoid known constraints in the area. Both your proposed route (red dashed line) and the modified routes (orange line and yellow line) are shown on the attached map and explained below.

Your proposed route follows the general route of the Glass Hill Road area you state has a higher human presence than the location of the proposed route. In the siting of a transmission line we must consider the impacts to the human as well as the natural environment. We modified your proposed route to avoid passing over several structures and to be further away from Morgan Lake, a local recreation site. We also developed an alternative route (yellow line) that would further reduce impacts to Morgan Lake. The above recommendations reflect the same methodology we used for routing along the entire length of the project.

A site visit to the area by Idaho Power transmission engineers and final design of the transmission line could result in further refinement of the modified route on the Elk Song Ranch. Please contact me if you would like to discuss any aspect of the routing.

Regards,

Todd Adams
B2H Project Leader

Enc: map

cc: D Gonzalez BLM
    T Gertch BLM
    R Straub BLM
    Z Funkhouser IPC
    M Colburn IPC
-----Original Message-----
From: Brad Allen <bradallen4030@hotmail.com>
To: wildlandmm@netscape.net <wildlandmm@netscape.net>
Sent: Sat, Mar 7, 2015 9:09 am
Subject: Fwd: B2H Elk Song Ranch Alternative Route

Sent from my iPhone

Begin forwarded message:

From: "Adams, Todd" <TAdams@idahopower.com>
To: "bradallen4030@hotmail.com" <bradallen4030@hotmail.com>
Cc: "Don Gonzalez" <dgonzale@blm.gov>, "Gertsch, Tamara" <tgertsch@blm.gov>, "Funkhouser, Zach" <ZFunkhouser@idahopower.com>, "Colburn, Mitchel" <MColburn@idahopower.com>
Subject: B2H Elk Song Ranch Alternative Route

Brad,

Attached please find a map showing your alternative route as you proposed along with a suggested route variation as explained in the letter. Don't hesitate to contact me if you have any questions.

Regards,

Todd Adams

Sent from my iPhone

2 Attachments
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENERGY

IN THE MATTER OF: ) RULING AND ORDER ON MOTIONS
THE APPLICATION FOR SITE ) FOR SUMMARY DETERMINATION
CERTIFICATE FOR THE ) OF CONTESTED CASE ISSUES FW-13,
BOARDMAN TO HEMMINGWAY ) R-2, AND SP-2
TRANSMISSION LINE ) OAH Case No. 2019-ABC-02833

INTRODUCTION

On May 28, 2021, in accordance with the January 14, 2021 Order on Case Management Matters and Contested Case Schedule (Case Management Order) and OAR 137-003-0580, Applicant Idaho Power Company (IPC or Idaho Power) filed a Motion for Summary Determination of Contested Case Issues SP-2 and FW-13, seeking summary determination in its favor on a Soil Protection (SP) issue and a Fish and Wildlife Habitat (FW) issue in this contested case.\(^1\) That same date, Idaho Power also filed a Motion for Summary Determination of Contested Case Issue R-2, pertaining to the Recreation (R) standard.

Also on May 28, 2021, the Department of Energy (Department or ODOE) filed a Motion for Summary Determination on Issue FW-13 for Limited Party Michael McAllister, and a Motion for Summary Determination on Issue SP-2 for Limited Party Michael McAllister.

The Amended Order on Party Status granted Michael McAllister status as a limited party with standing on Issues FW-13, R-2, and SP-1 and Lois Barry status as a limited party on Issue R-2.\(^2\)

This ruling addresses all three contested case issues for which Mr. McAllister has status as a limited party. Idaho Power requests a favorable ruling as a matter of law on Issues FW-13, R-2 and SP-2 and the Department requests a favorable ruling as a matter of law on Issues FW-13 and SP-2.

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\(^1\) The issues to be considered in this contested case pursuant to ORS 469.370(3) and OAR 345-015-0016(3) are set out in the table at pages 77-82 of the Amended Order on Party Status, Authorized Representatives and Properly Raised Issues for Contested Case (Amended Order on Party Status) issued December 4, 2020, and restated in the Table of Identified Issues incorporated into the Order on Case Management at pages 3-8.

\(^2\) Lois Barry was also granted limited party status on Issues SR-1, R-3, R-4, and SR-6. Issues R-3 and R-4 are not subject to a motion for summary determination. The ALJ has issued separate Rulings on Idaho Power’s motions for summary determination of Issues SR-1 and SR-6.
Pursuant to the Case Management Order, the deadline for filing a response to a timely filed motion for summary determination was June 25, 2021. On June 23, 2021, the ALJ granted Mr. McAllister leave until July 9, 2021 to file his responses to the Department’s and Idaho Power’s motions on Issues FW-13 and SP-2.

On June 25, 2021, Mr. McAllister timely filed an Opposition to Idaho Power’s Motion on Issue R-2. On June 25, 2021, Ms. Barry also filed an Opposition to Idaho Power’s Motion on Issue R-2. In addition, Idaho Power filed a Response to the Department’s Motions and the Department filed Responses to Idaho Power’s Motions.

On July 9, 2021, Mr. McAllister timely filed his Opposition to Idaho Power’s Motion on Issues FW-13 and SP-2; his Opposition to the Department’s Motion on Issue FW-13; and his Opposition to the Department’s Motion on Issue SP-2. That same date, Idaho Power filed its Reply to Limited Parties’ Responses on Issue R-2.


ISSUES

1. Whether Idaho Power and/or the Department are entitled to a favorable ruling as a matter of law on Contested Case Issue FW-13: Whether the proposed Morgan Lake Alternative route complies with the Fish and Wildlife Habitat standard.

2. Whether Idaho Power is entitled to a favorable ruling as a matter of law on Contested Case Issue R-2: Whether the visual impacts of the proposed facility structures in the viewshed of Morgan Lake Park are inconsistent with the objectives of the Morgan Lake Park Recreational Use and Development Plan and should therefore be reevaluated.

3. Whether Idaho Power and/or the Department are entitled to a favorable ruling as a matter of law on Contested Case Issue SP-2: Whether the proposed Morgan Lake Alternative complies with the Soil Protection standard.

DOCUMENTS CONSIDERED

The ALJ considered the following documents in ruling on the motions regarding Issues FW-13, R-2, and SP-2:

3 In ruling on Idaho Power’s and the Department’s motions regarding Issue SP-2, the ALJ did not consider the “concerns” about summary determination on Issue SP-2 filed on July 9, 2021 by limited party Suzanne Fouty. Dr. Fouty has standing on Issue SP-1 but does not have standing on Issue SP-2. For that reason, the ALJ declines to consider Dr. Fouty’s concerns about how summary determination in Idaho Power’s and/or the Department’s favor on Issue SP-2 may impact Issue SP-1. In addition, although both Issue SP-1 and SP-2 pertain to the Soil Protection standard, the issues raised in Idaho Power’s and the Department’s motions on SP-2 are distinct and independent of the substance of Issue SP-1.
(1) Idaho Power’s Motion on Issues SP-2 and FW-13, with supporting Exhibit A (Affidavit of Jocelyn Pease, and attachments 1-3) and Exhibit B (Affidavit of Zachary Funkhouser), filed May 28, 2021;

(2) Idaho Power’s Motion on Issue R-2, with Exhibits A (Affidavit of Zachary Funkhouser) and B (Morgan Lake Park Recreational Use and Development Plan), filed May 28, 2021;

(3) The Department’s Motion on Issue FW-13, filed May 28, 2021;

(4) The Department’s Motion on Issue SP-2, filed May 28, 2021;

(5) Mr. McAllister’s Opposition to Idaho Power’s Motion on Issue R-2, with the Affidavit of Michael McAllister, and attached Exhibits 1 through 6; the Affidavit of Charles Gillis, Declaration of Kyann Sholtes, and Declaration of Geoffrey Witek, filed June 25, 2021;

(6) Lois Barry Response to MSD on Issue R-2, filed June 25, 2021;

(7) The Department’s Responses to Applicant’s Motions for Summary Determination of Limited Party Issues, filed June 25, 2021;

(8) Idaho Power’s Response to the Department’s Motions for Summary Determination, filed June 25, 2021;

(9) Idaho Power’s Reply to Limited Parties’ Responses to Idaho Power’s Motion on Issue R-2, with Exhibit A (Funkhouser Aff.), Exhibit B (Affidavit of Scott Flinders, with attachments A and B), filed July 9, 2021;

(10) Mr. McAllister’s Opposition to Idaho Power’s Motion on Issues FW-13 and SP-2, filed July 9, 2021;

(11) Mr. McAllister’s Opposition to the Department’s Motion on Issue FW-13, filed July 9, 2021;

(12) McAllister Affidavit in Support of Opposition to Idaho Power’s and the Department’s Motions on Issues FW-13 and SP-2 (“McAllister Affidavit 2,” and attached Exhibits 1 through 7, filed July 9, 2021;

(13) The Declaration of Susan Geer in Support of Mr. McAllister’s Opposition to Idaho Power’s and the Department’s Motions on Issue FW-13, filed July 9, 2021;

(14) Mr. McAllister’s Opposition to the Department’s Motion on Issue SP-2, filed July 9, 2021;

UNDISPUTED FACTS

1. In Union County, Idaho Power’s completed application for a site certificate (ASC) for the Boardman to Hemingway Transmission Line (B2H Project or proposed facility) proposes approximately 39.9 miles of 500 kV transmission line, multi-use areas, new access roads, substantial modifications to certain existing roads within the site boundary and two communication stations. The ASC also proposes alternative routes, including an 18.5-mile alternative segment in Union County, identified as the Morgan Lake Alternative route. The Morgan Lake Alternative route passes about 0.2 mile southwest of Morgan Lake. (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, page 213.)

2. Morgan Lake is located in Morgan Lake Park, about three miles outside the City of La Grande. Morgan Lake Park also includes Little Morgan Lake (also known as Twin Lake). Morgan Lake Park offers recreational activities, including hiking, fishing, swimming, camping, and non-motorized boating. Morgan Lake Park is managed by the City of La Grande Parks and Recreation Department. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 528.)

3. As described in ASC Exhibit C, Idaho Power proposed a site boundary for the B2H project that includes, among other features, a 500-foot micrositing corridor for the transmission line right of way. In certain locations, however, Idaho Power proposed a narrower or otherwise modified corridor to avoid potential direct impacts to various resources near the proposed facility. (Idaho Power Reply on Issue R-2, Exhibit A, Funkhouser Aff. at 1-2.)

4 The B2H Project Record was admitted into the contested case hearing record by order of the ALJ’s Response to ODOE’s Inquiry Re: Marking and Submitting Exhibits, issued May 26, 2021.
4. For the Morgan Lake Alternative in the area near Morgan Lake Park, Idaho Power modified the proposed B2H Project site boundary to avoid Morgan Lake Park. Near Morgan Lake Park, the site boundary includes a modified micrositing corridor to ensure that no component of the proposed facility is constructed within the boundary of Morgan Lake Park.5 (Idaho Power Reply on Issue R-2, Exhibit A, Funkhouser Aff. at 2.)

5. The site boundary for the Morgan Lake Alternative does not include any portion of Morgan Lake Park because Idaho Power does not propose any project facilities within the boundary of Morgan Lake Park.6 (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7702.)

The Fish and Wildlife Habitat standard

6. In the Second Amended Project Order for the B2H Project, the Department ordered, in pertinent part, as follows with regard to the Fish and Wildlife Habitat standard:

Exhibit P shall include as much information as possible about the results of the field surveys conducted to date for biological resources and the schedule for future surveys. Exhibit P shall include an analysis of how the evidence provided supports a finding by the Council that the proposed facility meets the Council’s fish and wildlife habitat standard. Exhibit P must include the results of all surveys for fish and wildlife habitat in the analysis area. Exhibit P must also identify all state sensitive species that may be present in the analysis area and include the results of surveys for state sensitive species. Also include the survey methodology, including scope and timing of each survey. * * *

If particular fish and/or wildlife habitat or state sensitive species are identified within the analysis area that could be adversely affected as a result of the proposed facility, the applicant shall include [a] description of the nature, extent and duration of potential adverse impacts and a description of any proposed mitigation measures. Fish and Wildlife Habitat Mitigation Policy (OAR Chapter 635, Division 415) classifies six habitat categories and establishes a mitigation goal for each category. The applicant for a site certificate must identify the appropriate habitat category for all areas affected by the proposed facility and provide the basis for each category designation, subject to ODFW review. The

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5 Idaho Power reflected this modified site boundary in ASC Exhibit F, Attachment F-1, Map 57 (ODOE - B2HAPPDoc3-12 ASC 06_Exhibit F_Property_Owners_of_Record_ASC 2018-09-28, page 85), but neglected to update the mapping in other parts of the ASC, including ASC Exhibit C, Attachment C-3. (Idaho Power Reply on Issue R-2, Exhibit A, Funkhouser Aff. at 2.)

6 ASC Exhibit C, Attachment C-3, Morgan Lake Alternative Union County Map 8 does not reflect the modified site boundary. See ODOE - B2HAPPDoc3-4 ASC 03_Exhibit C_Project_Location_ASC 2018-09-28, page 181.) However, Idaho Power has submitted, as errata, a revised Exhibit C, Attachment C-3, Map 8 showing the modification of the site boundary to avoid any overlap with Morgan Lake Park. (Idaho Power Reply on Issue R-2, Exhibit A, Funkhouser Aff. at 2, and Exhibit B, Flinders Aff. at 2, Attachment A.)
applicant must show how it would comply with the habitat mitigation goals and standards by appropriate monitoring and mitigation. ODFW rules OAR 635-140-0000 through 635-140-0025 are applicable to EFSC’s review process in Oregon Sage-grouse habitat.


7. As required by OAR 345-021-0010(1)(p) and the Second Amended Project Order, Idaho Power included in ASC Exhibit P its methodology for evaluating habitat and designated habitat categories for purposes of evaluating compliance with the Fish and Wildlife Habitat standard. ASC Exhibit P1 describes potential impacts of the B2H Project on fish and wildlife species (other than the threatened and endangered species addressed in ASC Exhibit Q). ASC Exhibit P2 addresses greater sage-grouse and ASC Exhibit P3 addresses elk habitats. (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28.)

8. In ASC Exhibit P1, Idaho Power explained that the analysis area for Exhibit P1 includes all areas within the site boundary. Idaho Power explained that the site boundary encompasses the Proposed Route, and four alternative routes that could replace a portion of the Proposed Route, including the Morgan Lake Alternative route. (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, page 10.)

9. In ASC Exhibit P1, section 3.3.2, Idaho Power set out its classification of habitats located within the analysis area based on the six category types described in OAR 635-415-0025. Idaho Power explained that it “used data from the TVES surveys that identified the ecological systems and assigned an initial habitat category based on vegetation characteristics. Following this categorization, [it] overlaid WAGS, raptor nest, and fish presence data collected during surveys, as well as existing mapped big game ranges, onto the initial habitat categorization using ArcGIS.” (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, page 31.)

10. In the Fish and Wildlife Habitat standard section of the Proposed Order (Section IV.H.1, General Fish and Wildlife Habitat Mitigation Goals and Standards), the Department reviewed Idaho Power’s methodology for evaluating habitat quantity and quality within the analysis area. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, starting at page 313.) The Department discussed habitat assessment, the identification of habitat within habitat categories, potential impacts to fish and wildlife habitat, and the applicant’s reclamation and revegetation plans. (Id. at pages 314-322.) The Department recommended Fish and Wildlife Conditions, including a final Fish and Wildlife Habitat Mitigation Plan, based on the plan provided in ASC Exhibit P, Attachment P-6. (Id. at pages 323-329.)

7 OAR 345-021-0010(1)(p) requires the applicant to include as Exhibit P, “[i]nformation about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in subsection (q) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060[.]”

In the Matter of Boardman to Hemmingway, OAH Case No. 2019-ABC-02833
Ruling and Order on Motions for Summary Determination on Contested Case Issues FW-13, R-2, and SP-2
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11. The Proposed Order Section IV.H.1 also includes the Department’s review of Idaho Power’s impact assessment for elk habitat, and the proposed project’s potential impacts to elk winter range. For example, the Proposed Order notes that “[t]he Morgan Lake alternative would include 13.1 acres of permanent direct impacts and acres of temporary direct impacts to elk winter range, including the following components: 16.54 line miles of the proposed transmission line; 14.69 miles of new access roads; 12.14 miles of substantially modified existing roads; and one communication station.” (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 330.)

12. In the Proposed Order, at the conclusion of the evaluation of habitat categories and impacts to elk habitat, big game, small fur bearing animals, bats, avian species, fish species, and sage-grouse and sage-grouse habitats, the Department stated as follows:

Based on the foregoing findings of fact, and subject to compliance with the recommended conditions of approval, the Department recommends the Council conclude that, taking into account mitigation, the design, construction, and operation of the proposed facility, including proposed and alternative routes, is in compliance with the Council’s Fish and Wildlife Habitat standard.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 374.)

Recreation standard

13. With regard to the Recreation standard, in the Second Amended Project Order, the Department ordered, in pertinent part, as follows:

The application shall analyze the importance of recreational opportunities in the analysis area using the factors listed in OAR 345-022-0100(1), discuss any significant potential adverse impacts to important recreational opportunities, and describe measures proposed to avoid, minimize or mitigate those impacts. Please list all recreational opportunities in the analysis area and the applicant’s analysis of whether those recreational opportunities are considered “important” or not.

* * * A visual impact assessment is required as part of Exhibit T; while no specific methodology is required by EFSC rule, the applicant must demonstrate why the proposed facility is [in] compliance with the Recreation standard. Visual simulations or other visual representations are not required, but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to important Recreation sites.


14. In ASC Exhibit T, as required by OAR 345-021-0010(1)(t), Idaho Power evaluated potential impacts to Morgan Lake Park as an important recreational opportunity in the project

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8 OAR 345-021-0010(1)(t) requires that the ASC include as Exhibit T, “[i]nformation about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100[.]”

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area. (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28. Page 32 of 291.) In summarizing the visual impacts to Morgan Lake Park, Table T-1 notes: “Vegetation will block views of the towers from most locations in the park. The cleared right-of-way will not be visible. Viewers could experience weak contrast from the Project while engaging in transient or stationary activities.” (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28, page 32.)

15. In Exhibit T, Attachment T-4, Visual Impact Methodology and Analysis, Idaho Power stated as follows:

The Proposed Project will result in long-term visual impacts to Morgan Lake Park. Impacts will be medium intensity as measured by visual contrast and scale dominance, resource change, and viewer perception. Visual impacts will not preclude visitors from enjoying the day use and overnight facilities offered at the Morgan Lake Park. Therefore, visual impacts to Morgan Lake Park will be less than significant.

(ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28, page 155.)

16. In response to comments received on the Draft Proposed Order (DPO), Idaho Power performed a supplemental analysis of Morgan Lake Park, including an updated visual impacts analysis. In the supplemental visual impacts analysis, Idaho Power explained as follows:

Idaho Power first notes that Morgan Lake Park is considered in the EFSC process as an important recreation opportunity and evaluated for compliance with the Council’s Recreation Standard, but is not separately evaluated as a Scenic Resource because the applicable management plan for Morgan Lake Park, the Morgan Lake Recreational Use and Development Plan, did not identify Morgan Lake Park as an important scenic resource. Accordingly, while Idaho Power did evaluate potential visual impacts associated with the project, it is important to also note that, per the Morgan Lake Recreational Use and Development Plan, there are no specific scenic views or values associated with the Morgan Lake Park that are regarded as particularly important for purposes of compliance with the Recreation Standard. Idaho Power’s analysis of visual impacts focused on the elements of Morgan Lake Park that are most important for the recreation activities at the park, which include camping, picnicking, fishing, and boating.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7308, emphasis added.)

17. In section IV.L of the Proposed Order, the Department recognized Morgan Lake Park as an important recreation opportunity and evaluated Idaho Power’s impact assessment of the park and 20 other identified important recreational opportunities. The Department noted that Idaho Power assessed visual impacts to important recreational opportunities using the
methodology described in Exhibit L (Protected Areas) and Exhibit R (Scenic Resources).
(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 520.)

18. In the Proposed Order, in addressing the visual impacts of the proposed facility at Morgan Lake Park, the Department stated as follows:

Based on the applicant-modeled H-frame towers in specific locations and to reduce the overall potential visual impacts to the affected human population of user of the Morgan Lake Park recreational opportunity, the Department recommends that Council include the following condition as Recreation Condition 1:

**Recommended Recreation Condition 1:** If the Morgan Lake alternative facility route is selected, the certificate holder shall construct the facility using tower structures that meet the following criteria for the transmission line that would be visible from Morgan Lake Park, specifically between milepost (MP) 6.0 to MP 6.9 miles 5-7 of the Morgan Lake alternative, as shown on ASC Exhibit C, Attachment C-3, Map 8.

a. H-frames;
b. Tower height no greater than 130 feet; and
c. Weathered steel (or an equivalent coating).

Based on the analysis presented here, the Department recommends that the Council find that the proposed Morgan Lake alternative facility with recommended mitigation would not cause a significant adverse impact to the recreational opportunities at Morgan Lake Park.


19. The Policy Statement in the Morgan Lake Plan provides, in pertinent part:

Morgan Lake Park shall be managed and improved in a manner consistent with the objective of providing a quality outdoor recreational experience harmonious with a natural forest and lake area (as opposed to typical city park activities). Example activities consistent with this objective include fishing, bird watching, nature study, boating, but do not include baseball, motor bike trails, hunting, shooting, or playground activities using swings, merry-go-rounds, slides, etc.

(Idaho Power Motion on Issue SP-2; Ex. B at 6.)

*Soil Protection standard*

20. In the Second Amended Project Order, the Department ordered Idaho Power as follows with regard to the Soil Protection standard:
The applicant shall include information describing the impact of construction and operation of the proposed facility on soil conditions in the analysis area. Describe all measures proposed to maintain soil productivity during construction and operation. It is recommended that the applicant consult with local farmers, landowners, soil conservation districts, and federal land managers regarding mitigation of impacts to agricultural and forest lands. Specific discussion could include weed encroachment, interference with irrigation equipment, and the potential for restrictions to aerial applications caused by the proximity of transmission towers.

Exhibit I shall also include the required evidence related to the federally-delegated National Pollutant Discharge Elimination System (NPDES) 1200-C permit application. ** *

If the applicant intends to rely upon an erosion and sediment control plan to meet the Soil Protection standard, provide a draft of the plan for review.


21. As required by OAR 345-021-0010(1)(i) and the Second Amended Project Order, in ASC Exhibit I, Idaho Power described and analyzed the impacts to soils potentially resulting from the B2H Project. Idaho Power analyzed all areas within the project site boundary. It identified soil properties and assessed the potential impacts of construction and operations on soils. (ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28; ODOE - B2HAPPDoc3-17 ASC 09b_Exhibit I_Soil_ASC_Part 2 2018-09-28.)

22. In the Proposed Order, the Department evaluated Idaho Power’s assessment of potential impacts set out in the ASC, and additional information contained in ASC Exhibit G (Materials Analysis) and Exhibit K (Land Use). The Department noted that the analysis area for the Soil Protection standard includes the area within the site boundary, construction activities would disturb approximately 4,348 acres (temporary impacts), and the footprint of the proposed facility would disturb approximately 757 acres (permanent impacts). (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 99.)

23. In the Proposed Order, the Department described existing soil conditions within the analysis area and the land use. The Department evaluated the potential adverse impacts to soil from construction and operation of the proposed facility and evaluated Idaho Power’s proposed measures to avoid, minimize, and mitigate the impacts. The Department recommended conditions related to the DEQ-issued NPDES 1200 permit, the Construction Spill Prevention Control and Countermeasures (SPCC) Plan, the Blasting Plan, and post-construction reclamation monitoring for impacts to soil. The Department recommended that the Council find that the proposed facility, including the proposed and alternative routes, is in compliance with the Soil Conditions.

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9 OAR 345-021-0010(1)(i) requires that the applicant provide, as Exhibit I, “[i]nformation from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022[.]”
McAllister Comments on the Draft Proposed Order/Status as a Limited Party

24. In his comments on the DPO, Mr. McAllister provided his “comparative analysis” of the BLM Agency Selected Route (also known as the NEPA route)\(^{10}\) and the Morgan Lake Alternative Route. He compared, among other things, the geographic settings of the two routes, the predominant soil types for both routes,\(^{11}\) and the fish and wildlife habitats along both routes.\(^{12}\) He noted that towers for the Morgan Lake Alternative will be erected within 500 feet of Morgan Lake Park boundary, and that the proposed project will significantly impact the public’s enjoyment of the park. (Id. at 25.) He noted that the City of La Grande Chamber of Commerce has long promoted Morgan Lake Park as the number one recreation tourist destination in the La Grande area, and that the ODFW identifies Morgan Lake as an easy access fishing destination for persons with disabilities. (Id.)

25. Mr. McAllister asserted that the Morgan Lake Alternative route was “high impact,” and concluded his comments as follows:

At the ridgetop, Morgan Lake Route 3 would have greater impacts on: protected areas, recreation, scenic resources, soils, forested areas, and fish and wildlife habitats. The Morgan Lake Route poses unnecessary risks to: public health and safety, the wildland urban interface, fire suppression support systems, and to aircraft transportation. The Morgan Lake Route is more topographically complex, has very limited road access, and requires much more disruption to wildlands. All said, I calculate that the Morgan Lake Route 3 is a significantly more expensive transmission line segment to build, and to maintain.

\(^{10}\)Idaho Power did not propose the NEPA route as an alternative route in the ASC.

\(^{11}\)Mr. McAllister asserted that the soil along the Morgan Lake Alternative tends to be “deeper, loamier, of residual decomposed basalt, but with more volcanic as composition.” (ODOE - B2HAPPDoc5-1 All DPO Comments Combined-Rec'd 2019-05-22 to 08-22, pages 3924 to 3928.) He added that the Morgan Lake Alternative “crosses 66% forested acres mostly cool moist plant communities, and that is 33% more timber acres” than the NEPA route. (Id.)

\(^{12}\)With regard to fish and wildlife habitat, Mr. McAllister noted, “the lower six miles of Rock Creek have been identified as an important habitat for both Steelhead and Chinook Salmon smolts.” (ODOE - B2HAPPDoc5-1 All DPO Comments Combined-Rec'd 2019-05-22 to 08-22, page 3925.) He also noted, “Twin Lake, at 4,100 feet elevation, supports one of the most diverse waterfowl nesting communities in the Blue Mountain Ecoregion,” providing habitat for “Ring-necked ducks, Red Head, Rudy Duck, Blue-winged Teal, Shoveler, and Pied-billed Grebe.” (Id.) He added that Great Grey Owl and white-headed woodpecker frequent Twin Lake and that Bald Eagles nest near Twin Lake. (Id.) Mr. McAllister asserted that the Morgan Lake Alternative route “demonstrates a disregard for these Bald Eagles” and at the ridge top, Morgan Lake supports and entire ecosystem of scale where the fall hawk migration follows south up the monocline ridge. (Id.) In addition, he noted that the Morgan Lake Alternative route crosses “renowned high-density elk breeding grounds” along the Glass Hill Monocline. (Id. at 3926)
* * * * *

I am now asking EFSC, to ask Idaho Power [], to amend their Oregon Application for Site Certificate – Include the Agency Identified Route A [NEPA route] for consideration.

(Id. at page 3928.)

26. In the Council Order on Appeals, the Council stated as follows with regard to Mr. McAllister’s status as a limited party with standing on Issues FW-13 and SP-2:

   Council finds that Hearing Officer’s denial of issues raised related to the proposed facility’s compliance with Council standards for Soil Protection and Fish and Wildlife Habitat be overruled because these issues were raised with sufficient specificity, including having provided facts on the record that support his positions on these issues, including listing soil types and identifying buffer distances from bird nests and the proposed facility. Council finds that Hearing Officer’s denial of the following issues be overruled and identified as properly raised contested case issues, “Whether the proposed Morgan Lake Alternative route complies with the Soil Protection standard,” and “Whether the proposed Morgan Lake Alternative route complies with the Fish and Wildlife Habitat standard.”

Council Order on Appeals at 16.

CONCLUSIONS OF LAW

1. Both Idaho Power and the Department are entitled to a favorable ruling as a matter of law on Contested Case Issue FW-13. Mr. McAllister has not presented any evidence demonstrating that the proposed facility is inconsistent with general fish and wildlife habitat mitigation goals and standards along the Morgan Lake Alternative route.

2. Idaho Power is entitled to a favorable ruling as a matter of law on Contested Case Issue R-2. The development standards of the Morgan Lake Plan are not applicable to the proposed facility because no portion of the facility will be constructed in Morgan Lake Park. It is therefore immaterial whether the proposed facility is consistent with the objectives of the Morgan Lake Plan.

3. Both Idaho Power and the Department are entitled to a favorable ruling as a matter of law on Contested Case Issue SP-2: Mr. McAllister has not presented any evidence demonstrating that the proposed facility will result in a significant adverse impact to soils in the analysis area along the Morgan Lake Alternative route.

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OPINION

1. Standard of Review for Motion for Summary Determination

As set out in the Order on Case Management, OAR 137-003-0580 sets out requirements and the standard for granting summary determination in contested case proceedings. The rule states, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

In Watts v. Board of Nursing, 282 Or App 705 (2016), the Oregon Court of Appeals clarified the standard for granting motions for summary determination in administrative proceedings, stating:

The board can grant a motion for summary determination only if the relevant documents, including affidavits, create “no genuine issue as to any material fact that is relevant to resolution of the legal issue.” OAR 137-003-0580(6)(a) ** *. If there is evidence creating a relevant fact issue, then no matter how “overwhelming” the moving party’s evidence may be, or how implausible the nonmoving party’s version of the historical facts, the nonmoving party, upon proper request, is entitled to a hearing.

282 Or App 714; emphasis in original. See also Wolff v. Board of Psychologist Examiners, 284 Or App 792 (2017).

Similarly, in King v. Department of Public Safety Standards and Training, 289 Or App 314 (2017), the court stated:
Issues may be resolved on a motion for summary determination only where the application of law to the facts requires a single, particular result. Therefore, the issues on summary determination must be purely legal.

289 Or App 321; internal citations omitted.

These cases make clear that summary determination may only be granted when there are no relevant facts in dispute and the question(s) to be resolved are purely legal.

2. Applicable Law Regarding the Fish and Wildlife Habitat, Recreation, and Soil Protection Standards

As pertinent here, ORS 469.501(1)(i) states as follows:

(1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:

* * * *

(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

* * * *

(i) Impacts of the facility on recreation, scenic and aesthetic values.

* * * *

(n) Soil protection.

To implement ORS 469.501(1), the Council adopted a series of siting standards set out in OAR Chapter 345, Division 22. As pertinent to resolution of the motions herein, the Fish and Wildlife Habitat standard, OAR 345-022-0060 states:

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:

(1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017,\textsuperscript{13} and

\textsuperscript{13} OAR 635-415-0025 addresses the implementation of Department of Fish and Wildlife Habitat Mitigation Recommendations. As pertinent here, subsections (1) and (2), state as follows:

(1) “Habitat Category 1” is irreplaceable, essential habitat for a fish or wildlife species, population, or a unique assemblage of species and is limited on either a physiographic
(2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effect as of February 24, 2017.

The **Recreation** standard, OAR 345-022-0100, states as follows:

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project province or site-specific basis, depending on the individual species, population or unique assemblage.

(a) The mitigation goal for Category 1 habitat is no loss of either habitat quantity or quality.

(b) The Department shall act to protect Category 1 habitats described in this subsection by recommending or requiring:

(A) Avoidance of impacts through alternatives to the proposed development action; or

(B) No authorization of the proposed development action if impacts cannot be avoided.

(2) “Habitat Category 2” is essential habitat for a fish or wildlife species, population, or unique assemblage of species and is limited either on a physiographic province or site-specific basis depending on the individual species, population or unique assemblage.

(a) The mitigation goal if impacts are unavoidable, is no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality.

(b) The Department shall act to achieve the mitigation goal for Category 2 habitat by recommending or requiring:

(A) Avoidance of impacts through alternatives to the proposed development action; or

(B) Mitigation of impacts, if unavoidable, through reliable in-kind, in-proximity habitat mitigation to achieve no net loss of either pre-development habitat quantity or quality. In addition, a net benefit of habitat quantity or quality must be provided. Progress towards achieving the mitigation goals and standards shall be reported on a schedule agreed to in the mitigation plan performance measures. The fish and wildlife mitigation measures shall be implemented and completed either prior to or concurrent with the development action.

(c) If neither 635-415-0025(2)(b)(A) or (B) can be achieved, the Department shall recommend against or shall not authorize the proposed development action.
order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

(a) Any special designation or management of the location;

(b) The degree of demand;

(c) Outstanding or unusual qualities;

(d) Availability or rareness;

(e) Irreplaceability or irretrievability of the opportunity.

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

The Soil Protection standard, OAR 345-022-0022, states:

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

As discussed previously, pursuant to OAR 345-021-0010(1), the ASC must include certain information. To demonstrate compliance with the Soil Protection standard, ASC Exhibit I must include:

Information from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:

(A) Identification and description of the major soil types in the analysis area;

(B) Identification and description of current land uses in the analysis area, such as growing crops, that require or depend on productive soils;

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills;

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils; and
(E) The applicant’s proposed monitoring program, if any, for adverse impact to soils during construction and operation.

OAR 345-021-0010(1)(i).

To demonstrate compliance with the Fish and Wildlife Habitat standard, ASC Exhibit P must include:

Information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in subsection (q) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant must include:

(A) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey;

(B) Identification of all fish and wildlife habitat in the analysis area, classified by the general fish and wildlife habitat categories as set forth in OAR 635-415-0025 and the sage-grouse specific habitats described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025 (core, low density, and general habitats), and a description of the characteristics and condition of that habitat in the analysis area, including a table of the areas of permanent disturbance and temporary disturbance (in acres) in each habitat category and subtype;

(C) A map showing the locations of the habitat identified in (B);

(D) Based on consultation with the Oregon Department of Fish and Wildlife (ODFW) and appropriate field study and literature review, identification of all State Sensitive Species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW;

(E) A baseline survey of the use of habitat in the analysis area by species identified in (D) performed according to a protocol approved by the Department and ODFW;

(F) A description of the nature, extent and duration of potential adverse impacts on the habitat identified in (B) and species identified in (D) that could result from construction, operation and retirement of the proposed facility;

(G) A description of any measures proposed by the applicant to avoid, reduce, or mitigate the potential adverse impacts described in (F) in accordance with the general fish and wildlife habitat mitigation goals and standards described in OAR 635-415-0025 and a description of any measures proposed by the applicant to
avoid, minimize, and provide compensatory mitigation for the potential adverse impacts described in (F) in accordance with the sage-grouse specific habitat mitigation requirements described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025, and a discussion of how the proposed measures would achieve those goals and requirements; and

(H) A description of the applicant’s proposed monitoring plans to evaluate the success of the measures described in (G).

OAR 345-021-0010(1)(p).

And, finally, to demonstrate compliance with the Recreation standard, ASC Exhibit T must include:

Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

(A) A description of the recreational opportunities in the analysis area that includes information on the factors listed in OAR 345-022-0100(1) as a basis for identifying important recreational opportunities;

(B) A description of any significant potential adverse impacts to the important opportunities identified in (A) including, but not limited to:

(i) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation;

(ii) Noise resulting from facility construction or operation;

(iii) Increased traffic resulting from facility construction or operation;

(iv) Visual impacts of facility structures or plumes;

(C) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate the significant adverse impacts identified in (B);

(D) A map of the analysis area showing the locations of important recreational opportunities identified in (A); and

(E) The applicant’s proposed monitoring program, if any, for impacts to important recreational opportunities.

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3. Motions on Issue FW-13

(a) Idaho Power’s Motion on Issue FW-13

As set out above, Mr. McAllister has standing on Issue F-13, which the Council stated as: “Whether the proposed Morgan Lake Alternative route complies with the Fish and Wildlife Habitat standard.”

In his petition for party status, Mr. McAllister challenged Idaho Power’s choice of the Morgan Lake Alternative route over the NEPA route. He asserted that the NEPA route was the least impactful route and the Morgan Lake Alternative would have greater adverse impacts to fish and wildlife habitat. McAllister Petition at 4. Mr. McAllister also asserted that the Morgan Lake Alternative Route “is inconsistent with the considerations and goals” of OAR 345-022-0060, the Fish and Wildlife Habitat standard. Id.

The Council found that Mr. McAllister raised a challenge to B2H Project’s compliance with the Fish and Wildlife Habitat standard by, among other things, “identifying buffer distances from bird nests and the proposed facility.” Council Order on Appeals at 16. Accordingly, in the Amended Order on Party Status, the ALJ stated as follows:

Fish and wildlife habitat are within Council’s jurisdiction. Mr. McAllister referenced this standard in his comments on the DPO in his comparison of the NEPA Route and the Morgan Lake Alternative Route. He discussed fish and wildlife species that exist along the Morgan Lake Alternative Route (e.g., Steelhead and Chinook Salmon, Great Gray Owl, White-headed Woodpecker, Bald Eagles and Ospreys). In its Order on Appeals, Council found that Mr. McAllister raised this issue with sufficient specificity to allow for a response.

Amended Order on Party Status at 63.

In requesting summary determination on Issue FW-13, Idaho Power asserts that regardless of the validity of Mr. McAllister’s factual allegations,14 it is entitled to a favorable ruling as a matter of law because: (1) Mr. McAllister’s comparative analysis of the fish and wildlife habitats along the Morgan Lake Alternative and the NEPA route is not relevant to whether the Morgan Lake Alternative route is consistent with the Fish and Wildlife Habitat standard; and (2) Mr. McAllister has not put forward any evidence demonstrating that the proposed facility will adversely impact the identified fish and wildlife habitats along the Morgan Lake Alternative route, nor has he explained how potential impacts are inconsistent with the ODFW’s habitat mitigation goals and standards. Id. at 10-12.


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14 As set out in the findings above, in his comments on the DPO Mr. McAllister identified wildlife species that exist along the Morgan Lake Alternative route and provided a comparative analysis of the fish and wildlife habitats along the Morgan Lake Alternative route and the NEPA route.
In his Opposition to Idaho Power’s Motion on Issue FW-13, Mr. McAllister contends as follows: (1) Idaho Power misconstrues the scope of Issue FW-13; (2) Idaho Power is attempting to improperly limit the facts he may use to prove his case; and (3) there are facts in dispute as to whether the Morgan Lake Route complies with the Fish and Wildlife Habitat standard. Mr. McAllister asserts that because the Council granted him limited party status on Issue FW-13, he is entitled to “prove the merits of his case” by presenting “facts beyond those raised in public comment and petition for party status.” Opposition to Idaho Power’s Motion on FW-13 and SP-2 at 16.

On the third point, Mr. McAllister argues that contrary to Idaho Power’s contention, portions of Morgan Lake Park and the Twin Lake wetlands fall within the B2H Project site boundary and Idaho Power failed to categorize the Twin Lake wetlands as a Habitat Category 1. Opposition to Idaho Power’s Motion on FW-13 and SP-2 at 18-19. Mr. McAllister also argues that even if the Twin Lake Wetlands is outside the site boundary, Idaho Power is required to include an additional buffer surrounding the wetlands habitat. He asserts that, “building the Project feet away from this critical habitat does not meet the avoidance criteria for either Habitat Category 1 or 2.” Id. at 19. In his Opposition, Mr. McAllister further contends, “it is highly relevant to the assessment of compliance with OAR 635-415-0025 that a BLM-recommended alternative route, which avoids the impacts of the current proposed action, has been identified.” Id. at 19-20.

In addition, Mr. McAllister argues in his Opposition that “[t]he analysis area for the Fish and Wildlife Habitat standard identified in the Second Amended Project Order cannot be reconciled with the ‘general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6)’ as OAR 345-022-0060 requires.” Opposition to Idaho Power’s Motion on Issues FW-13 and SP-2 at 20. He contends that the Department’s and Idaho Power’s position that the proposed facility will only affect habitats within a 500-foot corridor “is absurd.” Id. Finally, Mr. McAllister asserts that Idaho Power’s ASC is “fraught with inaccuracies, flawed analyses, and misleading and false information” and that the unreliability of the information, representations, and analyses in the ASC creates a genuine dispute of material fact. Id. at 21-22.

In its Reply on Issue FW-13, Idaho Power maintains that Mr. McAllister has not raised any factual issues relevant to the resolution of Issue FW-13. Idaho Power contends that, in his oppositions to the motions on Issue FW-13, Mr. McAllister raises new issues that cannot be considered in the contested case because he did not raise these concerns with sufficient specificity in his comments on the DPO. Idaho Power Reply on Issue FW-13 at 6-9. Idaho Power also argues that, contrary to Mr. McAllister’s contention, the existence of the NEPA route is not relevant to whether the Morgan Lake Alternative complies with the avoidance and mitigation requirements of the ODFW habitat standards. In addition, Idaho Power asserts that there is no factual dispute with regard to the B2H Project site boundary, because Idaho Power

To support this contention, Mr. McAllister submitted a Declaration of Susan Geer, a professional botanist. Ms. Geer asserts that Twin Lake is a “unique and irreplaceable wetland” and the area contains “an incredible density of birds, bats, and insects” that have not been inventoried. Declaration of Susan Geer at 2-3. Ms. Geer concludes that “the vegetation of Twin Lake is a ‘unique assemblage’ and absolutely must be Category 1 Habitat of ODFW.” Id. at 3.

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has not proposed to site any component of the B2H Project within Morgan Lake Park (and/or by extension, the Twin Lake wetlands).  *Id.* at 6-12.

For the reasons that follow, the ALJ finds that there are no material facts in dispute with regard to Issue FW-13 and Idaho Power is entitled to a favorable ruling as a matter of law.

First, the ALJ agrees with Idaho Power that Mr. McAllister raised new issues in opposing the motions on Issue FW-13 and these issues may not be considered in the contested case. With limited exceptions that do not apply here, ORS 469.370(5) requires that the issues in the contested case “be limited to those raised on the record of the public hearing.” Similarly, OAR 345-015-0016(3) states in pertinent part

To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing ***. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person’s position on the issue.

Emphasis added.

In his comments on the DPO, Mr. McAllister challenged Idaho Power’s choice of the Morgan Lake Alternative route in light what he believed to be the less impactful BLM selected NEPA route. He asked that Idaho Power amend the ASC to include the NEPA route and additional evidence of the environmental and safety impacts of the Proposed (Mill Creek) Route and the Morgan Lake Alternative route. ODOE - B2HAPPDoc5-1 All DPO Comments Combined-Rec'd 2019-05-22 to 08-22, page 3921. As discussed previously herein, in his DPO comments, Mr. McAllister provided a detailed comparative analysis of the geographic settings, the predominant soil types, and the fish and wildlife habitats along the Morgan Lake Alternative route and the NEPA route. With regard to the Morgan Lake Alternative route, Mr. McAllister identified Rock Creek as an important habitat for Steelhead and Chinook salmon. He also identified waterfowl species that nest in the area of Twin Lake and asserted that south of Morgan Lake there are renowned high-density elk breeding grounds. *Id.* at pages 3925-3926.

Mr. McAllister did not, however, claim in his DPO comments that the Twin Lake wetlands are within the site boundary, that the Twin Lake wetlands are a Category I habitat, or that the analysis area for the B2H Project should extend beyond the site boundary in the area of Morgan Lake Park. Mr. McAllister also did not assert in his DPO comments that Idaho Power’s habitat assessments must include a buffer around wetlands to avoid impacts to those wetlands. Because Mr. McAllister did not raise (or present evidence in support of) these latter contentions in his DPO comments, he lacks standing to raise the arguments in his opposition to summary determination on Issue FW-13.  *See* ORS 469.370(5); OAR 345-015-0016(3).
Although the Council framed Issue FW-13 broadly, Mr. McAllister’s participation in this contested case is still limited by the requirements of ORS 469.370(5) and OAR 345-015-0016(3). In other words, while he may present and rely upon additional evidence in opposing Idaho Power’s motion, the evidence presented must be relevant to the position Mr. McAllister took in his DPO comments. The law does not permit Mr. McAllister to raise new and/or different claims or to present evidence on matters related to the Fish and Wildlife Habitat standard that he did not reference in his DPO comments. Consequently, Mr. McAllister’s challenges to the site boundary/analysis area along the Morgan Lake Alternative route, his claim that the Twin Lake wetlands are a Category 1 habitat, and his claim that Idaho Power must include an additional avoidance buffer around the wetlands are not properly before the ALJ on Issue FW-13. For that reason, Mr. McAllister’s arguments (and the evidence submitted in support thereof) about the analysis area and the Twin Lakes wetlands do not create a relevant factual dispute and do not preclude a determination in Idaho Power’s favor on Issue FW-13 as a matter of law.

Second, the ALJ agrees with Idaho Power that the NEPA route’s impacts (or lack thereof) on fish and wildlife habitat is not relevant to whether the B2H Project, including the Morgan Lake Alternative, complies with the avoidance and mitigation requirements of the ODFW habitat standards. The Fish and Wildlife Habitat standard does not require an alternatives analysis. The Council siting standards do not require a determination that the route(s) proposed in the ASC are the least impactful to fish and wildlife habitats. Rather, the pertinent inquiry under OAR 345-022-0060(1) is whether the design, construction, and operation of the facility, taking into account mitigation, are consistent with ODFW habitat mitigation goals and standards. In short, it is immaterial to the Council’s inquiry that a route not proposed in the ASC would have no adverse impact upon the fish and wildlife habitats in the area of Twin Lake and Morgan Lake Park.

Third, even if Mr. McAllister was not precluded from raising the issue, he has not demonstrated a factual dispute about the project’s site boundary and the analysis area for the Fish and Wildlife Habitat standard. The analysis area includes all areas within the site boundary. Idaho Power determines the site boundary, and it has not proposed to place any portion of the facility within the boundary of Morgan Lake Park. See Idaho Power Reply on Issue R-2, Exhibits A and B, Affidavits of Funkhouser and Flinders. Because Morgan Lake Park falls outside the site boundary, Idaho Power had no obligation to analyze and categorize the habitat areas therein for potential adverse impacts from the proposed facility.

Finally, the ALJ agrees with Idaho Power that Mr. McAllister failed to provide evidence to create a genuine issue of fact with regard to Issue FW-13. As discussed previously, in his DPO comments, Mr. McAllister identified specific habitats along the Morgan Lake Alternative (e.g., Steelhead and Chinook salmon smolts, waterfowl species, Great Gray Owl and white-headed woodpecker, bald eagles, and elk). However, in opposing Idaho Power’s motion, Mr. McAllister presented no evidence to contradict the Department’s findings in the Proposed Order

16 “Site boundary” is defined in OAR 345-001-0010(54), and means “the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.” (Emphasis added.)
and the Department’s conclusion that, accounting for mitigation, the design, construction, and operation of the proposed facility, including the Morgan Lake Alternative route, complies with the Council’s Fish and Wildlife Habitat standard.

Accordingly, Idaho Power is entitled to a favorable ruling as a matter of law on Issue FW-13.

(b) The Department’s Motion in Issue FW-13

The Department, in its motion, contends that it is entitled to a favorable ruling as a matter of law on Issue FW-13 because the Fish and Wildlife Habitat standard is not species specific, but rather, focused on potential impacts to habitat generally. The Department also asserts that in evaluating the proposed facility’s compliance with the Fish and Wildlife Habitat standard, it considers the proposed facility’s analysis area as a whole (including the proposed and alternative routes) and does not make separate recommendations specific to a portion of the proposed facility, such as the Morgan Lake Alternative. Department Motion on Issue FW-13 at 2, 9-10.

In his Opposition to the Department’s Motion on Issue FW-13, Mr. McAllister again contends that he “is not limited to the facts in his petition or public comment” and is entitled to present new facts in support of his challenge to the proposed facility’s compliance with the Fish and Wildlife Habitat standard. McAllister Opposition to Department Motion on Issues FW-13 and SP-2 at 1-2. In addition, Mr. McAllister argues that: (1) contrary to Idaho Power’s claims, the B2H Project crosses the Twin Lake wetlands and Morgan Lake Park; (2) Twin Lake is a Category 1 habitat pursuant to OAR 635-415-0025; (3) Idaho Power never categorized Twin Lake or Morgan Lake Park for purposes of OAR 635-415-0025; (4) the analysis area for the Fish and Wildlife Habitat standard cannot be squared with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1); and (5) the Department based its findings on inaccurate and unreliable information in the ASC. Id. at 3-9.

The Department, in its Reply in support of summary determination on Issue FW-13, argues that Mr. McAllister is improperly seeking to introduce new issues, rather than new facts. Department Reply on Issue FW-13 at 3. The Department also contends that Mr. McAllister has not created a relevant factual dispute with regard to the site boundary or the reliability or accuracy of the information in the ASC pertaining to compliance with the Fish and Wildlife Habitat standard. The Department notes the applicant determines the site boundary, and Idaho Power has confirmed that Morgan Lake Park/the Twin Lake wetlands are not within the B2H Project site boundary. The Department also contends that because the Twin Lake wetlands are outside the Fish and Wildlife Habitat standard analysis area, Mr. McAllister’s concerns about potential impacts to the Twin Lake wetlands are not relevant. Finally, the Department argues that even if Mr. McAllister’s concerns about impacts to the Twin Lake wetlands were pertinent to the Fish and Wildlife Habitat analysis, he has not come forward with evidence demonstrating the impact the proposed facility would have on fish and wildlife habitats outside of the site boundary. Id. at 3-8.
After consideration of the Department’s motion and Mr. McAllister’s opposition thereto, the ALJ finds that there are no material facts in dispute with regard to Issue FW-13 and the Department is entitled to a favorable ruling as a matter of law.

First, for the reasons discussed above in connection with Idaho Power’s motion, Mr. McAllister’s standing in this contested case is limited to the issues raised in his DPO comments. ORS 469.370(5); OAR 345-015-0016(3). Because Mr. McAllister did not challenge the site boundary, did not contend that the Twin Lake wetlands are a Category I habitat, and/or did not assert that Idaho Power was required to evaluate impacts to wetland areas beyond the site boundary in his DPO comments, he lacks standing and is precluded from raising these contentions in the contested case. Because Mr. McAllister lacks standing to raise these new issues in the contested case, the evidence he submitted in support thereof does not create a relevant factual dispute.

Second, Mr. McAllister has not identified an issue of fact with regard to the site boundary and analysis area. As set out in the Second Amended Project Order, the analysis area is the area within the site boundary. As discussed above, Idaho Power determines the site boundary. Idaho Power has confirmed that Morgan Lake Park/the Twin Lake wetlands fall outside the site boundary. For that reason, Idaho Power had no obligation to analyze and/or categorize the habitat areas within Morgan Lake Park for potential adverse impacts from the proposed facility.

Third, to the extent Mr. McAllister contends the analysis area for the Fish and Wildlife Habitat standard cannot be reconciled with ODFW’s habitat mitigation goals and standards and the Department erred by limiting the analysis area to the project’s site boundary, he has not come forward with any evidence or persuasive arguments to support this contention. Although he presented evidence of the fish and wildlife habitats in Morgan Lake Park/the Twin Lake wetlands, he did not offer evidence of the proposed facility’s potential impacts to those habitats.

Finally, to the extent Mr. McAllister claims that the ASC is inaccurate and unreliable, he has not come forward with any evidence or examples that create a genuine issue of fact relevant to the resolution of Issue FW-13 and the Department’s evaluation of fish and wildlife habitats along the Morgan Lake Alternative. Accordingly, the Department is also entitled to a ruling in its favor on Issue FW-13.

4. Idaho Power’s Motion on Issue R-2

Mr. McAllister and Lois Barry have limited party status on Issue R-2, which states: Whether the visual impacts of the proposed facility structures in the viewshed of Morgan Lake Park are inconsistent with the objectives of the Morgan Lake Park Recreational Use and Development Plan (Morgan Lake Plan) and should therefore be reevaluated.

Indeed, to the extent that ASC Exhibit C, Attachment C-3, Map 8 does not reflect Idaho Power’s modified micrositing corridor near Morgan Lake Park, Idaho Power has submitted a corrected map and confirmed that there will be no project features within the boundary of Morgan Lake Park. The second error Mr. McAllister identifies (a typographical error in ASC Exhibit B, Attachment B-6, Table 3.1-1 that mistakenly designates the Mill Creek route as BLM’s Agency Preferred NEPA route), has no bearing on Issue FW-13.

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In his Petition, Mr. McAllister asserted that the Morgan Lake Alternative is inconsistent with the considerations and goals of the Recreation standard. McAllister Petition at 4. In his DPO comments, Mr. McAllister asserted that the proposed facility’s impact on Morgan Lake Park will be high because towers will be erected within 500 feet of the park. He added that Morgan Lake Park is an important tourist destination for recreation and provides easy access for fishing.

In her Petition, Ms. Barry noted that the Morgan Lake Alternative route is within .2 miles of Little Morgan Lake. She argued that the portion of Morgan Lake Park near Little Morgan Lake should be left as a natural habitat for wildlife with little change or interference. She asserted that a goal of Morgan Lake Plan is to preserve the maximum natural setting of park to encourage solitude, isolation and limited visibility of users, and the proposed facility is inconsistent with that goal. In addition, Ms. Barry argued the proposed facility is inconsistent with the Morgan Lake Plan’s directive to manage with the objective of providing a quality outdoor recreational experience harmonious with a natural forest and lake area. She added, “the experience of camping, hiking, fishing and nature study in a park surrounded by 130’ towers is not the experience of a park preserved for its natural setting.” Barry Petition at 10.

In its Motion on Issue R-2, Idaho Power asserts that, regardless of the validity of Mr. McAllister’s and Ms. Barry’s factual allegations about Morgan Lake Park and the objectives of the Morgan Lake Plan, it is entitled to a favorable ruling as a matter of law because the Morgan Lake Park is not within the B2H Project site boundary and Idaho Power is not required to demonstrate compliance with the development objectives of Morgan Lake Plan to satisfy the Recreation standard. Idaho Power Motion on Issue R-2 at 4-7.

The Department supports Idaho Power’s Motion on Issue R-2, noting that there are no genuine issues of material fact, either within the existing record or that could be introduced into the record, which would be relevant to resolution of Issue R-2. Department Response at 6.

In his Opposition to Idaho Power’s motion, Mr. McAllister challenges the scope of Issue R-2, asserting that the issue should be whether the Morgan Lake Alternative complies with the Recreation standard, and not whether Idaho Power must demonstrate compliance with the Morgan Lake Plan. He asserts that because he has limited party status with an issue related to the Recreation standard, he is now entitled to present facts demonstrating that the proposed facility will result in significant adverse impacts to Morgan Lake Park. McAllister Opposition to Idaho Power Motion on Issue R-2 at 8-10. Mr. McAllister also argues that there are material facts in dispute with regard to the site boundary, because contrary to Idaho Power’s contention, a portion of the site boundary along the Morgan Lake Alternative falls within Morgan Lake Park. Id. at 10-11. Mr. McAllister also contends that Idaho Power’s assessment of visual impacts to Morgan Lake Park is flawed and the proposed facility will result in significant impacts to this important recreational resource.\textsuperscript{18} Id. at 12-19.

\textsuperscript{18} In this regard, Mr. McAllister submitted with his opposition affidavits and declarations from La Grande community members describing their enjoyment of recreation opportunities at Morgan Lake Park in its natural and undeveloped setting, and their assessment that visible transmission lines from the B2H Project
In her Response, Ms. Barry concurs with Mr. McAllister’s opposition to the motion. She asserts that “whether the project is actually within the boundary [of Morgan Lake Park] or .2 miles from it, [Idaho Power] knows well that the visual assessment area is two miles from the project. [Idaho Power] also know[s] that 80’ evergreens cannot screen 150’ towers, or even 130’ towers, especially when they are on the west side of the lake, where natural vegetation is low, and the tower would be only .2 miles from Twin Lake, a haven of solitude for hikers and a remote birders’ paradise.” Barry Response at 1.

In its Reply, Idaho Power argues that both Mr. McAllister and Ms. Barry raise facts that are not relevant to whether Idaho Power must demonstrate compliance with the Morgan Lake Plan. Idaho Power asserts that, for purposes of Issue R-2, Mr. McAllister is limited to presenting evidence pertinent to the Morgan Lake Plan and whether the B2H Project must adhere to the plan’s objectives. Idaho Power notes that there is no mechanism under the Council’s rules to expand the scope of Issue R-2 at this stage of the contested case. Idaho Power Reply on Issue R-2 at 3-9. In addition, Idaho Power contends that there are no disputed issues of fact related to Issue R-2 because, notwithstanding Mr. McAllister’s contention, all of Morgan Lake Park falls outside the site boundary. Idaho Power concedes that Morgan Lake Park is within the analysis area for the Recreation standard. Idaho Power argues that although the park is within the analysis area for the Recreation standard and subject to a visual impact assessment as an important recreational opportunity that is not pertinent to whether the B2H Project must comply with the Morgan Lake Plan. Id. at 12.

For the reasons that follow, Idaho Power is entitled to a favorable ruling on Issue R-2.

First, contrary to Mr. McAllister’s contention, Issue R-2 is limited in its scope. As discussed elsewhere in this order, and with exceptions that are not pertinent here, the issues in the contested case are limited to those raised with sufficient specificity in the person’s comments on the DPO. OAR 345-015-0016(3). In their respective comments on the DPO, Ms. Barry and Mr. McAllister referenced the stated goals and objectives of the Morgan Lake Plan asserted that the visual impacts of the proposed facility would be inconsistent with the plan.19 Mr. McAllister would significantly detract from their enjoyment of the park. See McAllister Opposition to Motion on Issue R-2, McAllister Affidavit; Gillis Affidavit; Sholtes Declaration; and Witek Declaration.

19 In his DPO comments, Mr. McAllister noted:

[The Morgan Lake Alternative] route also establishes towers within 500 feet of Morgan Lake Park. Here, the impact on La Grande’s public will be High. The first stated goal in the Morgan Lake Park Recreational Use and Development Plan (Section 1, Page 2) — A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of uses while at the same time providing safe and sanitary condition for users.

(ODOE - B2HAPPDoc5-1 All DPO Comments Combined-Rec’d 2019-05-22 to 08-22, page 3925, emphasis in original.) Ms. Barry similarly referenced the Morgan Lake Plan’s goal of minimal development to preserve the maximum natural setting in her DPO comments. (ODOE - B2HAPPDoc5-1 All DPO Comments Combined-Rec’d 2019-05-22 to 08-22., page 550.)
did not assert in his DPO comments that Idaho Power’s analysis and conclusions about the proposed facility’s impact on Morgan Lake Park are deeply flawed. Mr. McAllister also did not assert in his DPO comments that Idaho Power erred in its assumptions about a “typical visitor” to Morgan Lake Park. Because Mr. McAllister did not raise these concerns in his DPO comments, he lacks standing to raise them now in opposing Idaho Power’s Motion on Issue R-2.20

Second, as to Issue R-2 as stated above, neither Mr. McAllister nor Ms. Barry have come forward with evidence creating a relevant factual dispute with regard to the Morgan Lake Plan’s objectives and the proposed facility’s visual impacts in Morgan Lake Park. Morgan Lake Park is not within the site boundary of the B2H Project so Idaho Power is not required to demonstrate compliance with the Morgan Lake Plan. As Idaho Power notes in its motion, the Morgan Lake Plan cannot bind development outside the boundaries of Morgan Lake Park, because the land outside the park’s boundaries is unincorporated Union County and not within the City of La Grande’s planning jurisdiction. The land outside the boundary of Morgan Lake Park (and the land within the B2H Project site boundary along the Morgan Lake Alternative) is subject to the development provisions of the Union County Zoning, Partition, and Subdivision Ordinance (UCZPSO), but not the Morgan Lake Plan. Although Morgan Lake Park is within the analysis area for Recreation standard, the ALJ agrees with Idaho Power that this is not relevant to whether the Morgan Lake Plan is applicable to the B2H Project.

In short, Issue R-2 is limited to whether the visual impacts of the proposed facility are inconsistent with the Morgan Lake Plan. Issue R-2 does not encompass the broader questions of whether Idaho Power and the Department appropriately evaluated the potential adverse impacts of the proposed facility on the recreational opportunities at Morgan Lake Park. Idaho Power is entitled to summary determination in its favor on Issue R-2 because, as a matter of law, the development standards of the Morgan Lake Plan are not applicable to and therefore not binding upon the B2H Project.

5. Motions on Issue SP-2

(a) Idaho Power’s Motion on Issue SP-2

Mr. McAllister also has standing as a limited party on Issue SP-2, which the Council stated as: Whether the proposed Morgan Lake Alternative complies with the Soil Protection standard.

In his Petition, Mr. McAllister asserted that the NEPA route was the least impactful to Union County and that Idaho Power “failed to adequately consider nearly every aspect of the Morgan Lake Alternative Route’s impact on Union County’s local resources and public safety.” McAllister Petition at 4. Mr. McAllister also asserted that the Morgan Lake Alternative Route

20 Also, as Idaho Power notes, neither Mr. McAllister nor Ms. Barry appealed the framing and/or scope of Issue R-2 in the Order on Party Status. Mr. McAllister timely appealed the ALJ’s determination that his other issues were not properly raised to the Council, but he did not assert that Issue R-2 should be amended or expanded.
“is inconsistent with the considerations and goals” of OAR 345-022-0022, the Soil Protection standard. *Id.*

In the *Council Order on Appeals*, the Council found that Mr. McAllister raised a challenge to B2H Project’s compliance with the Soil Protection standard by, among other things, “listing soil types” along the Morgan Lake Alternative Route. Accordingly, in the *Amended Order on Party Status*, the ALJ stated as follows:

Soil protection is a matter within Council’s jurisdiction. Mr. McAllister referenced the Soil Protection standard in his June 23, 2019 letter to Council and discussed the characteristics of the soil along the Morgan Lake Alternative Route (with a comparison to the soil along the Agency Selected NEPA Route). In its Order on Appeals, Council determined that Mr. McAllister raised this issue with sufficient specificity to allow for a response.

Amended Order on Party Status at 62.

In requesting summary determination on Issue SP-2, Idaho Power asserts that regardless of the validity of Mr. McAllister’s factual allegations,21 it is entitled to a favorable ruling as a matter of law because Mr. McAllister’s comparison of the soils along the two routes is not relevant to whether the Morgan Lake Alternative will cause significant adverse impacts to the soil. Idaho Power Motion on Issue SP-2 at 4. Idaho Power argues that because the Council lacks jurisdiction to address a route not proposed in the ASC, any comparison between predominant soil types and potential adverse impacts thereto is immaterial. *Id.* at 4-6.

The Department agrees with Idaho Power’s position with regard to Issue FW-13. Department Response at 12.

In his Opposition to Idaho Power’s Motion, Mr. McAllister contends that he is not limited to discussing his comparative analysis when proving the merits of his case, and he is entitled to present “facts beyond those raised in public comment and petition for party status.” Opposition to Motion on Issues FW-13 and SP-2 at 16. In his Opposition to the Department’s Motion on Issue SP-2 (incorporated into his response to Idaho Power’s motion), Mr. McAllister argues that there are relevant facts in dispute regarding whether the proposed facility complies with the Soil Protection standard. First, Mr. McAllister contends that the ASC consists of “flawed analyses, inconsistencies, inaccurate, misleading and false representations, and incomplete information.”22 Opposition to Motion on Issue SP-2 at 4. Second, citing limited

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21 As set out in the findings above, in his comments on the DPO Mr. McAllister described the predominant soil types along the Morgan Lake Alternative route and provided a comparative analysis of the soil types along the NEPA route. He concluded that the soils along the Morgan Lake Alternative tend to be deeper, loamier, of residual decomposed basalt, but with more volcanic ash composition. ODOE-B2HAPPDoc5-1 All DPO Comments Combined-Rec’d 2019-05-22 to 08-22, page 3924.

22 As examples, Mr. McAllister asserts that: (1) the ASC falsely represents that Morgan Lake Park and the Twin Lake wetlands are outside the site boundary, when a map (ASC Exhibit C, Attachment C-3, Map 8) shows the site boundary crossing Morgan Lake Park; and (2) the ASC falsely claims in ASC Exhibit B,
party Dr. Suzanne Fouty’s comments on the DPO, Mr. McAllister argues that Idaho Power and the Department improperly limited the soil protection analysis area to the area within the site boundary, and that Idaho Power’s analysis should have included the impacts of decreased existing carbon sequestration and future potential carbon sequestration over time.  *Id.* at 6.  

Third, Mr. McAllister argues that summary determination on Issue SP-2 is inappropriate because there is at least one outstanding issue (Issue SP-1) challenging the proposed facility’s compliance with the soil protection standard.  *Id.* at 7.

In its Reply on Issue SP-2, Idaho Power contends that Mr. McAllister cannot raise new issues in the contested case that he did not raise with sufficient specificity in his comments on the DPO.  Idaho Power asserts that because Mr. McAllister did not contest the soil protection analysis area in his DPO comments, he is now precluded from raising the argument.  Idaho Power further contends that, even if he was not precluded from raising the issue, Mr. McAllister has offered no factual support for this contention.  Idaho Power Reply on Issues SP-2 and FW-13.

For the reasons that follow, the ALJ finds that Idaho Power is entitled to summary determination in its favor on Issue SP-2.  First, as discussed above, Mr. McAllister may only raise issues in the contested case that he raised with sufficient specificity in his comments on the DPO.  OAR 345-015-0016(3) states that to raise an issue in a contested case proceeding, “the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing[.]” (Emphasis added.)  Mr. McAllister did not challenge the soil protection analysis area in his DPO comments.  Mr. McAllister presented facts about the predominant soil types along the Morgan Lake Alternative, but he did not question the analysis area or Idaho Power’s methodology for evaluating impacts to soil in the analysis area.  Because Mr. McAllister did not raise (or present evidence in support of) these contentions in his DPO comments, he lacks standing to raise these issues in opposing summary determination on Issue SP-2.  

Second, Mr. McAllister has not demonstrated any relevant factual dispute with regard to Issue SP-2.  The fact that the soils along the Morgan Lake Alternative route are generally more productive than the soils near the NEPA route is immaterial, because the Soil Protection standard does not involve a comparative analysis.  The standard does not require a showing that the route(s) proposed in the ASC are the least impactful to soil.  Rather, the pertinent inquiry under OAR 345-022-0022 is whether the design, construction, and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils.  Mr.

23 This ruling does not purport to limit the evidence and arguments that may be presented in the contested case by the parties and limited parties with standing on Issue SP-1.  This ruling simply finds that Mr. McAllister may not raise, *in the context of Issue SP-2*, challenges that he did not raise with specificity, or present evidence in support of, in his DPO comments.

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McAllister has not come forward with any evidence of potential significant adverse impacts to soils within the analysis area to contradict the Department’s determination that the B2H Project satisfies the Soil Protection standard.

Third, to the extent Mr. McAllister has identified errors in the ASC, these errors have been corrected or acknowledged by Idaho Power, and have no bearing on Idaho Power’s analysis under the Soil Protection standard and the resolution of Issue SP-2.

(b) The Department’s Motion on Issue SP-2

The Department, in its motion, contends that it is entitled to a favorable ruling as a matter of law on Issue SP-2 because the Council’s review under the Soil Protection standard considers the analysis area as a whole (including the proposed and alternative routes), and does not require a finding of compliance related to particular portions of a facility, such as the Morgan Lake Alternative. Department Motion on SP-2 at 2, 11.

In his Opposition to this motion, Mr. McAllister again argues that he is not limited to the facts set out in his DPO comments. He argues that the ASC is flawed, inaccurate and unreliable, and that there are disputes of material fact with regard to the Morgan Lake Route’s compliance with the Soil Protection standard. He challenges Idaho Power’s methodology for evaluating impacts and argues that the limited analysis area (area within the site boundary) is insufficient to adequately assess impacts on soils.24 Opposition to Department’s Motion on Issue SP-2 at 5-7.

In its Reply, the Department argues that Mr. McAllister has not provided any pertinent facts to support his assertion that the proposed facility will result in significant adverse impacts to soil along the Morgan Lake Alternative. The Department also contends that Mr. McAllister has not provided evidence establishing a relevant factual dispute related to impacts to soil outside the site boundary/analysis area. Department Reply on Motion on Issue SP-2 at 4-7.

The ALJ finds that the Department is entitled to a favorable ruling as a matter of law on Issue SP-2 because Mr. McAllister has not demonstrated any relevant factual dispute.

As discussed above, the Council rules do not prohibit a party or limited party from presenting evidence in the contested case in support of the party’s or limited party’s position. However, with exceptions not pertinent here, the law does limit the issues in the contested case to those raised with specificity on the record of the public hearing. ORS 469.370(5); OAR 345-015-0016(3). Because Mr. McAllister did not challenge Idaho Power’s methodology for evaluating impacts to soil or the appropriateness of the analysis area in his DPO comments, he

24 Mr. McAllister argued that Idaho Power’s soil protection analysis was flawed and “[t]he composition and productivity of the soil impacted by the Morgan Lake Alternative is significant because the site potential of that soil is great.” Opposition to Department’s Motion on Issue SP-2 at 5. He added that the significance of the impacts are demonstrated through “comparative analysis” of other soils. Id. at 6.

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lacks standing to raise these issues in the contested case in response to the Department’s motion.25

Moreover, to the extent Mr. McAllister identified misstatements in the ASC, these errors have been corrected or acknowledged by Idaho Power. These errors do not raise material questions of fact, nor do they demonstrate that the ASC as a whole is unreliable or inaccurate. More importantly, the errors identified by Mr. McAllister have no bearing on the Department’s evaluation of the proposed facility’s compliance with the Soil Protection standard.

Finally, as the Department notes, the Soil Protection standard requires an analysis of the proposed facility’s impact on soil in the analysis area, meaning all areas within the project site boundary, including the Morgan Lake Alternative route. The Soil Protection standard does not, however, require a comparative analysis of soil impacts for the proposed and alternative routes, or a finding of compliance specifically related to the Morgan Lake Alternative.

6. Conclusion

To summarize the above, there are no material facts in dispute with regard to Issue FW-13, and both Idaho Power and the Department are entitled to favorable rulings. There are no material facts in dispute with regard to Issue R-2, and Idaho Power is entitled to a ruling in its favor on Issue R-2. There are no material facts in dispute with regard to Issue SP-2, and both Idaho Power and the Department are entitled to favorable rulings.

Because these rulings resolve, in favor of Idaho Power and the Department, all three issues on which Mr. McAllister has limited party status, it is appropriate at this time to dismiss Mr. McAllister’s participation as a limited party in the contested case.26

RULINGS AND ORDER

Idaho Power’s Motion for Summary Determination on Contested Case Issues FW-13 and SP-2 is GRANTED;

Idaho Power’s Motion for Summary Determination on Contested Case Issue R-2 is GRANTED;

The Department’s Motion for Summary Determination on Contested Case Issue FW-13 is GRANTED;

The Department’s Motion for Summary Determination on Contested Case Issue SP-2 is GRANTED;

25 As noted previously, this ruling does not purport to limit the evidence and arguments presented in the contested case by the parties and limited parties with standing on Issue SP-1 (namely Idaho Power, the Department, and limited parties Stop B2H Coalition, and Dr. Fouty).

26 As noted at the outset, Ms. Barry retains her status as a limited party with standing on Issues R-3 and R-4.
Issues FW-13, R-2, and SP-2 are DISMISSED from the contested case; and

Michael McAllister is DISMISSED as a limited party in the contested case and shall be removed from the Service List for future filings in the contested case.

Alison Greene Webster
Senior Administrative Law Judge
Office of Administrative Hearings

NOTICE OF RIGHT TO INTERLOCUTORY APPEAL
PURSUANT TO OAR 345-015-0057

If this ruling terminates the limited party’s right to participate in the contested case proceeding, the limited party may take an interlocutory appeal to the Council pursuant to OAR 345-015-0057(1).

Pursuant to OAR 345-015-0057(2), the limited party shall submit an appeal involving the limited party’s right to participate in this contested case proceeding, with supporting arguments and documents, to the Council within seven (7) calendar days after the date of service of this ruling.
CERTIFICATE OF MAILING

On August 3, 2021, I mailed the foregoing RULING AND ORDER ON MOTIONS FOR SUMMARY DETERMINATION OF CONTESTED CASE ISSUES FW-13, R-2, AND SP-2 issued on this date in OAH Case No. 2019-ABC-02833.

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