



United States  
Department of  
Agriculture

Forest  
Service

Umpqua  
National  
Forest

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File Code: 2770

Date: May 14, 2003

Dear Interested Party

The North Umpqua Hydroelectric Project FERC No. 1927 (Project), located primarily on lands within the Umpqua National Forest, is undergoing relicensing by the Federal Energy Regulatory Commission (FERC). The USDA Forest Service (USDA-FS) has the authority, under section 4(e) of the Federal Power Act, to submit to FERC conditions for the new license that are necessary for protection and utilization of National Forest System (NFS) lands affected by the Project.

The USDA-FS was a party in the collaborative settlement process and a signatory of the *North Umpqua Hydroelectric Project, FERC No. 1927-008 Settlement Agreement (SA)* on June 21, 2001.

The USDA-FS has previously made several filings with FERC regarding section 4(e) terms and conditions. The following filings may be located on the Federal Energy Regulatory Records Information System at <http://ferris.ferc.gov> using "P-1927" as the docket number or by contacting this office. The dates of the filings are:

- February 27, 2001 - Preliminary 4(e) Terms and Conditions in response to the FERC Ready for Environmental Analysis (REA) notice of November 15, 2000;
- November 6, 2001 - Revised Preliminary 4(e) Terms and Conditions based upon the SA;
- June 21, 2002 – Draft 4(e) Terms and Conditions in response to the FERC Draft Environmental Impact Statement (DEIS); a schedule indicating Final 4(e) Terms and Conditions would be filed 90 days from publication of the FERC's final environmental impact statement (FEIS); and comments on the FERC DEIS; and
- March 7, 2003 - Revised Draft 4(e) Terms and Conditions incorporating modifications from the November 1, 2002, Amendment No. 1 to the SA.

The public and other interested parties were given the opportunity to comment on the USDA-FS Preliminary 4(e) Terms and Conditions through FERC's REA process. These comments were considered during the development of the USDA-FS Revised Preliminary 4(e) Terms and Conditions, which were analyzed in the FERC DEIS published in April 2002. The public was provided an opportunity to comment on the USDA-FS Revised Preliminary 4(e) Terms and Conditions in the DEIS through FERC's National Environmental Policy Act (NEPA) process. FERC has recently issued a final environmental impact statement (FEIS), April 2003, for the Project responding to public and agency comments and analyzing the USDA-FS Revised Draft 4(e) Terms and Conditions.

The USDA-FS had proposed to adopt the FERC FEIS and issue a Record of Decision regarding the USDA-FS terms and conditions. However, a new USDA-FS national policy (see Enclosure I) identifies that FERC is the appropriate federal agency to complete the NEPA analysis for hydroelectric projects, as FERC is the agency responsible for issuing the license order. This new



policy decision is effective immediately and directs the Regional Foresters to file Final 4(e) Terms and Conditions without a separate NEPA decision document. Questions regarding this new policy should be directed to Walt Dortch, Regional Hydroelectric Program Coordinator at (360) 436-1555.

Condition No. 6 of our Revised Draft 4(e) Terms and Conditions requires the Licensee to conduct or fund site-specific NEPA analysis for all ground or habitat disturbing activities that may occur on NFS lands for the implementation of any protection, mitigation and enhancement (PM&E) required by the new license. Analysis for PM&E measures that were included in the FERC FEIS may be utilized as part of this site-specific NEPA, as appropriate. The project level NEPA analysis will include documentation of the potential effects to cultural resources, USDA-FS Sensitive species, and addresses other requirements of the USDA-FS policy, for implementation of site-specific projects or measures on NFS lands.

The USDA-FS is now requesting any additional public comment on the Revised Draft 4(e) Terms and Conditions. The USDA-FS is developing the Final 4(e) Terms and Conditions and plans to file these with FERC on or before July 10, 2003. These Final 4(e) Terms and Conditions will be based on consideration of the FERC FEIS, SA, and public comments received.

Attached (Enclosure II) is a copy of the Revised Draft 4(e) Terms and Conditions. Please reference your responses to these Revised Draft 4(e) Terms and Conditions. If you have comments based on your review, please respond to:

Umpqua National Forest  
James A. Caplan, Forest Supervisor  
2900 NW Stewart Parkway  
Roseburg, OR 97470  
Attn: North Umpqua Hydroelectric Project Coordinator

To ensure that your comments can be considered, all comments must be received by June 13, 2003.

Sincerely,

*/s/ James A Caplan*

JAMES A CAPLAN  
Forest Supervisor

Enclosure (2)

Cc Service List  
RHAT  
WO Lands

ENCLOSURE I



United States  
Department of  
Agriculture

Forest  
Service

Washington Office

14<sup>th</sup> & Independence SW  
P.O. Box 96090  
Washington, DC 20090-6090

File Code: 2770

Date: May 12, 2003

Route To:

Subject: Clarification Regarding Forest Service Hydropower Program

To: Regional Foresters

On March 13, 2003, I signed a letter formalizing our determination that certain actions would occur regarding the Forest Service (FS) Hydropower Program, based upon your input and the agency's responsibilities. Among those actions, we "... [d]elegat[ed] to Regional Foresters ... the responsibilities for *decisions* regarding the signing of and filing with FERC Federal Power Act (FPA) Section 4(e) and 10(a) and Wild and Scenic River Act section 7 terms and conditions, and any settlements related to these authorities." It has been the Forest Service's (FS) practice to treat the development of FPA Section 4(e) conditions as an agency action requiring a "NEPA decision," and the subsequent compliance with 36 CFR 215 notice, comment and appeal processes. (See FSM 2700, Chapter 2770, Section 2772.1, and FSH 2709.15).

As part of a number of efforts, including the ongoing FERC Hydropower Licensing Rule Making, the FS response to the National Energy Policy, the USDA/FS Rule Making regarding 36 CFR 215, and the "Process Predicament" analysis, we conducted a review of the NEPA as applied to FPA Section 4(e) conditions and the policies and practices of other federal agencies that also submit conditions to FERC pursuant to the FPA. As noted in our telephone conference call of April 23, 2003, the process predicament review has led to a determination that the development of FPA Section 4(e) conditions does not constitute an independent agency action, because the NEPA "action" regarding licensing of hydroelectric projects is FERC's.

Effective immediately, notwithstanding current FS manual direction, the FS will rely upon FERC's NEPA analysis to support the FS's 4(e) conditions. Therefore the FS will no longer issue a separate "NEPA decision document" in association with our 4(e) conditions. Note that because the FS will no longer be issuing a Record of Decision or Decision Notice for its 4(e) conditions, those 4(e) conditions will no longer qualify as appealable decisions as defined in 36 CFR 215.7. Further note that because the FS will rely upon FERC's NEPA analysis to support



FS's 4(e) conditions, the FS must provide FERC with sufficient evidence and analysis to demonstrate that our 4(e) conditions are necessary for the adequate protection and utilization of the affected forests.

This change in FS policy will “harmonize” the policy and practice of the FS with the other federal agencies that submit conditions to FERC pursuant to the FPA (e.g., USFWS, BIA, BLM, and NOAA) as directed in the National Energy Policy (*See* Chapter 5, pages 18 and 22), and allow the FS to file any revisions to its preliminary conditions at the same time as other federal agencies (as per the proposed FERC “Integrated Licensing Process”, FERC Notice of

Proposed Rule Making, Docket No. RM06-16, February 20, 2003). As for all agency conditions, opportunity for public comment on FS's 4(e)'s is available in the FERC process, and parties to the FERC proceeding still have an appeal opportunity at the end of the FERC licensing process.

This change in FS policy allows for early and frequent public involvement in the development of FS 4(e)'s. This is in line with the newly proposed FERC “integrated” licensing process and the practice of other federal agencies with “mandatory conditioning” authority. Through the FERC process, we and other agencies will be “front-end loading” many opportunities for public comment while FERC is “scoping” issues in the NEPA process and the licensee is developing its application.

This letter rescinds the January 31, 2001, letter to Regional Foresters from Paul Brouha, filed in 2770, Forest Service NEPA Compliance for Federal Power Act Section 4(e) Conditions. Nothing in the letter of March 13, 2003, or this letter, changes the Forest's and Region's responsibilities for issuing special use authorizations (SUA) for FERC hydropower projects on NFS lands or the NEPA analysis necessary to support issuance of any SUA. These policy changes will be documented in the FS directives system as soon as feasible after our review of current relevant policy.

/S/ TOM L. THOMPSON  
TOM L. THOMPSON  
Deputy Chief for National Forest System

## **ENCLOSURE II**

### **REVISED DRAFT 4(e) TERMS AND CONDITIONS**

#### **North Umpqua Hydroelectric Project**

**PacifiCorp – 1927-008**

**Pacific Northwest Region**

**USDA Forest Service**

#### **Condition No. 1 - Compliance With the Settlement Agreement**

The Licensee shall completely and fully comply with all provisions of the June 13, 2001, North Umpqua Hydroelectric Project Settlement Agreement and the November 1, 2002, Amendment No. 1, relating to:

1. All protection, mitigation and enhancement measures identified in the Settlement Agreement, Appendices, Schedules, and Amendment No. 1 which are on or affect National Forest System lands and resources.
2. All commitments identified in each and every plan referenced in the Settlement Agreement, Appendices, Schedules, and Amendment No. 1 which implement activities on or affecting National Forest System lands and resources.

#### **Condition No. 2 - Acceptance and Implementation of the Settlement Agreement**

The above Condition is premised on two requirements:

1. The Commission's acceptance and incorporation of the Settlement Agreement, Appendices, Schedules, and Amendment No. 1 without modification, into license terms; and
2. The Licensee's immediate and complete implementation of the PM&E measures in accordance with the Schedules contained in the June 13, 2001, Settlement Agreement and November 21, 2002, Amendment No. 1.

In the event either of these requirements is not met, the USDA Forest Service reserves its right to supplement or modify these terms and conditions at a later time.

### **Condition No. 3 – Reservation For Change In the Event of A Party Withdrawal**

The USDA Forest Service reserves the authority to add to, delete from, or modify the draft terms and conditions contained herein in the event that the Licensee, the USDA Forest Service or other federal and state agencies withdraw from the Settlement Agreement under the procedures identified in Section 22.8 of the Settlement Agreement filed with the Commission on June 21, 2001, prior to the Commission's issuance of a new license for the Project.

### **Condition No. 4 - Implementation and Modification of Forest Service Conditions**

The USDA Forest Service reserves the authority to modify its 4(e) terms and conditions if:

1. The term of the new license issued by the Commission exceeds 35 years.
2. Upon completion of the USDA Forest Service administrative appeals process at 36 Code of Federal Regulations (CFR) Part 215, the USDA Forest Service may be required to modify its 4(e) conditions consistent with requirements of applicable agency regulations.
3. The Commission issues a new license for the Project that is materially inconsistent with the provisions of the Settlement Agreement filed with the Commission on June 21, 2001.

### **Condition No. 5 - Requirement to Obtain a Forest Service Special-Use Authorization**

If additional National Forest System lands are included within the Project boundary, the Licensee shall apply to the USDA Forest Service for a special-use permit and may be required to obtain a permit for occupancy and use of National Forest System lands added to the Project area boundary in the new license.

Additional lands authorized for use by the Licensee in a new special-use permit shall be subject to laws, rules, and regulations applicable to the National Forest System. The terms and conditions of the USDA Forest Service special-use authorization are enforceable by the USDA Forest Service under the laws, rules, and regulations applicable to the National Forest System. USDA Forest Service may request the Commission to take action against the Licensee to enforce the provisions of the special use permit.

### **Condition No. 6 – Activities on National Forest System Lands**

Prior to initiating any ground or habitat-disturbing activities on National Forest System lands required for implementation of any protection, mitigation and enhancement measure (“PM&E Measure”) in the Settlement Agreement, the Licensee shall conduct or fund an environmental analysis including, but not limited to, scoping, site-specific resource analyses, and cumulative-effects analyses, sufficient to meet the criteria set forth in USDA Forest Service regulations for NEPA in existence at the time the process is initiated. The Licensee may refer to or rely on any previous NEPA analysis for the activity to the extent such analysis is not out of date, as determined by USDA Forest Service. Any contractors selected by the Licensee to conduct the NEPA process shall be approved by the USDA Forest Service in advance of any work.

Following scoping, the Licensee shall submit the scope of work for the environmental analysis, including, but not limited to, the range of alternatives that shall be addressed, to the USDA Forest Service for review and approval.

The Licensee shall make reasonable efforts to initiate and complete the NEPA process sufficiently in advance of Project implementation dates for PM&E Measures for which implementation dates are set forth in the Settlement Agreement and for those PM&E Measures scheduled by the RCC subsequent to the new license, to accommodate time lines for preparation and publication of a NEPA decision document by the USDA Forest Service and any administrative appeals of the NEPA decision, as required by USDA Forest Service appeal regulations in existence at the time the NEPA process is initiated.

Upon license issuance, the Licensee shall, in consultation with the USDA Forest Service, NMFS, USFWS, ODFW, and ODEQ, develop site-specific plans for construction activities under the license that shall result in ground or habitat disturbance, whether within or outside of water bodies. Such plans shall be prepared in accordance with the Implementation Schedule in the Settlement Agreement for such activities and shall include a construction schedule providing for in-river and riparian construction during non-critical periods for affected resources. The Licensee will submit completed plans to the USDA Forest Service (in addition to any agencies that may be required to approve such plans under other provisions of the Settlement Agreement) for review and approval prior to initiating any construction activities and before filing the construction schedule with FERC. For measures to be implemented more than two years after the applicable NEPA decision, the USDA Forest Service shall review and approve NEPA documentation to assure its accuracy and currency prior to scheduled implementation. The Licensee shall conduct Sensitive Species and Survey and Manage Species protocol surveys for rare, endemic species within 400 feet of any ground- or habitat-disturbing activity that may occur as a result of the PM&E Measures. The list of species and survey protocols shall be derived from then current USDA Forest Service regulations, manuals, policies, and handbooks. The Licensee shall include measures to prevent erosion in all site-specific plans.

#### **Condition No. 7 - Approval of Changes After License Issuance**

Notwithstanding any license amendments to make changes to the Project on National Forest System lands, the Licensee shall receive written approval to the extent required by law from the USDA Forest Service prior to implementing changes in the location of any constructed Project features or facilities, or in the uses of Project land and waters, or any other departure from the requirements of the new license. Nothing in this condition prevents the Licensee from proposing a license amendment in accordance with applicable Commission Regulations and Section 22.5.3 of the Settlement Agreement.

### **Condition No. 8 - Coordination With Other Authorized Activities**

The Project area, or portions thereof, may be under federal authorization for other activities and permitted uses that are not in conflict with the new license. If the USDA Forest Service determines that the Licensee proposes an activity not expressly provided for in the license that affects another authorized activity, the Licensee shall coordinate with the USDA Forest Service to ensure that any potential conflicts are resolved prior to implementing the activity. Prior to authorizing any new third-party use of National Forest System lands within the Project area that may conflict with the new license, the USDA Forest Service shall coordinate with the Licensee to ensure that any potential conflicts are resolved.

### **Condition No. 9 – Borrow and Quarry Pits**

The Licensee shall consult with and receive approval from the USDA Forest Service prior to conducting any activities relating to the excavation and removal of soil and rock materials from National Forest System lands. Use and development of borrow and quarry pits shall be in accordance with the *Umpqua National Forest Rock Resource Management Plan*. Use and development of borrow and quarry pits shall be accomplished in accordance with Condition No. 6 – Activities on National Forest System Lands

### **Condition No. 10 - Seismic and Geologic Hazard Evaluation, and Dam Safety**

In conjunction with the next regularly scheduled FERC part 12 inspection and future FERC Part 12 inspections, the Licensee shall perform high-level analyses of potential seismic and geologic hazards facing the Project, according to methodologies and procedures approved by the Oregon Department of Geology and Mineral Industries (“DOGAMI”). The Licensee shall include such analyses, after review and comment by DOGAMI, in its Part 12 submissions to FERC. The Licensee shall, upon request, submit the results of these inspections to DOGAMI and the USDA Forest Service.

The Licensee shall consult with OWRD’s Dam Safety Section in conjunction with FERC engineering and safety inspection activities. The Licensee shall comply with relevant dam safety statutes and rules when modifying dams or other hydraulic structures at the Project.

### **Condition No. 11 - Spoils Disposal**

If not completed as part of the final Erosion Control and Transportation Management Plans required in the Settlement Agreement, the Licensee shall within one year of license issuance, prepare a Spoils Disposal Plan in consultation with and approved by the USDA Forest Service and file the plan with the Commission. The plan shall address disposal and/or storage of waste soil and rock materials (spoils) generated from routine road maintenance activities, rock fall and slope failure (landslides), and construction projects. The plan shall require the Licensee to:

1. Identify and characterize the nature of the spoils in accordance with applicable USDA Forest Service regulations.
2. Identify prospective sites for the disposal and/or storage of spoils that prevent contamination of water by leachate and surface water runoff.
3. Develop concurrent and final site stabilization, slope reconfiguration, erosion control, and rehabilitation measures.
4. Complete the NEPA analysis in accordance with Condition No. 6 – Activities on National Forest System Lands.

### **Condition No. 12 - Fire Suppression Plan**

Within one year of license issuance, the Licensee shall prepare a Fire Suppression Plan in consultation with and approved by the USDA Forest Service, and file the plan with the Commission. The plan shall require the Licensee to:

1. Describe the fire hazard associated with Licensee facilities.
2. Identify hazard abatement procedures.
3. Identify a notification process in the event of a fire involving Licensee facilities.
4. Cooperate with the USDA Forest Service for suppression of fire involving the Licensee facilities.

### **Condition No. 13 - Solid Waste and Waste Water Plan**

Within one year of license issuance, the Licensee shall prepare in consultation with and approved by the USDA Forest Service, a Solid Waste and Waste Water Treatment Plan for facilities and operations on the National Forest System lands and file the plan with the Commission. The plan will comply with the regulations of the US Department of Agriculture and all Federal, State, County, and municipal laws, ordinances and regulations that are applicable to the area or operations authorized by the Project license.

### **Condition No. 14 – Spill Prevention and Control, and Hazardous Materials Management**

Within one year of license issuance, the Licensee shall prepare in consultation with and approved by the USDA Forest Service, a Spill Prevention and Control, and Hazardous Materials Management Plan for facilities and operations on the National Forest System lands and file the plan with the Commission. The plan will comply with the regulations of the US Department of Agriculture and all Federal, State, County, and municipal laws, ordinances and regulations that are applicable to the area or operations authorized by the Project license.

### **Condition No. 15 – USDA Forest Service Sensitive Species**

Within one year of license issuance, the Licensee shall develop a Sensitive Species plan, in consultation with and approved by the Forest Service, and file the plan with the Commission. This plan shall describe how the Licensee shall coordinate with the Forest Service for the conservation and management of Sensitive Species that are identified on the Regional Forester's Sensitive Species List, as amended. The plan shall require the Licensee, in consultation with the USDA Forest Service, to:

- a. Identify criteria and approval elements for biological evaluations necessary to meet Forest Service standards and management direction in evaluating the effects of proposed actions on Sensitive Species.
- b. Develop and maintain a list of Sensitive Species that may be present in the Project area.
- c. Complete biological evaluations of the potential effects of proposed actions on Sensitive Species.
- d. Conduct surveys for Sensitive Species in connection with proposed actions.
- e. Update the plan as the Regional Forester's Sensitive Species List changes or new information indicates that changes to the plan are warranted.

### **Condition No. 16 - Proposed, Threatened and Endangered Species**

The USDA Forest Service acknowledges that the Commission's license provides the necessary authority for the Commission to amend the license, after prior notice and opportunity for hearing, as necessary for the Commission to comply with its obligations under the Endangered Species Act. Triggers for reinitiation, as stated in 50 CFR, Part 402.16 are if:

1. The amount or extent of taking specified in the incidental take statement is exceeded.
2. New information reveals effects of the action that may affect listed species or critical habitat in a manner or to the extent not previously considered.
3. The identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion.
4. A new species is listed or critical habitat designated that may be affected by the identified action.

The Licensee shall confer with the USDA Forest Service in the event reinitiation of consultation is triggered during the license term.

### **Condition No. 17 – Survey and Manage Species**

Within one year of license, the Licensee shall prepare a Survey and Manage Species plan, in consultation with and approved by the USDA Forest, and file the plan with the Commission. This plan shall describe how the Licensee will coordinate with the USDA Forest Service on proposed actions for the conservation and management of Survey and Manage Species. The

Licensee shall conduct surveys and provide appropriate mitigation consistent with *Umpqua National Forest Land and Resource Management Plan*, as amended, and applicable regulations. The plan shall also contain provisions for updating or revision due to changes in management direction or the list of Survey and Manage Species.

**Condition No. 18 – Reservoir Dredging**

Reservoir and forebay dredging on National Forest System lands is restricted to actions that are consistent with the *Umpqua National Forest Land and Resource Management Plan*, as amended, within and below the Project. All dredging proposals are subject to review and authorization by the USDA Forest Service as described in Condition No. 6 – Activities on National Forest System Lands and subject to coordination with and any necessary approvals from Oregon Division of State Lands, ODEQ, and ODFW.