



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Office of Environmental Policy and Compliance  
Denver Federal Center, Building 67, Room 118  
Post Office Box 25007 (D-108)  
Denver, Colorado 80225-0007



July 16, 2010

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ER 10/473

**RECEIVED**  
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Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE.  
Washington, D.C. 20426

Subject: COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, AND PRESCRIPTIONS – Notice of Application and Applicant Prepared Environmental Assessment (EA); Request for Comments, and Final Terms and Conditions, Recommendations and Prescriptions; Gibson Dam Hydroelectric Project, Federal Energy Regulatory Commission (FERC) Project No. 12478-003, Sun River Project, Teton and Lewis & Clark Counties, Montana (ER 10/473)

Dear Secretary Bose:

The Department of the Interior has reviewed the Notice of Application and Applicant Prepared EA for FERC Project No. 12478-003, located on the Sun River in Teton and Lewis & Clark Counties, Montana.

The comments, recommendations, terms and conditions, and prescriptions herein are provided in accordance with the provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the Federal Power Act (FPA), (16 U.S.C. 791 *et seq.*), the Endangered Species Act (ESA), (16 U.S.C. §1531 *et seq.*), and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). The Department does not intend to object to the issuance of a new license for the Gibson Dam Hydroelectric Project (Project), provided our comments, recommendations, terms and conditions, and prescriptions are incorporated into the new license.

## GENERAL COMMENTS

The proposed Project would utilize Gibson Dam and Reservoir, located on the Sun River in Teton and Lewis & Clark Counties, Montana. Gibson Dam is part of the Bureau of Reclamation's Sun River Project. Irrigation is the only authorized project purpose. The construction of the Project will be on a combination of Federal lands, some of which are administered by Reclamation, as well as private lands. Reclamation lands have been withdrawn from public domain for use as part of the Sun River Project. Reclamation holds dominant easements on private lands granted under the Ditches and Canal Act of 1890 (ch. 837,

26 Stat. 371) for canal location, operation, and maintenance. The Sun River Project facilities, including Gibson Dam, are owned by Reclamation and operated and maintained by the Greenfields Irrigation District through formal agreement with Reclamation.

The development of the proposed Project facilities must not interfere with the originally authorized purposes of the Sun River Project. The Licensee is required to enter into a memorandum of understanding for pre-construction activities and a comprehensive agreement/contract with Reclamation and the water users. These would, at a minimum, define the various responsibilities of each of the parties; provide for the necessary coordination and access to the Project; provide for Reclamation's review and approval of Project design-, construction-, operation-, and maintenance-related activities, and environmental and cultural compliance activities; identify ownership, land use, easement, and water right requirements; and establish a trust account to which the Licensee would advance funds to cover Reclamation's costs for the work activities associated with the Project. This agreement must be signed and executed prior to Reclamation initiating any project design or environmental reviews and prior to initiating any onsite work activities.

The design, construction, operation, and maintenance of the proposed Project facilities will be subject to review and approval by Reclamation. The Application contains general and conceptual level design information that is insufficient for Reclamation to adequately assess at this time. The comprehensive agreement/contract described above, as well as Reclamation's Section 4(e) Conditions below, must address Reclamation's review and approval of detailed designs. Future objections could be raised if during later reviews adverse effects to the safety of the existing facility or incompatibility of the operation of the proposed Project facilities and Reclamation project operations are identified.

#### **BUREAU OF RECLAMATION SPECIFIC COMMENTS:**

- Environmental Assessment (EA): As part of the proposed action, the Licensee will be required to enter into a contract with Reclamation to construct, operate, and maintain the project on Reclamation lands. The term of the contract may coincide with the term of the FERC License. The issuance of this contract should be included as part of Proposed Action and Alternatives, and the effects of that action analyzed through the NEPA process.
- Maintenance Building on page 3 and Temporary Facilities on page 5 of Volume 1 of the License Application and page 14, Volume 2, of the Final Draft EA: Reclamation administers lands associated with Gibson Dam and Reservoir (project) and uses such lands as necessary for operation and maintenance of the project. The proposed maintenance building would occupy a part of those lands and would have to be constructed in a manner so as not to interfere with operation and maintenance activities. In addition, the environmental effects of additional living quarters and the increased human activity due to occupation of those quarters, both short-term during construction and long-term for operation and maintenance of the Project, need to be assessed in the EA. Depending on occupancy levels, which are only stated as "5 or more" in the sections listed above, considerations could include increased sanitation facilities, increased traffic, increased human/pet/wildlife encounters (especially with grizzly bears), and possibly increased recreational use of the area. Permanent, full-time,

or seasonal occupancy of this facility will require separate approval from Reclamation based upon this evaluation as well as other criteria determined by Reclamation.

- Temporary Facilities on page 5 of Volume 1 of the License Application and Construction Staging Area on page 17 of Volume 2 of the Final Draft EA: The sources and quantities of material for the temporary cofferdam need to be specified, and the environmental effects of using that source assessed (e.g., excavation and hauling materials to the site, removal and hauling the materials to disposal areas upon completion, etc.) as would areas designated for wasting cofferdam materials after removal.
- Gibson Dam and Reservoir on page 11 of Volume 2 of the Final Draft EA: Gibson Reservoir storage is about 5,300 acre-feet at elevation 4610 feet, not 20,000 acre-feet.
- Class III Cultural Resource Inventory Report, Post-Construction Irrigation History on pages 3-7 of section 3, Volume 3 of the Final Draft EA: For clarification in the first paragraph on this page, the old needle valves at Gibson Dam were replaced in 1971 and 1972 due to operational problems with the needle valves. This was not as a result of the 1964 flooding event. For clarification in the third paragraph on this page, the Greenfields Irrigation District undertook the Rehabilitation and Betterment in the mid-1980s, not Fort Shaw.

#### **U.S. FISH AND WILDLIFE SERVICE SPECIFIC COMMENTS**

The U.S. Fish and Wildlife Service (USFWS), National Wildlife Refuge System administers perpetual conservation easements on properties in the proposed alignment of the project transmission line. The USFWS has not received official documentation of a senior, unrecorded, pre-existing right-of-way easement on these properties. Without such documentation, a right-of-way would need to be acquired before the proposed transmission line can cross properties encumbered by USFWS easement.

No right-of-way will be approved unless it is determined by the USFWS Regional Director to be compatible with the refuge purposes, pursuant to the National Wildlife Refuge System Improvement Act of 1997. The procedures for filing applications and the terms and conditions under which rights-of-way over and across the lands administered by the USFWS are provided in 50 CFR 29.21-1.

#### **ENERGY POLICY ACT OF 2005**

The Energy Policy Act of 2005 (Act) provides parties to the licensing the opportunity to request trial-type hearings regarding issues of material fact that support the prescriptions and conditions developed under FPA sections 4(e) (Federal reservations) and 18 (fishway prescriptions). In this letter, the Department is submitting mandatory conditions and prescriptions. Reclamation's administrative records for their mandatory conditions, showing various real property interests under Reclamation's jurisdiction in the Sun River Project, are attached as Exhibit "A" and by this reference incorporated herein. The U.S. Fish and Wildlife Service administrative records are not required to be filed in this instance since the Service is only exercising its prescriptive authority. The Act also allows parties to propose alternatives to prescriptions and conditions. Procedures for requesting a trial-type hearing on a factual issue or for proposing alternatives are set forth at 43 C.F.R. Part 45.

## **DESCRIPTION OF THE PROJECT AND LOCATION**

The Project would consist of a powerhouse located near the base of the existing Gibson Dam with four turbine generating units with a total installed capacity of 15 megawatts, a maintenance building located approximately 1,400 feet downstream from the powerhouse adjacent to existing Gibson Dam facilities, a 25.84-mile 34.5/69kV transmission line upgrading the existing transmission line extending east from the powerhouse to an interconnection point with Sun River Electric Cooperative's (SREC) existing 69kV line at Jackson's Corner, and other appurtenant facilities. The Project would also include a 34.5 kV to 69 kV transformer substation situated approximately 4.5 miles east of the Forest Boundary at the location where the existing SREC electrical distribution lines transition to overhead lines extending to the east to Jackson's Corner.

The Project would not alter the amount or timing of irrigation water stored or released from any reservoir, would not alter flows in the Sun River below Gibson Dam, and would not change any point of irrigation use but would merely utilize existing flows to generate power. Reclamation would continue to control Gibson Reservoir releases and water use.

Gibson Dam is owned by Reclamation. The Dam is located within the boundaries of the Lewis and Clark National Forest. All property in the area of the Dam is owned by the United States of America and is located within the boundary of the National Forest System lands.

### **BUREAU OF RECLAMATION SECTION 4(e) CONDITIONS, GIBSON DAM HYDROELECTRIC PROJECT, FERC No. 12478-003**

**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.

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

Pursuant to Federal Power Act (FPA) Section 10(j), the Federal Energy Regulatory Commission "in order to adequately and equitably protect, mitigate damages to, and enhance fish and wildlife

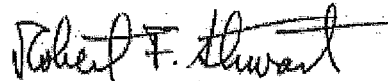
(including related spawning grounds and habitat) affected by the development, operation and management of the project...shall include conditions for such protection, mitigation, and enhancement...based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the United States Fish and Wildlife Service....”

The USFWS submits the following final recommendation pursuant to FPA Section 10(j) and irrespective of whether any portion of the project transmission lines are sited on USFWS-administered properties:

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

If you have any questions regarding Reclamation's Terms and Conditions, please contact George Gliko at 406-247-7651. If you have any questions concerning USFWS Recommendations, please contact Dave Carlson at 303-236-4254.

Sincerely,

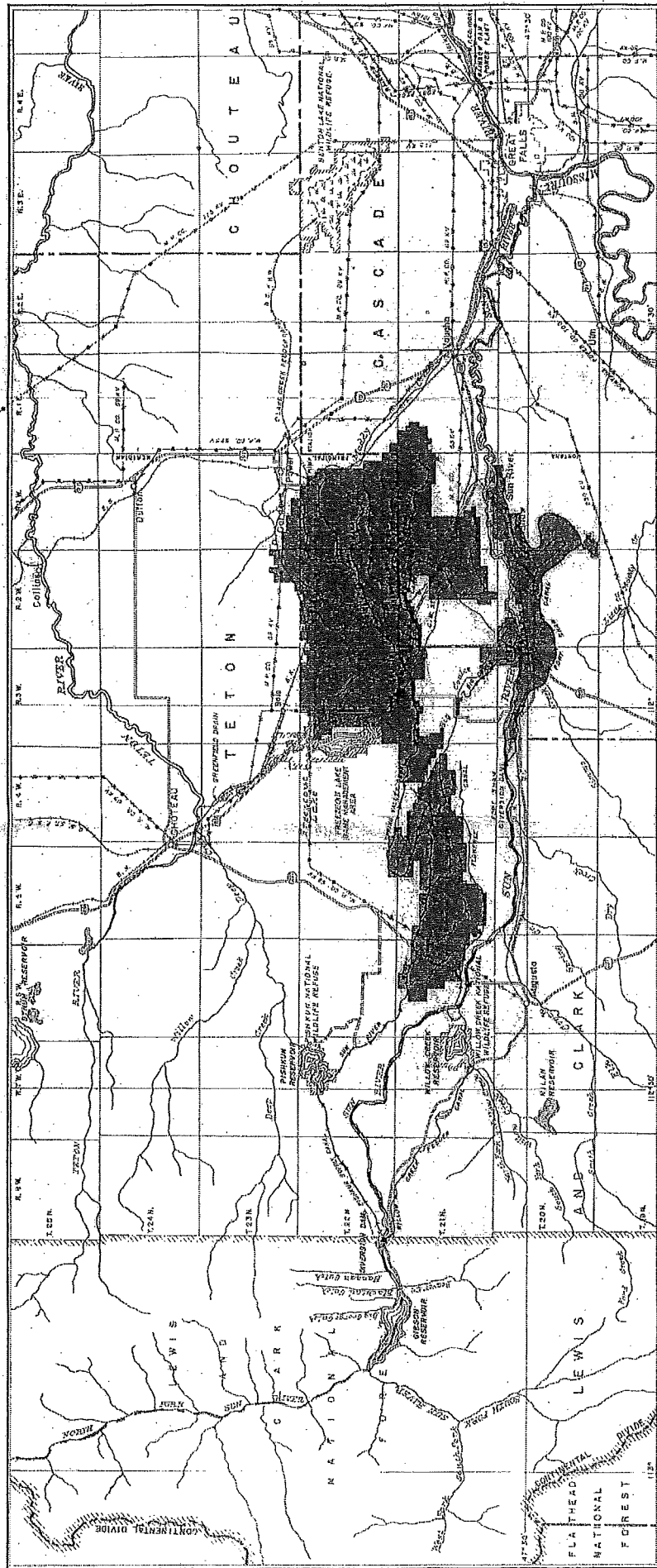


Robert F. Stewart  
Regional Environmental Officer

Enclosure: Exhibit "A"

cc: Service List

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



UNITED STATES  
DEPARTMENT OF INTERIORS  
BUREAU OF RECLAMATION  
GREAT PLAINS REGION  
E. L. HANFORD, CHIEF ENGINEER

# SUN RIVER PROJECT

MONTANA  
GREAT PLAINS REGION

MAP NO. 25-5045

## EXHIBIT 'A'

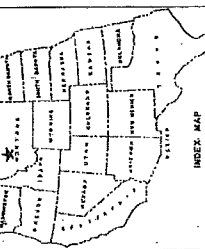


FEBRUARY 1973

U.S. GOVERNMENT PRINTING OFFICE: 1970-038-934

### EXPLANATION

- DAM
- CANAL
- LATERAL
- TUNNEL
- SHIPWAY
- TRANSMISSION LINE
- SUBSTATION
- PROJECT HEADQUARTERS
- AREAS ACQUIRED BY PROJECT
- STREAM GAGE STATION



INDEX MAP

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

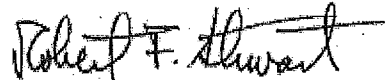
**Gibson Dam Hydroelectric Company, LLC )  
Gibson Dam Hydroelectric Project ) Project No. 12478-003**

**Major Project – Existing Dam**

**Certificate of Service**

**I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.**

**Dated on this 16th day of July, 2010.**



**Robert F. Stewart  
Regional Environmental Officer  
U.S. Department of the Interior  
P.O. Box 25007 (D-108)  
Denver, CO 80225-0007**