

**Forest Service Handbook
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**Forest Service Handbook 2709.15 – Hydroelectric Handbook
Chapter 60 - Special-Use Authorizations**

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Approved by: Gloria Manning, Associate Deputy Chief, NFS

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Responsible Staff:

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 2709.15-2009-1 to chapter 30.

Last Change: 2709.15-2009-1 to chapter 30

Superseded Document(s): 60-1 thru 62.1-9, February 1987

Digest: Following is an explanation of the changes throughout the directive by section.

60: Revises and recodes entire chapter to better correspond to codes for special-use authorizations described in FSH 2709.11. Issues new direction to be consistent with the direction contained in FSM 2770, FSH 2709.11, 2709.12, and 7709.59. Removes policy statements and refers to policy described in FSM 2770.3. Moves terms and conditions to FSH 2709.11, chapter 50.

60.3: Replaces policy statements with references to the FSM 2700.

61: Updates cross-references and replaces FLUR with SUDS (formerly sec. 61.1). Adds two new project types and SUDS use codes for non-jurisdictional and jurisdiction pending cases.

61.1 through 61.5: Replaced sections 61.2 through 61.43e with sections 61.1 through 61.5 by revising direction regarding the type of authorization, corresponding project, application process, duration, terms and conditions, and fees associated with the permit.

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62: Revises direction for authorizations involving construction of facilities, roads, power lines, special areas, general terms and conditions, and plans.

63: Revises direction pertaining to the administration of special-use permits for FERC licensed or exempted projects.

64: Revises direction for procedures relative to old projects including projects not previously authorized by FERC or the Forest Service.

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60.3 - Policy

See FSM 2710, 2720, 2730, and 2770 for policy regarding special-use authorizations related to hydroelectric projects. Certain hydroelectric projects or portions thereof are exempt from Forest Service special-use authorization, see FSM 2771.

61 - Hydroelectric Project Authorizations

Use the following Special-Uses Data System (SUDS) codes for applicable projects. Additional guidance for each project type is provided in following sections, as noted below.

1. 413 - Hydroelectric Investigation (FSM 2724.13). See section 61.1.
2. 611 - Hydroelectric Project, FERC Licensed (FSM 2726.11). See section 61.2.
3. 612 - Hydroelectric Project, FERC Exempted (FSM 2726.12). See section 61.3.
4. 613 - Hydroelectric Project, FERC Non-jurisdictional (FSM 2726.13). See section 61.4.
5. 614 - Hydroelectric Project, FERC Jurisdiction Pending (FSM 2726.14).

Ancillary facilities may be included in a hydroelectric authorization, or may be authorized separately, at the discretion of the authorized officer. However, when the only facilities on National Forest System (NFS) lands are non-power-generating ancillary uses, such as access roads or electric transmission lines, use the appropriate non-hydroelectric SUDS use codes (for example, power line, FSM 2726.43, SUDS use code 643). Use non-hydroelectric SUDS use codes for conduits and power lines associated with small conduit exemptions (for example, water transmission line, use code 914). See sections 62.2 and 62.3 for further guidance regarding roads and power lines associated with hydroelectric projects.

See FSH 2709.11, chapter 10 for general authorization proposal and application procedures. Refer to FSH 2709.11, section 19, exhibit 03, Special-Use Authorization Guide, for the appropriate authority, authorization form, and recommended maximum term for the use type.

Sections 61.1 through 61.5 present additional authorization guidance by project type, including issuance determination, application process, duration, terms and conditions, boundaries, and fees.

61.1 - Investigation Special-Use Permit

When a proponent desires to develop a hydroelectric project, they may apply to Federal Energy Regulatory Commission (FERC) for a preliminary permit under Part I of the Federal Power Act (FPA). A preliminary permit secures priority of application and removes the land from entry. It provides the applicant with time to evaluate the feasibility of the proposed project and to complete the studies required to support development of a license application. Issuance of a

preliminary permit by FERC, however, does not give the applicant any right to use or occupy NFS lands to conduct studies.

Issue an investigation special-use permit, under the Organic Act of 1897, to authorize occupancy of NFS lands for studies that have land or resource-disturbing potential including: equipment use, drilling, survey clearing, marking, staking, painting, installing instruments or gauges, and so forth. Also issue an investigation permit if a filing is made to FERC to amend a license if the proposed studies for the amendment may involve resource-disturbing activities outside the project boundary. A special-use authorization is not usually required if there are no ground disturbing activities, however, a special-use authorization regarding cultural resources may be needed even when there would be no ground disturbing-activity (FSM 2724.4).

61.11 - Proposal and Application Process

If a proponent proposes to conduct studies on NFS lands, they must notify the Forest Service (FSH 2709.11, sec. 11). See FSH 2709.11, section 12, for the proposal screening process.

If the proponent has not yet applied to FERC for a preliminary permit, but wants to conduct appropriate, project-related studies on NFS lands, the authorized officer may issue an investigation special-use permit. It is not necessary for the proponent to hold a preliminary permit from FERC in order to apply to the Forest Service for an investigation special-use permit.

61.12 - Duration

When possible, match the term of the investigation special-use permit with that of the FERC-issued preliminary permit, which is usually 3 years. If the applicant has a legitimate need to perform additional studies beyond the term of the preliminary permit, the authorized officer may elect to issue a new permit.

61.13 - Terms and Conditions

The Forest Service investigation special-use permit must describe the type of activity permitted (on-the-ground studies, soil-disturbing activities such as drilling or trenching, establishment of gauges or other monitoring equipment), insurance or bonding requirements, appropriate fee for use and occupancy, and the required mitigation for the activity such as revegetation or erosion control. See FSH 2709.11 section 60 for mandatory and supplemental terms and conditions.

61.14 - Fees

Unless market conditions indicate that a higher fee is appropriate (FSH 2709.11, sec. 31), charge \$200.00 annually for a hydroelectric investigation special-use permit. Cost recovery fees may apply to application processing and monitoring (FSH 2709.11, sec. 31.32, and 36 CFR 251.58).

61.2 - Licensed Project Special-Use Permit

New projects licensed by FERC generally require a Forest Service special-use permit under the Federal Land Policy Management Act (FLPMA) for NFS lands occupied by the project.

However, existing FERC-licensed projects may or may not require a Forest Service permit, depending on the timing of the license and issuance of prior authorizations by the Forest Service with regard to the passage of the Energy Policy Act (EPA) on October 24, 1992 (FSM 2770.1, para. 4). The following items show when a special-use permit can or cannot be issued:

1. If a project was first licensed on or after October 24, 1992, then a Forest Service special-use permit is generally required.
2. If a project was licensed prior to October 24, 1992, but not authorized by the Forest Service under FLPMA, then no Forest Service special-use permit is required.
3. If a project was licensed prior to October 24, 1992, and also authorized by the Forest Service under FLPMA, issue a special-use permit upon project relicensing.
4. If a project was licensed prior to October 24, 1992, but not authorized by the Forest Service under FLPMA, and the project license is amended to include additional NFS lands on or after October 24, 1992, issue a special-use permit for the additional lands only.
5. If a project was licensed prior to October 24, 1992, authorized by the Forest Service under FLPMA, and the project license is amended to include additional lands on or after October 24, 1992, amend the special-use permit to include all NFS lands within the new licensed project boundary.

In certain circumstances, the authorized officer may waive the requirement for a special-use permit if the authorized officer determines that the proposed use is already regulated by FERC in a manner that is adequate to protect NFS lands and resources (36 CFR 251.50(e)(2)). However, in other circumstances the authorized officer may want to issue a special-use permit. For example, when the Forest Service wants to retain administrative control over some aspects of the project such as roads, fire suppression plans, and so forth.

If FERC denies a license, the Forest Service authorized officer shall not issue or allow special-use permits to continue.

61.21 - Proposal and Application Process

When a proponent wants to occupy NFS lands for a hydroelectric project, they are required to contact the Forest Service office(s) responsible for the management of the affected land early in the licensing process (FSH 2709.11, sec. 12 and 36 CFR 251.54(a)). The authorized officer should discuss the following items with the project proponent: whether a special-use permit is required (see sec. 61.2), application process, environmental studies needed, issues and potential alternatives to be addressed, mitigation, plans needed, fees, and general aspects of the special-use permit and license conditions.

If subject to a special-use permit, encourage the proponent to apply to the Forest Service at the same time they apply for a FERC license. The proponent should submit their proposals using form SF-299 - Application for Transportation and Utility Systems and Facilities on Federal

Lands (FSH 2709.11, sec. 11.3). The proponent may use the information and exhibits prepared for the FERC application to meet the needs of the special-use application, to the extent possible.

If a project on NFS lands is subject to a special-use permit, do not issue a special-use permit until FERC has issued a project license. The Forest Service should include a copy of the draft special-use permit when filing the Forest Service Preliminary Terms and Conditions. This allows the license applicant time to review the requirements and costs associated with the special-use permit to be issued in conjunction with the FERC license.

61.22 - Duration

For licensed projects, issue a special-use permit for the same term as the FERC license. If the duration exceeds 30 years, include in the permit a provision for periodic review and amendment, as discussed in section 61.23.

A special-use permit is not assignable, and terminates upon change of ownership of the improvements (36 CFR 251.59), or at the end of the permit term (36 CFR 251.60(a)(2)(iii)) unless FERC issues annual licenses as discussed in the next paragraph. If FERC issues annual licenses, the inclusion of clause K-32 will automatically extend the term to match the annual license periods. Also see FSM 2770.4, paragraph 3(g), regarding the expiration of a FERC license or a Forest Service special-use permit.

61.23 - Terms and Conditions

Special-use permits for FERC licensed projects must authorize the occupancy and use of NFS lands and must include those conditions and requirements that are not included in the license (see FSM 2771.2).

Special-use permit form [FS-2700-4](#), contains standard terms and conditions that may be modified, added to, or deleted only as directed in the user instructions in the permit or by direction contained in FSH 2709.11, chapter 50. All other changes to the standard terms and conditions require approval by the Washington Office, Director of Lands. Select and insert mandatory and appropriate supplemental clauses into the permit as needed, ensuring that they do not conflict with the standard terms and conditions or Section 4(e) conditions contained in the FERC license.

Rely on the license and Section 4(e) conditions (see ch. 50) to require specific mitigation or plans identifying specific mitigation and enhancement. Use the following factors when considering additional conditions:

1. If the conditions relate to protection of NFS lands and resources, generally include those conditions in the license as Section 4(e) conditions rather than in the permit. Generally, decide if it is better for FERC to administer aspects of the occupancy or if it is preferable for the Forest Service to administer the occupancy. For example, it is likely that the Forest Service would want to administer road use while it might be more efficient

and proper for FERC to administer operations and maintenance of the hydro-production features.

2. If the conditions relate primarily to consultation with other parties, or to contingent events that occur only after a predicate event, then add them to the special-use permit.
3. If the conditions relate to construction of the project, require a construction plan as part of a Section 4(e) condition (see ch. 50). Use the construction conditions contained in section 62.6 as a guide in compiling such a plan.
4. If the conditions relate to dams or dam safety, leave these items to FERC and the license for control unless the dam is owned by the Forest Service.
5. If the conditions affect power production capability of the project, include the conditions in the license as Section 4(e) conditions rather than the permit (see FSM 2773.4).

FERC licenses are issued for a period of 30-50 years. Special-use permits that exceed 30 years must provide for revision of terms and conditions at specified intervals to reflect changing times and conditions (36 CFR 251.56(b)(1)(v)). In order to comply with the regulation and not to interfere with the FERC license, include clause E-8 in the special-use permit (FSH 2709.11, sec. 52.5). Changes made as a result of such review should be processed openly, in full consultation with the holder and should not unreasonably reduce the use already authorized.

61.24 - Fees

Special-use land use fees should be based on appraisal (FSH 2709.11, sec. 31.1, para. 1). Waive land use fees in full when FERC already collects fees for the use and occupancy of NFS lands, (FSH 2709.11, sec. 31.22b, para. 6; 36 CFR 251.57(b)(4)). Cost recovery fees apply to application processing and monitoring, even if land use fees are waived (see FSH 2709.11, sec. 31.32, and 36 CFR 251.58).

61.25 - Amendments

Special-use permits associated with FERC licensed projects may be amended under the following circumstances:

1. FERC is amending the license due to project construction, changed generation capacity, or a change in the project boundary.
2. Periodic review pursuant to 36 CFR 251.56(b)(1)(v) identifies changed conditions warranting changes in permit terms and conditions.

61.3 - Exempted Project Special-Use Authorization

FERC issues two types of exemptions from licensing, small hydroelectric and conduit exemptions. A small hydroelectric exemption (for projects with capacity of less than 5 MW that

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occupy federal lands) qualifies a site as suitable for development and affords the exemptee priority protection under the FPA as long as the exemptee meets performance requirements. Issue a special-use authorization for a small hydroelectric exemption if it meets the criteria below. A conduit exemption excludes both the water conduit and electric transmission lines associated with the project from hydroelectric licensing. Issue a special-use authorization for a conduit exemption under the appropriate non-hydroelectric use code. For example, code the water conduit as a water transmission line (use code 914 or 915), see section 61 and FSH 2709.11, section 19, exhibit 03.

Projects exempted from licensing by FERC require a Forest Service special-use authorization issued under FLPMA to occupy NFS lands, if the agency determines the project is an appropriate use of NFS lands, is in the public interest, and is not precluded by any of the following criteria. Use the following criteria to determine whether a special-use authorization should be required (FSM 2770.1, para. 4):

1. If a project was exempted from licensing by FERC prior to October 24, 1992, occupies NFS lands subject to a reservation under Section 24 of the Federal Power Act, but was not authorized by the Forest Service under FLPMA, then a special-use authorization cannot be required. Therefore there may be a few instances where there is no Forest Service authority to authorize the occupancy and the FERC exemption does not authorize occupancy either.
2. If a project was exempted from licensing by FERC prior to October 24, 1992 and authorized by the Forest Service under FLPMA, the authorized officer may issue a new special-use authorization at the end of the first authorization term if the holder continues to meet the terms and conditions of the authorization.
3. If a project was exempted from licensing by FERC on or after October 24, 1992, the authorized officer must issue a special-use authorization for the project or deny the occupancy.
4. If a project was exempted prior to October 24, 1992, but not authorized by the Forest Service under FLPMA, and the project was amended to include additional NFS land on or after October 24, 1992, issue a special-use authorization for the additional lands only.
5. If a project was exempted prior to October 24, 1992, authorized by the Forest Service under FLPMA, and the project was amended to include additional lands on or after October 24, 1992, amend the special-use authorization to include all NFS lands within the new project boundary.

If the authorized officer determines that a special-use authorization is needed, do not issue the authorization until FERC has issued an exemption from licensing. If FERC denies a license exemption, the Forest Service authorized officer shall not issue or allow special-use authorizations to continue.

61.31 - Proposal and Application Process

See FSH 2709.11, sections 11 and 12, regarding responding to proposals.

If a proponent of a new hydroelectric project wants to occupy and use NFS lands, they are required to contact the Forest Service office(s) responsible for the management of the affected land as early as possible, in advance of the intended use (FSH 2709.11 and 36 CFR 251.54(a)). Proponents should apply for project special-use authorizations the same time they apply to FERC for an exemption from licensing. Encourage proponents to submit their proposals using form SF-299, Application for Transportation and Utility Systems and Facilities on Federal Lands.

The applicant may use the information and exhibits prepared for the FERC application to meet the needs of the special-use application, to the extent possible.

If a project on NFS lands is subject to the requirement to obtain a special-use authorization from the Forest Service, do not issue the authorization until FERC has issued a project exemption.

61.32 - Duration

Although FERC license exemptions are issued in perpetuity and are transferable, a special-use permit is not assignable and terminates upon change of ownership of the improvements, or at the end of the permit term (36 CFR 251.60(a)(2)(iii)).

The authorizing officer shall establish the term of the authorization for an exempted project. Such term should allow for the reasonable amortization of the investment, but generally should not exceed 30 years. If exceeding 30 years, include the provision for periodic review discussed in section 61.33. Temporary facilities may be authorized for a shorter time period under a separate authorization.

61.33 - Terms and Conditions

The special-use authorization for an exempt project should contain the basic conditions that normally would have been in a FERC license. The terms and conditions for an exemption should include, where applicable, the engineering and structural specifications, land-use and administrative fees, resource protection requirements, provisions for site restoration, and safety requirements in addition to other special clauses deemed appropriate by the Forest Service. Require a performance bond of sufficient value to cover restoration as part of a special-use authorization issued for a hydroelectric project that may be high risk, technically or economically.

Forest Service authorizations that exceed 30 years must provide for revision of terms and conditions at specified intervals to reflect changing times and conditions (36 CFR 251.56(b)(1)(v)). If the duration exceeds 30 years, include a clause in the authorization (such as clause E-8, FSH 2709.11, sec. 52.5) allowing the authorized officer to review and amend terms and conditions at specified intervals. Changes made as a result of such review should be processed openly in full consultation with the holder and should not unreasonably reduce the use already authorized.

61.34 - Fees

Special-use land-use fees should be based on appraisal (FSH 2709.11, sec. 31.1, para. 1). Cost recovery fees may apply to application processing and monitoring (see FSH 2709.11, sec. 31.32, and 36 CFR 251.58).

61.35 - Amendments

Work with the holder to resolve operating impacts to Forest Service administered resources as they occur and try to obtain voluntary project adjustment by the holder to correct problems. If the problems are severe and the authorized officer is unable to obtain voluntary compliance from the holder, the authorized officer may unilaterally amend the special-use authorization with the appropriate changes. Take such action only after a thorough analysis of the impacts and economic capabilities of the project and after allowing the holder to provide input. Do not provide the holder with compensation for such changes.

See section 61.3 to determine whether a special-use authorization can be required for an amendment to a FERC exemption.

61.4 - Unlicensed and Non-jurisdictional Project Special-use Authorizations

For Forest Service special-use authorization purposes, there are two types of unlicensed and non-jurisdictional projects.

The first type is where the owner of an existing project is in the process of obtaining a jurisdictional determination from FERC. The authorized officer may issue a short-term special-use permit under FLPMA to temporarily authorize an existing project to allow the owner time to seek a jurisdictional determination from FERC. The authorized officer may renew the permit for a longer term if FERC makes a non-jurisdictional determination and the authorized officer determines that the use would pass first and second level proposal screening (FSH 2709.11, secs. 11 and 12). If FERC determines that it does have jurisdiction, the project becomes subject to proposal and application processing by FERC for a license or exemption (secs. 61.2 or 61.3).

The second type is where FERC has made a determination that the project is not under its jurisdiction and a license or exemption will not be required. Issue a special-use permit under FLPMA to owners of Forest Service approved hydroelectric projects where jurisdiction has been declined by FERC. Consider a short-term encroachment permit (FSM 2723.7, use code 373) for existing facilities when FERC declines jurisdiction and the authorized officer determines that the continued use would not pass first and second level proposal screening (FSH 2709.11, secs. 11 and 12).

Section 23(b) of the FPA, (see FSM 2770.1, para. 1) makes it unlawful for a non-Federal entity to develop hydropower on Federal lands, unless FERC has granted a license, exemption to licensing, or made a determination of non-jurisdiction. The only exception is where the entity holds a valid permit or right-of-way granted prior to the June 10, 1920, enactment of the FPA.

61.41 - Proposal and Application Process

Potential non-jurisdictional project proposals are subject to the standard special-use screening process (FSH 2709.11, secs. 11 and 12). Require the proponent to obtain a jurisdictional determination from FERC before accepting an application for new projects.

61.42 - Duration

The termination date of a short-term permit should be determined by the authorized officer, based on a reasonable period for FERC to process a jurisdictional termination, or for the owner to remove the facilities.

When FERC has declined jurisdiction and the authorized officer determines that continuation is appropriate, establish permit duration using the considerations for special-use authorizations issued for exempted projects (see sec. 61.32).

61.43 - Terms and Conditions

See section 61.33 for further information on terms and conditions for projects where FERC has declined jurisdiction.

61.44 - Fees

Special-use land-use fees should be based on appraisal (FSH 2709.11, sec. 31.1, para. 1). Cost recovery fees may apply to application processing and monitoring (see FSH 2709.11, sec. 31.32, and 36 CFR 251.58).

61.5 - Easements

Easements are inappropriate for hydroelectric projects when FERC is controlling the property interest and the Forest Service does not collect fees. Easements convey a transferable interest in land that may be compensable (36 CFR 251.51).

Easements may be issued only under limited circumstances (FSM 2711.4) and for limited types of facilities pertaining to hydroelectric projects. An easement or special-use permit may be issued for electric transmission lines that have been removed from the FERC license and water transmission lines associated with small conduit exemptions. These lines should be coded other than hydroelectric in SUDS (sec. 61).

See section 62.2 for easements related to the use of roads outside of the FERC project boundary.

62 - Authorization Preparation

See section 61 for general authorization preparation guidance. See sections 61.1 through 61.4 for guidance related to specific types of hydroelectric authorizations. See section 61.5 for easement considerations. The following subsections provide guidance for authorizations involving construction, roads, power lines, special areas, general terms and conditions, and plans.

62.1 - Projects with Construction or Reconstruction

The owner of a licensed hydroelectric project must obtain a Forest Service special-use permit (form FS-2700-4) before constructing any new facilities on NFS lands. Use Section 4(e) conditions to require a construction plan for licensed projects.

Add construction stipulations to special-use authorizations for exempted or non-jurisdictional projects to address any construction, modification, or major repairs necessary to the project. Remove the stipulations when the holder has completed the work to the satisfaction of the Forest Service. Reintroduce construction stipulations if needed.

Issue a temporary special-use permit for the temporary use of areas that are needed for construction related activities (for example, borrow pits or staging areas) and that will not become a part of the project itself. Include restoration objectives or conditions for the restoration of the temporary use areas following completion of the work. Charge the holder of the permit a use fee for the temporary use of NFS lands (FSH 2709.11, ch. 30).

62.2 - Roads

62.21 - Single-purpose Roads

If not covered by FPA Section 4(e) conditions, address use and maintenance of single-purpose (private, non-system) roads used as project facilities in the hydroelectric special-use authorization.

62.22 - National Forest System Roads

Authorize separately from the hydroelectric authorization the construction, reconstruction, use, or maintenance of NFS roads used by the hydroelectric project (FSM 2730 or 7730). Prior to the issuance of any road authorization, check to make sure that an authorization does not already exist. The road authorization will generally be one of the following three types. Consult FSH 2709.12, chapter 10, for guidance in selecting the appropriate form of authorization.

1. Road Use Permit (form FS-7700-41). This permit authorizes maintenance, improvement, minor reconstruction, commercial haul, use of a road closed by order, or snow removal on existing NFS roads. See FSH 2709.12, section 41.21 and FSH 7709.59, section 24.

2. FLPMA Forest Road Special-use Permit (form FS-2700-4b). See FSH 2709.12, section 41.22.

3. FLPMA Forest Road Easement (form FS-2700-9i). See FSH 2709.12, section 41.11.

62.3 - Power Lines

Wheeling stipulations are no longer required and should be removed from existing permits. Wheeling stipulations required the authorization holder to allow Federal power marketing authorities to use surplus transmission capacity. Such requirements were removed from Forest Service regulations (49 FR 46893, November 29, 1984). Continue to consult with the Department of Energy for lines over 66 kV that are not part of a licensed project (see FSH 2709.11, sec. 11.11).

Include in the Forest Service special-use authorization any power lines (transmission and distribution) that are within the FERC licensed or exempted project boundary and on NFS lands. See section 61.

If transmission lines are directly connected to a powerhouse on NFS lands and the lines are less than 2,500 feet in length, include that portion of the project's transmission lines that are on NFS lands in the hydroelectric project special-use authorization. If the lines are longer than 2,500 feet, the authorized officer may choose to issue a separate electric transmission authorization (FSM 2726.4) for all of the transmission lines that are on NFS lands. Portions of the transmission lines, regardless of length, that are separated from the powerhouse by non-NFS lands may be authorized by a separate transmission line authorization or by part of the hydroelectric project special-use authorization at the discretion of the authorized officer.

62.31 - Power Line Only

If a power line is the only facility occupying NFS lands, issue the appropriate non-hydroelectric special-use authorization for that individual facility (FSM 2726.4), and use its associated use code in SUDS (for example, code 643 for non-REA power lines). See 61.2 for exceptions.

62.32 - Power Lines Removed from License

Where power lines are to be removed from a FERC license (do not fit FERC's criteria for primary transmission lines), the Forest Service should request that FERC require the licensee to apply for and obtain a non-hydroelectric special-use authorization for the power lines before they are removed from the license. This will allow the licensee to continue occupancy and use of NFS lands for the excluded project work. Amend the special-use permit for the licensed hydroelectric project to reflect the removal of the power lines.

62.4 - Special Areas

Refer to FSM 2775.

62.41 - Wilderness Areas

1. Existing Projects – Projects that occupied the lands within Congressionally designated wilderness that were authorized by a FERC license at the time of designation are considered to be existing projects. Existing projects must be administered as such under Section 4(c) of the Wilderness Act of September 3, 1964 (16 U.S.C. 1133). Under the Federal Power Act, FERC determines if the new license for the project is consistent with the purposes of the Federal reservation. If FERC issues a new license for a project in Congressionally designated wilderness, the applicable special use permit should cover only those facilities and lands authorized by the Federal Power Act license and included within the authorized project boundary

Pursuant to the Wilderness Act of September 3, 1964 (16 U.S.C. 1133(d)(4)) and the wilderness management direction at FSM 2323.43c, only the President (FSM 2323.04) can approve new water development structures, including water-regulating structures, power installations, transmission conduits, water conservation works, related improvements, and proposals to increase the storage capacity of a reservoir or to replace a reservoir that was not under a valid permit or other authority at the time the unit became wilderness.

Special-use permits may be issued under the authority of the Wilderness Act (16 U.S.C. 1133(d)) and any legislation establishing particular wilderness areas for licensed projects with valid existing rights (constructed prior to wilderness designation or allowed by the designating legislation) located wholly or partially inside wilderness areas. Do not use FLPMA authority for facilities inside wilderness not expressly included in the wilderness authorizing legislation under the authority of the Wilderness Act (16 U.S.C. 1133(d)).

Special-use permits may be modified for maintenance and reconstruction work on existing projects in wilderness areas. Any modifications to such facilities must be made in conformance with the requirements of the license, any special-use permit, and section 4(c) of the Wilderness Act, except that modifications to increase storage capacity or similar improvements may be authorized only under Presidential approval (sec. 4(d), (para. 4) of the Wilderness Act). Section 4(c) of the Wilderness Act is Prohibition of Certain Uses – “except as specifically provided for in this chapter, and subject to existing private rights...” there is no reference to facility modifications.

2. Dams. Hydroelectric 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 - 467n), the Federal Power Act, the law and regulation that provides for the special-use authorization, and the terms of the authorization. The Wilderness Act allows for the maintenance of existing dams and related facilities in wilderness areas if they are valid existing rights. Maintenance can include work that improves 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.

3. Improvements and Reconstruction. 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), and balancing wilderness values with licensee rights and public safety. Historic methods of access and economics also should be considered in the analysis.

4. Proposed Projects. Special-use permits for study of potential hydroelectric development and other non-ground-disturbing activities in wilderness areas may be issued without Presidential approval (FSM 2775.1).

Projects in Alaska which are within an ANILCA conservation unit see FSM 2775.51.

62.42 - Other Special Areas

See FSM 2775.

62.5 - General Terms and Conditions

See FSH 2709.11, chapter 50, for general terms and conditions and authorization forms.

See sections 61.1 through 61.4 for discussion of terms and conditions for specific hydroelectric authorization types.

62.6 - Plans

Supplemental plans may be required by the license or by a special-use authorization. If a project proponent applies to FERC for a license, the Forest Service has the authority to submit 4(e) conditions that may include the development of supplemental plans. For licensed projects, the determination of whether to include such plans as 4(e) conditions in a FERC license or attach them to the special-use authorization will depend upon the amount of direct control the Forest Service should have over the activity addressed by the plan. If the proponent applies to FERC for an exemption, the Forest Service may require the proponent to prepare certain plans that will be attached to the special-use authorization. The Forest Service may also require supplemental plans for unlicensed and non-jurisdictional projects.

Supplemental plans should be prepared by the proponent in consultation with the Forest Service and other appropriate agencies.

Supplemental plans required in special-use authorizations typically address activities requiring direct oversight and administration by the designated Forest officer. Examples of supplemental plans that meet this need included in special-use authorizations are: erosion control, revegetation and/or rehabilitation, spoil disposal, grading and profile, toxic and hazardous substances, sewage and/or refuse disposal, flood plain and wetland protection, clearing and disposal, timber removal, recreation site, landscape management, borrow pit restoration, transportation, road maintenance, safety, fire, and construction monitoring. These plans can be separate documents, or be sections within construction, operation, or maintenance plans.

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Amendment: 2709.15-2009-2
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See also sections 61.23, 61.33, and 61.43 regarding terms and conditions for specific hydroelectric authorization types.

63 - Authorization Administration

63.1 - Transfers

Special-use permits are not transferable; they terminate automatically with change of ownership of the authorized improvements (36 CFR 251.59). When FERC transfers a license or exemption, the authorized officer should issue a new permit to the new owner (FSM 2716.1).

63.2 - Termination, Cancellation, Revocation, Suspension, and Surrender

Cancellation, revocation, or surrender of a FERC preliminary permit, exemption, or license terminates the associated Forest Service special-use authorization, provided that it contains an explicit termination clause. For authorizations that do not include such a clause, the authorized officer shall take action to revoke the special-use authorization where FERC cancels, revokes, or accepts surrender of the associated preliminary permit, exemption, or license.

The Forest Service can initiate action to revoke, suspend, or terminate a special-use authorization if the holder is out of compliance with the special-use authorization or due to lack of responsiveness by FERC to remediate a compliance issue. See 36 CFR 251.51 for definitions of “revocation,” “suspension,” and “termination” with respect to Forest Service special-use authorizations. See 36 CFR 251.60 for regulations regarding termination, revocation, and suspension of special-use authorizations.

Special-use authorizations terminate automatically when, by the terms of the authorization, a fixed or agreed upon condition, event, or time occurs. For example, a permit terminates at expiration. Terminations are not appealable. See FSM 2716.2 and 36 CFR 251.60(a)(2)(iii). The authorized officer may revoke a special-use authorization due to noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable. See FSM 2716.3 and 36 CFR 251.60(a)(2)(i) and 251.60(g).

If problems arise during project construction or operation, the authorized officer may suspend the privileges set forth in the authorization; however, the authorization may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable. See CFR 251.60(a)(2)(i) and 251.60(g).

The Forest Service should contact FERC regarding any actions to revoke, suspend or terminate a special-use authorization.

64 - Special Procedures Relative to Old Projects

64.1 - Minor Projects Authorized by the Forest Service Only

Prior to May 13, 1976, the Forest Service was authorized by the Federal Power Commission to issue permits for minor hydropower projects. Developers of projects completed since that date must obtain a license, exemption from licensing, or non-jurisdictional determination from FERC. Existing permits for such minor hydropower projects (issued before May 13, 1976) remain valid until terminated or revoked, or until the permittee acquires a new or amended authorization. At that time, the holder should contact FERC to obtain a license, exemption from licensing, or a jurisdictional ruling from FERC (see sec. 61.4). At that time, the permittee must apply for the corresponding new Forest Service special-use authorization (sec. 61.1).

64.2 - Projects Not Previously Authorized by the FERC or the Forest Service

Construction or operation of a project on NFS lands without proper authorization from the Forest Service or FERC constitutes a trespass. The only exceptions are where the project owner holds a valid right-of-way granted prior to June 10, 1920 (see sec. 64.3), or the Forest Service cannot issue a special-use authorization per Section 501(d) of FLPMA (see FSM 2771, and secs. 61.2 and 61.3).

Take appropriate action to resolve the trespass. If the authorized Forest Service officer determines it is a compatible use, then advise the project owner to contact FERC about the appropriate procedures.

If the trespass project is under construction without authorization from the Forest Service or FERC, the authorized officer shall require the construction in trespass to stop immediately, and not continue until the developer obtains appropriate authorization from FERC and the Forest Service.

If the trespass project already exists and does not have a special-use authorization from the Forest Service, or a license or exemption from FERC, the owner shall contact FERC for a jurisdictional determination and apply for a special-use authorization from the Forest Service. If the project owner does not contact FERC for a jurisdictional determination or the Forest Service to obtain a special-use authorization, they shall immediately discontinue operation and remove all facilities from NFS lands to the satisfaction of the authorized officer. If FERC determines that the project is under their jurisdiction, the owner shall apply for a license or exemption from licensing, and obtain a special-use authorization from the Forest Service. See section 61.4.

If the project exists and has a special-use authorization from the Forest Service under a non-hydroelectric use code, or the authorization was previously issued under another authority, the authorized officer should review the authorization and determine if a new or separate authorization is appropriate for the hydroelectric project. Also refer to 61.4.

64.3 - Projects Predating the Federal Water Power Act of 1920

Projects that were authorized prior to the Federal Water Power Act of June 10, 1920, do not require a license from FERC, unless substantial modifications are made. Such a project will continue under the provisions of its original authorization. Note that the Federal Water Power Act became Part I of the Federal Power Act in 1935 (FSM 2770.1, para. 1).