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APPENDIX 1. NCA ENABLING LEGISLATION

PUBLIC LAW 103-64 – AUG. 4, 1993

SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA

PUBLIC LAW 103-64
103d Congress

An Act

To establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes.

Be it enacted by the Senate and House of Representatives of United States of America in Congress assembled,

Section 1. Findings

The Congress finds the following:

(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area contain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.

(2) These public lands constitute a valuable national biological and educational resource since birds of prey are important components of the ecosystem and indicators of environmental quality, and contribute significantly to the quality of wildlife and human communities.

(3) These public lands also contain important historic and cultural resources (including significant archaeological resources) as well as other resources and values, all of which should be protected and appropriately managed.

(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension or renewal thereof), to the extent consistent with section 460iii-3(e) of this title, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.

(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that:

(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;



(B) provides for continued military use, consistent with the requirements of section 460iii-3(e) of this title, of the Orchard Training Area by reserve components of the Armed Forces;

(C) addresses the need for public educational and interpretive opportunities;

(D) allows for diverse appropriate uses of lands in the area to the extent consistent with the maintenance and enhancement of raptor populations and habitats and protection and sound management of other resources and values of the area; and

(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.

(6) There exists near the conservation area a facility, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and reestablishment operations exist for endangered raptor species. There also exists at Boise State University a raptor study program which attracts national and international graduate and undergraduate students.

(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.

(8) Consistent with requirements of sections 1712 and 1732 of title 43, the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this subchapter.

(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans and these raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.

(10) An ongoing research program funded by the Bureau of Land Management and the National Guard is intended to provide information to be used in connection with future decision making concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.

(11) Public lands in the Snake River Birds of Prey Area have been used for domestic livestock grazing for more than a century, with resultant benefits to community stability and contributions to the local and State economies. It has not been demonstrated that continuation of this use would be incompatible with appropriate protection and sound management of raptor habitat and the other resource values of these lands; therefore, subject to the determination provided for in section 460iii-3(f) of this title, it is expected that such grazing will continue in accordance with applicable regulations of the Secretary and the management plan for the conservation area.

(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission.



Section 2. Definitions

As used in this Act:

- (1) The term "Secretary" means the Secretary of the Interior.
- (2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 3.
- (3) The term "raptor" or "raptors" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.
- (4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.
- (5) The term "Memorandum of Understanding" means the Memorandum of Understanding #ID-237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.
- (6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 3(b) of this title, and as described in the Memorandum of Understanding as well as the air space over the same.
- (7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 3(b).
- (8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 3(b) of this title.
- (9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this Act.
- (10) The term "hydroelectric facilities" means all facilities related to the generation, transmission, and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.

Section 3. Establishment of National Conservation Area

- (a) Establishment and Purposes – (1) There is hereby established the Snake River Birds of Prey National Conservation Area (hereafter referred to as the "conservation area").
 - (2) The purposes for which the conservation area is established, and shall be managed, are to provide for the conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area.
 - (3) Subject to the provisions of subsection (d) of this section and section 4, uses of the public lands in the conservation area existing on August 4, 1993, shall be allowed to continue.
- (b) Area Included – The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests therein managed by the Bureau of Land Management as



generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.

(c) Map and Legal Description – As soon as is practicable after August 4, 1993, the map referred to in subsection (b) of this section and a legal description of the conservation area shall be filed by the Secretary with the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this Act; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.

(d) Withdrawals – Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 *et seq.*; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat; U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on August 4, 1993, without further action. Subject to valid existing rights, as of August 4, 1993, lands within the Birds of Prey Conservation Area are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws, and the mineral material disposal laws, except that mineral materials subject to disposal may be made available from existing sites to the extent compatible with the purposes for which the conservation area is established.

Section 4. Management and Use

(a) In General – (1)(A) Within 1 year after August 4, 1993, the Secretary shall make any revisions in the existing management plan for the conservation area as necessary to assure its conformance with this Act, and no later than January 1, 1996, shall finalize a new management plan for the conservation area.

(B) Thereafter, the Secretary shall review the plan at least once every 5 years and shall make such revisions as may be necessary or appropriate.

(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.

(2) Except as otherwise specifically provided in section 3(d) of this title and subsections (d), (e), and (f) of this section, the Secretary shall allow only such uses of lands in the conservation area as the Secretary determines will further the purposes for which the Conservation Area is established.

(b) Management Guidance – After each review pursuant to subsection (a) of this section, the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provisions for –



- (1) protection for the raptor populations and habitats and the scientific, cultural, and educational resources and values of the public lands in the conservation area;
 - (2) identifying levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;
 - (3) public use of the conservation area consistent with the purposes of this Act;
 - (4) interpretive and educational opportunities for the public;
 - (5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this Act, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;
 - (6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;
 - (7) the identification of levels, types, timing, and terms and conditions for the allowable nonmilitary uses of lands within the conservation area that will be compatible with the protection, maintenance, and enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and
 - (8) assessing the desirability of imposing appropriate fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.
- (c) Visitors Center – The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitors center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.
- (d) Visitors Use of Area – In addition to the Visitors Center, the Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.
- (e) National Guard Use of Area – (1) Pending completion of the ongoing research concerning military use of lands in the conservation area, or until the date 5 years after August 4, 1993, whichever is the shorter period, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.
- (2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this Act.
 - (3) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall submit to the Committees on Natural Resources and



Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of such research.

(4) Nothing in this subchapter shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.

(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date 5 years after August 4, 1993, whichever first occurs, the Secretary shall continue to permit military use of such lands, unless the Secretary, on the basis of such research, determines such use is not compatible with the purposes set forth in section 3(a)(2). Any such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.

(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to insure that military units involved maintain a program of decontamination.

(7) Nothing in this subchapter shall be construed as by itself precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.

(f) Livestock Grazing – (1) So long as the Secretary determines that domestic livestock grazing is compatible with the purposes for which the conservation area is established, the Secretary shall permit such use of public lands within the conservation area, to the extent such use of such lands is compatible with such purposes. Determinations as to compatibility shall be made in connection with the initial revision of management plans for the conservation area and in connection with each plan review required by subsection 4(a)(1)(B).

(2) Any livestock grazing on public lands within the conservation area, and activities the Secretary determines necessary to carry out proper and practical grazing management programs on such lands (such as animal damage control activities) shall be managed in accordance with the Act of June 28, 1934 (43 U.S.C. 315 *et seq.*; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), other laws applicable to such use and programs on the public lands, and the management plan for the conservation area.

(g) Cooperative Agreements – The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes and policies of this Act.

(h) Agricultural Practices – Nothing in this subchapter shall be construed as constituting a grant of authority to the Secretary to restrict recognized agricultural practices or other activities on private land adjacent to or within the conservation area boundary.

(i) Hydroelectric Facilities – Notwithstanding any provision of this Act, or regulations and management plans undertaken pursuant to its provisions, the Federal Energy Regulatory Commission shall retain its current jurisdiction concerning all aspects of the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. 791a *et seq.*), located within the boundaries of the conservation area.



Section 5. Additions

(a) Acquisitions – (1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange.

(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after August 4, 1993, shall become a part of the conservation area and shall be subject to this Act.

(b) Purchase of Lands – In addition to the authority in section 318(d) of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4061-9(a)), monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.

(c) Land Exchanges – The Secretary shall, within 4 years after August 4, 1993, study, identify, and initiate voluntary land exchanges which would resolve ownership related land use conflicts within the conservation area.

Section 6. Other Laws and Administrative Provisions

(a) Other Laws – (1) Nothing in this subchapter shall be construed to supersede, limit, or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) or to limit the applicability of the National Trails System Act (16 U.S.C. 1241 *et seq.*) to any lands within the conservation area.

(2) Except as otherwise specifically provided in this subchapter, nothing in this subchapter shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*), or the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*).

(3) Nothing in this subchapter shall be construed as by itself altering the status of any lands that on August 4, 1993, were not managed by the Bureau of Land Management.

(4) Nothing in this subchapter shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.

(b) Release – The Congress finds and directs that the public lands within the Snake River Birds of Prey Natural Area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied and found unsuitable for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976. Such lands are hereby



released from further management pursuant to section 603(c) of Such an Act and shall be managed in accordance with other applicable provisions of law, including this Act.

(c) Existing Administrative Withdrawal Terminated – Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby revoked subject to subsections (d)(3) and (d)(4).

(d) Water – (1) The Congress finds that the United States is currently a party in an adjudication of rights to waters of the Snake River, including water rights claimed by the United States on the basis of the reservation of lands for purposes of conservation of fish and wildlife and that consequently there is no need for this Act to effect a reservation by the United States of rights with respect to such waters in order to fulfill the purposes for which the conservation area is established.

(2) Nothing in this Act or any action taken pursuant thereto shall constitute either an expressed or implied reservation of water or water rights for any purpose.

(3) Nothing in this Act shall be construed as effecting a relinquishment or reduction of any of the water rights held or claimed by the United States within the State of Idaho or elsewhere on or before August 4, 1993.

(4) The Secretary and all other officers of the United States shall take all steps necessary to protect all water rights claimed by the United States in the Snake River adjudication now pending in the district court of the State of Idaho in which the United States is joined under section 208 of the Act of July 10, 1952 (66 Stat. 560; 43 U.S.C. 666; commonly referred to as the “McCarran Amendment”).

Section 7. Authorization of Appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Approved August 4, 1993.

