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**Forest Service Handbook 2709.15 – Hydroelectric Handbook
Chapter 20 - Forest Service Procedures**

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20.4 - Responsibility

(FSM 2770.4).

21 - Relationship With the Federal Energy Regulatory Commission

The Forest Service shall work closely with the Federal Energy Regulatory Commission (FERC) to provide conditions for the license in accordance with section 4(e) of the Federal Power Act.

21.1 - License and Special-Use Authorization

A developer is required to obtain a license or exemption from licensing from FERC pursuant to the Federal Power Act, and to obtain a right-of-way from the Federal Land Management Agency pursuant to the Federal Land Policy and Management Act to construct and operate a project on Federal lands (ch. 60).

Issue investigation special-use permits to authorize investigative work (preliminary permit stage).

Ensure that the project special-use authorization terms do not conflict with the terms of the FERC license. They should be complementary documents; however, the special-use authorization may contain more specific requirements (sec. 71.11).

Use the special-use authorization to administer the project operations as far as applicable and to directly control resource protection during construction. For licensed projects, coordinate all significant actions with the FERC office administering the license.

The applicant is responsible for the environmental studies and the analysis required for the license application (18 CFR subchapter B, subparts D-H). Use this information to secure compliance with National Environmental Policy Act when making the 4(e) report (sec. 30.41).

21.11 - Changes Needed in License

Only action by the Federal Energy Regulatory Commission (FERC) may change existing license conditions, including project boundaries; FERC will change existing license conditions only after public notice and opportunity for hearings. If the conditions need adjustment, the Regional Forester should send a letter to FERC recommending the change and stating the reason for the recommendation, what the change is expected to accomplish, and the extent of coordination with or agreement by the licensee (sec. 13.3).

21.2 - Forest Service Requirements Affecting Power Production Capability

(FSM 2773.4 and sec. 55.11).

21.3 - Project Boundaries and Withdrawals

21.31 - Resource Management Within Project Boundaries

(FSM 2774.1).

21.32 - Resource Management Within Withdrawals

Until revoked, areas withdrawn for power development by the Federal Power Act, Act of June 10, 1920, as a result of an application for preliminary permit or license, are reserved for that purpose as the priority use, starting on the date of application. The Federal Energy Regulatory Commission (FERC) has vacated all inactive Federal Power Act withdrawals and will revoke the withdrawals of land for projects when they become inactive by means of the license or permit being denied, revoked, or otherwise terminated. Refer to FSH 2709.14 section 20 for further information concerning Federal Power Act withdrawals.

Proceed with the full range of National Forest System resource activities (including mineral leasing) on Federal Power Act withdrawal areas considered inactive, because the withdrawal has been or will be revoked.

In most cases, defer major long-term investment in Forest Service projects on active withdrawals until the withdrawal is vacated. Except in rare instances, it is not possible to recover that investment if the project is subsequently licensed and displaces the Forest Service project. In deciding whether or not to make other investments in withdrawn areas, take into account the conflicting potential uses of the site. Considering the number of power projects that are either never built or that experience long delays, it might be wise to undertake the investments that can be amortized reasonably before a power project realistically could be completed.

See section 62.52h for information regarding issuing Forest Service permits within various types of withdrawals.

21.4 - Federal Energy Regulatory Commission Inspections

As appropriate, Forest Service representatives should accompany Federal Energy Regulatory Commission (FERC) regional office staff on their annual inspections of project facilities, including recreation developments.

Document any unacceptable conditions or practices in the operation of FERC project facilities that affect National Forest System land. Send a report to FERC identifying the project, clearly describing the location and nature of problems, explaining how the project adversely affects the protection and management of the National Forest, and indicating whether a forest officer will accompany the FERC inspector.

A copy of the letter summarizing the results of the inspection may be requested from the FERC Regional Director.

21.5 - Recreation Management and Inspections

Review and request updates of the licensee's plans for meeting project-induced recreation demand, as needed. Licensees must file a FERC form 80, Licensed Projects Recreation Report, on each project every 4 years unless FERC waives the requirement. Old projects without a recreation plan are not exempt from this review and report.

When additional recreation developments are necessary or there is a need for changes in the existing recreation plan, outline a proposal in a letter to the licensee and request the opportunity to participate in the next scheduled form 80 review or other recreation review. Send a copy of this letter to the FERC Regional Director. Point out Forest Service concerns relating to recreational development needs during annual FERC inspections of project facilities.

Negotiate directly with the licensee, because this is the most effective way to get the licensee to improve the recreation development; the licensee then applies to FERC for approval of the agreed-to changes.

Where the Forest Supervisor is unable to reach agreement with the licensee on measures for meeting project-induced recreation demands, including development time schedules, take the discussions to the FERC Regional Director and, if necessary, to the Chief. If there is still no agreement, the Chief may take the issue to the Commission Staff.

Another option to ensure the licensee updates the recreation facilities needed is to wait until the licensee applies to FERC for an amendment to the license to develop additional capacity. Then, in the comments sent to FERC, request that FERC require an updated recreation plan from the licensee. If the facilities proposed by the amendment create the need for a new recreation plan, then, the Forest Service can require a new plan by making it a license condition through the 4(e) report.

22 - Relationship With Other Agencies

22.1 - Army Corps of Engineers

Proponents of hydroelectric projects must apply to the Army Corps of Engineers for a section 404 permit (dredge and fill). The Corps determines whether or not a permit is necessary. This action is independent of the Federal Energy Regulatory Commission (FERC).

22.2 - Fishery Management Agencies

Coordinate with the U.S. Fish and Wildlife Service and State fish and wildlife management agencies when negotiating instream flow needs for fish, wildlife, recreation, vegetation, or other purposes.

22.3 - Cultural Resources Coordination

Coordinate with the National Park Service, Interagency Archeology Services (must consult on projects greater than 5 MW) and with any State cultural review agencies when a project involves cultural resources. Consult with Native American groups when necessary (36 CFR 296 and FSM 2361).

22.4 - Water Quality

The State manages water quality. The State water quality agency must be involved in the project and FERC requires the applicant to show compliance with the requirements of that agency.

22.5 - State Water Rights

The State manages water rights. The State water right agency may need to be involved. FERC requires the applicant to secure the water rights necessary for the project within 5 years of being licensed. The license gives the licensee the ability to obtain any private rights necessary for the project.

22.6 - Counties

Require the applicant to obtain appropriate permits from the county (for building codes, sanitation, and so forth).

22.7 - Other Federal and State Agencies

Other Federal and State agencies may have an interest in the project depending on its location. Coordinate Forest Service requirements with these agencies.

22.8 - Other Agency Indirect Management of National Forest System Lands

By law, some other Federal as well as State and local agencies have a role in the activities and resources on National Forest System lands (for example, water quality and pesticide use). State and local jurisdictions cannot enforce on Federal lands, any requirements that conflict with the Federal uses or rights granted. However, sometimes their requirements do conflict with National Forest Management (road use, mitigation, and so forth). Establish with other agencies a clear understanding of the Forest Service responsibilities and management requirements and implement cooperative advanced planning with those agencies.

If another agency places a requirement in the developer's permit that is unacceptable to the Forest Service, correct the situation through discussions with the other agency. Where that fails, request action by higher levels.

23 - General Forest Service Procedures

23.1 - Exempt Project Controls

(sec. 12.2).

23.2 - Land Management Plans

Forest land management plans should address the potential of hydroelectric development in the various management units. Develop standards and guidelines to provide direction to energy-related development in the management areas (sec. 32.11).

23.3 - Federal Energy Regulatory Commission License Where Special-Use Authorization May Be Denied

This situation should not occur because the Forest Service has the authority under section 4(e) of the Federal Power Act to condition the license and because the Federal Energy Regulatory Commission (FERC) should accept a justified recommendation on interference and inconsistency with National Forest purposes from the Forest Service (sec. 54.4). Only the Chief may make exceptions to this policy. See section 54 for procedures for problem projects.

23.4 - Recreation Planning

Cooperate with the applicant or licensee in the development of project recreation plans when recreation facilities are necessary. The licensee is responsible for construction, operation, maintenance, and replacement of project recreation facilities. Where it is in the Government's interest, the Forest Service may perform the operation and maintenance of facilities on National Forest System land with funds provided by the licensee in accordance with a collection agreement. Do not enter into an agreement that relieves the licensee of the ultimate responsibility for providing the necessary measures to accommodate project-induced recreation. Licensee operation and maintenance may be more appropriate on some projects (FSM 2310).

23.5 - License or Special-Use Authorization Surrender, Termination, or Project Abandonment

Primary Forest Service concerns relative to closing out a project are:

1. That the developer make suitable arrangements for continued operation and maintenance of the project works unless the project is to be removed. Do not agree to assume this responsibility.
2. That the developer restores the site to an environmentally acceptable condition (sec. 61.52c).

23.6 - Relationship with Applicant

Establish a positive working relationship with the applicant to make it easier to secure acceptable resource impacts. To help establish such a relationship: (1) make early contacts, (2) provide timely input and review, (3) reach agreement on procedures, and (4) assign an individual in the Forest Service to serve as liaison for the project to make contact easier and input more uniform.

23.61 - Preapplication Coordination and Responses

Make the applicant aware of the information needs for the project, such as issues to address, alternatives to investigate, studies to conduct, and other information to collect (sec. 30.43 and sec. 32). The Forest Supervisor or Regional Forester should sign official responses to contacts from the applicant performed under the staged consultation procedures of FERC's process (sec. 14). Define what is to be done as the minimum and leave the way open for the applicant to collect further data as the studies indicate or new situations require. If the applicant makes an application that is insufficient, point out earlier correspondence that detailed what information was necessary.