

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 2709.15 – Hydroelectric Handbook
Chapter 50 - Section 4(E) and Other Reports**

Amendment: 2709.15-Amendment 1

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Forest Service Handbook 2709.15 – Hydroelectric Handbook
Chapter 50 - Section 4(E) and Other Reports
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53 - Other Comments to the Federal Energy Regulatory Commission

53.1 - In Response to an Application for Preliminary Permit

Regional Foresters send comments on preliminary permit applications directly to the Federal Energy Regulatory Commission (FERC) in Washington, D.C. (not a 4(e) report).

State the Forest Service position on the issuance of the preliminary permit and limit comments and conditions to major areas of concern and to activities that the applicant may perform during the preliminary permit period. Identify the affected National Forest and designate the lead National Forest and whether or not the project involves a Wild and Scenic River or other special area (sec. 54.1). A condition should state that the permittee must secure a Forest Service special-use authorization prior to undertaking any entry or work on National Forest System lands pursuant to the preliminary permit. Recommendations for denial should be rare.

See exhibit 1 for an example of a response for a project not involving any special areas.

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Exhibit 1

Example Response to FERC about a Typical
Preliminary Permit Application

[] Region]

[Address]

2770

August 23, 1986

Mr. Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, NE.
Washington, DC 20426

Dear Mr. Plumb:

This letter is in response to the Notice of Application for Preliminary Permit dated June 20, 1986, for the Hell Roaring Creek Water Power Project No. 7273 on Hell Roaring Creek in Gallatin County, Montana.

This proposed project may impact lands and resources within the Gallatin National Forest. It is evident, however, that additional data must be gathered before we can quantify these impacts and their effects upon National Forest management objectives. Accordingly, the Forest Service has no objection to the issuance of a preliminary permit containing the standard terms and conditions of the most recent revision of the Commission's Form P-I, supplemented by the following special condition:

"Prior to undertaking any entry or work on National Forest System lands pursuant to a preliminary permit, the Permittee shall prepare and file with the Forest Service a plan of studies to be conducted under the permit; and, the Permittee shall secure a Forest Service special-use authorization and, if appropriate, enter into a memorandum of understanding with the Forest Service. The Permittee shall file with the Commission, within 90 days of the issuance of this preliminary permit, copies of the special-use permit and, if appropriate, the memorandum of understanding."

The special-use authorization would include Forest Service requirements for fire prevention and control, prevention of damage to Federal property and natural resources, and any requirements for repair or rehabilitation of damage resulting from study activities. The memorandum of understanding between the Forest Service and the Permittee, if prepared, would document the needs for studies and arrangements for consultation and cooperation not included in the special-use permit.

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Exhibit 1--continued

Sincerely,

/s/name>
Regional Forester

cc:
Applicant

53.2 - In Response to an Application for Exemption

Regional Foresters send comments on applications for exemption from licensing directly to the Federal Energy Regulatory Commission (FERC) in Washington, D.C.

Prepare a brief response to FERC's notification of application for exemption (not a 4(e) report, although similar). Do not include conditions because the special-use authorization controls the occupancy and use of National Forest System lands. Notify FERC of any special status or other major anticipated problems involved in the applicant's obtaining a special-use authorization. See sections 54.2 and 54.3 for procedures for problem projects.

Request that the applicant be advised that entry or investigative work on National Forest System lands requires a special-use permit from the Forest Service.

If the project is unacceptable, recommend that an exemption not be granted for it because the Forest Service will not issue a special-use permit.

53.3 - Requests for Additional Time to Submit Comments

Make every effort to meet the Federal Energy Regulatory Commission's (FERC's) deadline for submission of comments. In cases where it is impossible to meet the deadline, the Regional Forester requests an extension before the due date and specifies when FERC can expect to receive the 4(e) report. Generally a request for a 30-, 60-, or 90-day extension is acceptable.

FERC will continue to process an application after the 60-day comment period ends, or after the extension period has passed, and may issue a license without any 4(e) conditions other than the few standard ones that would apply to any license (such as the ones requiring a Forest Service special-use authorization, environmental consultation, and limits on changing the project).

If the extension is necessary because the area is currently unavailable until a land allocation is made, follow the procedures of section 54.42. If the extension is necessary because the applicant needs to supply more data for the analysis, follow the procedures of section 54.6.

54 - Informing the Federal Energy Regulatory Commission of Potential Problem Projects

54.1 - Potential Problems Identified Prior to the Federal Energy Regulatory Commission Issuing a Preliminary Permit

54.11 - Wilderness

(FSM 2775.1). Inform the Federal Energy Regulatory Commission (FERC) and the applicant that: (1) the project may affect <name> Wilderness, (2) the Forest Service can authorize only non-ground-disturbing and nonpermanent investigation studies, and (3) the project, itself, may be authorized only after Presidential approval.

54.12 - Wilderness Study Areas

Inform the Federal Energy Regulatory Commission (FERC) and the applicant that: (1) the project may affect <name> Wilderness Study Area; (2) the Forest Service can authorize only non-ground-disturbing investigation studies at this time; (3) the Forest Service cannot issue a special-use authorization to construct a project before the area is opened to multiple-use management through completion of the study or forest plan, through Federal legislation, or through a separate and complete environmental analysis; and (4) in the future, the area may not be available for hydroelectric use if legislation or the decision made in conjunction with the Forest Plan or separate analysis, so states. The much preferred procedure is to wait for completion of the study or forest plan.

See exhibit 1 for an example response for a project affecting a Further Planning area. A similar letter may be appropriate for projects affecting other types of special areas.

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Example Preliminary Permit Response to FERC about
a Project Located Within a Further Planning Area

[] Region [Address]

2770

August 23,

1986

Mr. Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, NE.
Washington, DC 20426

Dear Mr. Plumb:

This letter is in response to the Notice of Application for Preliminary Permit dated June 20, 1986, for the Hell Roaring Creek Water Power Project No. 7273 on Hell Roaring Creek in Gallatin County, Montana.

This proposed project may impact lands and resources within the Gallatin National Forest.

We request that FERC notify the applicant that the project is within the Big Creek Further Planning Area. Until a decision is made regarding future management of the area, no activities will be allowed which might alter the wilderness qualities of the area.

It is evident that additional data must be gathered before we can quantify these impacts and their effects upon National Forest management objectives. Accordingly, the Forest Service has no objection to the issuance of a preliminary permit containing the standard terms and conditions of the most recent revision of the Commission's Form P-1, supplemented by the following special condition:

"Prior to undertaking any entry or work on National Forest System lands pursuant to a preliminary permit, the Permittee shall prepare and file with the Forest Service a plan of studies to be conducted under the permit; and, the Permittee shall secure a Forest Service special-use authorization and, if appropriate, enter into a memorandum of understanding with the Forest Service. The Permittee shall file with the Commission, within 90 days of the issuance of this preliminary permit,

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copies of the special-use permit and, if appropriate, the memorandum of understanding."

The special-use authorization would include Forest Service requirements for fire prevention and control, prevention of damage to Federal property and natural resources, and any requirements for repair or rehabilitation of damage resulting from project activities. The memorandum of understanding between the Forest Service and the Permittee, if prepared, would document the needs for studies and arrangements for consultation and cooperation not included in the special-use permit.

Although a preliminary permit does not authorize construction of a project or entry on National Forest land, it provides the permittee time to undertake studies to determine, among other things, the economic and engineering feasibility of the proposed project. These studies may involve activities on or adjacent to the Big Creek Further Planning area, which could diminish the existing wilderness values of the area. For example, the desired studies may require core drilling, test excavation, stream gaging stations, and temporary road access to the unroaded area. The permittee may be limited to activities of a non-ground-disturbing nature, as the Forest Service will not issue a permit for activities that could threaten or diminish the wilderness qualities of the area. Studies undertaken by the applicant will be at the applicant's own risk, because the area may not be available for hydroelectric use after the land-use decision is made.

Sincerely,

</s/name>
Regional Forester

cc:
Applicant

54.13 - Wild and Scenic Rivers

(FSM 2775.3). As appropriate, inform FERC and the applicant that the project may affect the <name> Wild and Scenic River and state the name of the management agency for that river.

Evaluate the documentation establishing the wild and scenic river to help determine whether a project is obviously incompatible with the wild and scenic designation, or whether further analysis is necessary to make that determination. Inform FERC of the findings.

Unless all projects in the proposed area would be unacceptable, do not object to FERC issuing a preliminary permit, because a FERC preliminary permit does not authorize entry on National Forest land. Once FERC has received notice that a project may affect a wild and scenic river administered by the Forest Service, it cannot grant the project a license without the consent of the Secretary of Agriculture, through the Forest Service.

State whether or not it may be possible for the applicant to obtain a special-use permit from the Forest Service for the study of the project. If we would permit certain types of study, state that no activities will be allowed that may alter the values for which the river was designated, and that any investment in study for this project is at the applicant's risk, since the actual project may not be authorized.

Project studies conducted while a study river is under consideration for inclusion in the wild and scenic rivers system must not disturb the river area in a way that affects its eligibility for such inclusion. The boundaries of the study area are usually about one-quarter mile wide on each side of the river. Respond to FERC regarding these study rivers as directed in section 54.16. Types of study rivers are listed and further instructions are contained in section 54.7.

See exhibit 1 for an example of a response to a FERC notice of application for preliminary permit for a project involving a wild and scenic river.

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Example Preliminary Permit Response to FERC about a Project
Located Within a Wild and Scenic River

[] Region [Address]

2770

August 23, 1986

Mr. Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, NE.
Washington, DC 20426

Dear Mr. Plumb:

This letter is in response to the Notice of Application for Preliminary Permit dated June 20, 1986, for the Hell Roaring Creek Water Power Project No. 7273 on Hell Roaring Creek in Gallatin County, Montana.

This proposed project may impact lands and resources within the Gallatin National Forest.

We request that, inasmuch as the project, as currently proposed, is located within the Big Creek Wild and Scenic River system, that FERC notify the applicant that the project may affect the Big Creek Wild and Scenic River. This river was designated under section <number> of the Wild and Scenic Rivers Act (P.L. 90-542; 16 U.S.C. 1271-1287), as a component of the National Wild and Scenic Rivers System. As such, no license for a hydroelectric project may be granted by the commission without the consent of the Secretary of Agriculture in accordance with section 7 of the act and through the procedures outlined in 36 CFR 297.

It is evident that additional data must be gathered before we can determine whether the project will be on or directly affecting the designated river; or before the Secretary can determine if the project would invade or unreasonably diminish the scenic, recreational, or fish and wildlife values for which the area was designated; or before we can quantify these impacts and their effects upon National Forest management objectives. Accordingly, the Forest Service has no objection to the issuance of a preliminary permit containing the standard terms and conditions of the most recent revision of the Commission's Form P-1, supplemented by the following special condition:

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"Prior to undertaking any entry or work on National Forest System lands pursuant to a preliminary permit, the Permittee shall prepare and file with the Forest Service a plan of studies to be conducted under the permit; and, the Permittee shall secure a Forest Service special-use authorization and, if appropriate, enter into a memorandum of understanding with the Forest Service. The Permittee shall file with the Commission, within 90 days of the issuance of this preliminary permit, copies of the special-use permit and, if appropriate, the memorandum of understanding."

The special-use authorization would include Forest Service requirements for fire prevention and control, prevention of damage to Federal property and natural resources, and any requirements for repair or rehabilitation of damage resulting from project activities. The memorandum of understanding between the Forest Service and the Permittee, if prepared, would document the needs for studies and arrangements for consultation and cooperation not included in the special-use permit.

Although a preliminary permit does not authorize construction of a project or entry on National Forest land, it provides the permittee time to undertake studies to determine, among other things, the economic and engineering feasibility of the proposed project. These studies may involve activities which could invade or unreasonably diminish the existing wild river values of the Big Creek River and its tributaries. If this were the case, we could not issue a permit for use of National Forest lands for study unless such activities are reviewed and approved in accordance with section 7(a) of the Wild and Scenic Rivers Act. The permittee may be limited to activities of a non-ground-disturbing nature. All such studies are at the permittee's risk.

Sincerely,

</s/name>
Regional Forester

cc:
Applicant

54.14 - Research Natural Areas

(FSM 2775.4). Inform FERC and the applicant that the project may affect <name> Research Natural Area (RNA) and that use of that specific area for hydroelectric development would be inconsistent with the purpose for which the <name> National Forest was created or acquired and inconsistent with the purpose of the RNA. In support of this statement, refer to the forest plan or other study that established the RNA, its environmental impact statement, and the regulations (7 CFR 2.60a and 36 CFR 251.23) that allow that specific land allocation. State that no special-use permit will be issued for the study of the project if it is obvious that the potential project could never be compatible.

In some cases the potential impacts may be negligible or the management plan for the RNA may allow for some minor nonconflicting uses (consistent with the purpose of the RNA). In these situations, adjust the response to FERC accordingly.

54.15 - Special Areas

(FSM 2775.5). Where a hydroelectric project would obviously be incompatible with a special land allocation, inform FERC and the applicant that (1) the project may affect the <name> area which was established pursuant to <regulation> by the <procedure; such as a Forest Plan> on <date>, and (2) use of that specific area for hydroelectric development would interfere and be inconsistent with the purpose for which the <name> National Forest was created or acquired (and/or the purpose of the special area). Add or reference any additional information that supports or clarifies that determination. State that no special-use permit will be issued for the study of the project in the <name and type> area if it is obvious that no project in that area could be acceptable.

In cases where a project's compatibility with an officially established land allocation cannot be determined clearly prior to study of the project, inform FERC and the applicant (1) of the area's special status, (2) that the applicant may undertake non-ground-disturbing studies at its own risk after obtaining a Forest Service special-use permit, and (3) that the Forest Service will analyze the proposal when the applicant supplies more data and then advise FERC if the proposal is consistent with the special land allocation.

54.16 - Study Areas

Areas under study for special land allocations, such as candidate wild and scenic rivers (and rivers on the Nationwide Rivers Inventory), candidate research natural areas, and candidate special areas previously described above are temporarily excluded by the Forest Service from hydroelectric development until there is a decision made as to their allocation through the forest plan, legislation, or by special study. In these cases inform FERC and the applicant that (1) the project may affect <name and type> area, (2) the

Forest Service can authorize only non-ground-disturbing investigation studies at this time, (3) those studies undertaken are at the applicant's own risk after obtaining a Forest Service special-use permit, (4) the Forest Service cannot issue a special-use authorization to construct the project prior to the final land allocation decision affecting the area in question.

FERC has indicated that it may not be bound by restrictions on executive agencies such as the Forest Service resulting from executive orders, opinions of other executive agencies, or regulations or policy. However, the fact that the Forest Service is restricted and cannot issue a special-use authorization until the particular land management question is resolved, should cause FERC to withhold action on or dismiss an application so affected.

54.17 - Pressure to Resolve Study Area Status

Be aware that developers or others may pressure for a quick resolution of the study status of a particular piece of land relative to its further planning or candidate <type of study area> designation. The following information is intended to aid field personnel in their discussions of Forest Service procedures with developers.

The usual method of making this designation is through completion of the forest plan or by legislation. Allocations of this sort are made through an analysis of a particular area's attributes and its relation to all nearby similar areas, along with the trade-offs associated with designating each area to appropriate special categories. Forest planning is designed to do this analysis effectively.

An applicant may legitimately propose funding a separate environmental impact statement (EIS) to determine the land allocation for the particular piece of land. However, depending on the specific situation, that special EIS may have to be as encompassing as the one used as the basis for the forest plan. It would, therefore, have to evaluate the reasonable land allocations of many land areas that might have some bearing on the allocation of the area of interest.