FILED
AT THE REQUEST OF
Michael Whitfield
AT 00 MINUTES PAST 11 a.m.
DATE Aug. 3, 1998
Asa D. Drake
CLERK OF RECORD
BY Dora Rigby
DEPUTY

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TETON CO., ID
CLERK RECORDER

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CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this the third day of August, 1998, by David George and Carolyn A. Foster, having an address at P.O. Box 193, Driggs, ID, 83422, ("Grantors"), in favor of The Teton Regional Land Trust, Inc., a non-profit Idaho corporation, whose mailing address is P.O. Box 247, Driggs, Idaho 83422, ("Grantee").

WITNESS THAT

WHEREAS, Grantors are the sole owners in fee simple of certain real property located in Teton County, Idaho (the "Property"), described more particularly in Exhibit A (Property Legal Description), attached hereto and by this reference made a part thereof, which property remains largely in an undeveloped and natural state; and

WHEREAS, the Property possesses substantial natural, scenic and wildlife values (collectively, "Conservation Values") of great importance to the Grantors, Grantee, the people of Teton Valley and the people of Idaho and the United States, and their protection will yield a significant public benefit; and

WHEREAS, Grantors have the potential of building multiple residences on the Property in locations that would degrade fish and wildlife habitats, and Grantors do not wish to build multiple residences nor build in inappropriate locations; and

WHEREAS, the Property is situated within Teton Valley, Idaho and Wyoming, which includes portions of Targhee National Forest, nationally recognized views of the Teton Mountain Range, significant wildlife habitats including wetlands of great regional significance, and is an important portion of the Greater Yellowstone Ecosystem; and

WHEREAS, the Property has substantial natural, wildlife, and scenic values (collectively, "Conservation Values") of great importance to the Grantor, the Trust, the people of Teton Valley and the people of Idaho and the United States, and their protection will yield a significant public benefit; and

WHEREAS, the Property contains wetlands, flood plains and riparian habitats vital to the protection of wildlife populations, nutrient cycling, water quality, erosion control, and ground water recharge; and

WHEREAS, the Property is within one-quarter mile of the Teton River, a major river in the Henry's Fork Snake River Watershed, and includes a portion of Fox Creek, a major tributary of the Teton River, and several spring creeks which feed Fox Creek; and shares ecosystems with and contributes to the ecological viability of the watershed; and

WHEREAS Fox Creek is recognized as an important Yellowstone cutthroat trout spawning stream by the State of Idaho Department of Fish and Game and is specifically protected by the Comprehensive State Water Plan for the Henry's Fork Watershed, and is therefore, accorded specific recognition by the State of Idaho; and

WHEREAS, the Property contains portions of important shorebird and waterfowl migratory and wintering habitat for species of special concern such as trumpeter swans, whooping cranes, and long-billed curlew ; and

WHEREAS, the Property supports a diversity of wildlife species, including federal and state listed threatened, endangered and sensitive species, and many other species which are dependent upon the Property's streams, wetlands, and uplands; and

WHEREAS, the Idaho Department of Fish and Game, United States Natural Resources Conservation Service and United States Fish and Wildlife Service have recognized the important fish and wildlife habitats found on the Property; and

WHEREAS, the present conservation values of the Property are to be documented in an inventory of relevant features of the Property and filed at the offices of the Grantee and incorporated by this reference ("Baseline Documentation"), Exhibit B, which shall consist of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant, and which is intended to serve as an objective, though non inclusive, information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, the substantial development prohibited by this Conservation Easement would seriously impair the conservation values of the Property; and

WHEREAS, protection of this Property by means of a Conservation Easement is consistent with and will further the goals and policies of the Teton County Comprehensive Plan, which became effective on June 28, 1993 and is consistent with the wetlands element of that Plan, which endorses wetland protection; and

WHEREAS, Grantor desires to preserve and protect forever the natural, wildlife, and scenic features and values of the Property; and

WHEREAS, on the third day of August, 1998, a map depicting the Property and presenting information referred to by this Conservation Easement ("the Map of the Property") was filed in the office of the Clerk of Teton County, Idaho; and

WHEREAS, for the purposes of convenience only and not as a substitute for the Map of the Property, an incomplete and not totally accurate reproduction of the Map of the Property is attached to this Conservation Easement as Exhibit C (Foster Fox Creek Property Map); and

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code as of 1986, as amended, whose primary purpose is the conservation of the natural and agricultural resources, significant ecosystems, scenic open spaces, and traditional lifestyles of Idaho and Wyoming and the Upper Snake River Valley; and

WHEREAS, Grantee has agreed to accept this grant of certain interests in the Property upon the condition and understanding that the intentions of the Grantors regarding the future uses and preservation of the Property as expressed in this document shall be forever honored and defended; and

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Idaho and in particular Idaho Code §§ 55-2101 to 55-2109 (1988), and with the intention of making a voluntary and irrevocable gift in perpetuity, Grantors hereby voluntarily grant and convey to Grantee a Conservation Easement in perpetuity over and across the Property of the nature and character and to the extent hereinafter set forth:

1. Purpose. It is the purpose of the Conservation Easement granted herein to assure that the Property will be retained forever in its natural, scenic, and wetlands habitat condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantors intend that this Conservation Easement will confine the use of the Property to such activities, including, without limitation, natural, wildlife habitat, limited recreational and agricultural, as are not inconsistent with the purpose of this Conservation Easement.

1.1. Paragraphs 2 and 3 of this Conservation Easement identify rights conveyed to Grantee and rights reserved to Grantors respectively. It is the intention of this instrument to better define those rights so that Grantors and Grantee can accomplish the purposes of this Conservation Easement in a cooperative and amicable manner.

2. Affirmative Rights Conveyed by the Conservation Easement to Grantee. To accomplish the purpose of the Conservation Easement, the following rights are conveyed to Grantee by this easement:

2.1. To identify, preserve and protect in perpetuity the conservation values of the Property, subject to the terms of the grant of this easement and in keeping with permitted practices noted in Paragraph 3.

2.2. To enter upon the Property to enforce the rights herein granted and in connection therewith to inspect, observe, study, and make scientific observations

of the Property, all in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such entry, provided that, except in cases where Grantee determines that immediate entry upon the Property is essential to prevent or mitigate a significant violation of this Conservation Easement, such entry shall be upon reasonable prior notice given by or on behalf of Grantee to one or more of the then owners of the Property, and Grantee shall not in any case unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and

2.3. To prevent any unpermitted activity on or unpermitted use of the Property that is inconsistent with the purpose of this Conservation Easement or which may have a significant adverse impact on the conservation interests associated with the Property, and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in paragraph 6.

2.4. To place and maintain on the Property a sign that a Conservation Easement has been conveyed to Grantee, subject to the approval of Grantors as to design, size, and location.

3. Permitted Uses and Practices. Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement and will not result in significant injury to or the destruction of a significant conservation value. Without limiting the generality of the foregoing, the following rights are expressly reserved by Grantors:

3.1. To reside on the Property and to designate and to develop, in accordance with the provisions of this paragraph 3.1, one "Building Area" as described below, provided that Grantors agree that the "Building Area" shall not exceed 5 acres in size and that the following permitted uses and practices and restrictions apply to the "Building Area". Notwithstanding anything in this paragraph to the contrary, all structures permitted hereby shall be located within the "Building Area" defined herein. Grantors shall comply with local, state, and federal regulations that deal with building construction, and acquire all appropriate local, state and federal building permits. The designated "Building Area" shall be located as described below and as indicated on the accompanying map, Exhibit D, except with the prior written permission of the Trust, which permission shall not be unreasonably withheld.

3.1.1. To construct, use, own, occupy, lease, repair, and reconstruct within the designated Building Area: two "Principal Residences", two "Guest Houses", and normal residential and farming structures, including, but not

limited to two garages, corrals, loading chutes and outbuildings. Notwithstanding anything in this paragraph to the contrary, all structures permitted hereby shall be located within the "Building Area" defined herein.

The two "Principal Residences" shall not exceed 4,000 square feet of living area nor 25 feet in height from the ground level individually, except with the prior written permission of the Trust, which permission shall not be unreasonably withheld.

The Guest House(s) shall not exceed 1,000 square feet of living area and shall be used only occasionally by the owner of the Principal Residence for themselves or guests, and shall not be used as a personal residence nor for commercial purposes, provided that the guest house may be used as a residence for Property owners in the event that the Principal Residence is not yet built or is under construction.

3.1.2. To install and maintain all reasonably necessary water, sewage, and other utilities in connection with the permitted structures described in the subparagraphs of this Paragraph 3.1, so long as all such utilities are installed and maintained underground, it being understood that any septic system must be constructed in strict conformity with all applicable state and local laws.

3.1.3. To construct, maintain and use for pedestrian and vehicular access, roadways as needed to access the Building Area as determined by mutual written agreement of Grantors and the Trust. Grantors agree to provide the Trust with prior written notice pursuant to paragraph 6.1 herein before any construction of new roadways.

3.1.4. Anywhere within the designated Building Area, to construct, locate, maintain, repair and use minor, insubstantial structures and improvements which might be considered part of usual residential and farming activities, including but not limited to equipment storage buildings, outdoor walkways, decks attached to buildings, landscaping, lawns and flower and vegetable gardens and associated fences.

3.1.5. Within the designated Building Area only, normal residential ashes, trash and garbage may be stored on a temporary basis for burning or disposal off the property. Building materials may be stored temporarily during construction activities.

3.1.6. No residential buildings or associated developments or utilities except those specifically permitted by this paragraph 3.1 for the Building Area shall be constructed or located anywhere on the Property.

3.1.7. Use of the Property for lawful "home-occupancy" commercial use is permitted, provided that said use occurs solely inside a residential building and has no effect on the wildlife, scenic, agricultural and natural values of the Property, and in particular has, at most, negligible impact on the amount and character of traffic on the Property.

3.1.8. Pets, most specifically dogs, shall be under the control of property owners such that harassment of wildlife is prevented.

3.2. To pasture, graze, feed, water, and care for livestock in compliance with the standards and specifications of a grazing plan to be prepared by the United States Department of Agriculture, Natural Resources Conservation Service, for the purpose of improving local range and protecting the natural and wildlife resources of the Property, the terms and conditions of which grazing plan shall, upon completion, be attached hereto and by this reference made a part hereof as Exhibit E (Grazing Plan).

3.2.1 To construct or develop on the Property improvements needed for normal livestock grazing operations, including corrals and catch pens, provided that such construction or development takes place within the "Building Area" and shall be in compliance with the intent of this Conservation Easement.

3.3. To construct, maintain, and repair: (1) Fences along the property boundaries; and (2) Cross fences and riparian fences within pasture areas as needed to manage livestock and prevent excessive grazing in accordance with the above mentioned Natural Resources Conservation Service grazing plan; and (3) fences as may be necessary or appropriate for the Building Area as defined in subparagraph (3.1) provided that all such fences shall be located within an area designated as "Building Area" on the Map of the Property; and (4) only those additional fences as may be necessary or appropriate within the intent of this Conservation Easement; provided, however, that all fences shall comply with the following requirements, except by prior written permission of the Trust which permission shall not be unreasonably denied:

3.3.1. Where a fence must cross a major animal migration route, it shall be designed to minimize obstruction of migration routes.

3.3.2. Fences which are constructed to run parallel to any streams must be located at least 25 feet from open water.

3.4. To construct or develop on the Property wildlife habitat improvements, provided that any such construction or development shall be in compliance with the intent of this Conservation Easement, which is to conserve the diversity of wildlife species native to the Upper Snake River Watershed and found on the Property.

3.4.1. Grantors agree to consult with Grantee before taking actions to develop wildlife habitat improvements.

3.5 To lawfully use agrochemicals, including, but not limited to, fertilizer, herbicides, and biocides, only in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable agricultural and habitat management purposes, provided that the use of such chemicals shall in all cases be in compliance with local, state, and federal regulations, standards, and guidelines and conducted in such a manner as to minimize adverse effects upon the underlying natural habitat values, and surface and subsurface water resources of the Property.

3.6. To reintroduce, plant, and maintain native plant and wildlife species, meaning those species whose natural distributions include the Upper Snake River Watershed, which have been reduced or extirpated from their former range or exist below normal densities, and whose reintroduction is intended to protect, preserve and enhance the natural, aesthetic, scenic, and wildlife habitat values of the Property.

3.7. To conduct studies on resident wildlife species, including those which involve capturing and marking of individual animals, provided that all such studies are to be conducted by competent wildlife researchers with all necessary permits as required by law to conduct such studies.

3.8. To remove trees, bushes, grasses and other vegetation from the Property only if the removal constitutes an action that is compatible with the purpose of this Conservation Easement.

3.8.1. Actions which are not compatible with the purpose of this Conservation Easement, unless specifically permitted by the prior written consent of Grantee, include, but are not limited to: clearcutting of native vegetation, wide-scale removal of vegetation or soil, grading, and similar activities.

3.9. To use the Property for walking, hiking, horseback riding, skiing, snowmobiling, use of all-terrain-vehicles, fishing, hunting, picnicking and other recreational uses consistent with the purpose of this Conservation Easement and all applicable governmental regulations in regard to taking of fish and wildlife.

3.10. To introduce and maintain non-native vegetation and animal species on the Property to protect, preserve and enhance the wildlife habitat values of the Property, but only with the prior written consent of Grantee which consent may be refused or limited in Grantee's discretion.

3.11. The eradication, abatement, and control of toxic or noxious weeds or animals are permitted.

3.12. Grantors specifically retains all rights, title and interest in and to all tributary and non-tributary water, water rights, and related interests, in, on, under or appurtenant to the Property.

4. Prohibited Uses and Practices. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

4.1. Division, subdivision or defacto subdivision through sales, leases or for residential development beyond that permitted by a subparagraph of Paragraph 3 above, or otherwise.

4.2. Any residential, commercial or industrial buildings, structures of any kind, or associated developments or utilities.

4.3. Drilling, filling, excavating, dredging, mining or removal of topsoil, sand, gravel, rock, minerals, hydrocarbons, or other materials on or below the surface of the Property, or other significant changing of the topography of the Property.

4.4. Dumping or storing of ashes, trash, garbage, junk or other unsightly or offensive materials, except as necessary for uses permitted by a subparagraph of Paragraph 3 above .

4.5. Manipulation or alteration of natural watercourses, except as necessary for uses permitted by a subparagraph of Paragraph 3 above .

4.6. Manipulation or alteration of vegetation, except as necessary for uses permitted by a subparagraph of Paragraph 3 above .

4.7. Outdoor burning of any materials except where the burning is in conformity with applicable governmental controls and regulations and, in the case of vegetation, where the burning is also beneficial to wildlife.

4.8. Off-road use of vehicles, except as necessary for uses permitted by a subparagraph of Paragraph 3 above.

4.9. Establishment or maintenance or any livestock feedlots or game farms.

4.10. Commercial timbering of any kind.

4.11. Construction of any road.

4.12. Any industrial use.

4.13. Dude ranching is prohibited.

4.14. Harassment of wildlife by any person or domestic animal is prohibited.

4.15. Use of the Property for commercial uses is prohibited, except as necessary for uses permitted by a subparagraph of Paragraph 3 above.

4.16. All other uses which are inconsistent with the purpose of this Conservation Easement are prohibited.

5. Documentation of Use and Condition of Property--Baseline Documentation. In order to establish the present condition of the natural and wildlife resources and man-made features of the Property, so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, an inventory of the Property's relevant resources, features and conditions has been prepared, which inventory is attached hereto and by this reference made a part hereof as "Exhibit B". Grantors and Grantee agree that said inventory is an accurate representation of the Property at the time of the signing of this conveyance. In the event a controversy arises with respect to the nature and/or extent of the historical and/or present use of the Property or the physical condition of the Property as of the date of the signing of this Conservation Easement, the parties shall not be foreclosed from utilizing all relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

6. Notice and Approval.

6.1. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraph 3, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Conservation Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than sixty (60) days prior to the date Grantors intend to undertake the activity in question. The notice shall inform Grantee of all aspects of the proposed activity, including, but not limited to, the nature, situs, magnitude, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency the purpose of this Conservation Easement. Such notice shall be sent by registered or certified mail, return receipt requested, addressed to the following: The Teton Regional Land Trust, P.O. Box 247, Driggs, Idaho, 83422, or to such other address as Grantee may previously designate to Grantors in writing.

6.2. Grantee's Approval. Where Grantee's approval is required, as set forth in paragraphs 3 and 4, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantors' written request therefor. Grantee's approval

may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Conservation Easement.

6.3. Arbitration. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Grantors agree not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall elect a single arbitrator to hear the matter. In the event that Grantee exercises this right, if Grantors and Grantee agree upon selection of one person to serve as arbitrator, there shall be only one (1) arbitrator. If the parties are unable to agree on the selection of a single arbitrator within thirty (30) days after the demand for arbitration, there shall be three (3) arbitrators, one named by Grantee and one named by the Grantors within sixty (60) days after the demand for arbitration, and a third chosen by those two designated arbitrators. The decision of the arbitrator (or a majority of the arbitrators, as the case may be), shall be binding and may be confirmed by a court of competent jurisdiction upon application by Grantors or Grantee. All costs of the arbitration, including arbitrators' fees and reasonable attorneys' fees, shall be borne by the losing party.

7. Grantee's Remedies.

7.1. Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantors' of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

7.2. Injunctive Relief. If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

7.3. Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Conservation Easement, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Grantors' liability therefor,

Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

7.4 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this section 7 without prior notice to Grantors or without waiting for the period provided for cure to expire.

7.5. Scope of Relief. Grantee's rights under this section 7 apply equally in the event of either actual or threatened violations of this Conservation Easement. Grantors agree that Grantee's remedies at law for any violation of the Conservation Easement are inadequate and that Grantee shall be entitled to injunctive relief described in paragraph 7.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of other legal remedies. Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7.6. Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Conservation Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs.

7.7. Forbearance. Forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any term of this Conservation Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

7.8 Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription.

7.9 Acts Beyond Grantors' Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency

conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

8. Access. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement pursuant to U.S. Treasury Regulations §§ 1.170A-14(d)(4)(ii)(B) and §§ 1.170A-14(d)(4)(ii)(C).

9. Costs, Liabilities, Taxes, and Environmental Compliance.

9.1. Costs, Legal Requirements, and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate general liability insurance coverage. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, or local laws, regulations, and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

9.2. Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with sufficient evidence of payment upon request.

9.3. Representations and Warranties. Grantors represent and warrant that, after reasonable investigation and to the best of their knowledge:

(a) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Conservation Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination;
(b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements;
(c) Grantors and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

9.4. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be held responsible therefor.

9.5. Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and corresponding state statutes.

10. Hold Harmless. Grantors hereby release and agree to hold harmless, indemnify, and defend Grantee and its members directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and corresponding state statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraph 9.

11. Extinguishment of Conservation Easement.

11.1. Extinguishment. If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to termination or extinguishment, shall be the stipulated fair market value of the Conservation Easement, or proportionate part thereof, as determined in accordance with this Paragraph 11.

11.2. Valuation. This Conservation Easement constitutes a real property interest immediately vested in Grantee upon the execution of this Conservation Easement, which, for the purposes of this Paragraph 11, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) a fraction, the numerator of which is the value of the Conservation Easement at the time of this conveyance and the denominator of which is the value of the Property, without deduction for the value of this Conservation Easement, at the time of this grant. (The values at the time of this grant [are-or-shall be] those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended. For the purposes of this Paragraph 11, the ratio of the value of this Conservation Easement to the value of the Property unencumbered by this Conservation Easement shall remain constant.

11.3. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 11.2. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Property.

11.4. Application of Proceeds. Grantee shall use all any proceeds received under the circumstances described in this paragraph 11 in a manner consistent with the conservation purposes exemplified in this Conservation Easement.

12. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Grantors and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under applicable laws, including Idaho §§ 55-2101 to 55-2109 (1988) or Section 170(h) of the Internal Revenue Code of 1986, as amended, and any amendment shall be consistent with the purposes of this Conservation Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Teton County, Idaho.

13. Assignment. This Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Conservation Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended, (or any successor provision then applicable), or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Conservation Easement or limit its enforceability in any way.

14. Conservation Easement Granted in Perpetuity. The Conservation Easement herein granted shall be a burden upon and shall run with the Property in perpetuity and shall bind the Grantors and Grantors' heirs, successors and assigns forever.

15. Subsequent Transfers. The Grantors agree to incorporate the terms of this Conservation Easement by specific reference in a separate paragraph, along with the recording data of this Conservation Easement, in any deed or other legal instrument by which Grantors divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The Grantors further agree to give written notice by certified mail to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of the Grantors to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

16. Estoppel Certificates. Upon request by Grantors, Grantee shall within twenty (20) days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantors' compliance with any obligation of Grantors contained in this Conservation Easement or otherwise evidences the status of this Conservation Easement. Such certification shall be limited to the condition of the Property as of Grantee's most

recent inspection. If Grantors request more current documentation, Grantee shall conduct an inspection, at Grantors' expense, within thirty (30) days of receipt of Grantors' written request therefor.

17. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid to such address as either party from time to time shall designate by written notice to the other.

18. Recordation. Grantee shall record this instrument in timely fashion in the official records of Teton County, Idaho, and may re-record at any time as may be required to preserve its rights in this Conservation Easement.

19. General Provisions.

19.1. Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Idaho.

19.2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of Idaho Code §§ 55-2201 to 55-2109 (1988). If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

19.3. Severability. If any provision of this Conservation Easement, or application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

19.4. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration of variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 12 above.

19.5. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

19.6. Joint Obligation. The obligations imposed by this Conservation Easement upon Grantors shall be joint and several.

19.7. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantors" and "Grantee" wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above named "Grantee" and its successors and assigns.

19.8. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

19.9. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

19.10. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the Grantors and Grantee have set their hands on the day and year first above written.

By _____
David George Foster "GRANTOR"

By _____
Carolyn A Foster "GRANTOR"

By _____
Lewis M. Mithun "GRANTEE"

By _____
Mary E. Maj "GRANTEE"

STATE OF IDAHO)
) ss
COUNTY OF Teton)

On this third day of August, 1998, before me, _____ a Notary Public in and for said State, personally appeared (David George and Carolyn A. Foster) known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

S
E
A
L

LAYNE W. PRICE
☆ NOTARY PUBLIC ☆
STATE OF IDAHO

Teton County
My Commission Expires 11-19-2000

Notary Public for Idaho
Residing at: DRIGGS
My Commission Expires: 11-19-2000

STATE OF IDAHO)
) ss
COUNTY OF Teton)

On this third day of August, 1998, before me, LAYNE W PRICE a Notary Public in and for said State, personally appeared (Lewis M. Mithun and Mary E. Maj), known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of the Teton Regional Land Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

S
E
A
L

LAYNE W. PRICE
☆ NOTARY PUBLIC ☆
STATE OF IDAHO

Teton County
My Commission Expires 11-19-2000

Notary Public for Idaho
Residing at: DRIGGS, ID.
My Commission Expires: 11-19-2000

EXHIBIT A PROPERTY LEGAL DESCRIPTION

LEGAL DESCRIPTION of Property held by David George and Carolyn A. Foster, as tenants with full rights of survivorship, from Warranty Deed executed on 3rd day of August, 1998, in Teton County, Idaho. Legal description of the Douglas Ray Clinger and Chuck Clinger Property was attained from a Title Search conducted by American Land Title Company on May 22, 1998.

The subject property is located approximately five (5) miles to the south and west from Driggs and within ½ mile to the east from the Teton River in the south-central portion of Teton County, Idaho. The Property held by David George and Carolyn A. Foster is described as the Northwest Quarter of the Northwest Quarter of Section 28 and the Northeast Quarter of the Northeast Quarter of Section 29, both in Township 4 North, Range 45 East of the Boise Meridian, Teton County, Idaho.

CONTAINS 80 acres.

TOGETHER WITH two homesites of 2.5 acres being further described by the Warranty Deed referenced above.

EXHIBIT B BASELINE DOCUMENTATION
(In preparation)

Baseline Data for a Conservation Easement Granted by David George and Carolyn A. Foster On the Foster Fox Creek Property Teton County, Idaho

to The Teton Regional Land Trust

Prepared by

THE TETON REGIONAL LAND TRUST
P. O. BOX 247
DRIGGS, ID 83422

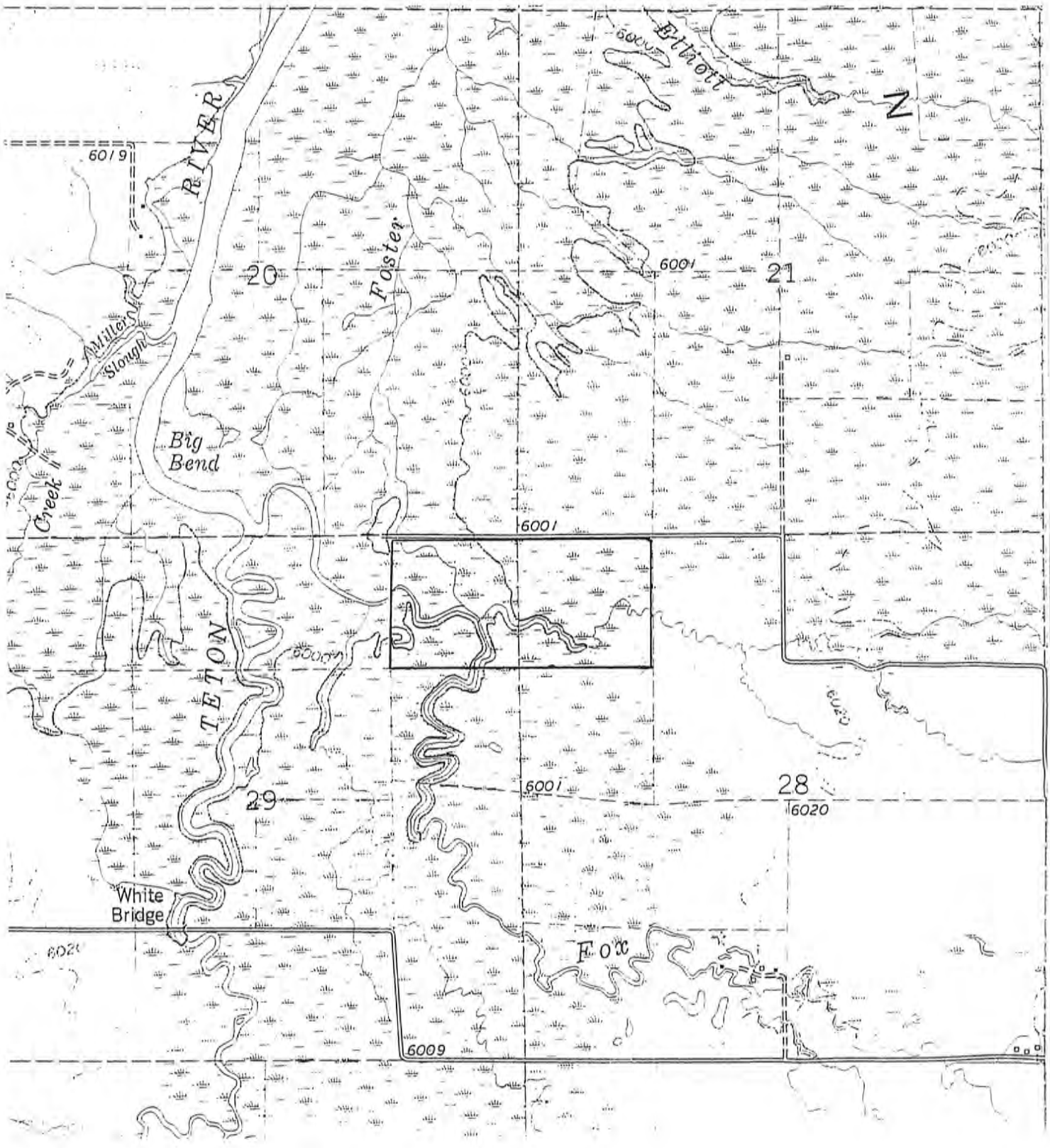
Principal Authors

Mary Maj, Wildlife Ecologist

Michael B. Whitfield, Conservation Biologist

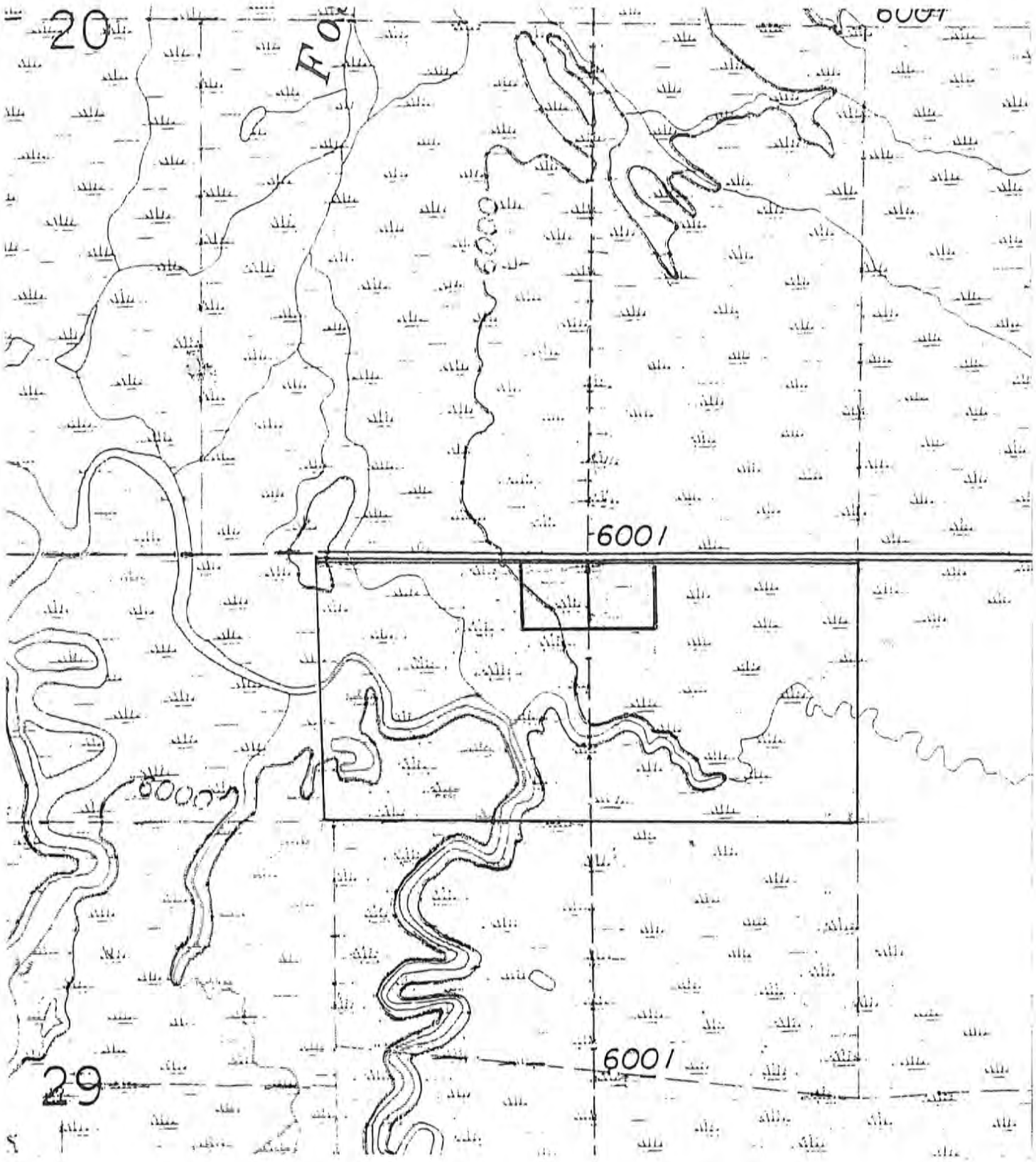
Date

EXHIBIT C FOSTER FOX CREEK PROPERTY MAP



TRLT/Foster Deed of Conservation Easement: August 3, 1998

EXHIBIT D MAP OF FOSTER FOX CREEK PROPERTY WITH APPROXIMATE LOCATION OF BUILDING AREA

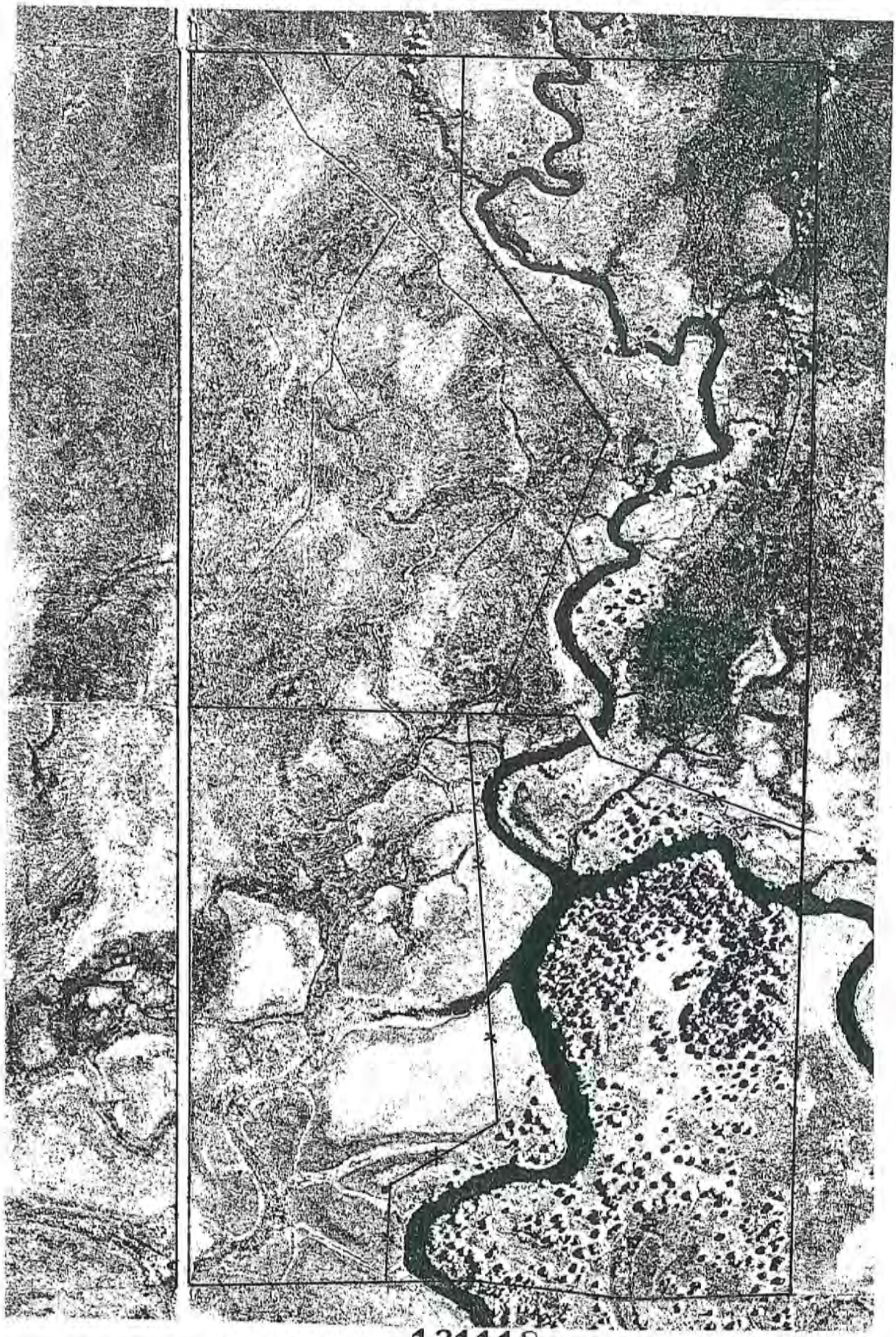


Grazing Plan
for the Foster Fox Creek Property

General Management Strategy: To create a four (4) pasture rotation system for beef cattle which would be grazed throughout the summer season. The southwest pasture which includes most of the willow and riparian habitat will be grazed less than the other three (3) pastures. The objective of livestock grazing in this pasture will be to minimize the invasion of undesirable plants.

Following a map depicting the approximate layout of all four (4) pastures and the internal fences needed to create the pastures. Capacity and rotation schedules will be developed after further examination of the property this summer (1998) by Natural Resource Conservation Service (NRCS). Capacity will be determined by a combination of grass types, soils and livestock and wildlife habitat objectives.

There may be opportunities for the landowner to participate in one of the NRCS's cost-share programs which are available for property owners wishing to protect riparian, fish and wildlife habitats. The Idaho Department of Fish and Game have also made fence materials available for protection of fish and wildlife habitat in the past.

EXHIBIT E GRAZING PLAN
(Being Prepared by Natural Resource Conservation Service)

MAP A: Four (4) Pasture System for the Foster Fox Creek Property Showing Approximate Fence Layout