

138 FERC ¶ 62,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Gibson Dam Hydroelectric Company, LLC

Project No. 12478-003

ORDER ISSUING ORIGINAL LICENSE

(January 12, 2012)

INTRODUCTION

1. On August 28, 2009, Gibson Dam Hydroelectric Company, LLC (Gibson Hydro or GDHC) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),¹ an application for an original license to construct and operate the Gibson Dam Hydroelectric Project (Gibson Dam Project or project). The project's authorized capacity being licensed is 15 megawatts (MW). The project will be located at the U.S. Department of the Interior (Interior), Bureau of Reclamation's (Reclamation) Gibson dam on the Sun River in Lewis and Clark County and Teton County, Montana. The project will occupy 68.5 acres of federal lands, 44.0 acres within the Lewis and Clark National Forest administered jointly by the U.S. Department of Agriculture's Forest Service (Forest Service) and Reclamation, and 24.5 acres of lands administered by the U.S. Department of Interior, Bureau of Land Management (BLM).² As discussed below, I am issuing an original license for the project.

BACKGROUND

2. On April 20, 2010, the Commission issued a public notice that was published in the Federal Register accepting the application for filing and soliciting motions to intervene.³ The Forest Service filed a notice of intervention.⁴

¹ 16 U.S.C. §§ 797(e) and 808 (2006).

² The project is required to be licensed on two separate bases under section 23(b)(1) of the FPA, 16 U.S.C. § 817 (2006). It occupies federal lands, and it uses a government dam.

³ 75 Fed. Reg. 22,122-22,123 (April 27, 2010).

⁴ Under Rule 214(a) of the Commission's Rules of Practice and Procedure, the Forest Service became a party to the proceeding upon timely filing of its notice of

(continued...)

3. On May 26, 2010, the Commission issued public notice that the project was ready for environmental analysis and solicited comments, recommendations, terms and conditions, and prescriptions. In response, comments, recommendations, and terms and conditions were filed by the Forest Service and Interior, representing Reclamation and the U.S. Fish and Wildlife Service (FWS).

4. A draft Environmental Assessment (EA) was prepared by Commission staff and issued on May 3, 2011. The Montana Historical Society, U.S. Environmental Protection Agency, Forest Service, Reclamation, and Zach Winestine filed comments on the draft EA. Commission staff is issuing a final EA concurrently with this order.

5. The interventions, comments, and recommendations have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

A. Project Area

6. Reclamation's Gibson dam and reservoir is an existing irrigation storage facility on the Sun River in northwestern Montana, approximately 19 miles northwest of Augusta, Montana. Gibson dam is part of Reclamation's Sun River Irrigation Project. Irrigation is the only federally authorized purpose for the dam.

7. Gibson dam is a concrete arch dam that is approximately 960 feet long at the crest. The crest of the dam is at elevation 4,726 feet above mean sea level (msl), with a structural height of 199 feet. The reservoir has a volume of 96,477 acre-feet of water at the normal high water elevation of 4,724 feet msl. The existing outlet works include an intake structure and two 72-inch-diameter steel conduits through the base of the dam, which lead to two 60-inch-diameter jet flow valves with a combined discharge capacity of 3,050 cubic feet per second (cfs).

B. Project Facilities

8. The applicant proposes to construct new penstocks, a powerhouse, a maintenance building, a transmission line, a step-up substation, and other appurtenant facilities. The jet flow valves will be removed from the existing steel conduits installed at the base of the dam. Two new 120-foot-long, 72-inch-diameter steel main penstocks, each with a capacity of 1,525 cfs, will be attached to the conduits. Each main penstock will continue approximately 10 feet from the existing outlet works before the first of two feeder penstocks bifurcates from each of the main penstocks. These 60-foot-long, 54-inch-diameter feeder penstocks will extend from the main penstocks into the new 120-foot-

intervention. 18 C.F.R. § 385.214(a) (2011).

long, 60-foot-wide reinforced concrete and metal powerhouse to provide flow to the 1.5-MW Francis turbines. Sixteen feet past the bifurcation of the first two feeder penstocks, each main penstock bifurcates again, and two 72-foot-long, 72-inch-diameter feeder penstocks extend from the main penstocks into the powerhouse to provide flow to the two 6-MW Francis turbines. The two main penstocks will continue an additional 80 feet through the powerhouse, and extend approximately 14 feet downstream of the powerhouse. The jet flow valves will be reinstalled on the terminal ends of the main penstocks to provide downstream flows when inflow exceeds the powerhouse capacity, flows are less than the 50-cfs minimum hydraulic capacity of the project, or the project is offline.

9. A maintenance building will include living quarters, office facilities, and a secure secondary power plant control room. The proposed project's transmission line will be 26.19 miles long, extending from the powerhouse to the interconnection point at Jackson's Corner, which is described in more detail below. The project will have a new substation 9.28 miles east of the dam. The project will consist of the new generating, transmission, and maintenance facilities only, and will not include the dam or reservoir.

10. The 26.19-mile-long transmission line will consist of three distinct segments beginning at the dam and continuing east to the interconnection point at Jackson's Corner: (1) the 4.57-mile-long, 34.5-kilovolt (kV) Canyon Segment; (2) the 4.71-mile-long, 34.5-kV Plains Segment; and (3) the 16.91-mile-long, 69-kV Plains Segment. The 34.5-kV Canyon Segment will begin at the dam and continues 4.57 miles east to the 34.5-kV Plains Segment, comprising 1.27 miles of buried transmission line and 3.30 miles of above-ground transmission line. All 4.71 miles of the 34.5-kV Plains Segment will be buried from the Canyon Segment to the 34.5-kV/69-kV step-up substation. The above-ground 69-kV Plains Segment will originate at the substation and extend 16.91 miles east to the interconnection point at Jackson's Corner.⁵

C. Project Boundary

11. The project boundary consists of lands necessary for the safe operation and

⁵ To enhance aesthetic resources of the project area, Gibson Hydro proposes to decommission portions of existing 7.2-kV and 12.5-kV distribution lines and poles owned by Sun River Electric Cooperative that are located in the vicinity of the project. Gibson Hydro proposes to either bury the non-project distribution lines together with portions of the project's transmission line or reconstruct the non-project distribution lines on the project's new, larger transmission-line poles. Any agreement to modify or remove non-project distribution lines will need to be addressed by Gibson Hydro and the Sun River Electric Cooperative through an off-license agreement.

maintenance of the project. The project boundary encloses all project features, including: penstocks, powerhouse, maintenance building, transmission line, substation, and all appurtenant facilities. Specifically, the project boundary begins immediately downstream of Gibson dam, and proceeds east approximately 1,350 feet, encompassing the penstocks, powerhouse, a portion of the Sun River, a portion of the transmission line, and part of the existing access road.⁶ The project boundary then turns north for approximately 650 feet, encompassing the maintenance building, existing non-project access roads, and construction staging areas. The project boundary then extends generally east in a 60-foot-wide corridor along the remaining length of transmission line and around the substation.

12. The project boundary will include about 202.5 acres of land, including 68.5 acres of federal lands. Gibson dam is owned by Reclamation. Most of the federal lands (55.6 acres) are associated with the transmission line right-of-way; the remaining 12.9 acres are associated with the generating facilities. Other lands that will be occupied by the transmission line and substation are owned by BLM, the State of Montana, and private land owners.

D. Proposed Project Operation and Environmental Measures

13. The powerhouse is located at the dam and will be operated as run-of-release; therefore, the project will result in no change in the existing flow regime of the Sun River. Power generation will vary according to the amount of water being released for irrigation purposes by Greenfields Irrigation District (Greenfields)⁷ through its formal agreement with Reclamation. Greenfields typically releases 200 cfs to 600 cfs during the non-irrigation season of October through April, and 2,000 cfs to 2,600 cfs during the irrigation season of May through September; however, flows of almost 5,000 cfs have been released during high-water years. The existing dam outlet works have a capacity to release 3,050 cfs, with flow releases in excess of 3,050 cfs made through a drop-inlet spillway located just upstream of the north end of the dam.

14. The project will have a minimum and maximum hydraulic capacity of 50 and 1,500 cfs, respectively. The two feeder penstocks off of each of the main penstocks will provide up to 150 cfs of flow to each of the 1.5-MW turbines, and up to 600 cfs of flow

⁶ The existing access road provides access to the existing Reclamation residence and shop buildings, and is therefore not considered a project facility.

⁷ Greenfields was established on January 1, 1931, to operate and maintain irrigation canals in the Greenfields Division of the Sun River Project in west central Montana. The Sun River Project was authorized by the Secretary of the Interior on February 26, 1906.

to each of the 6-MW turbines. At flows less than the maximum discharge capacity of the turbines, the jet-flow valves will be closed and all flow will be regulated through the turbines. Flows less than the 50-cfs minimum hydraulic capacity of the project, or flows in excess of the 1,500-cfs maximum hydraulic capacity of the project, are passed through the main penstocks to the jet flow valves. Releases in excess of 3,050 cfs, the maximum hydraulic capacity of the Reclamation outlet works, will be made through the Gibson dam spillway.

15. If the powerhouse goes offline, flows will bypass the turbines and will be released directly into the tailrace basin through the jet-flow valves until the powerhouse is brought back online.

16. Gibson Hydro proposes the following measures for the protection and enhancement of environmental resources: (1) operate the project run-of-release; (2) schedule project construction activities to minimize conflicts with wildlife, recreation use, and other access; (3) implement its proposed Erosion and Sediment Control Plan; (4) develop and implement a Stormwater Pollution Prevention Plan; a Spill Prevention, Control, and Countermeasures Plan; and a Blasting Plan; (5) implement its proposed Construction Water Quality Monitoring Plan; (6) implement its proposed Post-Construction Water Quality Monitoring Plan; (7) conduct field surveys to locate and avoid wetlands and sensitive plant species during construction activities; (8) implement its proposed Noxious Weed Control Plan; (9) implement its proposed Avian Protection Plan; (10) implement its proposed Bear Safety Plan; (11) implement its proposed Recreation During Construction Plan; (12) develop and implement a Fire Control Plan; (13) develop and implement a Traffic Control Plan; (14) implement the Historic Properties Management Plan (HPMP); and (15) implement transmission-line visual resources measures.

SUMMARY OF LICENSE REQUIREMENTS

17. As summarized below, this license, which authorizes 15 MW of renewable energy, requires a number of measures to protect and enhance water quality, fish, wildlife, recreation, cultural, and aesthetic resources at the project.

18. To protect fish and aquatic habitat in the Sun River, the license requires Gibson Hydro to implement a Sediment and Erosion Control Plan, and pre and post-construction water quality monitoring programs to ensure that project effects on sedimentation and water quality are minimized.

19. To protect vegetation and wildlife resources, the license requires Gibson Hydro to implement a Noxious Weed Control Plan; Bear Safety Plan; Wetland Protection Plan; Avian Protection Plan; Transmission Line Management Plan; and Threatened and Endangered, Proposed for Listing, and Sensitive Species Plan.

20. To protect and enhance recreational resources, including access to the Lewis and Clark National Forest and Bob Marshall Wilderness Area, the license requires Gibson Hydro to implement a Traffic Control Plan, and a Recreation During Construction Plan, and construct and maintain interpretive displays to educate the public about the power and environmental benefits of the project.
21. To protect the regionally important viewsheds of the Sun River Canyon and Rocky Mountain Front, the license requires Gibson Hydro to bury portions of the transmission line and implement other measures to protect visual resources along the 26.19-mile-long transmission line route.
22. To protect cultural resources within the project boundary, the license requires Gibson Hydro to implement the Programmatic Agreement (PA) and the associated Historic Properties Management Plan (HPMP) between the Commission and the State of Montana, State Historic Preservation Officer (Montana SHPO) executed on July 28, 2011.

WATER QUALITY CERTIFICATION

23. Under section 401(a)(1) of the CWA,⁸ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.⁹
24. On September 17, 2009, Gibson Hydro applied to the Montana Department of Environmental Quality (Montana DEQ) for water quality certification for the Gibson Dam Project, which Montana DEQ received on the same day. On December 4, 2009, Montana DEQ issued certification for the Gibson Dam Project that includes nine conditions, which are set forth in Appendix A of this order and incorporated into the license by Ordering Paragraph (D). The certification includes requirements for monitoring water quality during construction and initial project operations; implementing a dissolved oxygen enhancement program, monitoring dissolved oxygen levels and reporting the monitoring results, and conducting additional monitoring if necessary based on the monitoring results; notifying the agencies of activities that result in or may result

⁸ 33 U.S.C. § 1341(a)(1) (2006).

⁹ 33 U.S.C. § 1341(d) (2006).

in a discharge of pollutants to state waters; and allowing Montana DEQ reasonable access to the project and project records. The certification also requires Gibson Hydro to obtain all necessary permits and approvals prior to beginning any activities that could violate state water quality standards, and reserves authority to Montana DEQ to modify the conditions in the event that the project violates state water quality standards.

SECTION 4(e) FINDINGS AND CONDITIONS

25. Section 4(e) of the FPA¹⁰ provides that the Commission can issue a license for a project located within any reservation only if it finds that the license will not interfere or be inconsistent with the purpose for which the reservation was created or acquired.

26. Commission staff has reviewed the Organic Administration Act of 1897,¹¹ which established the purposes for forest reservations, and the presidential proclamations that created the Lewis and Clark National Forest.¹² There is no evidence or allegation in this proceeding to indicate that licensing of the Gibson Dam Project would interfere with the purposes of the Lewis and Clark National Forest within which the project is located. Therefore, I find that the license, as conditioned, will not interfere or be inconsistent with the purposes for which the Lewis and Clark National Forest was created.

27. FPA section 4(e) further requires that Commission licenses for projects located within federal reservations must include all conditions that the Secretary of the department, under whose supervision the reservation falls, shall deem necessary for the adequate protection and utilization of such reservation. As stated above, a portion of the Gibson Dam Project is located in the Lewis and Clark National Forest, under the supervision of the Forest Service and Reclamation,¹³ and a portion of the transmission

¹⁰ 16 U.S.C. § 797(e) (2006).

¹¹ 16 U.S.C. § 473 *et seq.* (2006).

¹² The Lewis and Clark National Forest was established by Presidential Proclamation on February 22, 1897 (29 U.S. Stats. at Large 907) and was expanded twice by Presidential Proclamation; first on June 9, 1903 (33 U.S. Stats. at Large 2311) and then again on March 2, 1907 (34 U.S. Stats. at Large 3304). The Organic Administration Act of 1897, 16 U.S.C. § 475 (2006), stipulated that all national forest lands are established and administered only for watershed protection and timber protection.

¹³ Reclamation states that the lands around its Gibson dam and reservoir are subject to shared administrative supervision by both Reclamation and the Forest Service. Reclamation's Gibson dam and reservoir is part of Reclamation's Sun River Project. The Sun River Project was authorized in 1906, in accordance with the Act of June 17, 1902,

(continued...)

line corridor is located on lands owned by BLM.¹⁴ Within the Lewis and Clark National Forest, Reclamation claims primary administration over the areas actually occupied by its structures and works and the areas required to administer, maintain, operate and protect those structures and works.

28. The Commission and Reclamation entered into a memorandum of understanding (MOU)¹⁵ that defines the coordination between the agencies in instances when a Commission-licensed project is developed at a Reclamation facility. On July 16, 2010, Reclamation filed its final section 4(e) conditions that accomplish the same objectives as the provisions of the MOU. Reclamation's 4(e) conditions are set forth in Appendix B to this order and are incorporated into this license by Ordering Paragraph (E).

29. Reclamation's final section 4(e) conditions include eleven conditions that require Gibson Hydro to: (1) establish procedures and responsibilities for coordination with Reclamation; (2) enter into a construction, operation, and maintenance agreement with Reclamation;¹⁶ (3) consult with and obtain Reclamation approval of the design of project features that could affect the structural integrity or operation of federal facilities or the federal reservation; (4) implement measures for identifying, responding to, and reporting conditions that could compromise the structural integrity and purposes of federal

43 U.S.C. § 391 (2006). The Sun River Project was constructed between 1907 and 1929, and consists of five dams and dikes, three storage reservoirs, 131 miles of canals, and 562 miles of laterals.

¹⁴ BLM did not provide FPA section 4(e) terms and conditions.

¹⁵ The "Memorandum of Understanding Between the Federal Energy Regulatory Commission of the Department of Energy and the Water and Power Resources Service [renamed Bureau of Reclamation] of the Department of the Interior for Joint Participation in Non-federal Hydropower Development in the Approval of Plans and Drawings, Project Access, Power Lease Charge and Use of Lands Administered by the Water and Power Resources Service" was executed on June 22, 1981.

¹⁶ The conditions also call for the licensee and Reclamation to agree on the costs that the licensee must pay to Reclamation for "Reclamation's work activities on the Project" and "reimbursement of all Reclamation costs with the work performed in the pre-construction, construction, operation, and maintenance phases of the Project, including the construction, operation, and maintenance agreement's administration." Any such reimbursement agreements under the license must comply with the requirements of sections 10(e)(1) and (2) and section 17 of the FPA.

facilities or the federal reservation; (5) revegetate all newly disturbed land areas; (6) release the United States from claims against it by Gibson Hydro; (7) recognize the primary right of any Reclamation project activity or the fulfillment of Indian water rights associated with the Reclamation project over Gibson Hydro's activities; (8) recognize that the Commission's Regional Engineer cannot authorize advance construction of any project works until receipt of Reclamation's written approval of plans and specifications; (9) obtain Reclamation review and approval of final plans and contractor-designed cofferdams, blasting, and deep excavations prior to the start of construction; (10) recognize that the timing, quantity, and location of water releases will be at the sole discretion of Reclamation; and (11) utilize Reclamation lands only for the purposes authorized by the license.

30. The Forest Service filed its final section 4(e) conditions on July 23, 2010. The final terms and conditions are set forth in Appendix C to this order and incorporated into this license by Ordering Paragraph (F). The Forest Service's final 4(e) conditions include 22 conditions that require Gibson Hydro to: (1) obtain a special-use authorization; (2) meet certain conditions prior to surrendering or transferring the license; (3) obtain Forest Service approval of final design plans for project components that it deems as affecting or potentially affecting national forest resources; (4) obtain Forest Service approval of modifications to constructed project facilities, operations, or approved exhibits filed with the Commission; (5) annually consult with the Forest Service on measures necessary to protect environmental resources; (6) reserve authority to the Forest Service to modify its 4(e) conditions; (7) maintain project features to standards acceptable to the Forest Service; (8) file with the Commission a Forest Service-approved Safety During Construction Plan; (9) indemnify the United States for actions of Gibson Hydro related to its authorized use and occupancy of national forest system lands; (10) reserve authority to the Forest Service to utilize national forest system lands for any purpose; (11) file with the Commission a Forest Service-approved Invasive Plant and Noxious Weed Management Plan; (12) file with the Commission a Forest Service-approved Threatened, Endangered, Proposed for Listing, and Sensitive Species Plan; (13) file with the Commission a Forest Service-approved Erosion Control Measures Plan; (14) file with the Commission a Forest Service-approved Public Safety Plan; (15) file with the Commission a Forest Service-approved Hazardous Substances Plan; (16) file with the Commission a Forest Service-approved Recreation Plan; (17) file with the Commission a Forest Service-approved Interpretive Display Plan; (18) consult with the Forest Service, obtain approval prior to erecting signs on national forest system lands, and maintain all licensee-erected signs on national forest service lands; (19) provide unrestricted use by the United States of any road constructed within the project area; (20) limit project vehicle use to roads or designated access routes; (21) develop a Transmission Line Management Plan; and (22) implement the Historic Properties Management Plan.

31. Forest Service condition 11 requires Gibson Hydro to develop an Invasive Plant and Noxious Weed Management Plan for Forest Service approval within six months of

license issuance. Gibson Hydro filed a Noxious Weed Control Plan with its final license application on August 28, 2009. Gibson Hydro's plan includes measures for preventing the spread and proliferation of noxious weeds (identifying, mapping, and flagging weed populations; treating or containing weed populations that may be disturbed by construction; obtaining certification that materials are weed-free prior to use onsite; training construction workers; cleaning equipment; draining water from containers associated with floating or submersible equipment), which Commission staff recommended in the final EA and found to be generally consistent with the plan contemplated by Forest Service condition 11;¹⁷ however, the Forest Service has not approved the plan. Article 402 requires Gibson Hydro to include additional provisions in the plan for herbicide application restrictions as recommended by staff in the final EA,¹⁸ and obtain Forest Service approval of the plan and refile it with the Commission for final approval prior to implementation.

32. Forest Service condition 13 requires Gibson Hydro to develop an Erosion Control Measures Plan that has been approved by the Forest Service at least 90 days prior to the start of any construction activities. The Forest Service requires the Erosion Control Measures Plan to include measures to control erosion, stream sedimentation, dust, and soil mass movement. Gibson Hydro filed a Sediment and Erosion Control Plan with its license application on August 28, 2009, which substantially addresses the required measures of the Erosion Control Measures Plan. Gibson Hydro's plan is an umbrella plan that includes a comprehensive set of measures and best management practices for preventing soil erosion, sedimentation, dust, and slope instability impacts during project construction activities; the plan also includes provisions for preparing three other plans after the design of the project is finalized: Storm Water Pollution Prevention Plan; Spill, Prevention, Control and Countermeasures Plan; and a Blasting Plan. However, the Sediment and Erosion Control Plan did not include a provision to file these plans for Commission approval. In the final EA,¹⁹ staff recommended implementation of Gibson Hydro's Sediment and Erosion Control Plan with the additional requirement that the three plans be filed for Commission approval prior to implementation. Staff also recommended that any future modifications to the Sediment and Erosion Control Plan only be implemented after obtaining prior Commission approval. Article 302 requires Gibson Hydro to modify its Sediment and Erosion Control Plan to obtain Commission approval of the individual plan components (Spill, Prevention, Control and Countermeasures Plan; Storm Water Pollution Prevention Plan; and Blasting Plan),

¹⁷ See final EA at 118.

¹⁸ See final EA at 118 and 119.

¹⁹ See final EA at 119.

including requirements for agency consultation, before refileing the entire Forest Service-approved plan with the Commission for final approval no less than 90 days prior to commencement of construction.

33. Forest Service condition 17 requires Gibson Hydro to develop and implement an Interpretive Display Plan that provides for three interpretive displays, one each at: Gibson Overlook, the viewing turnaround below Gibson dam, and near the Sun River diversion dam at the mouth of the Sun River Canyon. Condition 17 also stipulates that Gibson Hydro enhance and maintain additional interpretive displays at unspecified locations. In the final EA,²⁰ staff recommended that the plan be developed and implemented with provisions for interpretive displays at the three specific locations identified in condition 17. Staff also recommended that the plan include additional provisions for filing a schedule, site drawings, specifications, interpretive display contents, and maps showing the location of the interpretive displays in relation to the project boundary.²¹ However, staff did not recommend that Gibson Hydro develop additional interpretive displays at unspecified locations.²² Nevertheless, the additional interpretive displays are mandatory under section 4(e) of the FPA and thus are included in the license. Article 412 requires Gibson Hydro to include the additional staff-recommended items in the Interpretive Display Plan.

34. Forest Service condition 21 requires Gibson Hydro to develop and implement a Transmission Line Management Plan. Condition 21 requires that the plan include a map of the final transmission-line alignment with identification of above and below-ground sections and access points and roads, and additional requirements for protecting visual resources, managing vegetation, and protecting wildlife during transmission line operation and maintenance. In the final EA, staff recommended that Gibson Hydro develop the plan²³ but also recommended that Gibson Hydro identify the location of all proposed gates on the transmission-line access roads that would be used to control unauthorized access to the transmission line right-of-way and thus help prevent the spread of noxious weeds that could degrade wildlife habitat.²⁴ Article 406 requires the licensee to incorporate this provision into the Transmission Line Management Plan.

²⁰ See final EA at 120.

²¹ See final EA at 120.

²² See final EA at 123.

²³ See final EA at 120 and 121.

²⁴ See final EA at 120 and 121.

35. While staff agreed with most of the remaining Forest Service conditions, the portion of condition 16 that requires Gibson Hydro to implement additional unidentified recreation measures was not recommended by staff in the final EA because it includes approval of as-yet unidentified and uncertain future potential measures.²⁵ However, condition 16 is included in this license because it is mandatory under section 4(e) of the FPA.

SECTION 18 FISHWAY PRESCRIPTIONS

36. Section 18 of the FPA²⁶ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of Commerce or of the Interior, as appropriate.

37. No fishway prescriptions or requests for reservations of authority were filed under section 18 of the FPA.

THREATENED AND ENDANGERED SPECIES

38. Section 7(a)(2) of the Endangered Species Act (ESA) of 1973²⁷ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed, threatened, and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

39. In its August 5, 2010 filing, FWS identified the threatened bull trout, grizzly bear, Canada lynx, and endangered black-footed ferret as species that may occur in the project vicinity. Critical habitat has been designated for bull trout and Canada lynx; however, no designated critical habitat for either species occurs within the project area. Grizzly bear have been documented in the project area year-round; however, bull trout, Canada lynx, and black-footed ferret have not been documented in the project area.

40. Commission staff determined in the draft EA²⁸ that licensing the project under the staff alternative with mandatory conditions would have no effect on the bull trout, Canada lynx, or black-footed ferret because bull trout do not occur east of the continental divide in the Missouri drainage, and the project area does not provide suitable habitat for

²⁵ See final EA at 123 and 124.

²⁶ 16 U.S.C. § 811 (2006).

²⁷ 16 U.S.C. § 1536(a) (2006).

²⁸ See draft EA at 6 and 7.

Canada lynx or black-footed ferret.²⁹ In the draft EA,³⁰ Commission staff also determined that licensing the project with staff's recommended measures and mandatory conditions would not likely adversely affect the grizzly bear. Staff's determination was based in part on the implementation of Gibson Hydro's Bear Safety Plan to minimize human interaction with grizzly bears during construction. FWS concurred with staff's finding by letter filed June 20, 2011. Article 410 requires Gibson Hydro to implement its proposed Bear Safety Plan, and includes a reporting requirement to enable the Commission to ensure compliance with the plan.

NATIONAL HISTORIC PRESERVATION ACT

41. Under section 106 of the National Historic Preservation Act (NHPA)³¹ and its implementing regulations,³² federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State SHPO to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

42. To satisfy these responsibilities, the Commission executed a Programmatic Agreement (PA) with the Montana SHPO and invited the licensee, BLM, Reclamation, Forest Service, Blackfeet Nation, and Confederated Salish & Kootenai Tribes to concur with the stipulations of the PA. Gibson Hydro, the Forest Service, BLM, and Reclamation concurred. The PA requires the licensee to implement an HPMP for the term of any original license issued for this project. Execution of the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 413 requires the licensee to implement the PA and HPMP.

²⁹ See draft EA at 6 and 7.

³⁰ See draft EA at 6 and 7.

³¹ 16 U.S.C. § 470 et seq. (2006).

³² 36 C.F.R. Part 800 (2011).

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA

43. Section 10(j)(1) of the FPA³³ requires the Commission, when issuing a license, to include conditions based on recommendations by federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,³⁴ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project.

44. In response to the May 26, 2010 public notice that the project was ready for environmental analysis, the FWS filed one recommendation pursuant to section 10(j), which is within the scope of section 10(j).³⁵ FWS recommends that Gibson Hydro develop an Avian Protection Plan prior to the construction of any transmission-related facilities. Gibson Hydro filed an Avian Protection Plan with its final license application that is consistent with avian protection guidelines issued by the Edison Electric Institute and the FWS. Staff recommended the proposed plan in the final EA,³⁶ but also recommended additional requirements for Gibson Hydro to notify Montana DFWP within 24 hours of discovering an avian nest on any project transmission-line facilities. Gibson Hydro also intends to update the plan during the final design of the transmission line; therefore, approval of the plan is premature. Article 408 requires Gibson Hydro to file a revised final plan that includes staff's recommended notification procedures, and provisions to file detailed design drawings after final design and prior to construction. Article 408 also requires Gibson Hydro to file as-built drawings to document transmission-line construction in accordance with the plan.

SECTION 10(a)(1) OF THE FPA

45. Section 10(a)(1) of the FPA³⁷ requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the

³³ 16 U.S.C. § 803(j)(1) (2006).

³⁴ 16 U.S.C. §§ 661 et seq. (2006).

³⁵ FWS filed its recommendation on July 16, 2010.

³⁶ See final EA at 121 and 122.

³⁷ 16 U.S.C. § 803(a)(1) (2006).

adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

A. Recreation During Construction Plan

46. Project construction activities have the potential to affect recreational use and access to recreation facilities in the project area. To minimize the effects of project construction on recreation resources, Gibson Hydro developed a Recreation During Construction Plan. In the final EA,³⁸ Commission staff recommended all of Gibson Hydro's proposed measures included in the plan. Article 411 approves the plan and includes a reporting requirement to enable the Commission to ensure compliance with the requirements of the plan.

B. Traffic Control Plan

47. Construction of project facilities, including the project transmission line, will cause temporary lane closures along Forest Development Road 108-Sun Canyon Road, which is the primary access route to the Lewis & Clark National Forest, Gibson dam, the Sun River Canyon, and Bob Marshall Wilderness in the vicinity of the project. These temporary lane closures will cause minor, short-term traffic delays. To minimize the effects of project construction on traffic use along Forest Development Road 108-Sun Canyon Road, Gibson Hydro proposed to develop a Traffic Control Plan. In the final EA,³⁹ Commission staff recommended a Traffic Control Plan to minimize delays, hazards from wide loads, and construction equipment effects on recreation and other public use along Forest Development Road 108-Sun Canyon Road. Consistent with staff's recommendation, Article 403 requires Gibson Hydro to develop and implement a Traffic Control Plan.

C. Fire Control Plan

48. Gibson Hydro included a provision in its Recreation During Construction Plan for developing a Fire Control Plan. In the final EA,⁴⁰ staff concluded that having clearly defined measures for fighting fires, identifying the location of essential equipment, and identifying emergency notification procedures would minimize the potential for fire

³⁸ See final EA at 117.

³⁹ See final EA at 117.

⁴⁰ See final EA at 117.

damage in the project area. Therefore, Article 404 requires the licensee to develop and implement a Fire Control Plan.

D. Visual Resources Design

49. Project construction and operation will affect visual resources of the project area, including the regionally important Sun River Canyon and Rocky Mountain Front viewsheds. To address project effects on visual resources, Gibson Hydro proposes to implement the visual resources protective measures specified in its Visual Resources Field Survey and Design Recommendations Report,⁴¹ as modified by Alternative A of its March 24, 2010, additional information response filing.

50. In the final EA,⁴² staff concluded that implementation of Gibson Hydro's proposed visual resource protective measures for project facilities would avoid or minimize short-term and long-term effects on the visual resources of the project area. Article 405 approves the licensees' proposed visual resources measures, to the extent that they address the Gibson Dam Project facilities,⁴³ and includes a reporting requirement to enable the Commission to ensure compliance with these proposed measures.

E. Minimizing Disturbance to Wildlife

51. Gibson Hydro proposes to schedule transmission-line construction activities to minimize disturbance to elk migration, bighorn sheep lambing, grizzly bear foraging, and sharp-tailed grouse courtship and mating. Gibson Hydro also proposes to limit the footprint of its construction activities to minimize adverse effects on these resources. Staff recommended these measures in the final EA.⁴⁴ Article 407 requires Gibson Hydro to implement the proposed measures and file a report that documents completion of the wildlife protection measures.

F. Wetland Survey and Protection

⁴¹ See Volume 3, Exhibit 10, of the final license application.

⁴² See final EA at 117.

⁴³ Any proposed measures for non-project facilities (e.g., modification or decommissioning of non-project distribution lines owned by Sun River Electric Cooperative or other entities) are not required under Article 405.

⁴⁴ See final EA at 116.

52. Gibson Hydro proposes to conduct a field survey, after final design and prior to construction, to locate and avoid wetlands during transmission line construction. Staff recommended these wetland protection measures in the final EA.⁴⁵ Article 409 requires Gibson Hydro to complete the wetland survey and implement measures to avoid, minimize, or mitigate project effects to identified wetlands during project construction activities, and file a report that documents compliance with the wetland protection measures.

ADMINISTRATIVE PROVISIONS

A. Annual Charges

53. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA and use and occupancy of U.S. lands.

B. Exhibit F and G Drawings

54. The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of these drawings. The exhibit G maps and exhibit F drawings F-3, F-4, F-5, and F-6 are approved.

55. Exhibit F drawings F-1 and F-2, F-8, F-9, and F-10 do not reflect the final transmission line as identified in the exhibit G maps filed with the Commission on May 27, 2010, and approved in Ordering paragraph C. Therefore, these exhibit F drawings are not approved. Article 203 requires Gibson Hydro to file revised exhibit F drawings to include the updated transmission line and transmission line components pursuant to sections 4.39 and 4.41 of the Commission's regulations. Exhibit F drawing F-7 is a single-line drawing of the electrical facilities, and is not approved as an exhibit F drawing.

56. The licensee will need to ensure that all exhibit F and exhibit G maps and drawings comply with the specifications given in Article 202 and all requirements listed in sections 4.39 and 4.41 of the Commission's regulations. Specifically, all exhibits should be filed with the Commission in black and white. In addition to modifying the exhibit F drawings to reflect the approved transmission line proposal, the exhibit F drawings F-8, F-9, and F-10 should be renumbered to reflect the removal of drawing F-7 from the approved exhibit F drawings.

C. Amortization Reserve

⁴⁵ See final EA at 117.

57. The Commission requires that for original licenses for major projects, non-municipal licensees must set up and maintain an amortization reserve account after the first 20 years of operation of the project under license. Article 204 requires the establishment of the account.

D. Headwater Benefits

58. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 205 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

E. Project Land Rights Progress Report

59. The project will occupy 202.5 acres of land. The exhibit G-7 filed as part of the application for license identifies land ownership of all lands within the project boundary. Standard Article 5 set forth in L-Form 2 requires the licensee to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project, within five years. In order to monitor compliance with Article 5, Article 206 requires the licensee to file, no later than four years after license issuance, a report detailing its progress on acquiring title in fee or the necessary rights to all lands within the project boundary. The report shall include specific documentation on the status of the rights that have been acquired as of the filing date of the progress report, and a plan and schedule to acquire all remaining land prior to the five-year deadline.

F. Project Financing

60. To ensure that there are sufficient funds available for project construction, operation, and maintenance, Article 207 requires Gibson Hydro to file for Commission approval a project financing plan for the construction, operation, and maintenance of the project at least 90 days before starting any ground-disturbing activities that are associated with the project.

G. Use and Occupancy of Project Lands and Waters

61. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project lands would be unduly burdensome. Therefore, Article 414 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

H. Project Construction

62. Article 301 requires the licensee to begin construction of the project works within two years from the issuance date of the license and to complete construction of the project within five years of the issuance date of the license.

I. Review of Final Plans and Specifications

63. Article 302 requires the licensee to provide the Commission's Division of Dam Safety and Inspection Portland Regional Office (D2SI-PRO) with final contract drawings and specifications—together with a Quality Control and Inspection Program, a Temporary Construction Emergency Action Plan, and a revised Soil Erosion and Sediment Control Plan.

64. Article 303 requires the licensee to provide the Commission's D2SI-PRO with cofferdam and deep excavation design drawings.

65. Where new construction or modifications to the project are involved, the Commission requires licensees to file revised drawings of project features as-built. Article 304 provides for the filing of these drawings.

66. Article 305 requires the licensee to file with the Commission's D2SI-PRO a plan and schedule of any proposed modifications to the water retaining and/or conveyance features of the project resulting from the environmental requirements of the license to insure that these modifications do not adversely affect the project works, dam safety, or project operation.

67. To demonstrate awareness of the roles and responsibilities of project owners and dam safety staff with regard to project safety, Article 306 requires the licensee to submit a Project Owner's Dam Safety Program to the Commission's D2SI-PRO.

J. Commission Approval of Resource Plans, Reports, and Filing of Amendments

68. Montana DEQ's water quality certification (Appendix A) requires Gibson Hydro to implement plans that may specify changes to the project as licensed, do not require Gibson Hydro to file such plans with the Commission for approval, or do not require Gibson Hydro to file some reports with the Commission that are needed to demonstrate compliance with the license requirements. Therefore, Article 401 requires the licensee to file the plans with the Commission for approval, file the reports with the Commission, and file amendment applications, as appropriate.

69. Reclamation requires, as a component of the construction, operation, and maintenance agreement in Article 2 (Appendix B), that Gibson Hydro establish a construction bond or irrevocable letter of credit; however, there is no provision for Gibson Hydro to file evidence of the bond or a copy of the letter with the Commission.

Therefore, Article 401 also requires the licensee to file such documentation with the Commission.

STATE AND FEDERAL COMPREHENSIVE PLANS

70. Section 10(a)(2)(A) of the FPA⁴⁶ requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.⁴⁷ Under section 10(a)(2)(A), federal and state agencies filed 37 comprehensive plans that address various resources in Montana. Of these, staff identified and reviewed 14 comprehensive plans⁴⁸ that are relevant to this project. No conflicts were found.

CONSERVATION EFFORTS

71. Sections 10(a)(2)(C) of the FPA⁴⁹ requires the Commission to consider the electricity consumption improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities. Gibson Hydro will sell the project's power to a local power provider using the project transmission line and existing lines owned by the Sun River Electric Cooperative, Inc.

72. Staff concludes that, given the limits of its ability to influence users of the electricity generated by the project, Gibson Hydro will comply with section 10(a)(2)(C) of the FPA.

SAFE MANAGEMENT, OPERATION, AND MAINTENANCE OF THE PROJECT

73. Staff reviewed Gibson Hydro's preliminary plans to build the project as described in the license application. The project will be safe when constructed, operated, and maintained in accordance with the Commission's standards and provisions of this license.

NEED FOR POWER

⁴⁶ 16 U.S.C. § 803(a)(2)(A) (2006).

⁴⁷ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2011).

⁴⁸ The list of applicable plans can be found in section 5.5 of the final EA.

⁴⁹ 16 U.S.C. § 803(a)(2)(C) (2006).

74. To assess the need for power, staff looked at the needs in the operating region in which the project is located. Project power will be used to meet regional electrical demand. The project will be located in the Western Electricity Coordinating Council region of the North American Electric Reliability Council (NERC). According to NERC, summer peak demand in the region is expected to increase at an average rate of 1.4 percent per year over the 10-year planning period from 2010-2019.⁵⁰ The project's power and contribution to the region's diversified generation mix will help meet a need for power in the region.

PROJECT ECONOMICS

75. In determining whether to issue an original license for a hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,⁵¹ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

76. In applying this analysis to the Gibson Dam Project, staff considered two options: Gibson Hydro's proposal and the project as licensed herein. As proposed by Gibson Hydro, the levelized annual cost of operating the project is \$3,600,330 or \$90.01/MWh. The proposed project would generate an estimated average of 40,000 MWh of energy annually. When staff multiplies its estimate of average annual generation by the alternative power cost of \$41.58/MWh,⁵² staff get a total value of the project's power of \$1,663,200 in 2010 dollars. To determine whether the project is currently economically beneficial, staff subtracted the project costs from the value of the project's power.⁵³ Therefore, in the first year of operation, the project would cost \$1,937,130 or

⁵⁰ North American Reliability Corporation. October 2010. 2010 Long Term Reliability Assessment.

⁵¹ 72 FERC ¶ 61,027 (1995).

⁵² The alternative power cost of \$41.58/MWh is based on information from the Energy Information Administration's Annual Energy Outlook for 2010.

⁵³ Details of staff's economic analysis for the project as licensed herein and for various alternatives are included in the final EA issued concurrently with this license.

\$48.43/MWh, more than the likely alternative cost of power.

77. As licensed herein with the mandatory conditions and staff measures, the levelized annual cost of operating the project would be about \$3,585,220, or \$89.63/MWh. Based on an estimated average generation of 40,000 MWh as licensed, the project would produce power valued at \$1,663,200 when multiplied by the \$41.58/MWh value of the project's power. Therefore, in the first year of operation, project power would cost \$1,922,020, or \$48.05/MWh, more than the likely cost of alternative power

78. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include their ability to help maintain the stability of a power system, such as quickly adjusting power output to respond to rapid changes in system load, and to respond rapidly to a major utility system or regional blackout by providing a source of power to help restart fossil-fuel based generating stations and put them back on line.

79. Although our analysis shows that the project as licensed herein would cost more to operate than our estimated cost of alternative power, it is the applicant who must decide whether to accept this license and any financial risk that entails.

80. Although staff does not explicitly account for the effects inflation may have on the future cost of electricity, the fact that hydropower generation is relatively insensitive to inflation compared to fossil-fuel generators is an important economic consideration for power producers and the consumers they serve. This is one reason project economics is only one of the many public interest factors the Commission considers in determining whether or not, and under what conditions, to issue a license.

COMPREHENSIVE DEVELOPMENT

81. Sections 4(e) and 10(a)(1) of the FPA⁵⁴ require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

82. The EA for the project contains background information, analysis of effects, and

⁵⁴ 16 U.S.C. §§ 797(e) and 803(a)(1) (2006).

support for related license articles. I conclude based on the record of this proceeding, including the EA and the comments thereon, that licensing the Gibson Dam Project as described in this order would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if operated and maintained in accordance with the requirements of this license.

83. Based on staff's independent review and evaluation of the Gibson Dam Project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, I have selected the proposed Gibson Dam Project, with staff-recommended measures and mandatory conditions, and find that it is best adapted to a comprehensive plan for improving or developing the Sun River.

84. I selected this alternative because: (1) issuance of an original license will serve to provide a beneficial and dependable source of electric energy; (2) the required environmental measures will protect and enhance fish and wildlife resources, water quality, recreational and aesthetic resources, and historic properties; and (3) the 15 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

LICENSE TERM

85. Section 15(e) of the FPA,⁵⁵ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's policy with regard to original licenses for unconstructed projects is for the licensee to receive a 50-year license for projects, like the one here, located at federal dams.⁵⁶ Therefore, a 50-year license term is appropriate.

The Director orders:

(A) This license is issued to Gibson Dam Hydroelectric Company, LLC (licensee), for a period of 50 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Gibson Dam Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

⁵⁵ 16 U.S.C. § 808(e) (2006).

⁵⁶ *See City of Danville, Virginia*, 58 FERC ¶ 61,318 at 62,020 (1992).

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, enclosed by the project boundary shown by exhibit G filed May 21, 2010:

<u>Exhibit G Drawing</u>	<u>FERC No. 12478-</u>	<u>Description</u>
Sheet G-1	5	Transmission Line Project Boundary – Location and Key Map
Sheet G-2	6	Powerhouse and Maintenance Building Area Boundary
Sheet G-3	7	Transmission Line Project Boundary – Reach 1
Sheet G-4	8	Transmission Line Project Boundary – Reach 2 and 3
Sheet G-5	9	Transmission Line Project Boundary – Reach 4 and 5
Sheet G-6	10	Transmission Line Project Boundary – Reach 6 and 7
Sheet G-7	11	Property Ownership Map

(2) Project works consisting of: (a) two 120-foot-long, 72-inch-diameter steel penstocks extending from the existing dam outlet works, each with a capacity of 1,525 cubic feet per second (cfs); (b) a 120-foot-long, 60-foot-wide reinforced concrete and metal powerhouse, containing two 1.5-MW and two 6-MW Francis-type turbine/generators with a total installed capacity of 15 MW; (c) two approximately 60-foot-long, 54-inch-diameter penstocks, one bifurcating off each of the main penstocks to provide flows to the 1.5-MW turbines; (d) two approximately 72-foot-long, 72-inch diameter penstocks, one bifurcating off of each of the main penstocks to provide flows to the two 6-MW turbines; (e) a proposed maintenance building, including living quarters, office facilities, and a secure secondary power plant control room; (f) a 26.19-mile-long transmission line extending from the powerhouse to the interconnection point at Jackson's Corner, consisting of: (i) the 4.57-mile-long, 34.5-kV Canyon Segment, consisting of 1.27 miles of below-ground transmission line and 3.30 miles of above-ground transmission line; (ii) the 4.71-mile-long, 34.5-kV Plains Segment, installed below-ground; and (iii) the 16.91-mile-long, 69-kV Plains Segment, installed above-ground; (g) a new substation located 9.28 miles east of the dam between the 34.5-kV Plains Segment and the 69-kV Plains Segment; and (h) appurtenant facilities.

The project works generally described above are more specifically shown and described by those parts of exhibits A and F shown below:

Exhibit A: The following sections of exhibit A filed on August 28, 2009, and amended on May 21, 2010:

Pages 2 to 9, entitled “Description of the Project”.

Exhibit F: The following sections of exhibit F filed on August 28, 2009:

<u>Exhibit F Drawing</u>	<u>FERC No. 12478-</u>	<u>Description</u>
Sheet F-3	1	Powerhouse Plan
Sheet F-4	2	Powerhouse Section Thru Penstocks, Draft Tubes, and Tailrace
Sheet F-5	3	Powerhouse Section Thru Turbines and Generators
Sheet F-6	4	Coffer Dam, Water Bypass and De-watering Plan

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, and all riparian and other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The exhibits A, F, and G described above are approved and made part of this license. The exhibit F drawings F-1, F-2, F-8, F-9, and F-10 that show a transmission line proposal not approved as part of this license, are not approved.

(D) This license is subject to the conditions submitted by the Montana Department of Environmental Quality under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1) (2006), as those conditions are set forth in Appendix A to this order.

(E) This license is subject to the conditions submitted by the U.S. Bureau of Reclamation under section 4(e) of the FPA, as those conditions are set forth in Appendix B to this order.

(F) This license is subject to the conditions submitted by the U.S. Forest Service under section 4(e) of the FPA, as those conditions are set forth in Appendix C to this order.

(G) This license is also subject to the articles set forth in Form L-2 (Oct. 1975), entitled “Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States” (see 54 F.P.C. 1799 et seq.), as reproduced at the end of this order, and the following additional articles:

Article 201. Administrative Annual Charges. The licensee shall pay the United States annual charges, effective as of the date of commencement of project construction, and as determined in accordance with the provisions of the Commission's regulations in effect from time to time for the purposes of:

(1) reimbursing the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 15 megawatts;

(2) recompensing the United States for the use, occupancy and enjoyment of 12.9 acres of its lands (other than for transmission line right-of-way);

(3) recompensing the United States for the use, occupancy and enjoyment of 55.6 acres of its lands for transmission line right-of-way; and

(4) recompensing the United States for the utilization of surplus water or water power from a government dam.

Article 202. Approved Exhibit Drawings. Within 45 days of the date of issuance of the license, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

(a) Four sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" x 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., **P-12478-1** through **P-12478-11**) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards along with form FERC-587 shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. The remaining set of aperture cards (Exhibit G only) and a copy of Form FERC-587 shall be filed with the Bureau of Land Management office at the following address:

Bureau of Land Management
Branch of Land Resources (MT-932)
5001 Southgate Drive
Billings, MT 59101-4669

(b) The licensee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional

Office. Exhibit F drawings must be segregated from other project exhibits and identified as Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. §388.113(c) (2011). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [**P-12478-1**, G-1, Transmission Line Project Boundary, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4
RESOLUTION – 300 dpi desired, (200 dpi min)
DRAWING SIZE FORMAT – 24” x 36” (min), 28” x 40” (max)
FILE SIZE – less than 1 MB desired

Each Exhibit G that includes the project boundary must contain a minimum of three known reference points (i.e., latitude and longitude coordinates, or state plane coordinates). The points must be arranged in a triangular format for GIS geo-referencing the project boundary drawing to the polygon data, and must be based on a standard map coordinate system. The spatial reference for the drawing (i.e., map projection, map datum, and units of measurement) must be identified on the drawing and each reference point must be labeled. In addition, each project boundary drawing must be stamped by a registered land surveyor.

(c) The licensee shall file two separate sets of the project boundary data in a geo-referenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The filing shall include both polygon data and all reference points shown on the individual project boundary drawings. An electronic boundary polygon data file(s) is required for each project development. Depending on the electronic file format, the polygon and point data can be included in single files with multiple layers. The geo-referenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this license, and file extension in the following format [**P-12478**, boundary polygon/or point data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the spatial reference for the geo-referenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this license, and file extension in the following format [**P-12478**, project boundary metadata, MM-DD-YYYY.TXT].

In addition, for those projects that occupy federal lands, a separate geo-referenced

polygon file(s) is required that identifies transmission line acreage and non-transmission line acreage affecting federal lands for the purpose of meeting the requirements of 18 C.F.R. § 11.2. The file(s) must also identify each federal owner (e.g. BLM, Forest Service, Corps of Engineers, etc.), land identification (e.g. forest name, Section 24 lands, national park name, etc.), and federal acreage affected by the project boundary. Depending on the geo-referenced electronic file format, the polygon, point, and federal lands data can be included in a single file with multiple layers.

Article 203. *Exhibit F Drawings Not Approved.* Within 90 days of the effective date of the license, the licensee shall file, for Commission approval, revised Exhibit F drawings showing the approved transmission line segments. The Exhibit F drawings must comply with sections 4.39 and 4.41 of the Commission's regulations.

Article 204. *Amortization Reserve.* Pursuant to section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated after the first 20 years of operations under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserved account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 205. *Headwater Benefits.* If the licensee's project is directly benefited by the construction work of another licensee, a permittee, or the United States of a storage

reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed. The benefits will be assessed in accordance with Subpart B of the Commission's regulations.

Article 206. Project Land Rights Progress Report. No later than four years after license issuance, the licensee shall file a report with the Commission describing the status of acquiring title in fee or the rights for all the lands within the project boundary. The report must provide an overview map of each parcel and summary table identifying the licensee's rights over each parcel within the project boundary. The report shall also include specific supporting documentation showing the status of the land rights on all parcels of land within the project boundary that: (1) have been acquired up to the date of filing of the report, including pertinent deeds, lease agreements, and/or bill of sale information that specifically verify the licensee's rights; and (2) the licensee's plan and schedule for acquiring all remaining project lands prior to the five-year deadline, including a history of actions taken, current owner information, the type of ownership to be acquired whether in fee or by easement, and the timeline for completing property acquisition.

Article 207. Project Financing Plan. At least 90 days before starting construction, the licensee shall file with the Commission, for approval, three copies of a project financing plan. The plan must show that the licensee has acquired the funds, or commitment for funds, necessary to construct, operate, and maintain the project in accordance with the license. The plan must include, at a minimum, financial statements, including a balance sheet, income and expense statement, and a statement of actual or estimated cash flows over the license term which provide evidence that the licensee has sufficient assets, credit, and projected revenues to cover project construction, operation, and maintenance expenses, and any other estimated project liabilities and expenses.

The plan must be prepared in accordance with generally accepted accounting principles. The financial statements must be signed by a certified public accountant. The licensee shall not start any on-site project construction or ground-disturbing activities that are associated with the project, before the project financing plan is approved.

Article 301. Start of Construction. The licensee shall commence construction of the project works within two years from the issuance date of the license and shall complete construction of the project within 5 years from the issuance date of the license.

Article 302. Contract Plans and Specifications. At least 60 days prior to start of construction, the licensee shall submit one copy of its final contract plans and specifications and supporting design report to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The submittal must also include as part of preconstruction requirements: a Quality Control and Inspection

Program, and a Temporary Construction Emergency Action Plan. The licensee may not begin construction until D2SI-PRO has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

At least 90 days prior to the start of project construction activities, the licensee shall file for Commission approval an updated Erosion and Sediment Control Plan that is approved by the U.S. Forest Service (Forest Service) as required by condition 13 in Appendix C. The updated plan shall include the following modifications:

Section I.C of the licensee's Erosion and Sediment Control Plan shall be modified to include a provision that the Storm Water Pollution Prevention Plan, Spill, Prevention, Control and Countermeasures Plan, and Blasting Plan shall be filed for Commission approval prior to implementation. The licensee shall include with each plan, documentation of consultation with the U.S. Bureau of Reclamation, Forest Service, U.S. Fish and Wildlife Service, Montana Department of Environmental Quality, and Montana Department of Fish, Wildlife, and Parks; copies of comments and recommendations on the plan after it has been prepared and provided to the consulted agencies, and specific descriptions of how the consulted agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the consulted entities to comment and make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information. The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 303. *Cofferdam Construction Drawings and Deep Excavations.* Before starting construction, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations, and shall make sure construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall file with the Commission's Division of Dam Safety and Inspections-Portland Regional Engineer one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 304. *As-Built Drawings.* Within 90 days of completion of all construction activities authorized by this license, the licensee shall file for Commission approval, revised exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy shall be filed with the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer; the Director, D2SI; and the Director, Division of Hydropower Administration and Compliance.

Article 305. Project Modification Resulting From Environmental Requirement. The planning and design of any permanent or temporary modification which affects the project works or operation resulting from environmental requirements shall be coordinated as early as feasible with the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer. Within 90 days of issuance date of the license a letter is to be sent to D2SI-Portland Regional Engineer providing a plan and schedule of any proposed modifications to the project operations or to the water retaining and/or conveyance features of the project in the planning and design phase resulting from environmental requirements of the license. The schedule is to allow sufficient review time for the Commission to insure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 306. Project Owner's Dam Safety Program. Within 90 days of the issuance date of the license, the licensee shall submit to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer, an Owner's Dam Safety Program, which among other items, demonstrates a clear acknowledgement of the project owners responsibility for the safety of the project, an outline of the roles and responsibilities of the licensee's dam safety staff, and access of the licensee's dam safety official to the Chief Executive Officer. For guidance on what constitutes a good dam safety program, the licensee shall reference the Taum Sauk Stipulation and Consent Agreement on the FERC-D2SI website at:
<http://www.ferc.gov/industries/hydropower/safety/projects/taum-sauk.asp>.

Article 401. Commission Approval and Filing of Amendments.

(a) Requirement to File Plans for Commission Approval

Condition 3 of Montana Department of Environmental Quality's (Montana DEQ) water quality certification (Appendix A) requires the licensee to prepare and implement a Dissolved Oxygen Monitoring Plan 2, without obtaining prior Commission approval. The plan shall be submitted to the Commission for approval prior to implementation.

The licensee shall include with each plan filed with the Commission documentation that the licensee developed the plan in consultation with the Montana Department of Environmental Quality. The Commission reserves the right to make changes to any plan submitted. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan or changes in project operations or facilities, including any changes required by the Commission.

(b) Requirement to File Reports and Documentation

Condition 2 of Montana DEQ's water quality certification (Appendix A) requires the licensee to prepare a dissolved oxygen monitoring report. The report documents

compliance with requirements of this license and may have bearing on future actions. The report shall also be submitted to the Commission.

The licensee shall submit to the Commission documentation of any consultation, and copies of any comments and recommendations made by any consulted entity in connection with each report. The Commission reserves the right to require changes to project operations or facilities based on the information contained in the report and any other available information.

Article 3 of Reclamation's 4(e) conditions (Appendix B) requires the licensee to obtain a construction bond or irrevocable letter of credit for the project. This document provides assurance to Reclamation that there will be sufficient financial resources in place to protect Reclamation during the construction, operation, and maintenance of the facility. Evidence of the bond or a copy of the letter shall also be submitted to the Commission.

(c) Requirement to File Amendment Applications

Condition 7 of Montana DEQ's water quality certification (Appendix A) reserves authority for Montana DEQ to require further plans, actions, and monitoring to correct water quality violations. The licensee may not implement these changes without prior Commission authorization granted after the filing of an application to amend the license (18 CFR 4.200).

Article 402. Noxious Weed Control Plan. Within six months of license issuance, the licensee shall file for Commission approval an updated Noxious Weed Control Plan that is approved by the U.S. Forest Service as required by condition 11 in Appendix C. To minimize the risks of adverse health and environmental effects associated with the application of herbicides, the revised Noxious Weed Control Plan shall include provisions that limits the use of herbicides for vegetation management to those approved by the U.S. Environmental Protection Agency, and require their application by professional personnel appropriately trained in the use of herbicides.

Article 403. Traffic Control Plan. At least 60 days prior to the start of project construction activities, the licensee shall file for Commission approval a Traffic Control Plan. The plan shall provide a framework for minimizing effects of project construction traffic on public roads, including Forest Development Road 108-Sun Canyon Road, and shall include, but not necessarily be limited to: (1) the locations where lane restrictions would occur; (2) a description of temporary detours that may be needed to maintain the flow of traffic; (3) the locations where flaggers would be used to direct traffic; (4) a description of any potential, temporary trench covering to protect the public during times when active underground transmission line construction is not occurring; (5) a description of construction vehicle use restrictions to avoid periods when peak

recreational use typically occurs; and (6) an implementation schedule.

The licensee shall prepare the plan after consultation with the U.S. Bureau of Reclamation, U.S. Bureau of Land Management, and the U.S. Forest Service. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of non-administrative measures within the plan that may affect traffic (including but not limited to: lane restrictions, installation of temporary detours, and/or installation of protective trench coverings) shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 404. Fire Control Plan. At least 60 days prior to the start of project construction activities, the licensee shall file for Commission approval a Fire Control Plan. The plan shall include, but not necessarily be limited to: (1) a description of proposed measures to minimize fire potential; (2) specific equipment available onsite to fight fires and locations of that equipment; (3) emergency notification procedures for fire prevention and control; and (4) an implementation schedule.

The licensee shall prepare the plan after consultation with the U.S. Bureau of Reclamation, U.S. Bureau of Land Management, and the U.S. Forest Service. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 405. Visual Resources Protection. To protect and enhance aesthetic resources of the project area, the licensee shall implement the visual resources design measures specified in the Visual Resources Field Survey and Design Recommendations

Report, filed on August 28, 2009, as Exhibit 10 of Volume 3 of the final license application, as modified by Alternative A of the March 24, 2010, additional information response filing, to the extent that such measures address the Gibson Dam Project facilities.

Within 180 days of completion of transmission-line construction activities, the licensee shall file a Visual Resources Protection Report that provides documentation of how the licensee constructed project facilities consistent with the visual resources design measures. The report shall include documentation of consultation with the U.S. Forest Service, U.S. Bureau of Reclamation, U.S. Bureau of Land Management, and Montana Department of Natural Resources & Conservation, copies of comments on the completed report after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the report. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the report with the Commission, and shall address such comments in the report filed with the Commission (based on project-specific information). The Commission reserves the right to require changes to project operations or facilities based on information contained in the report and any other available information.

Article 406. Transmission Line Management Plan. The transmission line management plan, as referenced by U.S. Forest Service (Forest Service) condition 21 in Appendix C, shall include identification of the location of all existing and proposed gates on transmission-line access roads.

The plan shall be prepared after consultation with the U.S. Bureau of Reclamation, U.S. Bureau of Land Management, Forest Service, U.S. Fish and Wildlife Service, and Montana Department of Fish, Wildlife & Parks. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 407. Wildlife Protection. To minimize disturbance associated with project construction activities on elk migration, bighorn sheep lambing, grizzly bear foraging, and sharp-tailed grouse courtship and mating, the licensee shall schedule construction activities according to the following requirements:

(1) construction of the 4.57-mile-long, 34.5-kilovolt Canyon Segment of transmission line shall be scheduled to occur outside of the period of November through April to minimize disturbance to migrating elk and bighorn sheep lambing;

(2) construction of the 4.71-mile-long, 34.5-kilovolt Plains Segment and 16.91-mile-long, 69-kilovolt Plains Segment of the transmission line shall be scheduled to avoid the April through May sharp-tailed grouse courtship and mating season, unless surveys for leks are conducted in mid- to late-April, prior to beginning construction, and show no sharp-tailed grouse breeding is occurring along the plains segment (in which case, construction may occur in the remainder of April and May); and

(3) all construction activities shall be confined to areas defined by authorized plans and specifications and construction traffic shall be limited to established roads and parking areas in accordance with the Commission-approved plans and specifications required by Article 302.

Within 180 days of completion of project construction, the licensee shall file a Wildlife Protection Report that documents compliance with the requirements of this article. The report shall include documentation of consultation with the U.S. Forest Service, U.S. Bureau of Reclamation, U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, and Montana Department of Fish, Wildlife, & Parks, copies of comments on the completed report after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the report. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the report with the Commission, and shall address such comments in the report filed with the Commission (based on project-specific information). The Commission reserves the right to require changes to project operations or facilities based on information contained in the report and any other available information.

Article 408. Final Avian Protection Plan. At least 90 days before any land-disturbing or land-clearing activities associated with construction of the transmission line, the licensee shall file with the Commission for approval a final Avian Protection Plan, based on the Avian Protection Plan filed on August 28, 2009, as Exhibit 1 of Volume 3 of the Final License Application. The final plan shall include: (1) a provision to notify Montana Department of Fish, Wildlife, and Parks (Montana DFWP) within 24 hours of discovering an avian nest on any project transmission-line facilities; (2) detailed design drawings of the transmission-line clearly showing phase-spacing, configuration, and grounding practices; and (3) a construction schedule that is consistent with the wildlife protection requirements of Article 407 of this license.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Bureau of Reclamation, U.S. Bureau of Land

Management, and Montana DFWP. The license shall include with the plan documentation of consultation and copies of comments and recommendations on the completed plan after it is prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No transmission line construction shall begin until the licensee is notified that the plan is approved. Upon Commission approval the licensee shall implement the plan, including any changes required by the Commission. As-built drawings of the transmission line shall be filed in accordance with the requirements of Article 305 of this license.

Article 409. Wetland Survey and Protection Plan. At least 90 days before any land-disturbing or land-clearing activities associated with construction of the transmission line, the licensee shall file for Commission approval a Wetland Survey and Protection Plan. The purpose of the plan is to protect wetlands that could be affected by construction of the project transmission line. The plan shall include, but not necessarily be limited to:

(1) the results of a final pre-construction wetland survey along the transmission line corridor, including a list of all wetland types identified along the transmission line corridor and maps showing the locations and type of any wetlands located along the transmission line route;

(2) a description of measures that will be used to avoid, protect, or minimize project effects on each wetland identified in the survey, including placement of transmission line poles outside of any wetlands found, and a construction and maintenance vehicle protocol to avoid all known wetlands along the transmission line corridor;

(3) where avoidance of wetlands is not possible, a monitoring plan to determine the success of any implemented protection measures;

(4) a schedule for implementing any protection measures; and

(5) a provision to file a report within 180 days of completion of transmission-line construction activities that provides documentation of compliance with the approved plan requirements for wetland protection. The report shall include documentation of consultation with the U.S. Army Corps of Engineers (Corps), U.S. Forest Service (Forest Service) and U.S. Bureau of Reclamation (Reclamation), and U.S. Bureau of Land Management (BLM), copies of comments on the completed report after it has been

prepared and provided to the agencies. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the report with the Commission, and shall address such comments in the report filed with the Commission (based on project-specific information). The Commission reserves the right to require changes to project operations or facilities based on information contained in the report and any other available information.

The Wetland Survey and Protection Plan shall be developed after consultation with the Corps, Forest Service, Reclamation, and BLM. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission. Project construction shall not commence until the plan has been reviewed and approved by the Commission, and until the Commission notifies the licensee that the plan is approved.

Article 410. Bear Safety Plan. The Bear Safety Plan filed on August 28, 2009, as Exhibit 2 of Volume 3 of the Final License Application is approved and shall be implemented with the following additional requirement: within 180 days of completion of all construction activities, the licensee shall file a Bear Safety Report that documents how the licensee constructed project facilities consistent with the requirements of the Bear Safety Plan.

The report shall include documentation of consultation with the U.S. Forest Service, U.S. Bureau of Reclamation, U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, and Montana Department of Fish, Wildlife, & Parks, copies of comments on the completed report after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the report. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the report with the Commission, and shall address such comments in the report filed with the Commission (based on project-specific information). The Commission reserves the right to require changes to project operations or facilities based on information contained in the report and any other available information.

Article 411. Recreation During Construction Plan. The Recreation During Construction Plan filed on August 28, 2009, as Exhibit 8 of Volume 3 of the Final

License Application, is approved and shall be implemented with the following provision: within 180 days of completion of all construction activities, the licensee shall file a Recreation During Construction Report that documents how the licensee constructed project facilities consistent with the requirements of the Recreation During Construction Plan.

The report shall include documentation of consultation with the U.S. Forest Service, U.S. Bureau of Reclamation, U.S. Bureau of Land Management, and Montana Department of Fish, Wildlife, & Parks, copies of comments on the completed report after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the report. The licensee shall allow a minimum of 30 days for the agencies to comment before filing the report with the Commission, and shall address such comments in the report filed with the Commission (based on project-specific information). The Commission reserves the right to require changes to project operations or facilities based on information contained in the report and any other available information.

Article 412. *Interpretive Display Plan.* The Interpretive Display Plan, as referenced by U.S. Forest Service (Forest Service) condition 17 in Appendix C, shall be developed with the following additional items: site drawings and specifications, interpretive display content, a map showing the location of the interpretive displays in relation to the project boundary, and an implementation schedule.

The Commission reserves the right to require changes to the plan. Implementation of the plan and associated schedule shall not begin until the plan and schedule are approved by the Commission. Upon Commission approval, the licensee shall implement the plan and schedule, including any changes required by the Commission.

Article 413. *Programmatic Agreement and Historic Properties Management Plan.* The licensee shall implement the "Programmatic Agreement Between The Federal Energy Regulatory Commission And The Montana State Historic Preservation Officer For Managing Historic Properties That May Be Affected By Issuing A License To Gibson Dam Hydroelectric Company, LLC, For The Gibson Dam Hydroelectric Project In Lewis & Clark And Teton Counties, Montana (FERC Project No. 12478-003)" executed on July 28, 2011 and including but not limited to the Historic Properties Management Plan (HPMP). In the event that the Programmatic Agreement is terminated, the licensee shall continue to implement the provisions of its approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license.

Article 414. *Use and Occupancy.* (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use

and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or

roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project impoundment. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic

Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved report on recreational resources of an Exhibit E; or, if the project does not have an approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(H) The licensee shall serve copies of any Commission filing required by this order on any entity specified in the order to be consulted on matters relating to that filing. Proof of service on these entities must accompany the filing with the Commission.

(I) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011). The filing of a request for

rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Jeff C. Wright
Director
Office of Energy Projects

FEDERAL ENERGY REGULATORY COMMISSION

**TERMS AND CONDITIONS OF LICENSE FOR
UNCONSTRUCTED MAJOR PROJECT AFFECTING
LANDS OF THE UNITED STATES**

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project

boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any features or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission.

The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a nonpower licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the state and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character and locations of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as

may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal Agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply

or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to

construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Timber on lands of the United State cut, used, or destroyed in the

construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 22. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 23. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 24. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 25. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and

communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 26. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 27. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 28. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 29. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 30. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 31. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 32. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

APPENDIX A

Montana Department of Environmental Quality, Water Quality Certification Conditions

(Filed December 10, 2009)

1. GDHC shall implement the construction water quality monitoring plan, which is found in Volume 3 of GDHC's application for their FERC license. GDHC shall follow all provisions and reporting requirements therein.
2. In the first July to September period following project startup, GDHC shall implement the post construction water quality monitoring plan, which is found in Volume 3 of GDHC's application for their FERC license. GDHC shall follow all provisions and reporting requirements therein. After completing three years of dissolved oxygen monitoring, as described in the plan, a final report shall be submitted to the Department within four months of the completion of monitoring. The need for any action(s) by GDHC to enhance dissolved oxygen levels in the Sun River below Gibson Dam will be determined by the Department, based on the Department's review of the three-year DO monitoring program and resulting final report.
3. If dissolved oxygen enhancement in the Sun River is required, as determined by condition 2 above, GDHC shall, in consultation with the Department, develop a new dissolved oxygen monitoring plan (DO plan 2) to assess the success of the dissolved oxygen enhancement measures. DO plan 2 shall be based on the post construction water quality monitoring plan, with additional sampling requirements included only on an as-needed basis. DO plan 2 and the dissolved oxygen enhancement measures shall be implemented at the beginning of the next July to September period following the Department's determination of need.
4. GDHC shall notify the Department and the Montana Department of Fish, Wildlife and Parks in writing not less than two weeks prior to commencing any construction activity within the Project boundary which may result in a discharge of pollutants to state waters and notify the Departments within seven (7) days after completion of any construction activity.
5. GDHC shall notify the Department and the Montana Department of Fish, Wildlife and Parks within twenty-four (24) hours of any un-authorized discharge of pollutants to state waters within the Project boundary.

6. GDHC shall allow the Department reasonable entry and access to the Project and review of appropriate records in order to determine compliance with conditions of this certification.
7. GDHC shall obtain all permits, authorizations and certifications required by federal, state or local laws, regulations or ordinances prior to the commencement of any activity that could violate Montana's water quality standards. The Department reserves the authority under this certification to require plans, corrective actions and monitoring necessary to correct water quality violations that may result from operation, maintenance or construction associated with the Project.
8. Should the Project be found, at any time, not to be in compliance with any of the conditions of this certification, or should the permittee construct or operate this project in any way other than as specified in the application or supporting documents, as modified by the conditions of this certification, then the terms of this certification shall be considered to have been violated.
9. This certification shall expire upon the assignment or transfer of the property covered by this certification unless the new owner submits to the Department a written consent to all the terms and conditions of this certification.

APPENDIX B**U.S. Bureau of Reclamation, Section 4(e) Conditions****(Filed July 16, 2010)**

Article 1. No later than 60 days after issuance of a license, the Licensee shall contact the Regional Director of the Bureau of Reclamation's Great Plains Region to: (1) establish the appropriate level of coordination and identify points of contact and access to the Project; (2) provide for Reclamation's review and approval of all Project designs, construction, operation, and maintenance related activities, and environmental and cultural compliance activities; (3) identify ownership, land use, easement, and water right requirements; (4) enter into a Memorandum of Understanding and Contributed Funds Agreement to define the roles and responsibilities of the License holder and Reclamation during pre-construction activities and establish the Licensee's responsibility to pay, in advance, all costs for Reclamation's work activities on the Project; and (5) any other agreements required by Reclamation. These agreements/contracts must be signed and executed prior to Reclamation initiating any work activities associated with the Project and prior to the Licensee initiating any onsite work activities on Reclamation lands so that the physical structures and authorized purposes, including operations, safety, integrity, and the environment associated with the Federal facility or reservation are protected.

Article 2. The Licensee shall enter into a construction, operation, and maintenance agreement with Reclamation no later than 90 days prior to commencing construction. It is the Licensee's responsibility to coordinate with and respond to Reclamation in a timely manner to meet this deadline. It takes a minimum of 6 months to prepare the agreement for signature. In general, the construction, operation, and maintenance agreement shall establish terms and conditions for construction, operation, and maintenance of the hydroelectric facility. The agreement shall include, but is not limited to, the following terms and conditions: (1) protection of the Federal project including, but not limited to, all legal and contractual commitments; (2) establishment of appropriate ownership of hydroelectric facilities that are necessary for unimpaired operation of the Federal project; (3) a water rights provision, if applicable or necessary, as determined by Reclamation; (4) recognition of the Licensee's needs and time frames to enter upon and occupy Reclamation lands for pre-construction, construction, operation, and maintenance activities, conditioned by Reclamation as may be necessary to protect the Federal project; (5) identification of the roles and responsibilities of the Licensee regarding the necessary reviews, approvals, permits, licenses, schedules, data gathering, testing, and inspections for the construction of the Project; (6) definition of the roles and responsibilities of the Licensee regarding the operation and maintenance of the Project in conjunction with the Federal project's own operation and maintenance; (7) establishment of periodic or continuous inspections of the Project; (8) development of safety, emergency, and security

plans for the hydroelectric project; (9) definition of appropriate environmental and cultural resource compliance for the Project; (10) reimbursement of all Reclamation costs with the work performed in the pre-construction, construction, operation, and maintenance phases of the Project, including the construction, operation, and maintenance agreement's administration; (11) reimbursement of any work necessitated by the Licensee including, but not limited to, repairs of Federal project facilities damaged as a result of the Project; (12) establishment of a construction bond or irrevocable letter of credit for the protection of Reclamation; and (13) indemnification and release of claims for Reclamation including, but not limited to, any loss of Project power generation or the introduction of invasive species into the Project.

Article 3. The design and construction of 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 prior to the commencement of any onsite work. Significant and extensive engineering analyses, as determined by Reclamation, may be necessary to determine if the proposed modifications are feasible and compatible with the existing Reclamation project structures. Site explorations may be necessary to gather engineering data for the analyses. Analysis of the effects that the proposed modifications will have on the integrity of the existing structures as well as the existing release capacity of the facilities will be required. Design drawings with supporting documents 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, Great Plains Region, 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. If the results of the analyses and investigations determine there are adverse effects to the safety of the existing Reclamation facilities or the operation of the proposed Project is incompatible with Reclamation project operations, Reclamation reserves the right to request a change in the Project designs and or specifications at any time. 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 on 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 4. 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, or negatively affect the Federal government's ability to fulfill its trust responsibility to Indian tribes. Reclamation reserves the right, at any time, and without notice to the Licensee, to inspect any and all components, operations, or

maintenance activities associated with the proposed Project. 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, or 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 5. Unless otherwise specified by Reclamation, all newly disturbed land areas shall be revegetated by the Licensee with plant species indigenous to the area, as approved by Reclamation, within 6 months of completion of Project construction and shall be subject to Reclamation's approval regarding successful revegetation.

Article 6. The Licensee shall have no claim against the United States arising from any future changes made to meet authorized Federal purposes, or from the effect of any changes made in releases from or operation of the Federal facility or reservation, or from modifications to the Federal facility or reservation, or from any changes in reservoir levels, canal levels and/or water discharges through the Reclamation facilities resulting from the exercise of authorized Federal purposes or trust responsibilities.

Article 7. 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 contractors, 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 or initiated subsequent to the start of work by the Licensee, take precedence over the Licensee's Project activities.

Article 8. The Commission's Regional Engineer shall not authorize advance construction of any Project works until Reclamation's written acceptance of construction plans and specifications has been received by the Commission's Regional Engineer. The Licensee shall provide the Commission's Regional Engineer two copies of all correspondence between the Licensee and Reclamation.

Article 9. The Licensee shall provide Reclamation the opportunity to review and approve the final plans and design of contractor-designed cofferdams, 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 satisfactory performance of the cofferdam. 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 10. The timing, quantity, and location of water releases and release changes from the facilities will be at the sole discretion of Reclamation. Reclamation will not alter operations or maintenance of the Federal reservation or facilities or any associated Federal Reclamation project for the development of the proposed Project or 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 any potential Indian water rights settlements. Reclamation reserves the right to make any changes to the Reclamation project operations pending any and all future Endangered Species Act compliance requirements pertaining to facility operations.

Article 11. The Licensee is advised that any hydroelectric facilities and associated components which are located on lands under the jurisdiction of Reclamation may only be used for the authorized construction, operation, and maintenance of such facilities as specifically granted to the Licensee by the Federal Energy Regulatory Commission. The Licensee is expressly prohibited from using Reclamation lands for any other purpose not in accordance with its license, and the provisions of Reclamation's Section 4(e) Conditions. The Licensee is also prohibited from issuing any permits, licenses, easements, leases, or granting any type of use authorization to, or entering into any type of verbal or contractual agreement with third parties allowing the temporary or permanent use of Reclamation lands not directly associated with the Licensee's construction, operation, and maintenance of its authorized facilities.

APPENDIX C
U.S. Forest Service, Final Section 4(e) Terms and Conditions
(Filed July 23, 2010)

I. GENERAL

License articles contained in the Federal Energy Regulatory Commission's (Commission) Standard Form L-02 issued by Order No. 540, dated October 31, 1975, cover those general requirements that the Secretary of Agriculture, acting by and through the US Forest Service, considers necessary for adequate protection and utilization of the land and related resources of the Lewis and Clark National Forest. Under authority of section 4(e) of the Federal Power Act (16 U.S.C. 797(e)), the following terms and conditions are deemed necessary for adequate protection and utilization of Lewis and Clark National Forest lands and resources. These terms and conditions are based on those resources and management requirements enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), the Wilderness Act of 1964, and any other law specifically establishing a unit of the National Forest System (NFS) or prescribing the management thereof (such as the Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved Land and Resource Management Plans prepared in accordance with the National Forest Management Act. Therefore, pursuant to section 4(e) of the Federal Power Act, the following conditions covering specific requirements for protection and utilization of NFS land shall also be included in any license issued.

II. STANDARD FOREST SERVICE CONDITIONS

Condition No. 1 - Requirement to Obtain a Forest Service Special-Use Authorization

The Licensee shall obtain a special-use authorization from the Forest Service for the occupancy and use of NFS land. The Licensee shall obtain the executed authorization before beginning ground-disturbing activities on NFS land or within six months of License issuance if no construction or reconstruction was proposed in the application for License.

The Licensee may commence ground-disturbing activities authorized by the License and special-use authorization no sooner than 60 days following the date the Licensee files the Forest Service special-use authorization with the Commission, unless the Commission prescribes a different commencement schedule.

In the event there is a conflict between any provisions of the License and the Forest Service special-use authorization, the special-use authorization shall prevail to the extent that the Forest Service, in consultation with the Commission, deems necessary to protect and utilize NFS resources.

Condition No. 2 - Surrender of License or Transfer of Ownership

Prior to any surrender of this License, the Licensee shall restore NFS land to a condition satisfactory to the Forest Service. At least one (1) year in advance of the proposed application for License surrender, the Licensee shall file with the Commission a restoration plan approved by the Forest Service. The restoration plan shall identify improvements to be removed, restoration measures, and time frames for implementation and estimated restoration costs. In addition, the Licensee shall pay for an independent audit to assist the Forest Service in determining whether the Licensee has the financial ability to fund the surrender and restoration work specified in the plan.

As a condition of any transfer of the License or sale of the Project, the Licensee shall require the proposed transferee to demonstrate, in a manner satisfactory to the Forest Service, that it has the financial ability to provide for the costs of surrender and restoration of the Project.

Condition No. 3 - Forest Service Approval of Final Design

Before any construction of the Project occurs on NFS land, the Licensee shall obtain the prior written approval of the US Forest Service for all final design plans for Project components that the US Forest Service deems as affecting or potentially affecting NFS resources. The Licensee shall follow the schedules and procedures for design review and approval specified in the US Forest Service construction temporary special use authorization. As part of such prior written approval, the US Forest Service may require adjustments in final plans and facility locations to preclude or mitigate impacts and to assure that the Project is compatible with on-the-ground conditions. Should such necessary adjustments be deemed by the US Forest Service, the Commission, or the Licensee to be a substantial change, the Licensee shall follow procedures of Article 2 of the License. Any changes to the License made for any reason, pursuant to Article 2 or Article 3, shall be made subject to any new terms and conditions of the Secretary of Agriculture made pursuant to section 4(e) of the Federal Power Act.

Condition No. 4 - Approval of Changes After Initial Construction

Notwithstanding any License authorization to make changes to the Project, the Licensee shall get written approval from the US Forest Service prior to making any changes in the location of any constructed Project features or facilities, or in the uses of Project lands and waters, or any departure from the requirements of any approved exhibits filed with the Commission. Following receipt of such approval from the US Forest Service, and at least 60 days prior to initiating any such changes or departure, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the US Forest Service for such changes. The Licensee shall file an exact copy of this report with the US Forest Service at the same time it is filed with the Commission. This article does not relieve the Licensee from the amendment or other requirements of Article 2 or Article 3 of this License.

Condition No. 5 – Consultation

Each year during the 60 days preceding the anniversary date of the License, the Licensee shall consult with the US Forest Service with regard to measures needed to ensure protection and development of the natural resource values of the Project area. Within 60 days following such consultation, the Licensee shall file with the Commission evidence of the consultation with any recommendations made by the US Forest Service. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the Project and its operation that may be necessary to accomplish natural resource protection.

Condition No. 6—Modification of US Forest Service Conditions

The US Forest Service reserves the right to modify these conditions, if necessary, to incorporate changes necessitated by new laws and regulations directing changes in management of the area, additional information provided by future studies which have not been completed to date, by findings in the Project of new noxious terrestrial or aquatic biota, and to address new listings of threatened, endangered, and other special status species in the Project area.

III. OTHER US FOREST SERVICE CONDITIONS**Condition No. 7 - Maintenance of Improvements**

The Licensee shall maintain all its improvements and premises on NFS land to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the US Forest Service. The Licensee shall comply with all applicable Federal, State, and local laws and regulations, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resources Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment.

Condition No. 8—Safety During Project Construction Plan

At least 60 days prior to any ground disturbing activity related to new project construction on or affecting NFS land, the Licensee shall file with the Commission a Safety During Construction Plan approved by the US Forest Service that identifies potential hazard areas and measures necessary to protect public safety. Areas to consider include construction activities near public roads, trails, and recreation areas and facilities. Upon approval by the Commission, the Licensee shall implement the Plan.

The Licensee shall perform daily (or on a schedule otherwise agreed to by the US Forest Service in writing) inspections of Licensee's construction operations on NFS land while construction is in progress.

The Licensee shall document these inspections (informal writing sufficient) and shall deliver such documentation to the US Forest Service on a schedule agreed to by the US Forest Service. The inspections must specifically include fire plan compliance, public safety, and environmental protection. The Licensee shall act immediately to correct any items found to need correction.

Condition No. 9 - Indemnification, Risks and Hazards, and Damage to Lands, Property, and Interests of the United States

The Licensee shall indemnify, defend, and hold the United States harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Licensee in connection with the use and/or occupancy authorized by this License. This indemnification and hold harmless provision applies solely to any negligent acts and omissions of the Licensee or the Licensee's heirs, assigns, agents, employees, affiliates, subsidiaries, fiduciaries, contractors, or lessees in connection with the use and/or occupancy authorized by this License which result in: (1) violations of any laws and regulations which are now or which may in the future become applicable, and including, but not limited to environmental laws, such as the Comprehensive Environmental Response Compensation and Liability Act, Resource Conservation and Recovery Act, Oil Pollution Act, Clean Water Act, and Clean Air Act; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous substances, pollutant, contaminant, or oil in any form in the environment. The provisions of this condition do not apply to any damages, judgments, claims, or demands arising out of the negligence, recklessness, or willful misconduct of the United States or other third parties or to damages, judgments, claims, or demands arising out of any activity initially occurring outside the project boundary or outside NFS land. The Licensee's liability hereunder shall be limited to reasonable damages, costs, claims, and judgments.

The Licensee is responsible for periodically inspecting (in accordance with good utility practice) its project site, right-of-way, and immediate adjoining area for dangerous trees, hanging limbs, and other evidence of hazardous conditions. Licensee shall abate those conditions, except those caused by third parties not related to the occupancy and use authorized by the License, after securing permission from the US Forest Service, except in an emergency where there is an imminent risk of death or injury to the public or facilities, in which case the Licensee shall notify the US Forest Service of the action as soon as possible.

The extent of the Licensee's liability for fire and other damages to NFS land shall be determined in accordance with Standard L-Form Articles 22 and 24 of this License and the liability standard shall be determined in Federal Court by using applicable Montana law.

Condition No. 10 – Access

The Forest Service reserves the right to use or permit others to use any part of the Licensed area on NFS land for any purpose, provided such use does not interfere with the rights and privileges authorized by this License or the Federal Power Act.

Condition No. 11 – Invasive Species Prevention and Treatment

Within six months from the date of the issuance of a new License for the Project, the Licensee shall file with the Commission an Invasive Plant and Noxious Weed Management Plan that is approved by the US Forest Service. Upon approval by the Commission, the Licensee shall implement the Plan. This Plan is intended to reduce the infestation and spread of invasive plants and noxious weeds. At a minimum the Plan shall include the following requirements to be implemented by the Licensee:

- Identify methods for prevention and control of noxious weeds within the Project area. Treatment of existing infestations of highest priority weeds shall be initiated immediately upon approval of the plan by the Commission.
- Clean all construction equipment thoroughly before entering areas addressed by the Plan to reasonably ensure that seeds of invasive plants and noxious weeds are not introduced.
- Restrict travel to established roads and trails when possible, and avoid entering areas with existing populations of invasive plants or noxious weeds. If entering such areas is required, conduct work in uninfested areas first when possible.
- Minimize ground disturbance during Project operations and maintenance (O&M). When ground disturbance is required, dispose of any resulting spoils on-site, grading to match local contours and reseeded with a mix of native species approved by the US Forest Service. If fill is required for O&M activities, use fill collected onsite whenever possible, and reseed the disturbed area as described above. All seeding should be conducted immediately following disturbance. Seeding needs to be done in conjunction with proper seedbed preparation such as harrowing or tilling the soil surface.
- Use certified weed-free straw or rice straw for all construction, erosion control, or restoration needs.
- Develop a monitoring program to evaluate the effectiveness of re-vegetation, vegetation control, and invasive plant and noxious weed control measures. Provide specific methods for monitoring and evaluation. At a minimum, surveys shall be conducted every three years.
- Develop procedures for identification of additional measures that the Licensee shall implement if monitoring reveals that re-vegetation and vegetation control is not successful or does not meet intended objectives.

Condition No. 12 - Protection of Threatened, Endangered, Proposed for Listing and Sensitive Species Plan

At least 60 days prior to any ground disturbing activity that may affect a federally listed or proposed species and their critical habitat, or US Forest Service sensitive species and their habitat, the Licensee shall file with the Commission a Threatened, Endangered, Proposed for Listing and Sensitive Species Plan that is approved by the US Forest Service in consultation with appropriate Federal and State agencies. This Plan shall describe how the Licensee shall coordinate, consult, and prepare biological assessments and evaluations analyzing the potential impact that any action may have on listed, proposed and sensitive species and their habitat. The Licensee shall implement all mitigation measures and Reasonable and Prudent Alternatives required in any Biological Opinion rendered by the US Fish and Wildlife Service or other regulatory agency. Upon approval by the Commission, the Licensee shall implement the Plan.

At a minimum the Plan shall:

- Develop procedures to minimize adverse effects to listed species
- Ensure Project-related activities shall meet restrictions included in site management plans for listed species
- Develop implementation and effectiveness monitoring of measures taken or employed to reduce effects to listed species
- Update the Plan as new information is obtained in consultation with the agencies and submitting the updated Plan to the Commission for approval
- Identify required elements contained within a biological assessment and evaluation

Condition No. 13 - Erosion Control Measures Plan

At least 90 days prior to any ground-disturbing activity, the Licensee shall file with the Commission an Erosion Control Measures Plan that is approved by the USDA Forest Service. The Plan shall include measures to control erosion, stream sedimentation, dust, and soil mass movement. Upon approval by the Commission, the Licensee shall implement the Plan.

Condition No. 14 – Public Safety Plan

Within 6 months of the license issuance, the Licensee shall file with the Commission a Public Safety Plan approved by the Forest Service. This plan will identify potential hazardous situations, evaluate all project facilities for conformance with the International Building Code, and identify measures necessary to bring project facilities in conformance with the Code, and shall include a schedule for completion of any hazard abatement measures. The plan will also identify how the project complies with FERC's Guidelines for Public Safety at Hydropower Projects (March 1992). Upon approval by the Commission, the Licensee shall implement the Plan.

The Licensee shall perform daily (or on a schedule otherwise agreed to by the Forest Service) inspections of Licensee's construction operations on National Forest System lands while construction is in progress. The Licensee shall document these inspections

(informal writing sufficient) and shall deliver such documentation to the Forest Service on a schedule agreed to by the Forest Service. The inspections must include fire plan compliance, measures to provide for public safety, and environmental protection. The Licensee shall act immediately to correct any items found to need correction.

Condition No. 15 - Hazardous Substances Plan

During planning for and prior to any new construction or maintenance, the Licensee shall file with Commission, a Hazardous Substances Plan approved by the Forest Service for oil and hazardous substances storage and spill prevention and cleanup. Upon approval by the Commission, the Licensee shall implement the Plan. At a minimum, the Licensee shall:

- Outline the Licensee's procedures for reporting and responding to releases of hazardous substances, including names and phone numbers of all emergency response personnel and their assigned responsibilities,
- Maintain in the project area, a cache of spill cleanup equipment suitable to contain any spill from the project,
- Semi-annually inform the Forest Service of the location of the spill cleanup equipment on National Forest System lands and of the location, type, and quantity of oil and hazardous substances stored in the project area; and,
- Inform the Forest Service immediately of the nature, time, date, location, and action taken for any spill affecting National Forest System lands and Licensee adjoining fee title property.

Condition No. 16 - Recreation Plan

Within 1 year of license issuance the Licensee shall file with the Commission a Recreation Plan that is approved by the Forest Service. Upon approval by the Commission, the Licensee shall implement the Plan. The Plan shall, at a minimum, include:

- A description of Licensee and Forest Service share of responsibility for construction, operation and maintenance of recreation facilities and sites on National Forest System lands impacted or associated with the project,
- Specific mitigation measures for existing recreation facilities and sites, including compliance with the Americans with Disabilities Act.
- Planning for future development or rehabilitation of recreation facilities or sites.
- The plan shall include work that has been agreed to by the Forest Service and licensee at the following existing facilities: Home Gulch Campground, Home Gulch Boat Launch, Beaver Creek Trailhead, Gibson Overlook, the viewing turnaround below the dam, and the existing fishing access trail along the river to the dam, including addressing safety concerns of the trail.

Condition No. 17 – Interpretive Display

Within 1 year of license issuance the Licensee shall file with the Commission an

Interpretive Display Plan that is approved by the Forest Service. Displays and signs covered by the Plan will at a minimum provide a history of the hydropower facility, describe its operation and benefits as well as measures taken to mitigate environmental effects related to project facilities and operations, and provide general information about recreation opportunities and other information of interest to the public. The plan shall cover existing interpretive displays at Gibson Overlook, the viewing turnaround below the dam, and the watchable wildlife sign near the Diversion Dam, as well as additional interpretive displays. Upon approval by the Commission, the Licensee shall implement the Plan.

Condition No. 18 - Signs

The Licensee shall consult with the US Forest Service prior to erecting signs related to safety or other issues on NFS lands covered by the License. Prior to the Licensee erecting any other signs or advertising devices on NFS lands covered by the License, the Licensee must obtain the approval of the US Forest Service as to location, design, size, color, and message. The Licensee shall be responsible for maintaining all Licensee-erected signs to neat and presentable standards as determined by the US Forest Service.

Condition No. 19 - Road Use by Government

The United States shall have unrestricted use of any road constructed within the Project area for all purposes deemed necessary and desirable in connection with the protection, administration, management, and utilization of NFS lands or resources and shall have the right to extend rights and privileges of use of such road to states and local subdivisions thereof, as well as to other users, including members of the public, except contractors, agents, and employees of the Licensee; provided that the agency having jurisdiction shall control such use as to not unreasonably interfere with the safety or security uses, or cause the Licensee to bear a share of the costs of maintenance greater than the Licensee's use of the road.

Condition No. 20 - Road Use

The Licensee shall confine all Project vehicles, including but not limited to, administrative and transportation vehicles, and construction and inspection equipment, to roads or specifically designed access routes. The US Forest Service reserves the right to close any and all such routes where damage is occurring to the soil or vegetation, or, if requested by Licensee, to require reconstruction/construction by the Licensee to the extent needed to accommodate the Licensee's use.

Condition No. 21 – Transmission Line Management

Within 6 months of license issuance the Licensee shall file with the Commission a Transmission Line Management Plan that is approved by the Forest Service. Upon approval by the Commission, the Licensee shall implement the Plan. The plan shall, at a minimum, include:

- A map of transmission line locations and identification of above ground and below ground sections.
- Identification of transmission line access points and roads.
- A vegetation management plan that addresses trees and other vegetation along the transmission line. Noxious weeds will be addressed in the Invasive Species Prevention and Treatment Management Plan (Condition 11).
- A description of how the visual resources and scenic values in the project area, at the dam site and along Sun River Road 108 and Willow Creek/Beaver Creek Road 233, will be protected or enhanced in accordance with the forest plan.
- The plan shall include those measures deemed necessary by state and federal agencies to protect birds and other wildlife.

Condition No. 22 – Heritage Resource Protection

The licensee shall implement the finalized Historic Properties Management Plan (HPMP). The HPMP will guide the Licensee’s treatment of known and yet to be discovered cultural and historic resources through the new license terms and shall identify the consultation procedures the licensee shall undertake with affected Indian Tribes and oversight agencies.