

**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

Effective date: February 01, 1987

Duration: This amendment is effective until superseded or removed.

Approved by:

Date approved:

Responsible Staff:

Last Change:

Superseded Document(s):

Digest:

Forest Service Handbook 2709.15 – Hydroelectric Handbook
Chapter 50 - Section 4(E) and Other Reports
Amendment: 2709.15-Amendment 1
Effective date: February 01, 1987
Table of Contents

54.2 - Problems Identified Prior to the Federal Energy Regulatory Commission Issuing an Exemption from Licensing.....	3
54.3 - Problems Identified after the Federal Energy Regulatory Commission Issues an Exemption	3
54.4 - Problems Associated with Projects with an Application for License	3
54.41 - Incompatible Project.....	4
54.42 - Study Area	4
54.43 - Projects With Significant Effects and/or Potentially Incompatible.....	5
54.44 - Projects Without Significant Effects.....	5
54.5 - Problems Associated with Licensed Projects	5
54.6 - Inadequate Application for License/Special Use.....	5
54.7 - Rules Regarding Wild and Scenic Rivers	9
54.71 - Section 7(a) and 7(b) Determinations	10
54.72 - Approval and Routing of Section 7 Determinations	10
55 - Forest Service Standard License Conditions	10
55.1 - Selecting 4(e) Conditions	10
55.11 - Coordinating License and Special-Use Conditions	11
55.2 - Enforcing 4(e) Conditions	11

54.2 - Problems Identified Prior to the Federal Energy Regulatory Commission Issuing an Exemption from Licensing

See exhibit 2 of section 53.2 for an example response.

1. Incompatible Projects. These situations are less sensitive than those involving licensing (sec. 54.4). Consistent with the cases described in sections 54.11 - 54.16, where a project is determined to be incompatible, inform FERC and the applicant that (1) the project as proposed, would not be compatible with the management or use of the ____ <name> National Forest, (2) the Forest Service will not issue the project a special-use authorization, and (3) the Forest Service recommends that FERC not issue the exemption.

2. Study Area. Inform FERC and the applicant that (1) the project may affect ____ <name and type> study area, (2) there will not be a decision on that study area's allocation until approximately ____ <date> ____, (3) the Forest Service will not issue a project special-use authorization until implementation of the land allocation, and (4) if the land-use decision is realistically more than 1 year away, that the Forest Service recommends that FERC deny the application; or if the land-use decision should be made within 1 year, that the Forest Service recommends that FERC deny or hold the application until the decision is implemented.

3. Potentially Incompatible and Other Projects. In these situations, inform FERC and the applicant that the Forest Service is going to analyze the project through its special-use authorization process and make a decision after that process is complete. If aware of any potential conflicts that might prevent development of that project, inform FERC and the applicant at this time so the applicant can determine if it is worth pursuing the project any further.

54.3 - Problems Identified after the Federal Energy Regulatory Commission Issues an Exemption

If, after the analysis, the project is determined to be incompatible with the use of the area or to have unacceptable impacts, issue a decision to that effect denying the application for special-use authorization. Inform FERC and the applicant of the decision. Even if the Forest Service did not inform FERC of this decision at the time of the application for exemption, the Forest Service still may deny the special-use authorization.

54.4 - Problems Associated with Projects with an Application for License

These situations are similar to those described in section 54.1, except at this point the project proposal is well defined and usually has had considerable analysis. These cases are sensitive because the Federal Energy Regulatory Commission (FERC) makes the final determination concerning whether or not to license a project and whether or not it is consistent with National Forest purposes. See diagram in exhibit 1, section 32.41.

Legal grounds for recommending that a project interferes with or is inconsistent with the purposes of the National Forest include: definite land allocations made through an implemented forest plan; language in the Federal act that established the reserve (National Forest) in question; or language in another congressional act that designated some restricted or specific use of an affected area.

The forest plan refines the purposes of the National Forest as called for in the National Forest Management Act and is adequate support for recommending to FERC that a project is inconsistent or would interfere with the purposes of the National Forest.

54.41 - Incompatible Project

Where a project is obviously incompatible and if it is possible to support that determination with the forest plan, an environmental impact statement, legislation, or other regulation, state in the 4(e) report that (1) the project as applied for will interfere and be inconsistent with the purposes for which the <name> National Forest was created or acquired, (2) the Forest Service will not (or cannot) issue the project a special-use authorization, and (3) the Forest Service recommends that FERC not issue the project a license. Make comments and cite whatever supporting information and references establish that position (include copies of pertinent documents in the report to FERC).

In this situation, do not include license conditions in the 4(e) report to FERC. The Forest Service anticipates that FERC will decide according to the Forest Service recommendation. However, because FERC retains the authority to determine whether a project is consistent with the purposes of the reservation, include the following in the 4(e) report: If the commission disagrees with this recommendation of the Forest Service, the Forest Service reserves the right, after notification from FERC, to provide the commission with appropriate license conditions to protect the reservation. These conditions will be provided after an environmental impact statement has been completed by FERC with the Forest Service as a cooperating agency.

54.42 - Study Area

Inform FERC and the applicant through an initial 4(e) report that (1) the project would affect <name and type> study area, (2) the decision on that study area's allocation will not be complete until approximately <date> , (3) the Forest Service cannot issue a special-use authorization until there is a decision regarding the land allocation (preferably through the forest plan), (4) the Forest Service recommends that FERC deny the application or withhold action on the application until after the land allocation, and (5) if FERC decides to proceed with its own environmental impact statement (EIS), the Forest Service requests to be a cooperating agency and, as such, shall inform FERC of its recommendation on the project's consistency with National Forest purposes and shall provide license conditions if appropriate when the EIS is complete.

Under item 4, if the land-use decision is reasonably more than 1 year away, recommend denial of the application.

Attach comments and supporting information as appropriate. Do not attach conditions or other decision items in the initial 4(e) report.

54.43 - Projects With Significant Effects and/or Potentially Incompatible

Where a project is potentially incompatible with the land's allocation or existing use, but there is not adequate documentation available to support that determination, or where the project is determined through analysis to have a significant effect on the quality of the human environment, inform FERC and the applicant of that fact in an initial 4(e) report. State that (1) the project might interfere and be inconsistent with the purposes for which the <name> National Forest was created or acquired, and/or (2) the project would have a significant effect on the quality of the human environment and the Forest Service requests that FERC prepare an environmental impact statement (EIS) for the project and designate the Forest Service as a cooperating agency. Inform FERC that the Forest Service will provide the recommendation on consistency with the reservation and provide license conditions, if appropriate, when the EIS is complete.

Include comments, supporting material, and references in the 4(e) report to support the need for an EIS. Do not include conditions or other decision items.

54.44 - Projects Without Significant Effects

Analyze these projects and attach appropriate conditions to the 4(e) report as discussed in section 52.

54.5 - Problems Associated with Licensed Projects

1. Prior to Obtaining a Special-Use Authorization (sec. 23.3).
2. During Construction (sec. 61.82).
3. During Operation (sec. 61.83 and sec. 61.85).

54.6 - Inadequate Application for License/Special Use

If the application for license and special use does not contain sufficient information or the information is not objective enough to use as an environmental assessment, and an environmental impact statement is not necessary, inform FERC of that fact through an initial 4(e) report (sec. 61.3). Indicate that the final 4(e) report containing conditions will be sent to FERC 90 days after the Forest Service receives an adequate application. Send a copy of the initial 4(e) report to the applicant. Where adequate review of the draft license is possible, this procedure should seldom be necessary (sec. 53.3). See 18 CFR 4.38(2)(i) for a description of the types of studies which must be conducted before the application for license is prepared.

Forest Service Handbook 2709.15 – Hydroelectric Handbook

Chapter 50 - Section 4(E) and Other Reports

Amendment: 2709.15-Amendment 1

Effective date: February 01, 1987

See exhibit 1 for an example initial 4(e) report for an inadequate application.

Forest Service Handbook 2709.15 – Hydroelectric Handbook
Chapter 50 - Section 4(E) and Other Reports
Amendment: 2709.15-Amendment 1
Effective date: February 01, 1987
Exhibit 1

Example Initial 4(e) Report for an Inadequate Application

[] Region [Address]

2770

February 28, 1986

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

Dear Mr. Plumb:

This letter is the initial response of the Secretary of Agriculture, pursuant to section 4(e) of the Federal Power Act, to the Notice of Application for Minor License by Western Power, Inc., dated December 21, 1985, for Project No. 9999-001 on Quartz Creek in Snohomish County, Washington.

This proposed project may have a major impact on National Forest System lands within the Mt. Baker National Forest. The applicant has not yet supplied adequate information for the Forest Service to use in assessing the impacts of this project and its alternatives. We, therefore, request an extension time, within which to furnish comments, until 90-days after receipt of adequate information regarding the following resources.

1. Instream flow needs and mitigation plans for protection of the fisheries resource and riparian habitat (first requested of the applicant in letter of March 3, 1985).
2. Survey and mitigation plans for potential impacts to the sensitive plant species, Lewisia seratta (first requested of the applicant in letter of July 25, 1985).

The applicant should contact the Supervisor of the Mt. Baker National Forest at the applicant's earliest convenience to discuss the specific study needs, and prepare a study plan before beginning data collection work.

Forest Service Handbook 2709.15 – Hydroelectric Handbook
Chapter 50 - Section 4(E) and Other Reports
Amendment: 2709.15-Amendment 1
Effective date: February 01, 1987
Exhibit 1--continued

Sincerely,

</s/name>
Regional Forester

cc:Applicant

54.7 - Rules Regarding Wild and Scenic Rivers

The Forest Service, acting for the Secretary of Agriculture, is responsible for determining whether the proposed project is "on or directly affecting" a designated wild and scenic river under jurisdiction of the Secretary. Such rivers may have been designated in section 3(a) or through section 2(a) of the Wild and Scenic Rivers Act, or by subsequent acts of Congress.

A project is on a river if it is on a section of river designated by an act of Congress. A project is directly affecting a river if it is proposed to be within the boundaries of the river designated in an act of Congress or designated by the Secretary of the Interior through section 2(a)(ii) of the act. If a project is determined to be on or directly affecting a designated river, section 7(a) of the Wild and Scenic Rivers Act prohibits FERC from authorizing it.

A project is indirectly affecting the river if it is proposed to be above, below, on a tributary thereto, or near but outside the boundaries of the designated river and could have some effect on the wild and scenic values of the river. For a project indirectly affecting a river managed by the Forest Service, the Forest Service is responsible for determining whether a project is compatible with the designation of that river (section 7(a) of the Wild and Scenic Rivers Act).

Follow the procedures of 36 CFR 297 in determining the compatibility of the actual proposal with the wild and scenic river (whether or not it would invade or unreasonably diminish the scenic, recreational, or fish and wildlife values for which the river was designated). A key aspect of this determination is that the project or studies cannot adversely affect the free-flowing characteristics of the designated or study river.

For study rivers listed in section 5(a) of the act, the rules as described in section 7(b) of the act are the same as the preceding rules for designated rivers under section 7(a) of the act. These rules only apply while those rivers are under consideration for inclusion in the wild and scenic rivers system as defined in section 7(b) of the act. While technically not given the same statutory protection, the same or similar rules should apply to specific rivers subsequently designated for study, under section 5(d) of the act, by the Secretary of Agriculture or the Secretary of the Interior or by Congress. See additional instructions in FSM 2354.21.

Rivers listed on the Nationwide Rivers Inventory fall under the authority of section 5(d) of the act and are under consideration for inclusion in the wild and scenic rivers system. Rivers designated for study through such mechanisms as a forest plan are designated for study by the authority of section 5(d). See instructions in FSM 2354.62.

All rivers under consideration for inclusion in the wild and scenic rivers system shall be protected for that potential designation until such time as they are ruled ineligible or unsuitable. Construction of a project which is within the boundary of a river segment

may not be approved while the river is under study for inclusion in the system. Construction of a project indirectly affecting a study river may be approved if it does not invade or unreasonably diminish the values for which the river may be designated.

See section 54.13 for instructions on informing FERC of the status of these rivers.

54.71 - Section 7(a) and 7(b) Determinations

Under section 7(a) of the Wild and Scenic Rivers Act, the Regional Forester as delegated in FSM 2354.04e, makes these determinations when the Forest Service is the management agency for a designated Wild and Scenic River. Determinations under section 7(b) for study rivers follow the same rules. A determination under either section involves determining whether a project is "on or directly affecting" a designated river (includes certain study rivers); if not on or directly affecting the river, the second part would be a determination of whether the project "invades or unreasonably diminishes the values for which" a river is or may be designated. Follow the guidance of section 54.7 and 36 CFR 297 in making these determinations. Send section 7 decisions to the Washington Office Director of Lands for forwarding to FERC in accordance with section 54.72.

54.72 - Approval and Routing of Section 7 Determinations

The specific routing procedure for Section 7(a) and 7(b) Determinations is as follows (1) the Region creates a final draft of the 7(a) or 7(b) report package and sends it electronically to the Washington Office Lands Staff member responsible for FERC coordination; (2) the Lands Staff reviews it and sends comments back to the Region; (3) the Region makes appropriate corrections and the Regional Forester signs the appropriate documents; (4) the Region sends the original package to the Washington Office Director of Lands for forwarding to FERC; (5) the Region immediately sends a copy to the applicant and others with an expressed interest in receiving it; (6) upon receipt of the package, the Washington Office Director of Lands forwards it to FERC.

55 - Forest Service Standard License Conditions

Carefully word license conditions that the Forest Service wants incorporated into a Federal Energy Regulatory Commission (FERC) license so that it is possible to track and enforce them.

55.1 - Selecting 4(e) Conditions

Select carefully from the standard Forest Service 4(e) conditions (sec. 55.3). Not all conditions would be useful in any one license. Select or develop conditions for resource protection for those situations where it would be desirable to have the force of the license.

Do not use license conditions to gather information concerning the impacts of a proposed project. That information (field surveys, mitigation methods, and so forth) must be

supplied by the applicant at the time of the license application. See 18 CFR 4.38(2)(i) for a description of prelicense studies and plans. If the information is unavailable, follow the procedures of section 54.6. License conditions may require more detailed implementation plans for the mitigation measures.

The license can require the licensee to consult other agencies, but cannot require a response from another agency as a prerequisite to the licensee's action.

In section I of Enclosure II of the 4(e) report refer to one of the following Commission standard form L licenses:

- L-1 Constructed Major / US Lands
- L-2 Unconstructed Major / US Lands
- L-5 Constructed Major / Navigable Waters / US Lands
- L-6 Unconstructed Major / Navigable Waters / US Lands
- L-16 Constructed Minor / US Lands
- L-17 Unconstructed Minor / US Lands
- L-18 Constructed Minor / Navigable Waters / US Lands
- L-19 Unconstructed Minor / Navigable Waters / US Lands
- L-20 Constructed Transmission Line
- L-21 Unconstructed Transmission Line

55.11 - Coordinating License and Special-Use Conditions

Rely on conditions that are to be made part of the special-use authorization when the resource protection needs are fairly routine and the mitigation would not materially affect the economic viability of the project. Conditions that affect power production capability shall be only in the license. If there is a question as to whether the resource should be protected through the license and special-use authorization or the special-use authorization alone, consider the benefits of having the support of the license, especially for expensive mitigation or when any major problems in enforcement are foreseen (FSM 2773.4).

55.2 - Enforcing 4(e) Conditions

Carefully review the license plans that the licensee is to submit for Forest Service approval before submittal to FERC. Ensure that the plans meet the needs of National Forest resource protection, and that the plans contain language that provides for direct enforcement of the plans by the Forest Service. When appropriate, ensure the plan provides for such actions as the Forest Service temporarily suspending construction activities relating to a plan until the licensee is in compliance. See exhibit 1 for an example of a plan clause making the plan enforceable by the Forest Service through the license.

Forest Service Handbook 2709.15 – Hydroelectric Handbook
Chapter 50 - Section 4(E) and Other Reports
Amendment: 2709.15-Amendment 1
Effective date: February 01, 1987
Exhibit 1

SAMPLE ENFORCEMENT CLAUSE TO BECOME PART
OF A PLAN SUBMITTED TO THE
FEDERAL ENERGY REGULATORY COMMISSION

<licensee> is responsible for complying with the objectives and conditions of this plan. In the event that the Forest Service determines that operations affecting National Forest lands are not in compliance with this plan, the Forest Service shall notify <licensee> orally and in writing requesting compliance within a specific period of time. If <licensee> does not comply within the specified time period, the Forest Service may suspend construction or operation activities affected by such noncompliance until the Forest Service determines that the project is in compliance.

In the event that the Forest Service determines that noncompliance poses an immediate threat to safety or the environment, or poses an immediate fire danger, the Forest Service may require an immediate suspension without prior notice. Such suspension shall be given orally by the <title>, <title>, or <title>. The Forest Supervisor shall followup such notice with a letter. The suspension will remain in effect until the Forest Service determines that the project is in compliance.