

DEPARTMENT OF AGRICULTURE**Forest Service**

RIN 0596-AA47

Hydropower Applications**AGENCY:** Forest Service, USDA.**ACTION:** Notice of proposed policy and procedures; request for public comment.

SUMMARY: The Forest Service proposes to revise current policy and procedures, implemented in February 1987, concerning administration of hydropower authorizations and the processing of proposals for hydropower projects affecting National Forest System lands. This notice contains the proposed revision, clarifies the current policy, and modifies procedures. These revisions are necessary to make agency policy and procedures consistent with regulatory changes by the Federal Energy Regulatory Commission (FERC) and to address issues raised in appeals related to authorizing hydropower projects. This proposed revision also includes revised fee structures that developers would pay for hydropower projects on National Forest System lands exempted from FERC licensing. The fees were revised to ensure that the United States receives fair market value for the use of National Forest System lands for hydropower development. Public comment is invited.

DATES: Comments must be received in writing on or before July 21, 1995.

ADDRESSES: Send written comments to Director of Lands (2770), 4th Floor, South Wing, Auditors Building, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed policy in the Office of the Director of Lands, 4th Floor, South Wing, Auditors Building, 201 14th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202-205-1367) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Questions about this proposal or requests for the entire Forest Service Handbook 2709.15, Hydropower Handbook, should be addressed to J. Kenneth Myers, Assistant Director, Realty Management Group, Lands Staff 202-205-1248.

SUPPLEMENTARY INFORMATION:**Background and Need for Policy**

Presently, there are more than 240 non-Federal hydropower projects on National Forest System lands that are

either licensed or exempted from licensing by the Federal Energy Regulatory Commission (FERC). Hydropower developers must receive authorization from both FERC and the Forest Service to construct and operate projects on National Forest System lands. The Forest Service is authorized under the Federal Power Act (16 U.S.C. 791 *et seq.*) to set mandatory terms and conditions in a FERC license necessary to protect National Forest System resources. The Forest Service also has authority under the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701) to issue special use authorizations for the occupancy and use of National Forest System lands for hydropower purposes. Both the Forest Service and FERC must review applications for proposed hydropower projects for adequacy and prepare environmental analyses under the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*).

Hydropower development proposals affecting National Forest System lands nearly quadrupled in 1981 as a result of legislation promoting the construction of energy projects utilizing renewable resources, namely, the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 260) and the Energy Security Act of 1980 (Pub. L. 96-294; 42 U.S.C. 8855). In 1984, the Supreme Court in *Escondido Mutual Water Co. v. LoJolla Band of Mission Indians*, 466 U.S. 765 (1984) (hereafter "Escondido ruling"), clarified the role of the Secretary of Agriculture in the licensing of hydropower projects on National Forest System lands. The Escondido ruling makes it clear that when National Forest System lands are to be occupied by a hydropower project, the Secretary may impose conditions on a FERC license necessary for the adequate protection and utilization of the National Forest. This affirmation of the Secretary's authority was incorporated into a February 1987 revision of Forest Service Manual Chapter 2770, which sets our broad direction to Forest Service managers on how to respond to applications for FERC licenses. Simultaneously, the agency issued a new Handbook (FSH 2709.15) in February 1987 to provide field direction on hydropower licenses and permits.

In August 1989, the forest Service initiated a process to identify the topics or aspects of the agency's hydropower project direction that need revision.

Numerous modifications to existing policy and procedures were identified during the process. As a result, the agency is proposing a revision of all hydropower direction in the Manual and Handbook. A discussion of the

important modifications follows. Because of the length of the Handbook, only the proposed Manual direction and the following parts of the Handbook are set forth at the end of this **Federal Register** notice: (1) The Forest Service conditions for a FERC license, (2) special use authorization provisions for licensed projects, (3) direction on charging fees to hydropower developers, and (4) direction on rehabilitating dams in wilderness areas. Those interested in reviewing a copy of the entire Handbook may obtain a copy by calling the **FOR FURTHER INFORMATION CONTACT** listed in the beginning of this notice.

Modifications to Existing Policy and Procedures*1. Recognition of Hydropower as an Appropriate Use of National Forest System Lands*

Current Forest Service policy recognizes hydropower as an appropriate use of National Forest Service land but the policy is not clearly stated.

In the proposed Manual revision, this agency policy is rewritten and clarified. These changes appear in the draft Forest Service Manual (FSM) in sections FMS 2770.2 and 2770.3. In summary, (1) energy is a recognized use of National Forest System lands; (2) hydropower is a valuable energy resource and a legitimate use of National Forest System lands; (3) sites with hydropower development potential are unique and rare; (4) the Forest Service will favorably consider hydropower development that does not conflict with other important uses or allocations of National Forest System resources; and (5) potential hydropower use should be carefully considered in the forest planning process.

2. Resource Balance

The Forest Service must balance energy development with protection and use of National Forest System resources. Furthermore, the agency strives to mitigate adverse environmental impacts whenever possible. The Forest Service often sets instream flow requirements and requires other measures necessary for the adequate protection and utilization of National Forest System resources. Consistent with the Escondido ruling, FERC is precluded from requiring a less stringent instream flow than the Forest Service's required flow even if their information indicates less stringent flows are justified and in the public interest.

Consistent with its responsibility to administer National Forest System lands

in the public interest, the Forest Service reviews and considers recommendations of other agencies, as well as the licensee, in developing its position. The agency, however, will not simply include recommendations of other agencies as part of its mandatory conditions. Independent analysis of all recommendations by the Forest Service is necessary to put in perspective the project's impact against the Forest Service's general responsibility to protect all National Forest System resources. The Manual direction is being revised to reflect the Forest Service's obligation to balance resource needs in arriving at decisions related to hydropower development. The proposed revisions appear in the proposed Manual in FSM 2770.3 and 2773.2.

3. Relicensing Policy

The Manual lacks specific Forest Service policy relicensing hydropower projects and the role of the agency.

Under the proposed revision, the Forest Service would use the authority under section 4(e) of the Federal Power Act to condition the license of a project being relicensed. The responsibility has been affirmed by FERC. The proposed policy would recognize that such projects have been part of the environment for 50 years or more and that the Forest Service should not attempt, by virtue of its conditioning authority, to recreate the pre-license environment. However, the agency would mitigate unacceptable impacts to resources. The proposed changes appear in the Manual in FSM 2776.

4. Unlicensed Projects

The Forest Service does not have a policy regarding unlicensed hydropower projects. Before 1976, the Federal Power Commission (now FERC) allowed the Forest Service to authorize by a special use authorization minor hydropower projects. This authority was withdrawn in 1976; however, several unlicensed projects still exist on National Forest System lands. The agency proposes policy and guidance regarding the special use authorizations for unlicensed projects which would encourage their owners to obtain appropriate authorization for FERC. This proposed change appears in the Manual in FSM 2772.24. The agency shall not authorize amendments to these projects unless they first comply with FERC's regulations.

5. Cooperative Forest Service/FERC Environmental Assessments

Until recently, the Forest Service and FERC prepared separate environmental

assessments but prepared environmental impact statements as cooperating agencies. The Forest Service has recently adopted an environmental analysis process that is generally conducted cooperatively with FERC. The new process is explained in the proposed Manual in FSM 2773.

6. Recreation Plans and Development

The Forest Service proposes to clarify direction regarding recreation development and other recreation mitigation and enhancement needs associated with hydropower project development.

A new Manual section (FSM 2774) has been developed, in accordance with section 4(e) of the Federal Power Act, addressing recreation development at hydropower projects. This proposed section clarifies the licensee's full responsibility for the recreation needs resulting from project development and operation. And, even though the Forest Service could operate recreation facilities at a hydropower project according to a written agreement with the licensee, the licensee would remain financially responsible for the operation, as well as for the construction, maintenance, and replacement of the recreation facilities. Several items related to recreation plan development, operation, liability, and user fees may be the subject of voluntary and consensual agreement between the Forest Service and the licensee. These items may include, but are not limited to, licensee responsibility for construction, operation, maintenance, and replacement of recreation facilities on National Forest System lands, collection of fees to offset Forest Service operating costs, and the need for recreation planning for lands beyond the area directly influenced by the project.

7. Wild and Scenic Rivers

The Forest Service proposes to update the direction relating to hydropower development affecting designated and potential Wild and Scenic Rivers. The authority for this direction is section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287). The Forest Service proposes to prepare eligibility determinations for rivers not in the Wild and Scenic Rivers System that are affected by a hydropower proposal. Such determinations shall be prepared in a timely manner, usually accompanying the initial 4(e) report. Rivers found eligible for inclusion through this process would then be studied by the Forest Service for suitability. This Wild and Scenic River suitability study would be completed

within 18 months or in conjunction with the environmental document for the hydropower project. While not legally bound to do so, it has been FERC's practice to refrain from acting upon the license application until completion of the suitability study if the Forest Service makes timely determinations. Under the proposed policy, for rivers found suitable under this process, the Forest Service shall forward recommendations for Wild and Scenic River designation to the Secretary of Agriculture for review and submission to Congress. Once a suitability determination is made and for a period not to exceed three years after Congress has received the formal recommendation for Wild and Scenic River designation from the Secretary, the Forest Service shall use its authority under section 4(e) of the Federal Power Act to protect a suitable river from impacts that would "invade or unreasonably diminish the values" which make it eligible and suitable for inclusion in the Wild and Scenic Rivers System. If Congress fails to take action to protect the proposed river within three years, the Forest Service shall manage the river as a multiple-use resource and resume consideration of the original hydropower proposal. The proposed changes appear in the Manual in FSM 2775.1

For Congressionally designated rivers and designated study rivers, the Manual has been updated to clarify the procedures for section 7 determinations pursuant to the Wild and Scenic Rivers Act. The updated direction is in the Manual in FSM 2775.1

8. Term of the Special Use Authorization.

Current Forest Service direction for a special use authorization of a hydropower project exempted from the FERC licensing requirements does not address the amortization or financing period of the project.

The Forest Service proposes to revise its direction for special use authorizations for exempt projects to require the issuing officer to consider the amortization and financing periods of a project in determining the term of the special use authorization. The proposed change appears in the Manual in FSM 2772.4.

9. Fees

A proposed Forest Service policy on hydropower fees for licensed projects was published in the **Federal Register** in 1984 (49 FR, p. 23902, June 8, 1984). Due to the length of time since that notice, the agency is again seeking comments on a revised fee structure

proposed in section 65.3 of the Handbook.

a. Fees for Projects Exempt from Licensing

In 1987, the Forest Service implemented policy that set fair market value for use of National Forest System lands by hydropower projects exempted from licensing by FERC at three percent of the gross power sales from the project. This was based upon a market survey of land rental fees charged for hydropower use on private land. Upon administrative appeal, that policy was rescinded pending public notice and opportunity to comment. This notice seeks that involvement. In the interim, the Forest Service has been charging fair market value for the use of National Forest System lands, as determined by appraisal. Fees for the few projects that receive an exemption from licensing from FERC are contained in section 65.3 of the Handbook.

b. Fees for Licensed Projects

To date, Forest Service policy has been that it has the authority to collect fees for hydropower projects licensed by FERC. The Forest Service, however, presently waives the collection of fees for these projects since FERC already collects fees for the use of National Forest System land; although the fees collected by FERC for run-of-the-river projects (projects that operate whereby instantaneous inflow to the project equals instantaneous outflow) are often far below the market value of the use of those lands for power purposes.

The Forest Service proposes that, for licensed projects, fees shall not be charged because to do so may be inconsistent with the Federal Power Act (16 U.S.C. 803(e)) (FSH 2709.15, sec. 65.2). This position is consistent with the Federal Land Policy and Management Act (43 U.S.C. 1702(a)(9)) which does not require the collection of fees where another statute, in this case the Federal Power Act, also provides for fee collection.

10. *New Mandatory 4(e) License Conditions*

The Forest Service is proposing to update and revise those conditions required to be incorporated in all licenses issued by FERC for projects occupying National Forest System lands. These conditions would be applied to all proposed projects that would occupy National Forest System lands. Once these conditions have gone through the public notice process and are included in the final Handbook, they will not be subject to appeal under Department of Agriculture

administrative appeal regulations at 36 CFR 215 and 251. The proposed revisions of mandatory license conditions appear in the draft Handbook in section 55.6, exhibit 01.

11. *New Special Use Authorization Provisions*

The Forest Service proposes to revise the special use authorization conditions for hydropower projects (FSH 2709.15, sec. 77, ex. 01). These revisions are based on issues raised in appeals related to the open-ended nature of special use authorization conditions. Those provisions identified as mandatory will no longer be subject to appeal if they are incorporated into the final notice of policy.

12. *Other License and Special Use Authorization Conditions*

Other proposed conditions which may be used or adapted for use for a proposed project have also been developed in standardized form (Form FS 2700-4g) and are proposed in the Handbook. These conditions may be applied to projects as site-specific needs dictate. Their application is appealable, since the authorized Forest Officer has the discretion to require them. These conditions can be found in the Handbook in section 55.6, exhibit 01, and in section 77, exhibit 01.

13. *Open-ended Nature of the Special-use Authorization*

Under existing procedures, the licensee of a FERC-licensed hydropower project on National Forest System lands obtains a special use authorization from the Forest Service after FERC issues a license. (The FERC license contains an explicit clause to this effect as a condition of the license.) This procedure places the licensee in the awkward position of accepting a license without knowing what conditions the special use authorization may impose on the project's operation.

The Forest Service proposes to revise the Handbook procedures to limit the use of open-ended Forest Service conditions in the license (issued by FERC) and in the special use authorization issued by the Forest Service (Form FS-2700-4g); instead, the Forest Service would provide prospective licensees with a special use authorization prior to, and contingent upon, issuance of a license. This reversal of the special use authorization process will ensure that licensees will know ahead of time the requirements and costs associated with the special use authorization throughout the term of the license. In order to guard against modification in the design or operation

of the project subsequent to issuance of the special use authorization, the special use authorization would contain a provision which states that it is to become effective only if the project is licensed substantially as it was proposed during the time the Forest Service was developing the conditions for the special use authorization. These changes would require modification of the Forest Service special use authorization (FSH 2709.15, sec. 77, ex. 01, Form FS-2700-4g) and of the FERC license conditions currently required by the Forest Service (FSH 2709.15, sec. 55.6, ex. 01, condition 101).

14. *Revocation of the Special Use Authorization*

Current policy provides for revocation of a hydropower project special use authorization based on breach of the terms or conditions therein or for reasons to further the public interest.

Since FERC already has procedures in place which permit revocation of the license upon a public interest determination, the Forest Service believes that revocation of a special use permit on the basis of the public interest is redundant and adds unnecessary uncertainty to operations under the license. Therefore the Forest Service proposes to eliminate public interest as a basis for revocation of the special use authorization. The proposed change appears in the Handbook in section 77, exhibit 01, condition V.B.

15. *Modification of the Special Use Authorization*

At any time during the license term, which varies from 30 to 50 years, FERC may reopen and amend the license if it is in the public interest. Furthermore, FERC must review the project as a new proposal when the licensee applies for a license renewal when the license term ends. Currently, FERC licenses contain a mandatory condition under section 4(e) of the Federal Power Act that allows the Forest Service to unilaterally change the terms of special use authorizations for hydropower projects after 30 years, subject to loosely defined guidelines.

Forest Service special use regulations (36 CFR 251) provide for revision of special use authorization conditions at specified intervals to reflect changing times and conditions if the term of the special use authorization exceeds 30 years.

Based on its review, the agency proposes to provide for revision of conditions in hydropower project special use authorization only if the project is amended or when the license terminates and the relicensing process is

initiated. In those cases where the Forest Service determines that special use authorization revision is necessary and appropriate prior to license termination or project amendment, the agency proposes to petition FERC to reopen the license. If FERC grants a Forest Service petition, FERC will be able to balance the need to amend the license against the hardship such amendment would cause the licensee. The Forest Service believes this system is more equitable than the current unilateral right of the agency to periodically change a special use authorization if its term is greater than 30 years. Under this proposal, the Forest Service would no longer require a section 4(e) condition for reopening the FERC license at intervals. This proposed change appears in the draft Handbook in section 77, exhibit 01, condition I.D.

16. Continuation of the Special Use Authorization During Annual Licenses

The current Forest Service special use authorization does not provide for any interim authorization between termination of the original license and issuance of a new license through the relicensing process. During this period, a hydropower project operates on an annual license, which generally is granted and renewed by FERC as a matter of course until relicensing is completed.

The Forest Service proposes to modify the terms and conditions of the special use authorization for hydropower projects to provide that it remains in force for a particular project during relicensing as long as (1) FERC issues annual licenses and (2) there is not a critical need to immediately modify the authorization to provide for protection and management of National Forest System resources before the issuance of a new license and special use authorization. The proposed change appears in the draft Handbook in section 77, exhibit 01, condition II.A.

17. Improvement Relocation

The current special use authorization for hydropower projects requires the licensee to move hydropower and appurtenant facilities, if necessary, to accommodate future government access needs. This provision subjects the licensee to uncertainty regarding project costs. Accordingly, the Forest Service proposes to modify this provision slightly. Rather than speaking solely to relocation of facilities, the proposed direction would recognize that modification of hydropower facilities also may be appropriate under certain circumstances. The special use authorization also would make explicit

that this provision would apply only in furtherance of Federal Government purposes. In other words, the licensee would not incur additional costs to accommodate other forest users absent a Federal need. Instead, other forest users would have to pay for facility relocation or modification expenses resulting from their actions or needs. The proposed change appears in the Handbook in section 77, exhibit 01, condition III.I.

18. Nonexclusive Use of National Forest System Lands

The Forest Service may permit other uses of National Forest System lands within FERC-licensed project boundaries which do not materially interfere with the hydropower project. To this end, the special use authorization expressly prohibits exclusive use of National Forest System lands for project purposes and authorizes other nonconflicting uses on lands within a FERC-licensed project boundary. On the other hand, FERC typically authorizes licensees to exclude other uses from lands within the project boundary and holds the licensee responsible for accidents occurring therein. Due to this inconsistency between the Forest Service and FERC requirements concerning exclusive use of project lands, licensees contend that they may be held liable in tort claims for injuries occurring on project lands by users over which they had no knowledge or control.

The agency agrees that the licensee should not be held liable for injuries or damage caused by the actions of another Forest Service permittee if the licensee had no knowledge of or control over the other permittee. The Forest Service does not believe it is in the interest of sound management of National Forest System lands to change its policy of authorizing nonconflicting uses within the licensed boundary; however, the agency does believe it is appropriate to revise the standard terms and conditions of the special use authorization for licensed or relicensed projects to permit the exclusion of the public from certain areas within the project boundaries for safety reasons. This proposed revision appears in the draft Handbook in section 77, exhibit 01, as condition I.G.

19. Plan Approvals, Amendments, and Approval Authority

Current license and special use authorization provisions reserve to the Forest Service authority to approve project construction, design and mitigation plans. Based on this authority there is the potential for delays and additional costs resulting from (1) required Forest Service

approval of plans, (2) Forest Service authority to modify plans, (3) Forest Service authority to require amendments to the project, (4) Forest Service authority to suspend construction operations for noncompliance with the terms of the special use authorization, and (5) Forest Service final approval authority. There is some question regarding the extent to which the Forest Service can exercise control over a FERC license through this reserved authority.

In order to provide the licensee greater certainty regarding project operation, the Forest Service proposes to modify its standard 4(e) license condition that currently allows the Forest Service to impose changes in the operation and location of project facilities once a project has been licensed and issued a special use authorization. The intent of this proposal is to limit the discretion of the Forest Service by requiring Forest Service consistency in the agency's review and approval of project plans. For example, if the Forest Service had initially approved the concept of a powerhouse on the south side of a stream, it should not require the licensee to move the powerhouse to the north side during review of the final plan absent compelling information (justifying the change) not available during the initial review.

The proposed license conditions also provide for expedited higher level resolution of disputes regarding Forest Service approval of plans and Forest Service imposed suspensions. While the Forest Service will consult with FERC and the licensee on such disputes to the extent possible, it ultimately is and will remain the Forest Service's responsibility to make the final determination when licensee actions affect surface resources on National Forest System lands. Note that FERC has responsibility for dam safety and overall public safety, and therefore the Forest Service should not interfere with FERC's responsibilities in these areas. These changes appear in the Handbook in section 55.6, exhibit 01, conditions 102, 105, and 106.

20. Annual Review of Project

A standard license condition used by the Forest Service requires the licensee to meet annually with the Forest Service and review the project with a subsequent report to FERC. In order to reduce the amount of paperwork and reviews and to increase flexibility, the Forest Service proposes to modify the condition to require a meeting only every 5 years or for a period mutually agreeable to the Forest Service and the

licensee. The proposed change is in the draft Handbook in section 55.6, exhibit 01, condition 104.

21. Project Rehabilitation in Wilderness

The existing Manual and Handbook do not address hydropower project maintenance and rehabilitation in units of the National Wilderness Preservation System. These projects were in place before the establishment of the wilderness area. Direction would be incorporated in the Hydropower Handbook with this proposed revision. Maintenance and rehabilitation of hydropower projects in wilderness is necessary for safety and other reasons but it would be achieved subject to the provisions and intent of the Wilderness Act (16 U.S.C. 1131-1136). Decisions on access to the project would consider, among other things, the type of rehabilitation, the most reasonable and efficient method to conduct such work, the manner in which the original project was constructed, and ways in which to minimize the impact on wilderness values. Due to the restrictions imposed by the Wilderness Act, project rehabilitation must often be done by primitive means and will be more costly than similar project maintenance and rehabilitation outside designated wilderness. Nevertheless, necessary project rehabilitation would be allowed. The proposed revision is in the handbook, section 64.7.

Environmental Impact

This proposed policy would establish direction to Forest Service employees on the review, authorization, and administration of hydropower proposals on National Forest System lands. The environmental impacts of proposed projects will be addressed in environmental documents specific to each proposed project. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burdens on the Public

This policy does not contain any recordkeeping or reporting requirements or other information collection

requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) do not apply. The Forest Service uses information provided to FERC as a basis for reviewing hydropower project impacts on National Forest System lands. Any further additional information is covered by the Forest Service's special use regulations (36 CFR part 251).

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. The policy will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, use fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed policy is not subject to OMB review under Executive Order 12866.

Moreover, this proposed policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. In short, little or no effect on the National economy will result from this policy, since this action consists primarily of technical and administrative changes to existing policy and procedures. In fact, it may reduce costs to the Government and users of the National Forest System.

Takings Executive Order

This proposed policy has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that this proposed policy does not pose the risk of taking of Constitutionally protected private property.

First, special use authorizations are not private property compensable under the Fifth Amendment if taken by the Government. The special use authorization is a benefit or privilege bestowed on a private individual to use National Forest System lands. In the event that special use authorizations are

found to have certain contractual rights associated with them, those rights are consensual in nature and require the prior informed consent of the parties to form the agreement. Such consensual agreements generally do not result in takings claims against the Government. Finally, the proposed policy does not purport to modify the existing special use authorizations. Instead, only special use authorizations that will be issued after the date this guidance is adopted will be subject to the revisions and clarification described herein.

Comments Invited

The proposed policy and procedures for hydropower uses of National Forest System lands would replace existing policy and procedures contained in the Forest Service Manual (FSM 2770) and Forest Service Handbook (FSH 2709.15). The text of the Manual and sections of the Handbook containing the Forest Service standard license 4(e) conditions and the Forest Service special use authorization conditions for licensed projects are set out at the end of this notice. Single copies of the entire Handbook are available free of charge upon request to the **FURTHER INFORMATION CONTACT** listed at the beginning of this notice. The Forest Service invites written comments and will analyze and consider those comments in the development of the final notice of policy which will be published in the **Federal Register**.

Dated: May 15, 1995.

David G. Unger,
Associate Chief.

Proposed Manual Revision

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The audience of this direction is Forest Service employees charged with reviewing, processing, and approving hydropower proposals on National Forest System lands.

Title 2700—Land Uses Management

Chapter 2770—Federal Power Act Projects

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Title 2700—Land Uses Management

Chapter 2770—Federal Power Act Projects

This chapter covers the review of proposals for hydropower projects; the use of authority granted by section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) to set conditions in licenses for hydropower projects issued by the Federal Energy Regulatory Commission (FERC) for the protection and utilization of National Forest System lands; the granting of special-use authorizations for hydroelectric projects; and the granting of special-use authorizations for primary transmission lines subject to licensing by FERC that are partly or wholly on National Forest System land. The chapter also covers the relationship of the Forest Service and FERC during project planning, construction, and operation.

2770.1—Authority

See FSM 2701.1 for statutory authorities that govern the general issuance and administration of special use authorizations on National Forest System lands. The following statutes and regulations specifically govern the issuance and administration of hydropower projects on National Forest System lands:

1. *The Federal Power Act of August 26, 1935 (49 stat. 847; 16 U.S.C. 797)*. This act grants the Forest Service the authority to require conditions in a Federal Energy Regulatory Commission (FERC) license for a hydropower project on National Forest System lands.
2. *The Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906; 16 U.S.C. 1271-1287)*. This act, specifically in sections 7(a), 7(b) and 5(d), sets forth Forest Service responsibilities for determining acceptability for projects that impact designated and study wild and scenic rivers. Section 7 gives the Secretary of Agriculture the authority to determine whether a proposed project would be on or directly affect a wild and scenic river or would degrade or unreasonably diminish the values for which the river was designated. Under section 5(d), the Forest Service is authorized to study rivers for suitability for designation as wild and scenic.

3. *Title V, Section 501, Federal Land Policy and Management Act of October 21, 1976, as amended (90 Stat. 2743; 43 U.S.C. 1761-1771)*. Title V of the Federal Land Policy and Management Act (FLPMA) authorizes the Secretary of Agriculture to issue, renew, or grant permits or easements to occupy, use, or traverse National Forest System lands for the generation, transmission, and distribution of electric power. Under section 501, as amended by the Energy Policy Act of October 24, 1992 (106 Stat. 2776; 42 U.S.C. 13201), permits or easements are not required for the continued operation of projects licensed by FERC or exempted as of October 24, 1992, unless additional project area or the project had received a permit or easement under section 501 of FLPMA at some time in the past.

4. *Title 36, Code of Federal Regulations, Part 297, Subpart A*. This regulation provides direction concerning projects affecting wild and scenic rivers administered in whole or in part by the Secretary of Agriculture.

2770.2—Objectives

1. To facilitate hydropower production where it is compatible with the purposes for which a National Forest was created or acquired.

2. To ensure that planning, construction, and operation of hydropower projects are performed in a manner that provides adequate protection and utilization of National Forest System lands and resources.

3. To ensure that Forest Service planning and the evaluation of the hydropower proposals recognize the rarity of sites which are suitable for potential hydropower development because of a unique combination of resources and circumstances.

2770.3—Policy

1. Hydropower development is an appropriate use of National Forest System land, unless one or more of the following circumstances exist:

- a. Hydropower development is inconsistent with and would interfere with the purposes for which the affected area was created or acquired as determined by the following: The Organic Administration Act, the Multiple Use-Sustained Yield Act, subsequent acts making special designations within the National Forest System, and legislation or Presidential proclamation specifically establishing a National Forest.

- b. Hydropower development is inconsistent with the management direction in the Forest land and resource management plan, and significant adverse effects on the

management and utilization of National Forest System resources cannot be mitigated sufficiently to achieve plan consistency with the Forest plan.

c. The project is not in the public interest (FSM 2771.25)

2. Weight energy resource development with the protection and utilization of other National Forest resources when determining what mitigation is necessary to provide the best balance of protection and utilization of those resources.

3. Cooperate and coordinate activities in the development of the Nation's energy resources for hydropower with the Federal Energy Regulatory Commission (FERC); Federal, State, and local resource agencies; tribal governments; coordinating bodies, such as the Northwest Power Planning Council; and potential developers.

2770.4—Responsibility

2770.41—Chief

1. For projects proposed in designated wilderness areas or other special areas which require Presidential approval:

a. The Chief reserves authority to approve reports and sign correspondence that make recommendations to the Secretary for approval of projects when the Forest Service considers them to be in the public interest, and

b. The Chief may deny approval for projects when the Forest Service considers them not to be in the public interest (FSM 1923 and FSM 2323).

2. The Chief also reserves the authority to approve a Forest Service recommendation to FERC that the Federal Government take over a project whose license period is ending (FSM 2771.33).

2770.42—Director of Lands, Washington Office

Except for the authority reserved to the Chief (FSM 2770.41), the Director of Lands, Washington Office has authority and responsibility to:

1. Approve reports and sign correspondence to the Federal Energy Regulatory Commission (FERC) relating to activities under the Federal Power Act, as amended.

2. Represent the Department of Agriculture in contacts with FERC at the National level in matters relating to hydropower projects (FSM 1043).

3. Coordinate the review of matters pertaining to hydropower projects with other agencies of the Department.

4. Control the assignment of Forest Service personnel as witnesses in FERC hearings, secure Office of the General Counsel review, and approve testimony prior to its being filed with FERC.

5. Review prior to signature, any Regional Forester decision for hydropower project proposals involving section 7 of the Wild and Scenic Rivers Act. (See review and routing procedures in FSH 2709.15, sec. 24.41)

6. Review prior to signature, any Regional Forester decision involving section 4(e) of the Federal Power Act, except when the Director specifically waived such a review because the Regional Forester has staff sufficiently experienced in hydropower procedures. (See review and routing procedures in FSH 2709.15, sec. 52.2)

7. Approve recommendations to FERC for the Federal Government to take over hydropower project facilities (FSM 2771.33).

2770.43—Regional Forester

The Regional Forester has authority and responsibility to:

1. Subject to the delegations of authority to the Washington Office Director of Lands in FSM 2770.42, paragraphs 5 and 6, approve reports and signed correspondence to FERC on behalf of the Secretary of Agriculture relating to licensing activities under the Federal Power Act, as amended, including reports under section 4(e) of the Federal Power Act, except as noted in the following paragraph 8. This authority may not be redelegated.

2. Establish Region-wide guidelines for analysis and administration of hydropower projects on National Forest System lands.

3. Coordinate with FERC staff as necessary.

4. Maintain an information base for use in managing Federal Power Act project activities.

5. Respond to FERC on behalf of the Secretary of Agriculture on applications for licenses. Coordinate review of applications for FERC licenses, field investigations, and preparation of 4(e) reports.

6. Respond to FERC on behalf of the Secretary of Agriculture on applications for preliminary permits and exemptions.

7. Establish procedures for contacting licensees or special-use holders at least 5 years prior to the expiration of their license or special-use authorization to ascertain their intentions concerning continuation of the project.

8. For projects proposed in wilderness areas or other areas which require Presidential approval:

a. Prepare, for the Chief's review, the environmental impact statement (EIS) necessary for the Secretary to make recommendations to the President concerning such projects.

b. Approve reports recommending to the Chief approval of projects when the

Forest Service considers them to be in the public interest.

c. Approve reports and sign correspondence for denial of approval when the Forest Service considers projects not to be in the public interest.

The authority to sign the recommendation to the Chief or to deny approval for a project may not be redelegated.

9. Subject to the delegation of authority to the Washington Office Director of Lands (FSM 2770.42, para. 5 and 6) approve reports and sign correspondence to FERC on behalf of the Secretary of Agriculture relating to decisions made under section 7 of the Wild and Scenic Rivers Act for hydropower projects.

10. As appropriate, authorize Forest Supervisors to correspond directly with FERC on all administrative and construction matters during construction and operation of a project.

11. Issue special-use authorizations for hydropower projects that have been licensed or exempted from licensing by FERC. The authority to issue special-use authorizations for these projects may be redelegated to the Forest Supervisor, but the authority may not be redelegated by the Forest Supervisor to lower level officials.

2770.6—Federal Energy Regulatory Commission (FERC) Responsibility and Authority

Forest Service officers must coordinate actions regarding hydropower matters with the Federal Energy Regulatory Commission (FERC). Review the information regarding FERC in FSH 2709.15, chapter 10.

2771.—Forest Service Involvement With FERC on Hydropower Projects

For a summary of the typical steps involved in the hydropower approval and administration process, see FSH 2709.15, sec. 28.

2771.1—Response to Applications

2771.11—Response to License Applications

Use the 4(e) report (FSM 2771.2) to state the official position of the Secretary regarding the licensing of specific projects affecting National Forest System land and resources (FSH 2709.15, ch. 50). Where appropriate, include comments on the effects of the project on the programs of the Department of Agriculture. Also, see FSM 2774.5 for coordination with license applicants on recreation project plans.

2771.12—Response to Preliminary Permit Applications

The Regional Forester must provide comments to FERC on potential problems, concerns, and conditions for applications for preliminary permits on projects affecting National Forest System lands and resources. Do not prepare a 4(e) report for a preliminary permit; submit these comments through correspondence.

2771.13—Response to Exemption Applications

The Regional Forester shall identify potential problems and provide comments and recommendations to FERC on applications for exemptions. Incorporate standard and special conditions required on exemptions in the special-use authorization. Do not prepare 4(e) report for an exemption; submit these comments through correspondence.

2771.2—Requirements**2771.21—Section 4(e) Reports**

Respond to a Federal Energy Regulatory Commission (FERC) notice that an application for license is ready for environmental analysis with a report pursuant to section 4(e) of the Federal Power Act (hereafter called a 4(e) report) for any project that would occupy National Forest System land. An original and 8 copies of the 4(e) report must be provided to FERC within 60 days of the FERC notice. FERC's regulations allow FERC to consider 4(e) conditions filed after the 60-day deadline as recommendations rather than mandatory conditions. The exception is when FERC grants the Forest Service an extension of time because of extenuating circumstances or because the Forest Service and FERC are conducting a cooperative environmental analysis under the National Environmental Policy Act (NEPA). In these cases the Forest Service must provide preliminary 4(e) reports within the 60-day timeframe and final 4(e) conditions within 45 days after the cooperative NEPA analysis is completed (FSH 2709.15, sec. 13.32).

Regional Foresters shall transmit draft 4(e) reports (preliminary and final) to the Washington Office Director of Lands for procedural review prior to the Regional Forester's decision and transmittal to FERC in conformance with the review and routing procedures in FSH 2709.15, section 52.2. However, if the Washington Office Director of Lands notifies the Regional Forester that such reviews are not necessary because of sufficient Regional staff experience in hydropower matters, the Regional

Forester may send 4(e) reports to FERC without Washington Office review. The Regional Forester shall send copies of the signed 4(e) reports to the Washington Office Director of Lands.

The 4(e) report should provide FERC with:

1. A statement of the conclusion as to the project's consistency or interference with the purposes for which the National Forest was created or acquired, and as appropriate, advice on whether the project is in the public interest (FSM 2771.24 and 2771.25 and FSH 2709.15, sec. 27).

2. Appropriate comments regarding the project application for license.

3. Conditions (FSM 2771.22) to be included in the FERC license necessary for the adequate protection and utilization of the National Forest System lands and resources (FSH 2709.15, ch. 50).

4. The appropriate environmental documentation and documentation of decision in support of the conditions that the Forest Service will require in the license 4(e) conditions) and in the special-use authorization (FSH 2709.15, ch. 30).

5. A copy of the special-use authorization that will be issued if the project is licensed (FSH 2709.15, sec. 77). See FSH 2709.15, chapter 50, for instructions on responding to FERC under various situations.

2771.22—Section 4(e) Conditions

For a project which would occupy National Forest System lands, the Forest Service may impose conditions through the 4(e) report the FERC must make part of any license it issues for the project. Such conditions must be reasonable and necessary for the adequate protection and utilization of National Forest System lands and resources.

Do not impose the recommendations of other agencies as 4(e) conditions without an independent analysis by the Forest Service so that they become Forest Service conditions. Generally, limit 4(e) license conditions to those measures that have substantial effects on the economics or siting of the project. Other conditions of a more routine nature relating to project impacts on National Forest System lands may be imposed through the special-use authorization (FSM 2772.3). (See FSH 2709.15, sec. 21.4, for limits on the scope of 4(e) conditions for amendments to a license see also FSH 2709.15, sec. 52.23, 55.1, and 55.6). Chapter 70 of the Handbook contains direction on the forms to complete for various special-use permits for hydropower projects. (See FSH 2709.15, sec. 77, ex. 01 through 04).

2771.23—Projects Exempted From Licensing

An exemption from licensing (FSH 2709.15, sec. 12) by FERC does not grant or imply a grant to any land-use rights to the exemptee. Advise FERC of substantial concerns regarding potential effects of exempt project proposals on National Forest resources. Make an independent determination of whether to authorize such projects (FSM 2772.2).

2771.24—National Forest Purposes

FERC may not license projects which it finds would be inconsistent and that would interfere with the purposes for which the National Forest was created or acquired (section 4(e) of the Federal Power Act). Those purposes are defined in the Organic Administration Act of 1897 (16 U.S.C. 473 et. seq.) and expanded by the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et. seq.) and subsequent acts (FSM 2701.1). In addition, some National Forest enabling legislation or proclamations state specific purposes. Since Congress has the authority to change or expand the National Forests, those purposes do not have to have been stated at the time the National Forest was originally reserved or acquired to be "purposes for which they were created or acquired." Specific legislation (the Wilderness Act for example; 16 U.S.C. 1131-1136) and specific designations (Research Natural Areas for example) also determine the purposes for which portions of the National Forests are created or acquired.

Through the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601 et seq; as amended by the National Forest Management Act of 1976), Congress requires land and resources management planning to determine management direction for the National Forests. Such plans must be consistent with the purposes for which those lands were created or acquired. Therefore, also use the Forest land and resource management plan in determining the consistency of a project with the purposes for which the National Forest was created or acquired. Fully disclose to FERC in the 4(e) report, a recommendation concerning the nature and extent of any significant inconsistency or interference the project would cause for those purposes. FERC makes the decision whether to authorize the project through licensing. In so doing, FERC makes the actual determination regarding whether the project is inconsistent with or would interfere with the purposes for which the National Forest was created or acquired.

2771.25—Recommendation That Project is Not Public Interest

The Forest Service is not responsible for determining or recommending whether a hydropower project (with an application for license) is in the public interest. Consider making such a recommendation to FERC if the available information supports such a conclusion. Make sure the 4(e) report fully explains the nature and extent of reasons for the Forest Service recommendation. Use the Forest land and resource management plan as a basis for evaluating the needs of the public.

FERC makes the actual determination of whether the project is in the public interest under section 10(a) of the Federal Power Act.

2771.3—Coordination**2771.31—Other Actions Within Project Boundaries**

Do not initiate non-project related resource management activities or authorize use by others on lands covered by a hydropower project use authorization or license unless it is determined that such activities or uses will not adversely affect project operations and will not conflict with the terms and conditions of the project special-use authorization or license. Also, prior to granting special-use authorizations to third parties, the authorized officer must review with the Federal Energy Regulatory Commission (FERC) and the affected licensee proposed non-project uses within the boundaries of licensed projects.

2771.32—Project Surrender, Termination, or Abandonment

FERC is responsible for procedures for termination, surrender, and abandonment of licensed projects (18 CFR Part 6). See FSM 2772.5 for termination requirements for Forest Service special-use authorizations (36 CFR 251.60).

2771.33—Federal Takeover of Project Facilities With Expired License

Federal takeover of a project whose license period is ending is a rarely used process which requires Congressional action. If warranted, the Forest Service may file a recommendation with FERC that the United States exercise its right to take over a hydropower project no earlier than five years before the license expires and no later than the end of the comment period for a notice of an application for a new license, a nonpower license, or an exemption. The Forest Service rarely would propose to the Federal Energy Regulatory

Commission (FERC) that the United States take over a project. The Chief must approve a Forest Service recommendation for the Federal Government to take over project facilities. If a project is taken over, the Federal Government must compensate the licensee for the net investment. See Title 18, Code of Federal Regulations, Part 16, Subpart C, sections 16.14 through 16.17, for procedures for recommending to FERC for Federal takeover of a project. See FSM 2716.4 for direction regarding Forest Service takeover of unlicensed projects by default, surrender, abandonment, and so forth.

2771.4—Federal Power Act and Powersite Withdrawals

(For further direction see FSH 2709.15, sec. 21.8.)

2771.41—Exchange Within Federal Power Act and Powersite Withdrawals

Lands withdrawn for power purposes within licensed project boundaries are available for disposal through exchange or other means only after:

1. FERC vacates or amends the withdrawal, and thus opens (restores) the lands for exchange and other related actions, or
2. FERC makes a determination that the lands may be conveyed subject to a reservation in the patent or deed under section 24 of the Federal Power Act.

2771.42—Retraction of Licensed Project Boundaries and Withdrawals

When a project boundary contains National Forest System lands that are in excess of what is needed for the project, the authorized officer should formally request that the licensee and FERC retract the boundary; then, request FERC to vacate (terminate) the withdrawal of these excess lands.

When withdrawn lands are associated with an inactive project (that is, one not currently authorized or being considered by FERC for some type of action), request FERC to vacate the withdrawal.

2772—Special-Use Authorizations

FSH 2709.11, Special Uses Handbook, provides direction on the authorization and administration of special uses on National Forest System land. Chapters 60 and 70 of FSH 2709.15, Hydropower Handbook, provide detailed instructions for special-use authorizations related to hydropower projects on the following forms: Form FS-2700-4e, Special-Use Permit Exempted or Unlicensed Hydropower Project; Form FS-2700-4g, Special-Use Permit, Licensed Hydropower Project; and Form FS-

2700-4f, Special-Use Permit, Hydropower Investigation.

2772.1—Applications

Applicants for Federal Energy Regulatory Commission (FERC) licenses, preliminary permits, and exemptions from licensing must also apply to the Forest Service for authorization when projects involve National Forest System land (36 CFR 251 Part B; FSM 2772.25). Authorizing officers should encourage applicants to file applications for special use authorizations with the Forest Service concurrently with filing a FERC license or exemption application.

2772.2—Authorization of Projects

Project special-use authorizations shall become effective only after the project is licensed or exempted from licensing by FERC.

2772.21—Authorization of Licensed Projects

Issue special-use authorizations for all hydropower projects licensed by FERC in accordance with FSM 2772.25. If the Forest Service determines that a project (whose proponent is seeking a license) should not be constructed on National Forest System land, then the Forest Service must advise FERC, before the licensing decision is made, that the project is inconsistent or would interfere with National Forest purposes or that it would not be in the public interest. Promptly notify the Washington Office Director of Lands in issuance of a special-use authorization to a project licensed by FERC might violate a law or cause unacceptable damage to National Forest System resources before preparing a section 4(e) report.

2772.22—Denial of Special-Use Authorization to Licensed Project

Licensed projects may not be denied a special-use authorization (FSM 2772.21)

2772.23—Authorization of Projects Under Preliminary Permits

The Forest Service may issue investigative special use permits to authorize studies to be carried out by prospective applicants that have received a FERC preliminary permit. An investigative special-use permit (FS-2700-4f) may be issued to allow investigation of potential projects. This type of permit must contain conditions necessary for resource protection commensurate with the scope of investigation (FSH 2709.15, sec. 62.11 and 74).

2772.24—Authorization of Projects Exempt From Licensing

For a project exempted from licensing by FERC, the Forest Service may issue a special-use authorization (Form FS-2700-4e) if it determines the project is an appropriate use of National Forest System lands and is in the public interest. (See FSH 2709.15, sec. 53.2, for additional information on exemptions.)

2772.25—Requirement To Have Special-use Authorization

Pursuant to the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, the holder of a FERC license or a hydropower project proponent who is exempt from licensing also must obtain a Forest Service special-use authorization. This requirement to have a special-use authorization applies to original licenses (first license for project) and new licenses issued as a result of relicensing. However, pursuant to the Energy Policy Act of 1992 (42 U.S.C. 13201), a special use authorization is not required for the continued operation of licensed or exempted projects that had not received a authorization under section 501 of FLPMA at any time prior to the passage of the Act unless FERC determines that additional National Forest System lands would be affected. Before passage of FLPMA, FERC licensees were not required to have a Forest Service special-use authorization. See FSH 2709.15, section 63.1, for direction regarding the reasonable and orderly phase-in of FLPMA requirements in regard to licensed and relicensed projects.

A special-use authorization is also required for the use of National Forest System lands affected by a material license amendment, even if the current license was issued prior to passage of FLPMA. See FSH 2709.15, section 63.1 for direction regarding the reasonable and orderly phase-in of FLPMA requirements in regard to amendments of license.

2772.3—Conditions

Special-use authorizations for licensed projects (Form FS-2700-4g) shall authorize the occupancy and use of National Forest System lands. In addition to the mandatory standard provisions (FSH 2709.15 sec. 72), the special-use authorization shall include those conditions and requirements which are necessary for comprehensive and compatible use of land, water, and hydropower resources consistent with the purposes for which the National Forests are managed (FSM 2772.5, and FSH 2709.15, sec. 62.13 and 72). These

conditions, however, should not duplicate what is already required in the FERC license.

1. In the Forest Service special-use authorization for a FERC-licensed project (Form FS-2700-4g), do not include conditions and requirements that:

a. Substantially affect power production capability (through limits on water use or through high costs), or

b. Substantially affect facility siting. Such requirements are to be imposed through conditions in the section 4(e) report (FSM 2771.21).

2. The limitations on conditions in special use authorizations in the preceding paragraph 1 do not apply to:

a. A Federally owned dam under the jurisdiction of the Forest Service, or

b. A project exempted from licensing by FERC.

Special-use authorizations for projects exempted from licensing (Forms FS-2700-4e) by FERC must also include conditions to protect the public interest normally covered by the FERC license (FSH 2709.15, sec. 12, 62.12, and 73).

An investigation special-use permit (Form FS-2700-4f) may be issued to allow investigation of potential projects. This type of permit must contain conditions necessary for resource protection commensurate with the scope of investigation (FSH 2709.15, sec. 62.11 and 74).

2772.4—Term

For FERC-licensed projects, issue a special-use authorization (Form FS-2700-4g) for the same term as the license. For projects exempted from licensing by FERC, the authorized Forest Service officer shall determine the term of the permit (Form FS-2700-4e), up to 30 years. Temporary facilities and investigations may be authorized for up to 3 years (Form FS-2700-4f) (FSH 2709.15, sec. 62.1).

2772.5—Revocation or Suspension of Special-Use Authorization

A special-use authorization for a FERC-licensed project (Form FS-2700-4g) has a term matching that of the license and normally is not revoked unless and until the license terminates. However, a special-use authorization for a licensed project may be revoked or suspended for breach of its conditions, if negotiations to remedy the breach in consultation with FERC such as those outlined in FSH 2709.15, section 64, fail to obtain the compliance of the holder (see also FSM 2771.32). Special-use authorizations for FERC-exempted projects may be revoked in accordance with 36 CFR 251.60.

2772.6—Special Use Authorization Fees

See FSH 2709.15, section 65 for policy on charging fees for:

1. Investigation permits,
2. Licensed project authorizations, and
3. Exempted project authorizations.

2773—Environmental Analysis**2773.1—Environmental Analysis and Documentation**

(FSM 1950, FSH 1909.15, FSH 2709.15, ch. 30.) If an environmental impact statement (EIS) is to be prepared, FERC usually will be the lead Federal agency. Line officers should request FERC to designate the Forest Service as a cooperating agency when National Forest System lands are affected. When an environmental assessment (EA) is to be prepared, the Forest Service and FERC will usually perform a cooperative environmental analysis and prepare a cooperative EA.

2773.11—Licensed Projects

The Federal Energy Regulatory Commission (FERC) is responsible for National Environmental Policy Act (NEPA) compliance for projects licensed by FERC. The Forest Service is responsible for NEPA compliance on decisions regarding the determination of the conditions imposed through the 4(e) report (FSM 2771.21); and special-use permit conditions necessary for the protection and utilization of National Forest System lands; and compatibility decisions under Section 7 of the Wild and Scenic Rivers Act.

2773.12—Projects Exempted From Licensing

When National Forest System lands are involved, the Forest Service is responsible for NEPA compliance for projects exempt from licensing by FERC.

2773.2—Mitigation

Determine the effects of the project as proposed and the effects of identified alternatives. Devise alternatives which provide for mitigation of adverse resource impacts. Analyze alternatives and their associated resource protection measures, and balance resource protection needs and resource utilization needs.

1. Identify measures necessary for the adequate protection and utilization of the National Forest and

a. Include the measures in the 4(e) report which will then be incorporated into the license; as appropriate, require implementation plans as a 4(e) condition or as a condition of the special-use authorization to provide site-specific details for applying those measures on the ground; and/or

b. Include them as appropriate in the special-use authorization.

2. The effects of a project should be known before authorization is granted through the license or special-use authorization. Therefore, determine resource protection measures in the environmental analysis before authorization. The license or special-use authorization may require plans to implement the mitigation measures, but in general, the plans would not be used to determine the impacts (FSH 2709.15, sec. 55.23).

3. Required mitigation measures must be reasonable and necessary for the adequate protection and utilization of the National Forest and should be designed to prevent unnecessary impacts to forest resources. As noted in FSM 2271.22, do not require, through 4(e) conditions, measures that do not meet that standard.

4. Tradeoffs in uses of the National Forest can be evaluated and certain enhancement measures may be required through 4(e) conditions for the adequate protection and utilization of the National Forest. For example, in allowing an important hydropower development, a resource or use (such as dispersed recreation) may be severely impacted or eliminated from the affected area—an unmitigated impact. Through evaluation of the project, another related resource or use (such as developed recreation) may be enhanced by actions or developments (such as campgrounds) the licensee could provide. Such enhancements may be required through section 4(e) conditions as offsetting the impacts of the development. Carefully negotiate such enhancements with the potential licensee to obtain agreement if possible. In cases where it may be difficult to substantiate project impacts with the need for enhancement, be aware that such measures may be challenged by the potential licensee for their imposition as 4(e) conditions. Seek the advice of the Washington Office Lands Staff before requiring offsetting enhancement without the potential licensee's consent.

5. Developing offsite resources as mitigation for resources lost by development in the project area is acceptable as called for by a balanced evaluation of the effects of the project. However, it is not necessary that resource losses be mitigated by such offsite replacement. Determine whether offsite replacement is appropriate based on the evaluation of effects of the project and the balancing of the hydropower needs with resource needs; consider whether potentially lost resources are unique or in short supply; and determine the feasibility of

replacing the resources. See FSM 2276.1, for offsite mitigation direction regarding projects in relicensing.

2774—Recreation Uses at Hydropower Projects

(See also FSM 2314 for additional direction.)

2774.1—Licensee Responsibility

Licensees and exemptees are responsible for providing recreation and interpretive facilities to mitigate (FSM 2773.2) the recreation pressures induced by the construction and operation of the hydropower facilities. That induced recreation need is often the result of reservoir construction or stream flow alterations that create a water attraction or new access to existing roads (such as by snow removal). These attractions may invite the recreating public to existing locations in increased numbers, to new places, and to places or at times not previously used.

Require developers of hydropower facilities that induce or displace recreational use of the National Forest to provide facilities and otherwise mitigate those increases and losses in recreation use in an appropriate manner, consistent with the Forest land and resource management plan. Specify necessary facilities and mitigation measures as conditions in the 4(e) report submitted to FERC (FSH 2709.15, ch. 50). Forest Service requirements for recreation facilities and mitigation measures must be reasonable and necessary for the adequate protection and utilization of the National Forest and its resources (Federal Power Act, sec. 4(e); 16 U.S.C. 797(e)).

Hold the licensee or exemptee responsible for construction, operation, maintenance, and replacement of recreation facilities that accommodate project-induced use or mitigate impacts from projects constructed through licenses or exemption issued by the Federal Energy Regulatory Commission (FERC). Do not relieve the licensee of the obligation to provide those facilities and to cover the costs for facility operation, maintenance, and replacement.

See FSH 2709.15, section 24.2, for additional direction on Forest Service and licensee responsibilities; in particular, see section 24.22 regarding displaced recreation uses.

2774.2—Facility Operation, Maintenance, and Replacement

Control licensee's construction, operation, maintenance, and replacement of recreation facilities on National Forest System lands through

the project special-use authorization (FSM 2772, FSH 2709.15, ch. 60).

Negotiation is the preferred method of determining which party should assume operation and maintenance of licensee-constructed project recreation facilities (FSM 2774.2). If negotiations fail, the Forest Service may require the licensee to turn over operation and maintenance of these facilities on National Forest System lands to the Forest Service as long as the standards of FSH 2709.15, section 24.31 are met.

When it is desirable for the Forest Service to operate the recreation facilities (FSH 2709.15, sec. 24.3), negotiate a memorandum of understanding (FSH 2709.15, sec. 42.2) with the licensee for such operation at the licensee's expense. Ownership of facilities is not necessary for the Forest Service to operate facilities through a memorandum of understanding or license conditions. Use a collection agreement to allow the licensee to make payments for Forest Service operation, maintenance, and replacement of facilities.

Licensees may be allowed to operate Forest Service-owned facilities through the authority of the Granger-Thye Act (16 U.S.C. 580(d); see FSM 2711.7). The licensee may improve National Forest facilities and the facilities operated by the licensee under authorization of the Forest Service project special-use authorization by adding appropriate conditions from the standard Granger-Thye permit (FSM 2713.12a).

Negotiate shared financial responsibility with the licensee when facilities are constructed which accommodate both project induced recreation and non-project induced recreation.

See FSH 2709.15, section 24.3, for additional direction on determining who is responsible for operating, maintaining, and replacing recreation facilities.

Generally, do not accept ownership of recreation facilities constructed by the licensee. Such acceptance may make the Forest Service responsible for operation and maintenance of the facility, as well as replacement. If the licensee desires to transfer ownership to the Forest Service, ensure that the transfer agreement specifies the licensee's continuing responsibility, including replacement of facilities as appropriate. In addition, make sure that project-induced facilities remain within the project boundary so that they remain within the jurisdiction of the FERC license.

2774.3—Campgrounds

Campgrounds constructed on National Forest System lands, regardless

of who builds, operates, or maintains them, are to be identified and managed as National Forest campgrounds. They are subject to Forest Service standards and to National programs, such as the "Golden Age and Golden Access Passports."

Monitor literature produced by the licensee to ensure that campgrounds are identified as National Forest campgrounds and as licensed and/or operated by the licensee as required by a condition of the special use authorization or FERC license.

2774.4—Signs

Recreation facility signs must be from the Forest Service family of signs for campgrounds (FSM 7160 and FSH 7109.11). Give visible and equal credit in such signs to the licensee for its role in the campground development, construction, and operation, as appropriate. The licensee is responsible for the cost of such signs.

Interpretive signs for the project are the responsibility of the licensee, except to the extent they interpret the Forest Service mission or activities.

Coordinate with FERC and the licensee with regard to placement and design of signs required by FERC for the project.

2774.5—Project Recreation Plan

As part of the application for a FERC license, a project applicant normally prepares a project recreation plan to address future recreation needs associated with the project. The Forest Service should work with a license applicant to ensure that the applicant's plan adequately anticipates and plans for future recreation needs. In the plan, develop and include criteria or measurable events that will trigger future additional facility needs.

Do not use open-ended special-use authorization or 4(e) conditions for the FERC license to require unspecified future recreation developments; however, provide flexibility for modifying the project recreation plan if unanticipated needs for different recreation developments arise in the future. Keep in mind that costs for any future modifications must be within the total cost of the future recreation expansion required in the license.

2774.6—Recreation Planning During Relicensing

Recreation guidelines for relicensing existing FERC-licensed projects are the same as for original licenses. Needs induced by the project are the responsibility of the licensee, regardless of when those needs were originally

induced or who is currently meeting those needs.

The Forest Service has constructed many recreation facilities in the past to accommodate recreation induced by FERC-licensed projects when the licensee would not construct the facilities. During relicensing, use appropriate 4(e) conditions (FSH 2709.15, ch. 50) to require the licensee to assume appropriate financial responsibility for those facilities constructed by the Forest Service, unless the Forest Service has reasons to retain this responsibility (see also related direction in FSM 2774.2 and FSH 2709.15, sec. 24.15).

2775—Special Management Areas

2775.1—Projects Proposed in Wild and Scenic Rivers Areas

Rivers and study rivers designated for protection under sections 3 or 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) may not be used for hydropower projects on or directly affecting such rivers. Hydropower projects not on or directly affecting a designated wild and scenic river, but having some indirect effects on the river, may be permitted only where they do not invade or unreasonably diminish the existing wild and scenic river values (this provision also affects rivers designated for study under section 5(a) of the Wild and Scenic River Act).

By law, the Secretary of Agriculture must make the determination of whether a project is "on or directly affecting" the designated river or would "invade or unreasonably diminish the values for which the river was designated," in accordance with section 7 of the Wild and Scenic Rivers Act. This is called a section 7 determination. This authority has been delegated to the Regional Forester, who must make this determination prior to issuance of an exemption or license by FERC on rivers administered by the Department of Agriculture. See FSM 2354.04 and 2770.4 for the delegation of authority for making this determination. For further direction on wild and scenic rivers, see FSH 2709.15, sec. 25; 36 CFR Part 297; and FSH 1909.12, ch. 8.

2775.11—Projects Proposed on All Other Waterways

The proposed use of rivers on National Forest System lands for hydropower projects must be consistent with the requirements of section 5(d) of the wild and Scenic Rivers Act which Authorizes the Forest Service to study the Suitability of rivers for wild and scenic protection through the forest planning process. Therefore, the

Regional Forester must ensure that eligibility determinations have been completed for all National Forest rivers proposed for use by hydropower projects by the time of the interim 4(e) report (FSH 2709.15, sec. 25; FSM 2354). If the river is not eligible for inclusion in the Wild and Scenic Rivers System, note that fact in the interim 4(e) report to FERC. If the river is eligible for inclusion in the Wild and Scenic Rivers system, ask FERC to delay the licensing decision until the suitability determination for inclusion in the Wild and Scenic Rivers System has been completed as outlined in FSH 2709.15, section 25.3. This requirement to complete eligibility requirements and, if the river is eligible, to complete suitability determinations applies to rivers identified on the Nation-wide Rivers Inventory and to rivers identified for consideration through Forest land and resource management plans (FSM 1924).

2775.12—Wild and Scenic Rivers on Lands in Conservation Units in Alaska

Dams and hydropower plants on a designated wild and scenic river in Alaska would not be an appropriate use and could not be licensed by FERC if they are "on or directly affecting" the river (Wild and Scenic Rivers Act, sec. 7, and sec. 1107 of the Alaska National Interest Lands Conservation Act (ANILCA; 94 Stat. 2464; 16 U.S.C. 3167)). A transportation or utility system, including linear facilities associated with a hydropower project, may use lands within the boundaries of a designated river in Alaska National Forests when the following conditions are met (16 U.S.C. 3167(b)):

1. Facilities do not interfere with or impede the streamflow of and transportation on the river.
2. The transportation or utility system (linear facilities, such as pipelines, ditches, tunnels and powerlines; 16 U.S.C. 3162(4)) is located and constructed in an environmentally sound manner.

2775.2—Projects Proposed in Designated Wilderness Areas.

(FSM 2320), and FSH 2709.15, sec. 26.) A new hydropower project may occupy land in a wilderness only if the President approves (16 U.S.C. 1133(d)(4)). The Secretary of Agriculture is responsible for a recommendation to the President to approve a hydroelectric use in a designated wilderness. The Chief is responsible for the recommendation to the Secretary to approve such a hydroelectric use. The Regional Forester is responsible for evaluating such a proposal. The

Secretary, Chief, or Regional Forester (FSM 2770.4) may determine that a proposal is not in the public interest and dismiss the project proposal.

Even though the Forest Service is responsible for initiating a recommendation for a project in wilderness, the Federal Energy Regulatory Commission (FERC) is responsible for the environmental impact statement (EIS) needed to evaluate proposed licensing of the project (FSM 2773). Such an EIS generally is prepared with the cooperation of the Forest Service through the Regional Forester.

If the Chief determines that a proposed project in wilderness is in the public interest, the Chief transmits the EIS, along with the recommendation, to the Department of Agriculture for the Secretary's recommendation to the President for a decision. If the President approves the project and the associated use of the wilderness, the Regional Forester must submit a 4(e) report to FERC consistent with that decision.

A special-use authorization (Form FS-2700-4f) for study of a potential hydropower development and other non-ground-disturbing activities in a wilderness may be issued without Presidential approval (FSM 2772.3, and FSH 2709.15, sec. 62.11 and 74).

Existing facilities in wilderness areas that have been properly authorized by a FERC license continue to be authorized by that license. See FSH 2709.15, section 64.7, for further guidance on administering existing projects in the wilderness.

2775.3—Project Proposed in Roadless Study Areas

Roadless study areas include legislatively unreleased Roadless Area Review and Evaluation II (RARE II) areas, further planning areas, and Congressionally mandated wilderness study areas (FSM 1923 and FSM 2320).

When roadless study lands are included in an application for license for a proposed hydropower project, advise FERC through an interim 4(e) report (or other appropriate correspondence) of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the applicant to reapply if the lands in question are allocated to non-wilderness uses that would not conflict with hydropower development, or
2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the

forest land and resource management plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.12 and 1909.15).

Generally, grant investigation special-use authorizations (Form FS-2700-4f) in these areas only for study and other non-ground-disturbing activities.

2775.4—Projects Proposed in Research Natural Areas

Most surface hydropower facilities would be incompatible with the purposes of a research natural area (FSM 4063). However, the research natural area management plan may allow for hydropower or similar uses; in this case, evaluate a proposed project and respond to FERC in a 4(e) report. Coordinate advice to FERC and the issuance of any special-use authorizing actions within the research natural area with the Research Station Director.

1. If a proposed hydropower project is incompatible with the purposes of the research natural area, then:

a. In response to a notice of application to FERC for license, or in the 4(e) report, inform FERC that such surface uses would be incompatible with the purposes of the research natural area.

b. Do not issue a special-use authorization for a project exempted from licensing by FERC when the project includes surface lands within a research natural area boundary.

2. When the Station Director believes that the hydropower values that would be forgone are of greater public benefit than keeping the research natural area fully protected, the Station Director may request, with Regional Forester concurrence, that the Chief reconsider or modify the designation order establishing the research natural area (see direction on authority of Station Directors in FSM 4062).

3. In general, do not issue an investigation special-use authorization (Form FS-2700-4f) to a project proposing to use lands of a research natural area; however, a non-ground disturbing investigation special-use authorization may be issued in situations such as:

- a. The research natural area's management plan allows actions which include or are similar to those proposed by the hydropower project;
- b. There would be no direct or indirect modification to the ecological processes of the research natural area; for example, a tunnel under the research natural area might not adversely affect the area; or
- c. The Station Director anticipates that a proposed hydropower

development may have significant public benefits.

2775.41—Projects Proposed in Candidate Research Natural Areas

When candidate research natural area lands are included in an application for license for a proposed hydropower project, advise FERC of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the applicant to reapply if these lands are allocated to non-research natural area uses that would not conflict with hydropower development, or

2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the land and resource management plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.12 and 1090.15).

Issue investigation special-use authorizations (Form FS-2700-4f) for candidate research natural areas where no ground disturbance will take place. Coordinate the issuance of any special-use authorizing actions within the candidate research natural area with the Research Station Director.

2775.5—Projects Proposed in Other Special Areas

1. Other special areas may be established by the Forest land and resource management plan or unit plan for which the Forest Service may determine that a proposed hydropower development would not be compatible. Special interest areas established by the Forest Service may include:

a. Scenic, geological, botanical, zoological, and paleontological areas (FSM 2360.2).

b. Cultural resources areas (FSM 2361).

c. National scenic or historic trails (FSM 2353.4).

d. Other special land allocations established through the forest land and resource management plan or other procedure where hydropower development would be incompatible.

2. Other special land allocations may have been established by legislation, such as national recreation areas, where hydropower development may be incompatible.

3. When hydropower use would be incompatible with the management and purposes for establishing the special area, take the following actions:

a. In response to a notice of application to FERC for license, inform FERC in the 4(e) report that such use

would be incompatible with National Forest purposes of the special management area (FSH 2709.15, sec. 26.4).

b. In response to an application for special-use authorization for a project exempted from licensing by FERC, do not issue a special-use authorization for such a project that includes lands within the special management area.

4. When project impacts can be adequately mitigated to protect the management and purposes for establishing the special management area, impose appropriate conditions on the license and special-use authorization through the 4(e) report or through the special-use authorization alone for a project exempted from licensing.

2775.51—Projects Proposed in Study Special Areas

When study special management area lands are included in an application for license for a proposed hydropower project, advise FERC of the study and pending land allocation decision. Recommend that FERC:

1. Reject the application for license and advise the application to reapply if the lands in question are allocated to non-special area uses that would not conflict with hydropower development, or

2. Delay the licensing decision until the land allocation decision is made, preferably through the Forest land and resource management plan. If the land use decision must be made before the Forest land and resource plan can be implemented, conduct a suitable analysis in compliance with the National Environmental Policy Act (FSM 1920; FSH 1909.15).

Issue investigation special-use authorizations (Forms FS-2700-4f) for study special areas, and as appropriate, carefully regulate potential ground disturbance.

2775.6—Projects Proposed in State-Designated Special Areas

The States may designate special areas, such as State wild and scenic rivers, wild trout streams, and State game refuges, which may include National Forest System land. State laws may prohibit State permits for hydropower projects on these special areas, but these laws are not binding on Federally authorized projects. However, in the spirit of cooperation, give such State laws and areas very careful analysis when considering hydropower projects. Under section 4(e) of the Federal Power Act, the Forest Service is not authorized to:

1. Impose conditions on the license to ensure protection of the State's designated special areas; or

2. Impose conditions on the license to protect other State interests not directly a result of the need for "adequate protection and utilization of the National Forest."

However, the Forest Service and the State may request that FERC provide protections which promote the interest of the state-designated area.

2775.7—Projects Proposed in National Monuments

FERC is prohibited from licensing a project that would occupy lands of a national monument administered by the Forest Service or other Federal agency (41 Stat. 1353; 16 U.S.C. 797(a)); such action would require an act of Congress.

2776—Relicensing

In general, follow the same procedures for projects whose owners are applying for a new license under relicensing procedures as used for those for projects whose applicants are applying for an original license. The procedural differences apply mainly to the project owners, not the Forest Service (sec. 15 of the Federal Power Act, 16 U.S.C. 808; 18 CFR Part 16, subpart B, sec. 16.8 through 16.13).

2776.1—Section 4(e) Conditions in Relicensing

The Forest Service may specify 4(e) conditions in a new license issued by FERC under relicensing procedures. Such conditions must be reasonable and necessary for the adequate protection and utilization of the National Forest as it exists at the time of relicensing.

Existing projects provide public benefits and have been in place long enough to be the "normal" situation where they exist. Therefore avoid disruption of these projects and carefully evaluate the need for change. However, it is essential to require reasonable measures to protect the environment. For example, it may be reasonable to provide fish passage over a dam, but not to restore a stream fishery that was converted to a lake fishery. Do not seek in relicensing offsite replacement of resources lost during the original licensing decision.

Generally, limit the resource protection measures to those which the project could afford to provide and still operate; avoid as much as possible actions that would cause projects to operate in a marginal economic condition.

2776.2—Removal of Project

If special circumstances indicate a project that is under consideration for relicensing should be removed, recommend in a 4(e) report to FERC that no new license be issued and that the area be restored. Do not use the conditioning authority under section 4(e) of the Federal Power Act to force removal of a project. See FSM 2771.33, for direction regarding Federal takeover of a project.

Proposed Handbook Revision

Following are the sections of the Hydropower Handbook (FSH 2709.15) cited in this **Federal Register** notice. For a copy of the entire Handbook, call the **FOR FURTHER INFORMATION CONTACT** listed at the beginning of the notice. This Handbook provides detailed direction to Forest Service personnel for evaluating hydropower project proposals and for coordinating with the Federal Energy Regulatory Commission (FERC). See FSM 2770 for policy and overall direction on Forest Service hydropower matters.

64.7—Administration of Projects in Wilderness Areas

Facilities in wilderness areas that have been properly authorized by a FERC license will continue to be authorized by that license. When FERC relicenses a project, the Forest Service issues a companion special-use authorization (Form FS-2700-4g), usually under the Federal Land Policy and Management Act (FLPMA) (FSM 2770.1). Since FLPMA authority cannot be used for facilities in a wilderness, use the Organic Act (16 U.S.C. 551) for the Forest Service authorization of that portion of the project in the wilderness.

These hydropower projects are considered as valid existing rights and administered as such under section 4(c) of the Wilderness Act of September 3, 1964 (16 U.S.C. 1133(c); FSM 2775.2).

Existing special use authorizations may be modified for maintenance and reconstruction work on projects in wilderness areas. Any modifications to such facilities must be made in conformance with the requirements of the license and any special-use authorization, and section 4(c) of the Wilderness Act, except that modifications to increase storage capacity or similar improvements must receive Presidential approval (sec. 4(d)(4) of the Wilderness Act).

Hydropower dams in wilderness areas must meet the requirements of Federal and State law, including the Wilderness Act, the Dam Safety Act (33 U.S.C. 467a-367n), the Federal Power Act, the

law and regulation that provides for the special use authorization, and the terms of the authorization. The Wilderness Act provides for the maintenance of existing dams and related facilities in wilderness areas if they are valid existing rights.

Maintenance can include work that will improve the safety of the dam, such as enlarging the spillway or increasing the freeboard on the dam. In some instances the installation of a water measuring device may be added when required by State law and when there is no suitable location available outside of the wilderness area.

FSM 2320 provides direction for evaluating proposed improvements and reconstruction of facilities, including access alternatives to the dam or water conveyance system. Consideration of proposals for work on dams and related access should be made on a case-by-case basis using the NEPA process (FSM 1950), balancing wilderness values with licensee rights and public safety. Historic methods of access and economics also should be considered in the analysis.

Hydropower projects licensed by FERC do not qualify for an easement under the Act of October 27, 1986 (Pub. L. 99-5545, the "Ditch Bill"; FSM 2770.1) which amended parts of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(c)).

65—Special-Use Authorization Fees

Fees may be charged for investigation special use permits (Form FS-2700-4f), as well as for project special use authorizations.

65.1—Investigation Permit Fee

Unless the market conditions indicate that a higher fee is appropriate, charge \$200.00 for the term of a hydropower investigation permit (Form FS-2700-4f).

65.2—Licensed Project Authorization Fee

Waive the fee for this type of authorization since FERC already charges fees for the use of National Forest System land.

The holder shall pay a fee, as described in section 65.31, for areas outside the license boundary that are under temporary permit.

65.3—Exempted Project Authorization Fee

65.31—Fee for Construction Period (Minimum Operation Fee)

Charge the annual minimum fee of 10 percent of the land value of the area under permit for periods when power is not being sold. At the option of the Regional Forester, determine such land value by appraisal or other sound business practices. The holder shall pay the minimum fee in advance at the beginning of each year. Calculate the fee for temporary permits issued for temporary areas outside the main permit area at 10 percent, annually, of the land value of the area under those permits.

65.32—Operation Fee

Unless local market conditions indicate otherwise, the holder shall pay a fee of 3 percent of the gross power sales from the start of project operation until the end of the fifth year. From the start of the sixth year to the end of the tenth year, the holder shall pay a fee of 5 percent of the gross power sales. The fee from the start of the eleventh year until the end of the term of the authorization may increase up to 10 percent. Determine the final rate through a reevaluation of the market, during the tenth year.

The holder pays the minimum operation fee (sec. 65.31) in advance each year and that amount is credited toward the operation fee. The holder does not start paying the quarterly operation fees each year until the year's accumulated operation exceeds the minimum operation fee. The holder pays the operation fee quarterly, within 45 days of the end of each quarter, unless the average annual fee is less than \$2,000 (in which case the holder pays at the end of the year).

65.33—Fee Adjustment of Mixed Ownership

Adjust the operation fee when the Federal Government land under permit is less than 90 percent of the total linear distance actually occupied by the project excluding access roads and transmission lines. Make the adjustment by measuring slope-distance length of the project from the outlet of the lowest powerhouse tailrace to the upstream edge of the impoundment created by the diversion. The percentage of that length

that is on Government land is the percentage of the total fee that is due the Government. For example, if the government owns 800 feet of a 1,000-foot-long project, the initial operation fee would be 80 percent of 3 percent of the gross power sales or 2.4 percent of the gross power sales.

If there is more than one diversion, include the additional lengths of those other diversions from the point of intersection with those already measured in the total length.

65.34—Transmission Line Fee

The holder shall pay a separate fee for the area under permit for the transmission line portion of the project if such a line is the only facility under permit or if the transmission line exceeds 2,500 feet on National Forest System land to the point of interconnection with an existing transmission line. A separate special use authorization for a transmission line greater than 2,500 feet is not necessary, but may be used at the discretion of the authorizing officer; that is, the authorizing officer has the discretion to charge an additional fee for the transmission line within the hydropower permit, instead of issuing a separate transmission line permit for lines over 2,500 feet. Determine fees by the procedures for transmission line fees (see also sec. 62.24).

65.35—Conduit Exemption Fee

While conduit exemptions cannot be issued for projects that occupy Federal lands, FERC grants exemptions to such projects as long as the powerhouse is not on Federal lands and there is no new construction on Federal lands; for example when the powerhouse would be on non-Federal lands and the existing water pipeline or ditch on Federal lands does not need modification.

Regardless of FERC's action, treat the project in its entirety when calculating fees. Consistent with section 65.33, measure the linear distance of the water system from the powerhouse to the upper end of the diversion or to the next powerhouse, if any. The percentage of that length that is on National Forest System land is the percentage of the total fee that would be charged.

BILLING CODE 3410-11-M

HYDROPOWER HANDBOOK

Section 55.6 - Exhibit 01

Forest Service Standard 4(e) License Conditions

Enclosure II

LICENSE CONDITIONS NECESSARY FOR PROTECTION AND UTILIZATION OF THE
<NAME> NATIONAL FOREST IN CONNECTION WITH THE APPLICATION FOR
LICENSE PROJECT NO. <No.>

I. GENERAL

License articles contained in the Commission's Standard Form L-<no.> issued by Order No. 540, dated October 31, 1975, cover those general requirements that the Secretary of Agriculture, acting by and through the Forest Service, considers necessary for adequate protection and utilization of the land and related resources of the _____ National Forest under the purposes for which the _____ National Forest is administered. For the purposes of section 4(e) of the Federal Power Act (16 U.S.C. 797(e)), the purposes for which National Forest System lands were created or acquired are the protection and utilization of those resources enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), and any other law specifically establishing a unit of the National Forest System or prescribing the management thereof (such as the Wilderness Act or Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved Forest Plans prepared in accordance with the National Forest Management Act. Energy production (hydropower) is one of those resources (96 Stat. 2957). Therefore, pursuant to section 4(e) of the Federal Power Act, the following conditions covering specific requirements for protection and utilization of National Forest System lands shall also be included in any license issued.

II. MANDATORY PROVISIONS APPLICABLE TO ALL PROJECTS OCCUPYING NATIONAL FOREST SYSTEM LANDS

Condition No. 101 - Requirement To Obtain a Forest Service Special-Use Authorization.

The licensee shall comply with the special-use authorization which the licensee shall obtain from the Forest Service for the occupancy and use of National Forest System lands. The licensee shall obtain the executed authorization before beginning land disturbing, land clearing, or spoil producing activities on National Forest System lands or within one year of license issuance if no construction or reconstruction was proposed in the application for license or new license.

The Licensee may commence land-disturbing activities authorized by the License and special-use authorization no sooner than 60 days following the date the licensee files the Forest Service special-use authorization or endorsement regarding such authorization with the Commission, unless the Commission prescribes a different commencement schedule.

National Forest System lands within the project boundaries shall be managed by the Forest Service under the laws, rules, and regulations applicable to the National Forest System. The terms and conditions of the Forest Service special-use authorization are enforceable by the Forest Service under the laws, rules, and regulations applicable to the National Forest System. The violation of such terms and conditions also shall be subject to applicable sanctions and enforcement procedures of the Commission at the request of the Forest Service. In the event that there is a conflict between any provisions of the license and Forest Service special-use authorization, the special-use authorization shall prevail to the extent that the Forest Service, in consultation with the Commission, deems necessary to protect and utilize National Forest System resources.

Condition No. 102 - Forest Service Approval of Final Design

Before any ground-disturbing actions occur on National Forest System land, the Licensee shall obtain the written approval of the Forest Service for all final plans not previously approved by the Forest Service or which were not part of the approved project license exhibits (if such exhibits were given to the Forest Service for review). For the purposes of this license, (1) final plans are only those plans which show project facilities in complete and accurate detail in relation to the ground surface, which are accompanied by on-the-ground staking of the project facilities, and which have been reviewed and approved in writing by the Forest Service, and (2) the only final plans included are those relating to ground disturbance and to facility locations and appearance, which the Forest Service identifies as affecting the protection and utilization of the National Forest System lands. As part of the written approval for plans not previously approved, the Forest Service may require, within the scope of the licensed project and initial approvals of the Forest Service, adjustments in final plans with regard to facility locations and appearance to preclude or mitigate impacts and to assure that the project is compatible with on-the-ground conditions.

The Forest Service shall have up to 60 days from the date of plan(s) submittal to exercise approval authority. If the Forest Service is unable to proceed with consideration of such plans due to adverse weather or other reasons beyond the control of the Forest Service, the Forest Service shall promptly inform the licensee and the Commission of the problems, and the running of the 60-day period shall be delayed until the problems are resolved.

Condition No. 103 - Approval of Changes After Initial Construction

In addition to any Commission approval or license provisions to make changes to the project, the licensee shall obtain written approval from the Forest Service prior to making any changes in the location of any constructed project features or facilities, or any changes in the uses of Forest Service administered lands and waters, or any departure from the requirements of any approved exhibits filed with the Commission. Following receipt of such approval from the Forest Service, and not less than 60 days prior to initiating any such changes or departure, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest Service for such changes. The Licensee shall file an exact copy of this report with the Forest Service at the same time it is filed with the Commission.

This article does not relieve the Licensee from the requirement for amendment or other requirements of Article 2 or Article 3 of this License. Any changes made pursuant to Articles 2 of 3 of the license shall be also subject to any new terms and conditions that the Secretary of Agriculture may impose in accordance with Section 4(e) of the Federal Power Act.

Condition No. 104 - Consultation

Every five years, beginning the fifth year following the anniversary date of the license, or on a schedule mutually agreed to by the Licensee and the Forest Service, the Licensee shall consult with the Forest Service with regard to project operations, including measures needed to ensure the adequate protection and utilization of the area of the National Forest affected by the project. If a dispute arises regarding needed measures, the Licensee shall, within 60 days following such consultation, file a letter with the Commission documenting the consultation, including any recommendations made by the Forest Service. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the project and its operation that may be necessary to accomplish the adequate protection and utilization of the portion of National Forest System Lands occupied and affected by the project or to accomplish other identified natural resource protection.

Condition No. 105 - Dispute Resolution for Plan Approval

With respect to any plan required by this license to be approved by the Forest Service, if the Forest Service does not act within 60 days of submission of a proposed plan to the Forest Service by the licensee, the proposed plan shall be deemed disapproved.

The licensee may request, in writing, the Regional Forester to review any plan that is disapproved or deemed disapproved by the Forest Service. If the Regional Forester fails to issue a

determination regarding the request for review within 30 days of receiving the licensee's notice of request for review, the disapproval shall be deemed to have been sustained by the Regional Forester.

If the Regional Forester sustains the disapproval, the licensee may request, in writing, review of the decision by the Chief Service, as though the disapproval appealed was an original decision of the Regional Forester.

Condition No. 106 - Dispute Resolution for 4(e) Condition / Special-Use Authorization Administration

In order to expedite the review of disputed Forest Service orders or directions given during construction, the following procedures are to be used.

a. Any orders or directions, made during construction of the project can be immediately referred to the Forest Supervisor for resolution. If the Forest Supervisor fails to act within 5 working-days of written notice by the licensee of its concerns, the original order or directions of the Forest Service shall be deemed to be sustained.

If the licensee disagrees with the decision of the Forest Supervisor, it may request in writing that the appropriate Regional Forester review the decision of the Forest Supervisor. If the Regional Forester fails to act on such request within 15 working-days of receipt, the decision of the Forest Supervisor shall be deemed to be sustained by the Regional Forester.

If the licensee disagrees with the decision made by the Regional Forester, or as deemed made by the Regional Forester, it may request in writing that the Chief review the decision under the applicable administrative appeal procedures of the Forest Service as though the decision was an original decision of the Regional Forester.

b. Any orders or directions given during operation of the project will be resolved using the appeal regulations applicable to holders of special-use authorizations from the Forest Service.

Condition No. 107 - Cultural Resource Protection

The licensee shall not initiate any work, other than that specifically authorized in this license, before (1) consulting with the Forest Service and the appropriate State Historic Preservation Officer (SHPO), (2) conducting a cultural resources survey of these areas, and (3) filing for Commission approval a cultural resources management plan to avoid or mitigate impacts to any significant archeological or historic sites identified during the survey. The survey and plan shall be based on the recommendations of the SHPO and shall be

conducted and prepared by a qualified cultural resources specialist. If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all land-clearing, land-disturbing, or spoil-producing activities in the vicinity of the sites, and shall also consult with the SHPO and file for Commission approval a cultural resources management plan to avoid or mitigate impacts to significant resources, prepared by a qualified cultural resources management specialist.

The survey and the plan shall be documented in a report which shall contain the following: (1) a description of each discovered site, indicating whether it is listed or eligible to be listed on the National Register of Historic Places; (2) a description of the potential effect on each discovered site; (3) proposed measures for avoiding or mitigating the effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for mitigating effects and conducting additional studies. The Commission may require changes to the plan or the report.

The licensee shall not begin land-clearing, land-disturbing, or spoil-producing activities, other than those specifically authorized in this license, or resume such activities in the vicinity of a site discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

III. ADDITIONAL PROVISIONS

Condition No. 110 - Instream Flow Requirement

During the construction and operation of the facilities authorized by this license, the licensee shall maintain the following instantaneous instream flows or the natural flow, whichever is less, immediately below the diversion in the <Name of Stream>.

<date> through <date> <no.> cubic feet per second (cfs)
<date> through <date> <no.> cfs
<date> through <date> <no.> cfs

The Licensee may temporarily modify instream flows if required by operating emergencies beyond the control of the Licensee. The Licensee may also modify instream flows for short periods upon written consent of the Forest Service.

[OPTIONAL - USE THIS PARAGRAPH AS NECESSARY.]

After notice to and concurrence by the Forest Service, the Licensee shall release down the channel a flushing flow acceptable to the Forest Service in <name of creek> for <no.> consecutive days during the peak runoff period to maintain channel competence and to aggregate and flush the gravel.

[USE THIS PARAGRAPH ONLY IF STANDARD CONDITION 180 IS USED.]

These interim instream flow requirements shall remain in effect until the date that the approved adjusted instream flows provided for in Article 180 are implemented.

Condition No. 111 - Guaranteed Priority Flow Bypass Device and Gaging

The Licensee shall construct, operate, and maintain a guaranteed priority streamflow device, approved by the Forest Service, as part of the diversion/intake structure. Instream flows required by condition 110 shall be automatically released through this device, before any flow can be diverted into the conduit. At least 90 days prior to beginning construction of the diversion structure, the licensee shall file for Commission approval functional design drawings and an implementation schedule for the guaranteed priority streamflow device. Upon Commission approval, the licensee shall implement the schedule. The guaranteed priority streamflow device shall be shown on the as-built drawings filed with the Commission.

The licensee, after consulting with the appropriate State agency, the Forest Service, and the United States Geological Survey, shall develop plans to install and monitor a water measurement control section with an continuous recording gage to demonstrate compliance with the requirements of condition 110 and this article. The licensee shall file with the Commission, at least 90 days prior to the installation of the water measurement control section, plans approved by the Forest Service for the water measurement control section and gaging. The Commission may require changes to the plans.

The licensee shall provide stage-discharge information to the Forest Service prior to commencement of operation of the project. Within 60 days of request, the licensee shall provide the Forest Service with updated stage-discharge charts and/or with a report of streamflow information collected at the water measurement control section and any other applicable stream gage records. The water measurement control section and gage shall be shown on the as-built drawings filed with the Commission.

Condition No. 112 - Fish Screens

Prior to diversion of any flows into the conduit, the licensee shall install and maintain a fish screen device on the intake structure of the diversion to prevent entrainment of fish into the conduit and penstock system. A positive fish screen at the diversion intake structure designed for an approach velocity of ____ feet per second, a channel velocity at least twice the approach velocity, and a smooth transition to a fish bypass pipe at the down stream end of the screen structure shall be incorporated into the diversion.

At least 90 days prior to the installation of the diversion structure, the licensee shall file for Commission approval, Forest Service-approved functional design drawings for the

design of the screen and related devices. The Commission may require modifications to the designs. The screen and related devices shall be shown on the as-built drawings filed with the Commission.

Condition No. 113 - Fish and Wildlife Mitigation Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a fish and wildlife mitigation plan approved by the Forest Service. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

- a. _____
- b. _____
- c. _____

This plan must identify requirements for construction and mitigation measures to meet Forest Service fish and wildlife habitat objectives and standards. The plan also must include dates for accomplishing these objectives and standards and must identify needs for and timing of any additional studies called for in the license.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 114 - Sensitive Species Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a sensitive species plan approved by the Forest Service for the protection of _____ located in the project area. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

- a. _____
- b. _____
- c. _____
- d. _____

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service objectives and standards as identified in the _____ Forest plan on file with the Commission. A biological evaluation will

be required prior to project construction for each sensitive species.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 115 - Threatened and Endangered Species Plan

At least 90 days prior to land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service and U.S. Fish and Wildlife Service, for the protection of _____ located in the project area. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The mitigation plan must include the following.

- a. _____
- b. _____
- c. _____
- d. _____

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service and U.S. Fish and Wildlife Service objectives and standards for the recovery of the affected species. A biological evaluation will be required prior to project construction for the affected species.

Any comments of the <in consultation with FERC, fill in involved agencies, such as US Fish and Wildlife Service, National Marine Fisheries Service, and the State Fish and Wildlife agency> shall be filed with the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. Upon Commission approval, the licensee shall implement the plan.

Condition No. 116 - Erosion Control Measures Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service to control erosion, stream sedimentation, dust, and soil mass movement consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan.

The plan shall be based on actual-site geological, soil, and groundwater conditions and shall include: (1) a description of the actual-site conditions; (2) detailed descriptions, design drawings, and specific topographic locations of all control measures; (3) measures to divert runoff away from disturbed land surfaces; (4) measures to collect and filter runoff over disturbed land surfaces, including sediment ponds at the diversion and powerhouse sites; (5) revegetating disturbed areas outside of the roadbed; (6) measures to dissipate energy and prevent erosion at the tailrace; (7) _____; (8) _____; and (9) a monitoring and maintenance schedule. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

This plan must identify requirements for construction, operation, and maintenance measures to meet Forest Service erosion control objectives and standards.

Condition No. 117 - Visual Resource Protection

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the design and construction of the project facilities in order to preserve or enhance the visual quality of the project area, consistent with the standards and guidelines for affected management areas in the _____ National Forest Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

The plan must address facility configurations and alignments, architectural theme, building materials, color, conservation of vegetation, landscaping, signs, and screening. Project facilities to be covered by this plan include, among other things, clearings, diversion structures, penstocks, pipes, ditches, powerhouses, other buildings, transmission lines and corridors, recreation facilities, and access roads.

In particular, the plan must at least include the following: (1) the powerhouse and associated facilities such as security fences, tailrace, equipment storage, access and parking, and communication equipment; (2) diversion structure and associated facilities such as access and parking, power sources for sensing and monitoring equipment, and inlet controls; (3) power transmission line; and (4) pipelines and ditches; and (5) recreation facilities.

Mitigation measures shall include, but are not limited to, (1) surface treatments with colors that will be in harmony with the surrounding landscape, (2) use of non-specular conductors for the transmission lines, (3) use of native plant species to

screen facilities from view, (4) reshaping and revegetating disturbed areas to blend with surrounding visual characteristics, (5) locating transmission facilities to minimize visual impacts, (6) _____;
 (7) _____; (8) _____
 _____.

Condition No. 118 - Project Recreation Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, or as agreed to by the Forest Service, the Licensee shall file for Commission approval, a plan approved by the Forest Service for implementing measures to mitigate project-induced recreation and provide for other recreation needs over the life of the project, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The recreation plan must include sited plans for the following.

- a. _____
- b. _____
- c. _____
- d. _____

Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 119 - Diversion Operation Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the operation and maintenance of the diversion, consistent with the standards and guidelines for affected management areas in the _____ National Forest Plan.

The plan must address at least the following: (1) water storage, (2) methods for sediment flushing, (3) methods for removal and disposal of sediment, (4) procedures for flood conditions, (5) methods of erosion prevention in the diversion area and spillway channel, (6) trash and debris removal, (7) _____, (8) _____, and (9) an implementation schedule and maintenance program.

Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 120 - Storage Reservoir Operation Plan

At least 90 days prior to starting any land-clearing,

land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the operation and maintenance of the reservoir, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan.

The plan must address at least the following: (1) water storage and releases, including storage limitations (if any), dates and/or criteria for filling and release; (2) procedures for flood conditions; (3) erosion prevention in the reservoir area and spillway channel; (4) trash and debris removal; (5) _____; (6) _____; (7) _____; and an implementation schedule and maintenance program. Provided, however, that regardless of Forest Service approval or denial, the Commission may overrule the Forest Service and/or the approved storage reservoir operating plan if the Commission finds that measures required or provided for will interfere with dam safety or other public safety needs.

Upon Commission approval, the licensee shall implement the plan. The Commission may also require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

Condition No. 121 - Transmission Line Burial

The Licensee shall bury the transmission line along _____ <alignment> _____. The location and depth of burial of the line are subject to approval by the Forest Service.

Condition No. 122 - Pipeline Road Crossing

The licensee shall construct _____ <number> _____ road crossings over the pipeline/penstock at locations designated by the Forest Service. Such crossings must be designed to meet Forest Service road standards for trucks (describe standards).

Condition No. 123 - General Access Over Pipeline

In order to protect general access, the pipeline/penstock, where buried, shall be buried at a depth to allow heavy equipment to cross-over the conduit and to allow removal of timber by aerial or ground methods.

Condition No. 124 - Coordination With Timber Sale Purchaser

The project area may be under contract to the purchaser of the _____ <name> _____ timber sale. Before starting construction or removing any timber in the project area, the Licensee shall develop an agreement with that timber sale purchaser if the sale has not been closed. The agreement must stipulate the joint use of roads and the method of disposal for timber within the project boundary and under the existing sale contract. The

agreement must be approved by the Forest Service before timber removal may begin. Removal of timber in addition to that already sold to the purchaser, must be authorized by amendment to the purchaser's contract or by a separate timber sale contract sold to the Licensee or another party.

Condition No. 125 - Borrow Pit Requirements

Borrow pits and other excavations are restricted to locations below the high waterline and limited to the location and quantities specified in the approved plans and specifications. The licensee shall make no additional excavations without advance written approval of the Forest Service. After removal of the desired material, the licensee shall grade and shape all excavations as agreed to by the Forest Service.

Condition No. 126 - Winterization

The licensee shall take necessary measures to ensure that a suitable conveyance or channel is adequate to pass the inflow design flood for spring runoff and to prevent erosion or siltation due to the construction.

IV. REGIONAL STANDARD PROVISIONS

Conditions 140 - 159

V. PROJECT SPECIFIC PROVISIONS

Conditions 160 - 179

VI. OTHER SPECIAL PROVISIONS

Condition No. 180 - Instream Flow Modification Study

[THIS CONDITION SHOULD RARELY BE USED. USE ONLY IN CONJUNCTION WITH CONDITION NO. 110. USE ONLY IF LICENSEE REQUESTS FURTHER OPPORTUNITY TO STUDY STREAMFLOW RELEASES.]

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for the study of instream flows, consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall commence the study. The Commission may require changes to the study plan to ensure adequate assessment and protection of the environmental, scenic, and cultural values of the area.

This study must address: (a) the effects of diverting different quantities of water on downstream aquatic and terrestrial habitats; (b) the water requirements of aquatic organisms in the areas affected by diversions, including existing organisms and those that may be introduced; (c) the

effects of project discharges on stream morphology and stability; (d) measures that will ensure the protection and enhancement of water quality and animal and vegetative habitats in the streams and environs; (e) requirements for recreation and aesthetics; and (f) recommendations for instream flow requirements and flow regimes that will achieve the identified measures of protection and enhancement.

Within 6 months following completion of the study, the Licensee shall file the study results with the Commission.

As a result of the study, when and if the licensee and Forest Service agree to changes in the streamflows specified in article 110, the licensee may file with the Commission, a revised article 110 showing the new proposed instream flow requirements. Such filing shall clearly document Regional Forester specific agreement to the new streamflow requirements.

The licensee may not implement the revised instream flow requirements, until approved by the Forest Service, and until the Commission, issues an order approving the revised instream flow requirements.

Condition No. 181 - Sensitive Plant and Habitat Plan

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a Sensitive Plant Habitat Plan approved by the Forest Service and consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. The plan shall be prepared in consultation with the Forest Service and any other affected State or Federal agency. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the study plan to ensure adequate assessment and protection of the environmental, scenic, and cultural values of the project area.

This plan shall identify requirements for construction, operation, and maintenance measures to meet Forest Service sensitive plant and habitat objectives and standards as identified in the _____ Land and Resource Management Plan on file with the Commission. The plan shall include a schedule for accomplishing these objectives and standards and shall identify any needs for additional studies. Due to the unknown nature of the project's impacts on the sensitive plant species _____, some of the studies (possibly requiring a year or more) may need to be completed prior to construction, because of the required mitigation measure's effects on the viability of the total project.

The Licensee shall prepare a monitoring plan to determine the effectiveness of the mitigations on sensitive plants. If monitoring indicates to the Forest Service that changes in project structures or operations are necessary to maintain

sensitive species, the Licensee may be required by the Forest Service to file with the Commission a schedule, approved by the Forest Service, for implementing specific changes in project structures or operations.

Condition No. 182 - Slope Stability Protection Plan

[INSTRUCTIONS: THIS CONDITION IS SELDOM NECESSARY; CONDITION 116 SHOULD BE ADEQUATE.]

At least 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a slope stability protection plan approved by the Forest Service and consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area.

The plan will include a detailed geotechnical design report of all project elements, particularly for facilities in potential geologic hazard areas. The geotechnical design report shall address specific areas and identify the specifications and requirements for construction, operation, and maintenance to meet Forest Service standards.

Condition No. 183 - Restrictions on Access by Road

Road access to _____ will not be permitted. Access will be by pedestrian/two-wheel vehicle with no greater than a 4-foot wide trail. Construction of the powerhouse and penstock will utilize a fully-suspended cable system or helicopter. The cable system will operate within confinement of the penstock corridor. Engineering and design of the cable system must have Forest Service approval.

Condition No. 184 - Easement Acquisition

Prior to selling power produced by this project, the Licensee shall acquire, without contribution or compensation by the United States, easements in the name of the United States for the location of and public access to those portions of the _____ trail, trailhead, parking lot, and picnic facilities _____ to be constructed in accordance with the Licensee's approved Recreation Plan that are not located on National Forest System land. The licensee shall obtain Forest Service approval of the easement language and evidence of unencumbered title to the easements prepared by a certified title examiner prior to execution of the easements.

Condition No. 185 - Traffic Management and Public Safety

At least 90 days prior to starting any land-clearing,

land-disturbing, or spoil-producing activities, the licensee shall file for Commission approval, a plan approved by the Forest Service for traffic management and public safety associated with construction in the roadbed. The plan must be consistent with the standards and guidelines for affected management areas in the _____ National Land and Resource Management Plan. Upon Commission approval, the licensee shall implement the plan. The Commission may require changes to the plan to ensure adequate protection of the environmental, scenic, and cultural values of the project area. The plan shall provide for (1) suspension of penstock construction during the winter ski season from _____ to _____; during the big-game rifle hunt in _____ of each year (including a short pre- and post-season period); during summer recreation season weekends and holidays from _____ to _____; and (2) safe passage of public traffic during permitted construction periods, with traffic delays not to exceed 1 hour.

Condition No. 186 - Siting of Facilities

The facilities covered by this license shall be located generally as described in the License Application, except (1) as may be described below, (2) as modified by the terms of this license, or (3) as ordered by the Commission for the protection of the environmental, scenic, and cultural values of the project area.

- a. _____
- b. _____
- c. _____

Condition No. 187 - Plan Implementation.

The licensee shall implement the _____ plan filed _____, which is approved and made part of the license. The plan, consisting of pages _____ through _____ and drawings _____ and _____, provides measures for _____.

Section 77 - Exhibit 01

FS-2700-4g (07/93)
 OMB No. 0596-0082
 (Expires: 6/30/96)

U.S. DEPARTMENT OF AGRICULTURE Forest Service SPECIAL-USE PERMIT FOR LICENSED HYDROPOWER PROJECT Act of October 21, 1976 (P.L. 94-579) 36 CFR 251.50 et seq. (Ref. FSM 2770)	Holder No.	Issue Date	Expir. Date
	-----	--/--/--	--/--/--
	Type Site(s)	Authority	Auth. Type
	-----	-----	-----
	Region/Forest/District		State/County
	--/--/--		--/--
	Cong. Dist.	Latitude	Longitude
	--	-----	-----

_____ of _____
 (Holder Name) (Billing Address - 1)

 (Billing Address - 2) (City) (State) (Zip Code)

(hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the _____ National Forest <<or _____ unit of the National Forest System. OPTIONAL>>

This permit covers <<# OF ACRES>> acres and/or <<# OF MILES OR WIDTH IN FEET X LENGTH IN FEET OF USE AUTHORIZED>> and is described as (e.g. NW1/4 NW1/4, Section 26, T24N, R16E, W.M.; Tract 419-A; MS 309 ID; etc.) as shown on the location map attached to and made a part of this permit, and is issued for the purpose of: _____

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

- I. **AUTHORITY AND GENERAL TERMS OF THE PERMIT**
 - A. **Authority.** This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.
 - B. **Authorized Officer.** The authorized officer is the Forest Supervisor or a delegated subordinate officer.
 - C. **Permit.** This permit is an authorization for the use of federally owned land and does not grant any permanent, possessory interest in real

property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Permit Amendment, Licensed Project. (K44) The Regional Forester may review the terms and conditions of this permit upon any modification of project facilities affecting National Forest System lands and requiring an amendment to the license for this project. At such time, the Regional Forester may incorporate in the permit such new terms, conditions, and stipulations as existing or prospective conditions may warrant; provided, that such new terms, conditions, or stipulations shall not unreasonably reduce the use herein authorized and are consistent with the license issued by the Federal Energy Regulatory Commission. Changes in this permit needed because of modifications not requiring an amendment to the license for this project shall be limited to those items and resources affected by the modification.

E. Existing Rights. This permit is subject to all valid rights of third parties. The United States is not liable to the special use authorization holder for the exercise of any such right.

F. Nonexclusive Use. Unless expressly provided in additional terms, this permit is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area for any purpose, provided such use does not interfere with public safety or the rights and privileges hereby authorized or authorized under the Federal Power Act.

G. Public Access and Use. (X19) Unless specifically limited under additional terms to this permit, the holder agrees to allow the public free and unrestricted access to and use of the permit area at all times for all lawful purposes. To facilitate public use of the permit area, all existing roads or roads as may be constructed by the holder shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

H. Forest Service Right of Entry and Inspection. The Forest Service shall have free and unrestricted access at all times, including the right to enter into all buildings, dwellings, and other facilities to ensure compliance with the terms and conditions of this permit. In addition, the Forest Service may enter the authorized facilities for any purpose or reason consistent with any right or obligation of the United States under any law or regulation.

I. Assignability. This permit is transferable as provided for under condition II. H. of this permit; 36 CFR 251.59.

J. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

K. Water Rights. This permit does not confer to the holder any ownership of or right to the use of water.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Termination at the End of the Authorized Period, Licensed Project.

(K32) Unless canceled or terminated by the authorized officer, the term of this permit shall be concurrent with Federal Energy Regulatory Commission license for this project and this permit shall become void on the termination date shown in the ENDORSEMENT section at the end of this permit; provided, however, that this permit will be automatically extended during annual license extensions granted under the Federal Power Act while the Federal Energy Regulatory Commission is considering the granting of a new license unless the authorized officer determines and provides the holder with written notice that such automatic extensions are to be denied and the reasons for the denial.

B. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.
2. The permit area is being used for the purposes previously authorized.
3. The permit area is being operated and maintained in accordance with the provisions of the permit.
4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits, laws, or regulation.

C. Discretion of Forest Service, Licensed. (K48) Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued.

III. RESPONSIBILITIES OF THE HOLDER

A. Plans. (K47) Consistent with Article 102 of the Federal Energy Regulatory Commission license for this project, all proposals for construction, reconstruction, substantial change, or alteration shall be submitted by the holder for approval to the authorized officer issuing this permit. This includes all final plans affecting surface resources and any changes to approved plans, or to plans in the approved project license, related to the location or appearance of project features and temporary facilities, that are identified by the Forest Service as affecting the protection and utilization of National Forest System lands. The proposed action may commence only after the authorized officer has approved, in writing, the plans, specifications, and written construction stipulations, which stipulations shall become part of this permit for the period of time deemed necessary by the authorized officer. The authorized officer shall have up to 60 days from the date

of plan or change submittal to exercise approval authority. If the authorized officer is unable to proceed with consideration of such plans or changes due to adverse weather or reasons beyond the control of the Forest Service, the authorized officer shall promptly inform the licensee of the problems, and the running of the 60-day period shall be delayed until the problems are resolved.

B. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer, and consistent with applicable Federal, State, and local health and safety and other requirements. For example, trash, debris, unusable machinery, etc., will be disposed of separately; other materials will be stacked, stored neatly, or within buildings. Disposal will be at an approved existing location, except as otherwise agreed to by the authorized officer.

C. Hazard Analysis. (K33) The holder has a continuing responsibility to identify and abate hazardous conditions on the permit area which could affect the improvements or pose a risk of injury to individuals. Avalanches, rising waters, high winds, falling limbs or trees, and other hazards are natural phenomena in the forest that present risks to the holder's property that the holder hereby assumes. The holder is responsible for inspecting its site, right-of-way, and the immediate adjoining area for dangerous conditions and, after securing permission from the Forest Service, is responsible for removing such hazards. However, if a hazard poses a substantial immediate danger to life or property, the holder may remove the hazard in accordance with a Forest Service approved plan for such emergency actions, while immediately notifying the authorized forest officer.

D. Safety. (K13) The holder shall carry out all operations in a skillful manner, having due regard for the safety of employees and the public, and in accordance with applicable Occupational Safety and Health Administration and Environmental Protection Agency regulations shall safeguard unsafe areas. The holder shall regularly inspect its facilities as directed by 18 CFR Part 12 regulations, meet all the requirements of those regulations, and provide further effective safety measures as needed for safety protection.

E. Compliance with Laws, Regulations, and other Legal Requirements. The holder, in exercising the uses authorized by this permit, will assume responsibility for compliance with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. The obligations of the holder under this permit are not contingent upon any duty of the Forest Service to inspect the premises. A failure by the Forest Service, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms and conditions of this permit.

F. Fire Prevention and Suppression. The holder shall take all reasonable precautions to prevent and suppress forest fires. Open fires are prohibited except with written permit from the authorized officer or the authorized officer's agent.

G. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

H. Change in Ownership of the Authorized Improvements. This permit is transferable to the extent necessary to conform with of the license. The holder shall immediately notify the authorized officer when a change in ownership of the improvements is pending. Notification by the present holder and potential owner shall be executed using Form FS-2700-3, Special Use Application and Report, or Form FS-2700-3a, Request for Termination of and Application for Special-Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the new owner of the improvements.

I. Relocation of Improvements. (K29) The holder accepts this permit with the express understanding that should future location of government improvements or road rights-of-way require the relocation or adjustment of the holder's linear-type improvements (such as transmission lines, penstocks, pipelines, ditches, or roads) or other actions to accommodate the Federal Government's need for reasonable protection and use of public property, the holder shall, as mutually agreed by the government and the holder and at the holder's expense, accomplish such relocation, adjustment, or other actions, within 180 days following written request to take such action, or on a schedule approved by the Forest Service in writing.

J. Pollution. (K19) The holder shall discharge no waste or byproduct if it contains any substances in concentrations that would result in violation of Federal or State laws, including water quality standards set forth at the time of licensing by the State; would impair present or future beneficial uses of water; would cause pollution, nuisance, or contamination; or would otherwise unreasonably degrade the quality of any lands or waters. During the construction and operation of the project, the holder shall protect project water quality by using the best management practices established by the Forest Service and the State.

K. Esthetics. (K6) In its actions, the holder shall conserve the scenic and esthetic values of the area under this permit consistent with the uses granted herein during construction, operation, and maintenance of the project improvements.

L. Signs. (K11) The holder shall erect no signs or advertising devices on the area covered by this permit without prior approval of the Forest Service as to location, design, size, color, and message. The holder shall maintain or renew erected signs as necessary to neat and presentable standards. The holder shall coordinate the placement of signs required by the license or the Commission with the authorized forest officer. All signs for holder-provided project recreation facilities shall be constructed to Forest Service specifications (i.e., from the Forest Service "family of signs") and shall give equal representation to the holder and the Forest Service.

M. Pesticides. (K23) Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, trash fish, etc., without the prior written approval of the Forest Service. The holder shall submit a request for approval of planned uses of

pesticides. The report must cover annual planned use and be updated as required by the Forest Service. The holder shall provide information essential for review in the form specified. Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the report was submitted. In such an instance, an emergency request and approval may be made.

On National Forest System lands, the holder shall use only those materials registered by the U. S. Environmental Protection Agency for the specific purpose planned. The holder must strictly follow label instructions in the preparation and application of pesticides and disposal of excess materials and containers.

IV. LIABILITY

A. Risk of Loss. The holder assumes all risk of loss of the property. Loss to the property may result from, but is not limited to, theft, vandalism, fire, avalanches, rising waters, winds, falling limbs or trees, and acts of God. If the authorized improvements are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed.

B. Damage to Property of the United States. The holder has an affirmative duty to protect from damage the land and property of the United States. Damage includes, but is not limited to, fire suppression costs and all costs associated with, or resulting from the release or threatened release of a hazardous substance occurring during or as a result of the holder's activities on the property.

1. The holder shall pay the United States for damages occurring under the terms of this permit or under any law or regulation applicable to the National Forests, whether caused by the holder, or by any agents or employees of the holder. The holder shall be liable for all injury, loss, or damage, including fire suppression or cleanup of hazardous wastes, associated with the holder's use or occupancy without regard to the holder's negligence. Compensation shall include, but is not limited to, the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal and other costs in connection therewith.

2. With respect to roads, the holder shall be liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided under condition IV. B. The holder shall fully repair all damage to National Forest roads and trails caused by the holder in the exercise of the privileges granted by this permit.

C. Indemnification and Liability of the United States. The holder shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the Federal Water Pollution Control Act, 33 U.S.C. 1251, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq. The holder shall

indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for any judgments, claims, or demands assessed against the United States as a result of or associated with the holder's activities past, present, or future. The holder's indemnification of the United States shall include any damage to life or property arising from the holder's occupancy or use of Federal lands. The United States has no duty to inspect the permit area or to warn of hazards and, if the United States does inspect the permit area, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections.

D. Damage - High Hazard Clause. (K10) The holder is hereby made liable for all injury, loss, or damage, including but not limited to fire suppression costs, directly or indirectly resulting from or caused by the holder's use and occupancy of the area covered by the permit, regardless of whether the holder is negligent or otherwise at fault, provided that the maximum liability without fault shall not exceed \$1,000,000 for any one occurrence, and provided further that the holder shall not be liable when such injury, loss, or damage results wholly, or in part, from a negligent act of the United States, or from an act of a third party not involving the facilities of the holder.

Determination of liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum, shall be according to the laws governing ordinary negligence.

[INSTRUCTIONS: Use for project with an above-ground powerline, above-ground or moderate to high risk pipeline, dam (other than small diversion dam), exposed transformers, or powerhouse subject to vandalism.]

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. (K49) The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to condition V. B., the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Upon abandonment, revocation, termination, or expiration of this authorization, the holder shall remove within a reasonable time prescribed by the authorized officer all structures and improvements, except those owned by the United States and shall restore the site. If the holder fails to remove all structures or improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

E. Revocation of License. (K53) Revocation of the license for the project covered by this permit by the Federal Energy Regulatory Commission may result in revocation of this permit by the Regional Forester.

VI. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Nondiscrimination. (K42) In connection with the performance of work under this permit, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or handicap in accordance with the Civil Rights Act of 1964, as amended.

C. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

D. Removal and Planting of Vegetation. This permit does not authorize the cutting of timber or other vegetation. Trees or shrubbery may be removed or destroyed only after the authorized officer, or authorized officer's agent, has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed shall be paid for by the holder as follows: Merchantable timber at appraised

value and young-growth timber below merchantable size at current damage appraisal value, provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the authorized officer.

E. Plans, Part of Permit, Licensed. (K51) The holder shall prepare the following plans in consultation with Forest Service and other appropriate agencies.

- a. _____ <plan names> _____
- b. _____
- c. _____

The holder shall submit these plans for Forest Service approval 90 days prior to any new construction or reconstruction; or within one year of issuance of the Federal Energy Regulatory Commission license, if no construction or reconstruction was proposed in an application for license or new license. The holder shall obtain written Forest Service approval for said plan(s) before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plans and any terms of their approval (stipulations). Said plans shall be attached hereto and marked as Exhibits <letters>, respectively.

[INSTRUCTIONS: Optional use; see section 66 for types of operation plans to consider.]

F. Road Use by Government. (K38) The United States shall have unrestricted use of the said right-of-way and any road constructed thereon for all purposes deemed necessary or desirable in connection with the protection, administration, management, and utilization of Federal lands or resources and shall have the exclusive right to extend rights and privileges for use of the right-of-way and road thereon to States and local subdivisions thereof, as well as to other users, including members of the public, except contractors, agents, and employees of the holder; provided, that the agency having jurisdiction shall control such use so as not unreasonably to interfere with use of the road by the holder or cause the holder to bear a share of the cost of maintenance greater than the holder's use bears to all use of the road.

[INSTRUCTIONS: The Forest Service has this authority regardless of this clause. However, to be clear, use this clause when any power project roads will become part of the forest development road system and when the crest of a dam will function as a roadway. Also use this clause if a subsequent road easement may be issued to the county.]

G. Recreation Facility Construction, Operation, Maintenance, and Replacement. (K45) Consistent with the project recreation plan as approved by the Forest Service, the holder shall construct, operate, maintain, and replace (as necessary) the following recreation facilities on National Forest System lands in accordance with Forest Service specifications:

- a. _____
- b. _____

C. _____

The holder shall prepare a detailed site plan and applicable construction specifications for each proposed facility on National Forest System land and obtain the approval of the Forest Service before beginning construction on that site. The site plan shall be consistent with the Forest Service design narrative, which contains the site objectives and constraints. In constructing, operating, maintaining, or replacing authorized recreation facilities, the holder shall comply with the site plan and its approved provisions and with all other terms of this permit and with those construction stipulations made part of this permit to allow construction activities.

Upon mutual agreement, the holder may enter into a collection agreement with the Forest Service to have the Forest Service construct, operate, maintain, or replace recreation facilities or services. Work performed by the Forest Service shall be at the holder's expense, to the extent appropriate to the holder's financial responsibility.

[INSTRUCTIONS: Use this condition when recreation construction is contemplated.]

H. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

<ADD HERE ANY CLAUSES MANDATORY FOR THE KIND OF USE AUTHORIZED OR NEEDED TO ADDRESS LOCAL CONDITIONS>

In Witness Whereof, the parties hereto have caused this permit to be duly executed only upon licensing by the Federal Energy Regulatory Commission and subsequent endorsement below. Signed this _____ day of _____ 19__.

Holder

USDA - Forest Service

by _____
<Name>
<Title>
<Company>

by _____
<Name>
Forest Supervisor

<Name> National Forest

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

ENDORSEMENT: In accordance with the condition of execution above, this permit is in full force and effect as of this ____ day of _____ 19___. This permit shall terminate on <date of license termination> unless otherwise terminated under the provisions of condition V. or extended under the provisions of condition II. of this permit.

by _____
<Name>
Forest Supervisor
_____ National Forest

CONSTRUCTION STIPULATIONS

The Stipulations, made as of the <day> day of _____ <month>, 19 <year>, by and between <holder>, hereinafter referred to as the holder, and U.S. Department of Agriculture, Forest Service, acting by and through its authorized officer, hereinafter referred to as the Forest Service.

Whereas the holder has been issued a special-use permit dated _____ <date> for the use and occupancy of National Forest land for the use (and maintenance) of a hydropower project, and, whereas, such permit requires that all construction conform with approved plans, specifications, and stipulations.

Now, therefore, the holder hereby agrees to the following terms and conditions, and the Forest Service hereby authorizes the construction to proceed in accordance with these terms and conditions.

CS-1. Fire Plan Part of Authorization (K1)

A project fire plan describing the holder's responsibilities for prevention and suppression of fires, developed by the holder, and subject to Forest Service approval, shall become part of this authorization, as Exhibit <letter> and attached hereto. The holder shall obtain Forest Service approval for said plan before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plan and any terms of its approval (stipulations).

CS-2. Designation of Construction Manager (K2)

The holder shall designate a construction manager for project construction. This individual shall be qualified to represent the holder and shall be present or have a qualified acting representative present at all times while project construction activities are taking place. This individual shall be the person who receives the on-the-ground approvals and directions from the designated Forest Service representative(s).

CS-3. Construction Inspections by Holder--Licensed Project (K3)

The holder shall perform daily (or on a schedule otherwise agreed to by the Forest Service in writing) inspections of holder's operations while they are proceeding. The holder shall document these inspections (informal writing sufficient) and shall deliver such documentation to the Forest Service on a weekly basis. The inspections must specifically include fire plan compliance, public safety, and environmental protection. The holder shall act immediately to correct any items found to need correction.

CS-4. Protection of Wildlife and Plant Species (K5)

If threatened, endangered, or sensitive (as defined in the Forest Service manual) wildlife and plant species are found

during use under this authorization, the holder shall notify the Forest Service and shall take immediate measures to protect said species as directed by the Forest Service.

CS-5. Surveys, Land Corners (K7)

The holder shall protect, in place, all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges authorized by this authorization, depending on the type of monument destroyed, the holder shall reestablish or reference same in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of the Forest Service. Further, the holder shall ensure that any such official survey records affected are amended as provided by law.

CS-6. Traffic Safety (K8)

When construction is in progress adjacent to or on Forest Service controlled roads open to public travel, the holder shall furnish, install, and maintain temporary traffic controls to provide the public with adequate warning and protection from hazardous or potentially hazardous conditions associated with the holder's operations. Devices must be appropriate to current conditions and must be covered or removed when not needed. Except as otherwise agreed, flagmen and devices must be as specified in the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD).

CS-7. Site Development Schedule (K14)

As a part of this authorization, the holder shall, in consultation with the Forest Service, prepare a schedule for the progressive development of the permitted site and installation of facilities. Such a schedule shall be prepared 60 days prior to any activity the Forest Service considers to be of a ground disturbing nature on National Forest System lands, and shall set forth an itemized priority list of planned improvements and the planned dates for start-up and completion. This schedule shall be made a part of this authorization. The holder may modify the scheduled date for installation of any improvement authorized, provided the holder notifies the Forest Service of the change; and provided further, that the holder completes all previously scheduled priority resource protection measures by their scheduled due dates.

The holder shall submit all construction plans describing the location and appearance of project features and ground disturbing activities to the Forest Service for approval a minimum of 45 days before anticipated start of construction. These construction plans must have the approval with signature of a registered professional engineer of the appropriate

specialty, and must have the approval of the Forest Service prior to the use of these plans in constructing this project. These plans shall then become part of this authorization as Exhibit <letter>, to be attached hereto.

The holder shall ensure that construction bid invitations are in compliance with this authorization and with all applicable environmental protection standards.

In the actual layout on-the-ground, the holder shall use accurate mapping based on an adequate survey of the land, including the location of special areas such as water courses.

The holder shall furnish to officers of the United States such information as may be required concerning the construction, operation, and maintenance of the project, and any alteration thereof.

When asked by the Forest Service, the holder shall provide for an on-the-ground review with the Forest Service of the plans for any area of concern to the Forest Service at least 7 days prior to beginning construction on that area.

CS-8. Bonds, Performance (K18)

As a further guarantee of the faithful performance of the provisions of this permit and these stipulations, the holder agrees to deliver and maintain a surety bond in the amount of <written number> dollars (\$<number>) before land-disturbing activities begin. Before undertaking additional construction or alteration work not provided for at the time the bond amount was set or when the improvements are to be removed and the area restored, the holder shall deliver and maintain a surety bond in an amount set by the Forest Service, which amount shall not be in excess of the estimated loss the Government would suffer upon default in performance of this work. Should the sureties or the bonds delivered under this authorization become unsatisfactory to the Forest Service, the holder shall, within thirty (30) days of demand, furnish a new bond with surety, solvent and satisfactory to the Forest Service.

In lieu of surety bond, and as directed by the Forest Service, the holder may deposit into a Federal depository, and maintain therein, cash in the amounts provided for above, or negotiable securities of the United States having a market value at time of deposit of not less than the dollar amounts provided above.

The Forest Service shall release the holder's surety bond, or return deposits in lieu of bond, thirty (30) days after certification by the Forest Service that installations under the construction and resource protection plans required by this authorization are complete, and upon the holder furnishing proof satisfactory to the Forest Service that all claims for labor and material on said installations have been paid by the

holder or released and satisfied. The holder agrees that all moneys deposited under this authorization may, upon failure on holder's part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the United States to be applied to the satisfaction of holder's obligations assumed under the authorization and construction stipulations, without prejudice whatever to any other rights and remedies of the United States.

CS-9. Erosion Control, Topsoil, Revegetation (K20)

The holder shall be responsible for the prevention and control of soil erosion, caused either directly or indirectly by construction or operation of the project, and shall provide preventive and control measures as required by the Forest Service.

The holder shall strip topsoil from construction areas and deposit it in storage piles apart from other excavated material. After removing the desired amount of material, the holder shall evenly spread the stored topsoil over exposed subsoil in appropriate areas to the extent practicable, and shall revegetate the area disturbed.

To the extent practicable on National Forest System lands, the holder shall establish a vegetative cover on all cut and fill slopes, borrow areas, and other disturbed areas capable of growing a vegetative cover of grasses or other suitable vegetation, as required by the Forest Service. The holder shall seed or plant at a time of the year, in a manner, and with species that the Forest Service considers offer the best chance of success. The holder shall repeat such seeding and planting regularly as conditions allow, until such areas are accepted in writing by the Forest Service as satisfactorily revegetated and stabilized.

The holder shall install erosion control measures for adverse weather conditions by <date>, each year and keep them current with the operation until the Forest Service notifies the holder that the adverse conditions of that season are over.

CS-10. Suspension/Revocation (K27)

The Forest Service may temporarily suspend construction/reconstruction and/or revoke the special-use permit upon breach of any of the conditions herein.

CS-11. Use of Explosives (K37)

- a. Where the Forest Service determines that a fire hazard exists, the holder shall use only electronic detonators for blasting, except near high-voltage powerlines. The Forest Service may allow specific exceptions when in the public interest.

- b. When using explosives, the holder shall comply with all applicable Occupational Safety and Health Administration (OSHA) Construction Safety Orders to prevent endangerment of life or property and shall comply with the requirements of the Forest Service. The holder shall be responsible for any and all damages resulting from the use of explosives and shall adopt precautions to prevent damage to surrounding objects. The holder shall furnish and erect special signs as directed by applicable OSHA Construction Safety Orders to warn the public of the holder's blasting operations. The holder shall place and maintain such signs so they are clearly evident to the public during all critical periods of the blasting operations, and shall ensure that they include a warning statement to have radio transmitters turned off.
- c. The holder shall store all explosives in a secure manner, and shall mark all such storage places in compliance with applicable OSHA Construction Safety Orders and State and local laws and ordinances. In general, do not locate such storage facilities closer than 1,000 feet to a road or any building or camping area.
- d. When using explosives, the holder shall adopt precautions to prevent damage to landscape features and other surrounding objects. When directed by the authorized officer, the holder shall leave trees within an area designated to be cleared as a protective screen for surrounding vegetation during blasting operations. The holder shall remove and dispose of trees so left when blasting is complete. When necessary, and at any point of special danger, the holder shall use suitable mats or some other approved method to smother blasts.

CS-12. Unattended Construction Equipment (K39)

The holder shall not place construction equipment on National Forest land prior to actual use or allow it to remain on National Forest land subsequent to actual use. However, the holder shall be allowed reasonable latitude in move-in, move-out, and usually will be allowed to leave equipment in Forest Service-approved areas between consecutive seasons of actual use. After use, the holder shall remove equipment from National Forest System land unless a permit is issued for equipment storage.

CS-13. Soil and Water Protection Implementation Plan Part of Authorization (K46)

The holder shall prepare a plan(s), in consultation with Forest Service and other appropriate agencies, for implementing measures for mitigating impacts to soil and water resources. Such plan(s), consistent with the Forest Service plan for the area and mitigation measures identified in the

environmental analysis for the project, shall include measures for:

- a. Control of erosion, stream sedimentation, dust, and soil mass movement, particularly to implement the provisions of condition CS-11 of these stipulations.
- b. Treatment and disposal of solid waste and waste water generated during construction of the project.
- c. Storage of oil and hazardous substances, and spill prevention and cleanup.
- d. Storage and/or disposal of excess construction and tunnel spoils and slide material.
- e. Development and restoration of borrow areas.
- f. Monitoring water quality during construction and rehabilitation periods.

The holder shall submit this plan(s) for Forest Service approval 90 days prior to any new construction or reconstruction. The holder shall obtain Forest Service approval for said plan(s) before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plan(s) and any terms of its approval (stipulations). Said plan(s) shall be attached hereto and marked as Exhibit(s) _____.

CS-14. Plans, Part of Permit, Licensed (K51)

The holder shall prepare the following plans in consultation with Forest Service and other appropriate agencies.

- a. _____ <plan names> _____
- b. _____
- c. _____
- d. _____

The holder shall submit these plans for Forest Service approval 90 days prior to any new construction or reconstruction; or within one year of issuance of the Federal Energy Regulatory Commission license, if no construction or reconstruction was proposed in an application for license or new license. The holder shall obtain Forest Service approval for such plans before beginning any on-the-ground construction and shall strictly follow the provisions of the approved plans and any terms of their approval (stipulations). Said plans shall be attached hereto and marked as Exhibits <letters>, respectively.

[INSTRUCTIONS: Optional use; see section 66 for types of construction plans to consider.]

CS-15. Cultural Resource Discoveries (X17 edit)

If, prior to or during excavation work, items of potential cultural, historical, archeological, or paleontological value are reported or discovered, or a known deposit of such items is disturbed, the holder shall immediately cease excavation in the area so affected. The holder shall then notify the Forest Service and shall not resume excavation until it receives written approval from the authorized officer.

If necessary for the adequate protection and preservation of the site and its artifacts, the Forest Service may require the holder to provide for the recovery, excavation, and preservation of the site and its artifacts at the holder's expense. At the option of the Forest Service, this authorization may be terminated at no liability by the United States when such revocation is deemed necessary or desirable to preserve or protect archaeological, paleontological, or historic sites and artifacts.

In Witness Whereof, the parties hereto have caused these stipulations to be duly executed on this _____ day of _____ 19____.

Holder

USDA - Forest Service

by _____
 <Name>
 <Title>
 <Company>

by _____
 <Name>
 Forest Supervisor
 _____ <Name> National Forest

 (date)