

Act to collect the Other Federal Agency costs from licensees in order to reimburse the United States for the costs of administering Part I of the Federal Power Act. Costs reported by the Forest Service to FERC for time spent participating in license proceedings to develop necessary and appropriate mitigation are not subject to cost recovery by the proponent. In some cases, costs incurred in processing a special use application (SUA) and monitoring the authorization can be recovered and are separate from costs reported to FERC. See FSH 2709.15 - 61.23 for guidance on the scope of terms and conditions contained in a SUA. Please coordinate with the WO to clarify the appropriate use of the Special Use permit and associated cost recovery and ensure that these costs are not reported to FERC to avoid “double counting” of fees which are to be paid by the licensees to FERC.

Again, as noted above, we understand the capacity challenges. The WO will continue to work to address these challenges.

Policy Boundaries:

Agency policy is outlined in FSM 2770. The following clarifies the direction contained in the Manual as there has been inconsistent application or interpretation. There may be instances where some negative effects cannot be mitigated immediately below the project such as the effects of peaking operations on aquatic resources. Therefore, suitable offsite or compensatory mitigation is appropriate and justified to protect the operational value of a peaking project. Objective or outcome based mitigation measures allow the licensee to work with the FS and other parties to the proceeding to develop the most appropriate means to achieve the desired outcome.

FSM 2770.3 – (5) explicitly prohibits requiring mitigation associated with the original inundation. This prohibition is limited to seeking compensation for the original flooding of NFS land. This means that any lands inundated by the existing project reservoir cannot be used to require the licensee to purchase or offset those original losses due to flooding. This does not mean taking a static look at the effects of a project nor does it preclude incorporating alternative operations (i.e., downstream flow levels and lake levels) or new facilities (i.e., fish passage, boat ramps, invasive species check/clean stations, etc.) to meet agency goals and objectives.

It is also important to request studies that directly lead to development of specific license provisions that mitigate for known project effects.

WO Oversight:

In a letter dated July 27, 2011, the Deputy Chief required that all preliminary §4(e) conditions and any proposed settlement agreements are to be reviewed and approved by the NFS Deputy Chief before they are made public or transmitted to FERC by the Regional Forester. The letter also noted procedures and timelines for the coordinated review will be developed in conjunction with the Region to ensure timely processing and filing of preliminary §4(e) conditions and the signing of settlement agreements in order to meet FERC regulatory timelines. WO and Regional staff met in February 2014 and followed up via conference call to reach consensus on an approach that limits additional procedural burdens on staff at both levels. The process includes the following key components:

- a. Regions notify National Hydropower Program manager via e-mail of any application for a Preliminary Permit and/or filing of the Pre-Application Document (PAD) that initiates a formal proceeding before FERC;
- b. Add the National Hydropower Program manager and WO OGC lead for Hydropower on the Official FERC Service List so they receive all filings and issuances in a proceeding;
- c. Initial coordination occurs during the response to the PAD where the FS proposes revisions to draft study plans or proposes new studies. This is important for all to understand how the studies may lead to a mitigation prescription under §4(e);
- d. The Regions and WO should informally coordinate when the FS comments on the applicant's study plans to ensure consistent application of technical approaches and that the studies are germane to the protection and utilization of the reservation;
- e. Regions should submit their draft preliminary §4(e) conditions to the Director of Lands at least 10 days ahead of the FERC filing deadline; and
- f. Regions should submit their proposed final §4(e) conditions to the WO Director of Lands at least 10 days ahead of the FERC filing deadline.

For Settlement Negotiations, the Regions should provide ongoing updates on negotiations for multi-party settlement agreements in order to avoid reviews after stipulations have been agreed to and prior to signing by the authorized officer.

Our intent is to support the appropriate use and development of hydropower energy on the National Forests, while mitigating for and minimizing adverse impacts as prescribed in statute in a consistent manner. We understand the challenges of capacity and want to convey the need for an appropriate degree of alignment. If you need additional information, please contact Greg Smith, Director of Lands, or Gary Schiff, Assistant Director for Land Stewardship.

/s/ Tony Tooke (for)

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