

**BUREAU OF RECLAMATION SECTION 4(e) CONDITIONS, GIBSON DAM  
HYDROELECTRIC PROJECT, FERC No. 12478-002**

**Article 1.** No later than 60 days after issuance of a license, the Licensee shall contact the Regional Director, Bureau of Reclamation, Billings, Montana, to ascertain the necessary coordination of its plans and any agreements required by Reclamation for access to and site activities on lands and property administered by Reclamation, and for construction, operation, and maintenance of the licensed project so that the physical structures and authorized purposes, including operations, safety, integrity, and the environment of the Federal facility or reservation are protected. In general, the construction, operation, and maintenance agreement shall identify the facility, the applicable study and construction activities and schedule, and terms and conditions under which the studies and construction shall be conducted. The agreement shall include, but not be limited to, the following items:

- (1) Reasonable arrangements for access to the Federal facility or reservation to conduct

- studies and construction activities, such access to be conditioned by Reclamation as may be necessary to protect the federally authorized project purposes and operations;
- (2) Charges to be paid by the Licensee to Reclamation for (a) technical studies conducted by Reclamation that relate to the structural integrity or operation of the Federal facility associated with Project development, (b) review of designs including plans and specifications and proposed operations, (c) construction inspections based on personnel costs, where such reviews and inspections are directly related to the structural integrity or operation of the Federal facility or reservation, (d) provisions for repayment of any damages occurring to Federal lands and structures, (e) coordinated operating expenses, (f) copies of reports, drawings, and similar data based on printing and mailing costs, and (g) the value of the right of use of Reclamation land and all associated administrative costs incurred by Reclamation provided that charges shall not be assessed for information or services that would normally be provided to the public.
  - (3) Operation and maintenance plan for the Project that addresses coordination with Reclamation and payment of any costs incurred by Reclamation.

**Article 2.** The design and construction of those facilities that would be an integral part of or could affect the structural integrity or operation of the Federal reservation shall be done in consultation with and subject to the review and approval of Reclamation. The design drawings shall be approved by Reclamation at intervals determined by Reclamation. Six sets of design drawings, specifications, and design computations shall be forwarded at each interval to the Regional Director, Bureau of Reclamation. Additional sets may be requested. Any subsequent changes in the design and construction of the Project must be approved by Reclamation prior to implementation.

At the completion of construction, the Licensee shall prepare and submit to the Regional Director, one complete set of as-built drawings of the Project in Mylar or other durable, reproducible form and in electronic format acceptable to Reclamation, complete specifications with all amendments, and any design data and construction records, technical operation and maintenance manuals, and the final construction report as determined necessary by the Regional Director.

**Article 3.** The construction, operation, and maintenance of the Project works and Project investigations related to Project development, as determined by Reclamation, must not weaken, damage, or affect the structural integrity or operation of the Federal facilities or reservation, or reduce or impair the capability to provide for the purposes and services of the Federal reservation, and shall be subject to periodic or continuous inspection by Reclamation as appropriate. The Project must not negatively affect the Federal Government's ability to fulfill its trust responsibilities to Indian tribes. Any construction, operation, or maintenance deficiencies or difficulties detected by Reclamation will be immediately reported to the Licensee and the Commission's Regional Engineer. Reclamation shall report to the Commission's Regional Engineer the need to stop construction, operation, or maintenance while awaiting resolutions of any deficiency that would affect the structural integrity of the Federal facilities. In those cases when a construction, operation, or maintenance practice or deficiency may result in a situation that would or could endanger the structural integrity, environmental quality, safety, operational commitment of the Federal facility or reservation, or Indian water rights fulfilled by the system,

Reclamation shall have the authority to stop construction, operation, or maintenance activities until the problem or situation is resolved to the satisfaction of the Department. Operation of the hydroelectric project shall be secondary to the purpose, including operation and maintenance, of the Federal facilities or reservation as well as the fulfillment of Indian water rights.

**Article 4.** Unless otherwise specified by Reclamation, all newly disturbed land areas shall be revegetated by the Licensee with plant species indigenous to the area within 6 months of completion of Project construction.

**Article 5.** The Licensee shall have no claim against the United States arising from any future changes made to meet authorized Federal purposes, from the effect of any changes made in releases from or operation of the Federal facility or reservation, from modifications to the Federal facility or reservation, or from any changes in canal levels and/or flow of the Reclamation facilities resulting from the exercise of Federal purposes or trust responsibilities.

**Article 6.** The Licensee shall recognize the primary right of any Reclamation project activity or the fulfillment of Indian water rights, either by Reclamation or by its constructors or both, associated with the Reclamation project, its appurtenant facilities, access roads, operation, and maintenance.

Reclamation project activities and the fulfillment of Indian water rights, whether ongoing at, or initiated subsequent to the start of work by the Licensee, take precedence over the Licensee's Project activities.

**Article 7.** The Licensee shall provide the Commission's Regional Engineer two copies of all correspondence between the Licensee and the Bureau of Reclamation. The Commission's Regional Engineer shall not authorize construction of any Project works until Reclamation's written approval of construction plans and specifications has been received by the Commission's Regional Engineer.

**Article 8.** The Licensee shall provide Reclamation the opportunity to review and approve the final plans and design of contractor-designed cofferdams, and blasting, and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. Reclamation's review of the cofferdam will be in addition to the Licensee's review and approval of the final plans and shall in no way relieve the Licensee of the responsibility and liability regarding the satisfactory performance of the cofferdam. The cases where Reclamation review is required, the Licensee shall submit copies of the design data, computations, drawings, and specifications for the cofferdam to the Regional Director at a time which allows a sufficient review period prior to construction. The Regional Director will inform the Licensee of the required number of submittal copies and the Reclamation review period.

**Article 9.** The timing, quantity, and location of water releases and release changes from the facilities will be at the sole discretion of Reclamation. Reclamation does not agree to alter operations or maintenance of the Federal reservation or facilities or any associated Federal Reclamation project for the benefit of power generation. Reclamation does not in any manner

guarantee any quality or quantity of water for the hydroelectric project and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

The Licensee agrees not to claim damages for loss of hydropower production as a result of Reclamation's operation for authorized project purposes including but not limited to flood control, irrigation, municipal and industrial use, recreation and fish and wildlife, as well as fulfilling Indian water rights. Reclamation reserves the right to make any changes to Gibson Dam operations pending any and all future Endangered Species Act compliance requirements pertaining to facility operations.

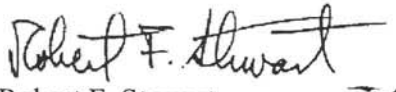
### **FISH AND WILDLIFE RECOMMENDATIONS PURSUANT TO SECTION 10(j) OF THE FEDERAL POWER ACT**

Pursuant to Federal Power Act Section 10(j), the Federal Energy Regulatory Commission "in order to adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat) affected by the development, operation and management of the project...shall include conditions for such protection, mitigation, and enhancement...based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the United States Fish and Wildlife Service...." The following recommendation is made pursuant to our authorities under section 10(j) of the Federal Power Act.

Avian Protection Plan: Within 1 year of license issuance, or prior to the construction of any transmission-related facilities (whichever comes first), the Licensee shall, in coordination with the U.S. Fish and Wildlife Service, develop an Avian Protection Plan (APP) pursuant to *Avian Protection Plan Guidelines, a Joint Document Prepared by The Edison Electric Institute's Avian Power Line Interaction Committee (APLIC) and U.S. Fish and Wildlife Service*. The APP guidelines presented in that document are intended to serve as a "tool box" from which a utility can select and tailor components applicable to its site specific needs. Those guidelines are intended to be used in conjunction with APLUC's *Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996* and *Migrating Bird Collisions with Power Lines: The State of the Art in 1994*, or the most current editions of these documents, which contain more detail on construction design standards and line siting recommendations.

If you have any questions regarding Reclamation's Terms and Conditions, please contact George Gliko at 406-247-7651. If you have any questions concerning USFWS's Section 10(j) recommendation, please contact Mark Wilson at 406-449-5225.

Sincerely,

  
Robert F. Stewart  
Regional Environmental Officer

cc: Director, Division of Hydropower  
Administration and Compliance  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Enclosure: Exhibit "A"

cc: Service List

Mr. Bob Hardin, Manager  
Greenfields Irrigation District  
P.O. Box 157  
Fairfield, MT 59436