

LEGAL FRAMEWORK FOR U.S. FISH AND WILDLIFE SERVICE MANAGEMENT AT LAKE LOWELL, DEER FLAT NATIONAL WILDLIFE REFUGE

The Deer Flat dams were constructed by the Bureau of Reclamation (Reclamation) as part of the Boise Project, Arrowrock Division. These embankments impound Lake Lowell, which serves as an off-stream water storage facility. Prior to completion of the project in 1911, the United States acquired or withdrew from the public domain approximately 10,000 acres constituting the reservoir area. All of the land underlying the reservoir is held in fee by the United States with the exception of two parcels over which the United States holds rights-of-way. With regard to the Reclamation project water stored in Lake Lowell, the United States retains proprietary jurisdiction over it until it is diverted from Lake Lowell for irrigation.

President Theodore Roosevelt established the Deer Flat Bird Reservation on February 25, 1909, when he signed Executive Order 1032. The Executive Order reserved the reservoir site as a preserve and breeding ground for native birds subject to reclamation (irrigation) use under the Reclamation Act of 1902 and any other valid existing rights. Executive Order 1032 made it unlawful to hunt, trap, capture, willfully disturb or kill any bird within the limits of the reservation except under rules prescribed by the Secretary of Agriculture. (The Bureau of Biological Survey, a predecessor to USFWS, was then located in the Department of Agriculture.)

Reclamation operated the Boise Project until 1926 when operation was turned over to newly organized irrigation districts. Contracts between the United States and the Big Bend, Boise-Kuna, Nampa & Meridian, New York and Wilder Irrigation Districts transferred the care, operation and maintenance of the reservoir and the canals and laterals receiving water from the project to the Districts. The contracts also established the Boise Project Board of Control as the operating entity for the transferred works. The contracts did not transfer title to project lands or works, nor did they supersede Executive Order 1032.

On July 12, 1937, President Franklin D. Roosevelt signed Executive Order 7655, replacing Executive Order 1032. To effectuate the purposes of the Migratory Bird Conservation Act, Executive Order 7655 reserved and set apart, subject to valid existing rights, approximately 10,253 acres of lands owned or controlled by the federal government for use by the Department of Agriculture as a refuge and breeding ground for migratory birds and other wildlife. Executive Order 7655 also acknowledged that most of the lands had been withdrawn as part of the Deer Flat Reclamation Project and were primarily under the jurisdiction of the Department of the Interior; therefore, it provided that the refuge reservation was subject to use by the Department of the Interior for reclamation (irrigation) work and incidental purposes. Executive Order 7655 renamed the refuge the Deer Flat Migratory Waterfowl Refuge. The name was changed in 1940 to Deer Flat National Wildlife Refuge.

Congress enacted the National Wildlife Refuge System Administration Act (Refuge Administration Act), 16 U.S.C. § 668dd, in 1966 and has amended it several times since then. The Refuge Administration Act consolidated various categories of areas administered by the

Secretary of the Interior for the conservation of fish and wildlife and designated all of these lands, waters, and interests as part of the National Wildlife Refuge System. It requires that all refuge units be administered by the Secretary of the Interior through USFWS, and limits how areas may be removed from the Refuge System.

Under the Refuge Administration Act, the mission of the Refuge System is to “administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” Each refuge must be managed to fulfill the mission of the Refuge System as well as the specific purposes for which that refuge was established. The Refuge Administration Act prohibits the USFWS from permitting a new use, or extending an existing use, unless it has determined that the use is compatible with the mission of the Refuge System and the refuge’s specific purposes. It also provides USFWS, through the Secretary, authority to regulate activities in refuges. In addition, the Refuge Recreation Act, 16 U.S.C. § 460k, permits the Secretary to administer refuge areas for public recreation, but only to the extent that it is consistent with the primary objectives for which the area was established, and it directs the Secretary to curtail public recreation within areas whenever he considers such action to be necessary.

Pursuant to this legal framework, USFWS has the responsibility to manage surface uses of Lake Lowell consistent with the mission of the Refuge System and the Refuge’s purposes to further the goals of the Migratory Bird Conservation Act and serve as a refuge and breeding ground for migratory birds and other wildlife. However, since Lake Lowell was originally built to store irrigation water for Reclamation’s Boise Project, Executive Order 7655 provides that USFWS management of the Refuge should be secondary to the primary purpose of the reservoir, which is for “reclamation work and incidental purposes.” This means that USFWS management may not interfere with operation of the Reclamation irrigation project or its incidental purposes associated with operations for the benefit of the Boise Project’s irrigation patrons.