

156 FERC ¶ 62,169

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Baker County, Oregon

Project No. 12686-004

ORDER ISSUING ORIGINAL LICENSE

(Issued September 6, 2016)

INTRODUCTION

1. On April 30, 2013, Baker County, Oregon (Baker County) filed, pursuant to Part I of the Federal Power Act (FPA),¹ an application for a license to construct and operate the proposed Mason Dam Hydroelectric Project No. 12686 (Mason Dam Project or project).² The project's authorized capacity being licensed is 3.4 megawatts (MW). The project will be located at the U.S. Department of the Interior (Interior), Bureau of Reclamation's (Reclamation) Mason Dam on the Powder River, near Baker City, in Baker County, Oregon. The project will occupy 9.39 acres of federal land administered by the U.S. Forest Service (Forest Service) and 1.54 acres administered by Reclamation.³
2. As discussed below, this order issues an original license for the Mason Dam Project.

BACKGROUND

3. On August 11, 2014, the Commission issued a public notice that was published in the *Federal Register* accepting the application for filing, soliciting motions to intervene and protests, indicating the application was ready for environmental analysis, and setting

¹ 16 U.S.C. §§ 791(a) – 825(r) (2012).

² On October 10, 2014, Baker County amended its license application with the filing of an Offer of Settlement for the Mason Dam Project.

³ Because the project will be constructed at Reclamation's existing Mason Dam and will occupy lands of the United States, section 23(b)(1) of the FPA, 16 U.S.C. § 817(1) (2012), requires the project to be licensed. In addition, the project will be located on the Powder River, a tributary to the Snake River which is a navigable waterway of the United States. Tributaries of navigable waterways are Commerce Clause streams within the meaning of section 23(b)(1) of the FPA. *See Navigable Riverways Within The State of Oregon*, U.S. Army Corps of Engineers – Portland District, (October 1993).

October 10, 2014, as the deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.⁴ Interior, the Forest Service, the Oregon Water Resources Department (Water Resources) and the Oregon Department of Fish and Wildlife (Oregon DFW) each filed a timely notice of intervention, comments, and recommendations on the application.⁵ None of the intervenors oppose the project. Interior and the Forest Service also filed terms and conditions.

4. On October 10, 2014, Baker County filed a Settlement Agreement (Agreement) for the Mason Dam Project, entered into by Baker County and six other entities.⁶ Under the Agreement, Baker County will construct and operate the project consistent with: (1) Reclamation's conditions under section 4(e) of the FPA; (2) Oregon Department of Environmental Quality's (Oregon DEQ) conditions under section 401 of the Clean Water Act; (3) Oregon DFW's recommendations under sections 10(a)(1) and 10(j) of the FPA; (4) Forest Service's conditions under section 4(e) of the FPA; and (5) FWS' recommendations conditions under FPA sections 10(a) and 10(j), and conditions under FPA section 18.

5. On October 21, 2014, the Commission issued notice of the Agreement. The notice set November 20, 2014, as the deadline for filing comments, and December 5, 2014, as the deadline for reply comments. In response, Oregon DFW and Water Resources filed comments supporting the Agreement. No reply comments were filed.

6. An Environmental Assessment (EA) was prepared by Commission staff and issued on October 27, 2015. The EA analyzes the impacts of the proposed project and alternatives to it. The U.S. Fish and Wildlife Service (FWS), Oregon DEQ, Oregon DFW, and Water Resources filed comments on the EA.

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

⁴ 79 *Fed. Reg.* 48737- 48738 (Monday, August 18, 2014).

⁵ Under Rule 214(a) of the Commission's Rules of Practice and Procedure, Interior, Forest Service, Water Resources, and Oregon DFW became parties to the proceeding upon timely filing of their notices of intervention. 18 C.F.R. § 385.214(a) (2016).

⁶ Baker County, FWS, Reclamation, Oregon DFW, Oregon DEQ, Water Resources, and Forest Service are signatories to the Agreement.

PROJECT DESCRIPTION AND OPERATION

A. Project Area

8. The project will be located at Reclamation's Mason Dam on the Powder River at river mile 131, in Baker County, Oregon. Mason Dam and Phillips Reservoir, which it impounds, are components of the Upper Division of Reclamation's Baker Project and are used for flood control and irrigation water storage and release. Congress authorized the Upper Division on September 27, 1962.⁷

9. The Powder River watershed is bordered by the Blue Mountains to the west, the Wallowa Mountains to the northeast, the Malheur River basin to the south, and the Snake River canyon to the east. The Powder River is a tributary of the Snake River in northeastern Oregon, and flows predominantly east from its headwaters in the Elkhorn Mountains at an elevation of about 9,600 feet to Brownlee Dam on the Snake River at an elevation of about 2,000 feet.⁸ The Powder River basin drains approximately 1,077 square miles, of which approximately 168 square miles are upstream of Mason Dam.

10. The Forest Service manages most of the land surrounding Mason Dam and Phillips Reservoir. All project facilities will be located on federal land.

B. Existing Reclamation Facilities and Operation

11. The 173-foot-tall, 895-foot-long Mason Dam impounds the 2,235-surface-acre Phillips Reservoir, also known as Phillips Lake. Mason Dam was built on the Powder River by Reclamation to provide irrigation, water delivery, and flood control. Baker Valley Irrigation District (Baker Valley) provides for the day-to-day operation and maintenance of Mason Dam and controls flow releases at Mason Dam to the Powder River under an agreement with Reclamation.

12. Water is withdrawn from Phillips Lake through an intake located immediately upstream of the dam and approximately 48 feet below the reservoir's normal water surface elevation of 4,070.5 feet mean sea level.⁹ The intake structure is attached to a 325-foot-long concrete lined vertical intake tunnel. The intake tunnel terminates at the centerline of the dam where it connects to a 350-foot-long, 56-inch-diameter discharge conduit. The discharge conduit splits into two branches, each fitted with a 35-inch-high

⁷ 76 Stat. 634, Public Law 87-706.

⁸ Brownlee Dam is a development of the Hells Canyon Project No. 1971.

⁹ Unless otherwise indicated, all elevations are referenced to mean sea level.

pressure slide gate just inside the downstream face of the dam. From the slide gates water is discharged into two downward sloping conduits and then to the dam's concrete stilling basin. The outlet works have a maximum discharge capacity of 875 cubic feet per second (cfs). Mason Dam is also equipped with an ungated emergency spillway with a crest elevation of 4,070.5 feet and a concrete channel down the left abutment ending in a pool/stilling basin near the outlet works discharge.

13. Flow releases at Mason Dam up to 875 cfs are made through the dam's outlet works. Releases in excess of 875 cfs would pass over the dam's emergency spillway; however, to date, the spillway has never had to be utilized.¹⁰

14. Typical irrigation flow releases at Mason Dam begin around April 15 and last until September 30. During the irrigation season, flow releases generally remain between 100 and 200 cfs but can be as high as 350 cfs. From October through January, Baker Valley releases about 10 cfs to protect aquatic habitat in the Powder River. In February and March, the flow release is increased to about 20 to 50 cfs to make room for flood storage capacity within Phillips Reservoir.

C. Proposed Project Facilities

15. The Mason Dam Project will use Reclamation's existing reservoir outlet works, which will require modification of the discharge conduit to include a bifurcation to a new 105-foot-long, 72-inch-diameter penstock. The penstock will deliver flows to a new 40-foot by 28-foot powerhouse that will house a single 3.4-MW horizontal shaft Francis-type turbine-generator unit. The project will also require modification of the existing stilling basin to incorporate the project's tailrace, the construction of a new 0.8-mile-long, 12.47-kilovolt (kV) overhead transmission line along Black Mountain Road to a new substation located within Idaho Power's existing 138-kV transmission line right-of-way, and appurtenant facilities.

16. A more detailed project description is contained in Ordering Paragraph (B)(2).

D. Proposed Project Operation

17. The project will be operated in a run-of-release mode, using flows that are released by Reclamation and/or Baker Valley for irrigation, flood control, or other purposes.

18. The project will have a minimum and maximum hydraulic capacity of 120 and 300 cfs, respectively. When available flows fall below 120 cfs, the project will not

¹⁰ See Email Communication Memo between Commission Staff and Baker County, Oregon, filed June 27, 2016.

operate and flow releases will be made through Reclamation's existing outlet works. At flows between 120 and 300 cfs, Reclamation's existing outlet works will be closed and flows will be released through the project's turbine. If required flow releases exceed the turbine capacity of 300 cfs, the additional flow will be released through Reclamation's existing outlet works, up to a combined total release of 875 cfs. Releases in excess of 875 cfs will be made through the emergency spillway.

19. A synchronous bypass mechanism will be installed at the project. If the powerhouse unexpectedly goes offline, the existing slide gates on Reclamation's outlet works will automatically open to bypass flows away from the turbine until the powerhouse is brought back online.

20. The project will generate an average of 7,510 megawatt-hours (MWh) annually.

E. Project Boundary

21. The project boundary encloses a section of Reclamation's existing outlet works (limited to the footprint of the bifurcation chamber),¹¹ the penstock, powerhouse, tailrace, transmission line, and substation. All land included within the project boundary is owned by the United States, and is administered by Reclamation or the Forest Service. Reclamation's dam and reservoir are federal facilities; and therefore, cannot be licensed by the Commission. The project boundary is discussed further below.

F. Proposed Environmental Measures

22. Baker County proposes to construct, operate, and maintain the project in accordance with the Agreement discussed above. The provisions of the Agreement are included in the summary of proposed environmental measures below:

23. To decrease erosion and sedimentation during construction and operation of the project, Baker County proposes to implement a Sediment and Erosion Control Plan with measures specifying that Baker County will: (1) monitor turbidity during construction; (2) restrict in-water work downstream of Mason Dam to July 1 through October 3; and (3) monitor sites disturbed during construction for the first 3 years of operation and implement remedial measures if revegetation has not met specific performance measures.

24. To protect water quantity and aquatic habitat in the Powder River, Baker County proposes to implement the Bypass Flow Plan, filed April 30, 2013, to ensure downstream

¹¹ The bifurcation chamber is a room that will be constructed inside the dam to house the project's bifurcation works.

flows are maintained during project construction and during scheduled and unscheduled turbine outages.

25. To protect water quality in the Powder River, Baker County proposes to implement the Dissolved Oxygen Compliance Plan, filed December 5, 2013, as revised by Oregon DEQ's section 401 water quality certification (certification) issued on May 6, 2014.¹² The plan requires monitoring of Dissolved Oxygen (DO) and Total Dissolved Gas (TDG), and, if needed, activating a turbine aeration system, releasing water from existing outlets and constructing aerating rock weirs. In the event project operations violate established DO or TDG criteria, Baker County will implement a project shutdown.

26. To prevent the spill or release of hazardous substances to the Powder River, Baker County proposes to implement the Hazardous Substances Spill Prevention and Cleanup Plan filed December 5, 2013.

27. To enhance upstream fish passage in tributaries upstream of the project, Baker County proposes to: (1) replace an undersized, perched culvert on Silver Creek with a 12-foot-wide open-bottom arch culvert; and (2) modify a box culvert on McCully Fork to provide a suitable gradient and flow velocities. Baker County also proposes to monitor and maintain these enhancements for proper function for the term of the license.

28. To address fish entrainment and potential turbine mortality at the project, Baker County proposes to: (1) create and contribute \$1,000 per year to a Phillips Reservoir stocking supplementation fund; and (2) screen the Shaw-Stewart irrigation diversion located on the Powder River 11 miles downstream of Mason Dam, and establish a \$90,000 Powder River diversion screening fund to cover the cost of installing fish screens at currently unspecified, water diversion facilities.

29. To protect wildlife habitat and prevent the spread of noxious weeds, Baker County proposes to implement the Revegetation/Noxious Weed Management Plan filed April 30, 2013, to guide the reseeding of areas disturbed by construction, and that requires project equipment to be cleaned to prevent spread of noxious weeds and invasive species. Baker County also proposes to monitor and control noxious weed species for the duration of the license.

30. To protect wildlife resources, Baker County proposes to: (1) design the transmission line to minimize avian electrocutions; (2) provide onsite in-kind wildlife habitat to replace the loss of up to 2 acres of grassland and forest habitats; and (3) avoid

¹² Oregon DEQ's section 401 water quality certification for the Mason Dam Project was filed by Baker County on July 7, 2015.

all construction, operation, and maintenance activities within 0.25 mile (1 mile for the use of explosives) of an active bald eagle nest site between January 1 and August 31 and time transmission line construction outside the bald eagle nesting season.

31. To inform the public of project construction schedules and actions that may affect recreation access, Baker County proposes to install an interpretation kiosk within the Powder River Recreation Area.

32. To minimize the impacts of project construction on visitor recreation and timber hauling use of Black Mountain Road (USDA Forest Service Road #1145), Baker County proposes to develop a transportation management plan.

33. To protect aesthetics in the project vicinity, Baker County proposes to use colors that blend the project powerhouse with the surrounding area.

34. To limit potential effects on any previously undiscovered cultural resource during construction of the project, Baker County proposes to consult with the Oregon State Historic Preservation Officer (Oregon SHPO), Forest Service, and Confederated Tribes of the Umatilla Indian Reservation (Umatilla) in the event of a discovery.

SUMMARY OF LICENSE REQUIREMENTS

35. The license, which authorizes the installation of 3.4 MW of new, renewable energy, requires a number of measures to protect water quality, fish, wildlife, recreation, and cultural resources at the project. In addition to the proposed measures identified above, the license includes the following additional measures:

36. In the event cultural resources are discovered at the project and determined to be eligible for the National Historic Register, to protect those resources, this license requires Baker County to develop a historic properties management plan (HPMP); and

37. In the event of a project-related emergency that threatens or harms fish or wildlife, the license requires Baker County to notify the Commission and the appropriate agencies as soon as becoming aware, but not later than 24 hours, of the emergency, and to file, with the Commission, a detailed report of the incident within 10 days of the initial notification.

WATER QUALITY CERTIFICATION

38. Under section 401(a)(1) of the Clean Water Act (CWA),¹³ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project

¹³ 33 U.S.C. § 1341(a)(1) (2012).

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.¹⁴

39. On May 28, 2013, Baker County applied to Oregon DEQ for a certification for the Mason Dam Project, which Oregon DEQ received on the same day. On May 6, 2014, Oregon DEQ timely issued certification for the project that includes conditions, which are set forth in Appendix A of this order and incorporated into the license by Ordering Paragraph (D).

40. The certification includes seven conditions. Certification condition 7 is administrative in nature and is not discussed further. The remaining six conditions are consistent with Baker County's proposal and the Agreement, and require Baker County to: (1) operate the project in a "run-of-release" mode; (2) monitor DO and TDG; (3) provide fish passage and entrainment measures; (4) implement the Erosion and Sediment Control Plan, submitted to Oregon DEQ on May 28, 2013; (5) implement and maintain the Hazardous Substance Spill Prevention and Cleanup Plan, submitted to Oregon DEQ on May 28, 2013; and (6) implement and maintain the Bypass Flow Plan, submitted to Oregon DEQ on May 28, 2013.

41. Certification condition 1 requires Baker County to enter into an agreement with Reclamation for the purpose of coordinating the transfer of flows between Reclamation, Baker Valley, and the project. Article 401 of the license requires Baker County to file that agreement with the Commission.

42. Certification condition 2 requires Baker County to revise and rename the DO Compliance Plan submitted to Oregon DEQ and re-submit it to Oregon DEQ as the "Project Water Quality Monitoring and Management Plan" for Oregon DEQ's approval. Article 402 of the license requires that Baker County file the revised plan, with the Commission, for approval.

43. Certification condition 3 requires Baker County to implement the following measures to address fish passage concerns within the Powder River watershed:¹⁵ (1)

¹⁴ 33 U.S.C. § 1341(d) (2012).

¹⁵ Condition 3 provides that Baker County must implement mitigation measures in lieu of fish screening and passage in accordance with the Fish Screening Exemption and the Fish Passage Waiver for the Mason Dam Project that were signed by the Oregon Department of Fish and Wildlife on February 7, 2014, and signed by Baker County on February 12, 2014. These documents are included as Appendix C of Baker County's (*continued ...*)

replace the Silver Creek Culvert; (2) enhance the McCully Fork Culvert; and (3) monitor the culvert enhancement sites (fish passage measures). Condition 3 also requires three additional measures to mitigate for project's effect on fish entrainment: (1) contribute \$1,000 annually to Oregon DFW to supplement the agency's Philips Reservoir stocking supplementation fund; (2) install a fish screen at the Shaw-Stewart Diversion; and (3) create and contribute \$90,000 to a Powder River Screening Fund (fish entrainment measures).

44. In the EA, Commission staff noted that because Reclamation's Mason Dam currently operates without upstream fish passage facilities, any adverse effects associated with the lack of upstream fish passage are pre-existing and due to the federally owned Mason Dam's construction. Therefore, these effects are not related to the proposed non-federal hydropower project. The EA also found that the entrainment rate through the proposed hydropower project and the existing federal project facilities would be the same as the rate of fish entrainment currently through the federal facility, and that fish passage through the non-federal hydroelectric project's turbine would likely decrease entrainment mortality of fish relative to existing conditions, which would benefit both rainbow trout and redband trout.¹⁶ Because the required fish passage measures would not address a project effect, and the project would not increase the entrainment rate at Mason Dam, the EA did not recommend the fish passage and fish entrainment measures.¹⁷ Nevertheless, because these measures are required by the certification, they are included in the license.

45. Certification condition 4 requires Baker County to implement the Erosion and Sediment Control Plan filed with Water Resources on May 28, 2013; however, as discussed below in *Section 4(e) Findings and Conditions*, the Forest Service's condition 8 requires this plan to be revised to include specific measures. Article 403 clarifies the geographic and temporal scope of the plan and requires that the revised plan be developed in consultation with the appropriate agencies and filed with the Commission for approval.

COASTAL ZONE MANAGEMENT ACT

46. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively

October 10, 2014 filing.

¹⁶ See EA at 50-51, 55-58, and 101-103.

¹⁷ See EA at 46-48, 101.

presumed by its failure to act within 6 months of its receipt of the applicant's certification.

47. The Oregon Department of Land Conservation and Development manages Oregon's Coastal Zone Management Program. Oregon's coastal zone boundary extends from the Washington border to the California border, east to the crest of the Coast Range Mountains west to about 3 miles out to sea to the outer limits of Oregon's territorial sea.

48. Pursuant to the National Oceanic and Atmospheric Administration's regulations implementing the CZMA, 15 C.F.R. § 930.53 (2016), if a state chooses to review activities, with reasonably foreseeable effects, outside its coastal zone, it must generally describe the geographic location of such activities. If a state wishes to review activities outside of the coastal zone, and for which it has not generally described the geographic location for review, the state must follow the procedures established in 15 C.F.R. § 930.54 (2016). That section requires the state to notify the federal agency, the applicant, and the National Oceanic and Atmospheric Administration of unlisted activities affecting the coastal zone (that it wishes to review) within 30 days from notice of the license application.

49. The Mason Dam Project is located outside Oregon's coastal zone, and Oregon has not described a geographic location for federal license activities outside the coastal zone that it wishes to review. Notice of the license application was published in the *Federal Register* on August 18, 2014. In addition, on November 6, 2015, Commission staff provided Oregon Department of Land Conservation and Development access to an electronic copy of the EA and requested concurrence with staff's conclusion in the EA that the project would not affect Oregon's Coastal Zone.¹⁸ No response was filed and the agency did not notify the Commission or the applicant that it wished to review the application. Therefore, certification is not required.

¹⁸ See November 6, 2015 letter to Patty Snow, Oregon CMP Manager.

SECTION 4(e) FINDINGS AND CONDITIONS

50. Section 4(e) of the FPA provides that the Commission can issue a license for a project located within a federal reservation only if it finds that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired. The Mason Dam Project is located on 9.39 acres of the Wallowa-Whitman National Forest, which is under Forest Service supervision, and uses components of the Baker Project (i.e., Mason Dam, Phillips Reservoir), which are under Reclamation's supervision.

51. Staff has reviewed the Organic Administration Act of 1897,¹⁹ which established the purposes for forest reservations, and the authorizations which created and expanded the Wallowa-Whitman National Forest²⁰ and the Baker Project.²¹ There is no evidence or allegation in this proceeding to indicate that licensing the Mason Dam Project would interfere with the purposes of the Wallowa-Whitman National Forest or the Baker Project, within which the project is located. Therefore, the license, as conditioned, will not interfere or be inconsistent with the purposes for which the Forest Service's Wallowa-Whitman National Forest or Reclamation's Baker Project were created.

A. Forest Service Conditions

52. Forest Service filed final section 4(e) conditions on October 8, 2014, which are set forth in Appendix B of this order and incorporated into the license by Ordering Paragraph (E).²² The conditions include administrative requirements and a number of general conditions regarding the use of Best Management Practices in carrying out construction

¹⁹ 16 U.S.C. § 473 et seq. (2012).

²⁰ The Wallowa National Forest was created by presidential proclamation on May 6, 1905. *See* Presidential Proclamation No. 546, 33 Stat. 3004. The Whitman National Forest was created by executive order issued June 13, 1908. *See* Executive Order No. 813. The two forests were merged administratively on July 1, 1954, and have since been known as the Wallowa-Whitman National Forest. At the time of each forest's creation, the Organic Administration Act of 1897, 16 U.S.C. § 475 (2012), stipulated that all national forest lands were established and administered for watershed protection and timber production.

²¹ Baker Dam is part of the Upper Division of Reclamation's Baker Project, authorized on September 27, 1962. Pub. Law 87-706, 76 Stat. 634.

²² In a letter filed on February 8, 2016, Forest Service confirmed that its preliminary 4(e) conditions, filed on October 8, 2014, are final.

and maintenance activities. The conditions also require project-specific measures, including requirements to: (1) submit annual reports on previous year compliance with license conditions and the following year's work plans (condition 5); (2) provide fish passage and fish entrainment measures (conditions 6A-6F); (3) meet all federal and state water quality standards (condition 7); (4) revise the Erosion and Sediment Control Plan (ESCP) filed with the Final License Application on December 5, 2013 (condition 8); (5) revise the Revegetation/Noxious Weed Management Plan filed with the Final License Application on December 5, 2013 (condition 9); (6) develop a terrestrial wildlife resource management plan (condition 10); (7) cease all construction activities should the licensee encounter any cultural material (condition 11); (8) construct and install a recreational visitor interpretation kiosk within the Powder River Recreation Site access area (condition 12); and (9) develop and finalize a transportation plan for the Black Mountain road # 1145 and the Powder River Recreation Site (condition 13).

53. As discussed in more detail above in the Water Quality Certification section of the order, staff determined in the EA that the fish passage and entrainment measures of conditions 6A through 6F are not needed to mitigate the project's effects. Nevertheless, because the conditions were submitted by Forest Service under section 4(e) of the FPA, they are included in the license.

54. Forest Service conditions 8 and 9 require that activities under the revised *Erosion and Sediment Control Plan* and *Revegetation and Revegetation/Noxious Weed Management Plan*, respectively, take place in the vicinity of the powerhouse and tailrace area, along the transmission line corridor along Black Mountain road, up a spur road to the Idaho Power transmission line corridor, and within the Powder River Recreation Site. However, limiting the geographic scope of these plans may not provide the necessary protections as some sites where ground disturbing activities will occur are outside of the immediate project works area (e.g., Silver Creek and McCully Fork culverts). As such, Articles 403 and 404 require the licensee to revise the *Erosion and Sediment Control Plan* and *Revegetation and Noxious Weed Management Plan*, respectively, to include all lands that will be disturbed during project construction and operation, and to file the revised plans with the Commission for approval.

B. Interior Conditions

55. Interior filed its final section 4(e) conditions on October 10, 2014, which are set forth in Appendix C of this order and incorporated into the license by Ordering Paragraph (F).²³ Many of Interior's conditions are administrative and/or to protect the

²³ Interior filed its preliminary 4(e) conditions on October 10, 2014. It did not file final 4(e) conditions; therefore, we consider the preliminary conditions to be final.

interest of Reclamation and its Baker Project. The conditions also require project-specific measures, including requirements to: (1) enter into a construction and coordination agreement with Reclamation prior to gaining access to Reclamation's facilities and conducting any ground disturbing activities (condition 4, Article 306 requires the agreement to be filed with the Commission); (2) enter into an agreement with Reclamation to coordinate project operations (condition 5, and Article 401 requires the agreement to be filed with the Commission); (3) operate the project so as the timing, quantity, and location of water releases and release changes from Mason Dam will be at the sole discretion of Reclamation (condition 6); (4) revegetate all newly disturbed land areas with plant species indigenous to the area (condition 10); and (5) ensure that all equipment entering the project area is free of aquatic and terrestrial invasive species (condition 11).

SECTION 18 FISHWAY PRESCRIPTION

56. Section 18 of the FPA²⁴ 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 the Interior or the Secretary of Commerce, as appropriate.

57. By letter filed October 10, 2014, the Secretary of Interior requested that the Commission reserve authority to prescribe fishways. Consistent with Commission policy, Article 405 of this license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Mason Dam Project.

THREATENED AND ENDANGERED SPECIES

58. Section 7(a)(2) of the Endangered Species Act of 1973²⁵ 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.

59. The Howell's spectacular thelypody (*Theylpodium howelli spp. spectabilis*) is the only federally listed (threatened) terrestrial species known to occur in the Baker-Powder River Valley; however, this species has not been observed in the Mason Dam Project area and Commission staff found in the EA that none of the proposed action alternatives

²⁴ 16 U.S.C. § 811 (2012).

²⁵ 16 U.S.C. § 1536(a) (2012).

would affect this species.²⁶ Therefore, no further action with regard to this species under the Endangered Species Act is required.

60. Bull trout (*Salvelinus fontinalis*) is the only federally listed aquatic species (threatened) that has the potential to occur in the project area. In total, there are 10 isolated populations of bull trout in the Powder River Basin. All populations persist in headwater streams upstream of Mason Dam and several of these tributaries, as well as Phillips Reservoir, are designated bull trout critical habitat.²⁷

61. As discussed in Commission staff's December 9, 2015 letter to FWS, staff found that licensing the project, with staff's recommended measures, most of the mandatory conditions required by Oregon DEQ's certification, and the Forest Service's 4(e) conditions, is "not likely to adversely affect" the bull trout or bull trout critical habitat, and sought FWS concurrence with this finding. However, the December 9, 2015 letter also found that licensing the project with the Oregon DEQ certification condition 3 and Forest Service 4(e) condition 6, requiring the replacement of the Silver Creek culvert, would likely result in some short-term adverse effects and, therefore, the mandatory culvert replacement is "likely to adversely affect" bull trout and bull trout critical habitat. As a result, we requested formal consultation with the FWS on the Silver Creek culvert replacement.

62. On April 22, 2016, FWS filed its concurrence and biological opinion for the Mason Dam Project, stating that the impacts associated with construction, operation, and maintenance of the project are not likely to adversely affect bull trout or its critical habitat, but that the replacement of the Silver Creek culvert is likely to adversely affect bull trout and its critical habitat. However, in its biological opinion the FWS found that replacement of the Silver Creek culvert is not likely to jeopardize the continued existence of the mid-Columbia River Recovery Unit of bull trout or destroy or adversely modify bull trout critical habitat. FWS's biological opinion includes an incidental take statement with reasonable and prudent measures to minimize take of the listed mid-Columbia River Recovery Unit of bull trout along with terms and conditions to implement the measures.

63. The FWS's reasonable and prudent measures and terms and conditions, set forth in Appendix D of this order and incorporated into the license by Ordering Paragraph (G), require the licensee to implement measures to protect the mid-Columbia River Recovery Unit of bull trout and its designated critical habitat by: (1) specifying the months for in-water work to occur (July and August) and limiting the duration of that in-water work;

²⁶See EA at 6.

²⁷ See EA at 72.

(2) minimizing effects to bull trout from fish removal, handling, or transport; (3) implementing best management practices; and (4) reporting and monitoring on culvert replacement activity. These measures are consistent with the Agreement, Oregon DEQ's certification, and Interior's and Forest Service's 4(e) conditions.

64. We note that FWS's Reasonable and Prudent measures also specify that following completion of the Silver Creek culvert replacement project, the Commission will submit a report to the FWS documenting the implementation of the action as proposed and compliance with the terms and conditions of the biological opinion. Article 407 requires the licensee to file the report with the FWS and to concurrently file a copy for the report with the Commission.

65. The biological opinion also contains a Conservation Recommendation that would have Baker County conduct supplemental plantings of native woody and herbaceous vegetation around the Silver Creek culvert replacement site.

66. Establishing native woody and herbaceous plants around the culvert site after its replacement would help reduce erosion and would further enhance habitat function for resident bull trout and other salmonids in Silver Creek. Interior's 4(e) condition 10 and Forest Service 4(e) condition 9, as supplemented by Article 404 of this license, adequately address FWS's Conservation Recommendation. Interior's 4(e) condition 10 specifies that "...all newly disturbed land areas shall be revegetated by the licensee with plant species indigenous to the area..." and Forest Service's section 4(e) condition 9 requires a Revegetation and Noxious Weed Management Plan to re-vegetate and restore native vegetation in disturbed areas in the vicinity of the powerhouse and tailrace area, along the transmission line corridor along Black Mountain road, up a spur road to the Idaho Power transmission line corridor, and within the Powder River Recreation Site. In addition, Article 404 of this license require that the Revegetation and Noxious Weed Management Plan address all lands disturbed by the licensee during project construction and operation including lands disturbed at the Silver Creek culvert replacement site.

NATIONAL HISTORIC PRESERVATION ACT

67. Under section 106 of the National Historic Preservation Act²⁸ and its implementing regulations,²⁹ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (defined as historic properties) and afford the Advisory Council on

²⁸ 54 U.S.C. § 306108, Pub. L. No. 113-287, 128 Stat. 3188 (2014). (The National Historic Preservation Act was recodified in Title 54 in December 2014).

²⁹ 36 C.F.R. Part 800 (2016).

Historic Preservation a reasonable opportunity to comment on the undertaking. This process generally requires the Commission to consult with the State Historic Preservation Office to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

68. No historic properties have been located within the project's area of potential effects; therefore, the proposed project would have no effects on such properties. The Oregon SHPO concurred with this finding.³⁰ If cultural resources are inadvertently discovered during construction or operation of the project, Article 410 requires Baker County to cease ground-disturbing activities and consult with the Oregon SHPO, Forest Service, and the Umatilla.

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

69. In 1980, Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).³¹ This act created the Northwest Power Planning Council (now known as the Northwest Power and Conservation Council) and directed it to develop a Columbia River Basin Fish and Wildlife Program (Program). The Program is to protect, mitigate, and enhance fish and wildlife resources affected by the development and operation of hydroelectric projects on the Columbia River and its tributaries, while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply.³² Section 4(h)(11)(A) of the Northwest Power Act,³³ provides that federal agencies operating or regulating hydroelectric projects within the Columbia River Basin shall exercise their responsibilities to provide equitable treatment for fish and wildlife resources with other purposes for which the river system is utilized and shall take the Council's Program into account "at each relevant stage of decision-making processes to the fullest extent practicable."

70. To mitigate harm to fish and wildlife resources, the Council has adopted specific provisions to be considered in the licensing or relicensing of non-federal hydropower projects (Appendix B of the Program). The requirements of the license, including run-of-release operations, prevention of erosion and sedimentation during construction and operation, and maintaining and protecting DO levels (Ordering Paragraphs (E) and (F))

³⁰ See, Letter from Dennis Griffin, Oregon State Archaeologist, filed June 5, 2013.

³¹ 16 U.S.C. §§ 839(b) *et seq.* (2012).

³² 16 U.S.C. § 839(b)(h)(5) (2012).

³³ 16 U.S.C. § 839(h)(11)(A) (2012).

are consistent with applicable provisions of the Program. As part of the Program, the Council has designated over 40,000 miles of river in the Pacific Northwest region as not being suitable for hydroelectric development ("protected area"). The project is not located within a protected area designated under Appendix B of the Program. Further, Article 406 reserves to the Commission the authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the Program.

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

71. Section 10(j)(1) of the FPA³⁴ requires the Commission, when issuing a license, to include conditions based on recommendations submitted by federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act,³⁵ to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

72. In response to the Commission’s August 11, 2014 public notice that the project was ready for environmental analysis, Interior filed 9 recommendations,³⁶ and Oregon DFW filed 11 recommendations,³⁷ under section 10(j) for the Mason Dam Project. Five of Interior’s recommendations and seven of Oregon DFW’s recommendations were determined to be outside the scope of section 10(j).³⁸ The five of the agencies’ recommendations outside the scope of section 10(j) are the same and are discussed above in the *Water Quality Certification* section of this order.³⁹ One of Oregon DFW’s

³⁴ 16 U.S.C. § 803(j)(1) (2012).

³⁵ 16 U.S.C. § 661 *et seq.* (2012).

³⁶ Interior filed its recommendations on October 10, 2014, and the filing includes five numbered recommendations under section 10(j); however, two recommendations (numbers 1 and 2) have multiple parts, for a total of nine recommendations.

³⁷ Oregon DFW filed its recommendations on October 10, 2014, and the filing includes 7 numbered recommendations under section 10(j); however, 2 recommendations (numbers 1 and 2) have multiple parts, for a total of 11 recommendations.

³⁸ The measures were determined to be outside the scope of 10(j) because: (1) they are not needed to mitigate a project effect, do not otherwise relate to the project, and would not fulfill a project-related purpose; or (2) they were not a specific measure to protect fish and wildlife (*See* EA at 106-109 for additional detail).

³⁹ The five matching recommendations are: (1) replacement of the Silver Creek
(*continued ...*)

remaining recommendations (water quality standards) is outside the scope because it is not a specific measure to protect fish and wildlife. It is also discussed above in the *Water Quality Certification* section. The final recommendation (notification of emergency) is also not a specific measure to protect fish and wildlife and is discussed below in the *Section 10(a)(1) of the FPA* section of this order.

73. Interior's and Oregon DFW's four remaining recommendations that are within the scope of section 10(j) are identical. This license includes conditions consistent with three of these recommendations, which require the licensee to: (1) develop a terrestrial wildlife resource management plan (Forest Service 4(e) condition 10), (2) implement a Revegetation/Noxious Weed Management Plan (Forest Service 4(e) condition 9, Interior 4(e) condition 10), and (3) implement an Erosion and Sediment Control Plan (certification condition 4, and Forest Service 4(e) condition 8).

74. If the Commission believes that any such recommendation may be inconsistent with the purposes and requirements of Part I of the FPA or other applicable law, section 10(j)(2) requires the Commission and the agencies to attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies.⁴⁰ If the Commission still does not adopt a recommendation, it must explain how the recommendation is inconsistent with Part I of the FPA or other applicable law and how the conditions imposed by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources.

75. Commission staff made an initial determination that Interior's and Oregon DFW's recommendation to install a fish screen at the Shaw Stewart Diversion may be inconsistent with the comprehensive planning standard of the FPA section 10(a)(1) and the public interest standard of the FPA section 4(e). By letters dated October 27, 2015, Commission staff advised Interior and Oregon DFW of its preliminary determination of inconsistency, but noted that the installation of a fish screen at the Shaw Stewart Diversion is a requirement of the Oregon DEQ's 401 certification condition 3 and Forest Service's section 4(e) condition 6, and would be included in any license issued for the project. On December 11, 2015, Interior and Oregon DFW filed letters requesting a

Culvert; (2) enhancement of the McCully Fork Culvert; (3) monitoring the culvert enhancement sites; (4) contribution of \$1,000 annually to a Philips Reservoir stocking supplementation fund; and (5) contribution of \$90,000 to a Powder River Screening Fund.

⁴⁰ 16 U.S.C. § 803(j)(2) (2012).

section 10(j) meeting to resolve the inconsistency, and Commission staff hosted the requested meeting on March 1, 2016.⁴¹ No resolution was reached.⁴²

76. While Commission staff's initial determination that Interior's and Oregon DFW's remaining recommendation to install a fish screen at the Shaw Stewart Diversion may be inconsistent with the comprehensive planning standard of section 10(a)(1) and the public interest standard of section 4(e) of the FPA; the recommendation is included in the Oregon DEQ's certification and the Forest Service's section 4(e) conditions for the project, which are mandatory.⁴³ As a result, this measure is incorporated into the license by Ordering Paragraphs (E) and (F).

SECTION 10(a)(1) OF THE FPA

77. Section 10(a)(1) of the FPA⁴⁴ requires that any project for which the Commission issues a license 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 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. Notification of Emergency

78. The potential exists for unexpected project operation or maintenance emergencies, equipment failures, or other circumstances that could cause harm to fish or wildlife. Therefore, Oregon DFW recommended that, when this occurs, Baker County take immediate actions to prevent further harm or loss to fish and wildlife resources, notify

⁴¹ Interior was unable to attend the March 1, 2016 section 10(j) meeting and informed commission staff that it did not wish to pursue a "make-up" meeting (*See Meeting transcripts issued April 1, 2016, and Memo to Public Files, filed on April 22, 2016*).

⁴² In the EA, Commission staff determined this measure to be outside the scope of 10(j) because funding is not a specific measure to protect fish and wildlife. During the section 10(j) meeting, Commission staff agreed to review its finding (*See Meeting transcripts at p. 28*). Upon further review, Commission staff continues to support its initial finding that the measure is outside the scope of 10(j).

⁴³ *See American Rivers v. FERC*, 129 F.3d 99 (2nd Cir. 1997).

⁴⁴ 16 U.S.C. § 803(a)(1) (2012).

appropriate agencies within 24 hours of the emergency, and notify the Commission within 10 days.

79. In the EA, staff found that a measure requiring Baker County to take unspecified actions to protect fish and wildlife resources, as proposed by Baker County and recommended by Oregon DFW, would be unenforceable.⁴⁵ In addition, several resource plans required by the license will include specific measures to protect fish and wildlife, rendering a general emergency action provision unnecessary.⁴⁶ However, staff concluded that notifying and providing details of incidents to the appropriate state and federal agencies, including the Commission, within 24 hours of a project-related emergency that harms fish and wildlife would provide an additional safeguard to these resources. As such, Article 408 of this license requires Baker County to notify the Commission, and other agencies as appropriate, within 24 hours and submit a detailed incident report to the Commission within 10 days of the notification.

B. Aesthetics

80. In the EA, staff concluded that painting the proposed powerhouse a color that closely matches the existing surrounding structures (i.e., dam, valve house, tailrace, and spillway) would minimize the visual impact of the new facilities and protect the aesthetics of the project area.⁴⁷ Therefore, Article 409 of the license requires Baker County to paint the powerhouse a color that blends in with the surrounding area.

81. The project powerhouse will be constructed in an area that is in direct line of sight with the Mason Dam Picnic Area, which is located about 600 feet downstream of the dam. In the EA, staff found that the use of vegetative landscaping to provide a visual barrier between the project powerhouse and the Mason Dam Picnic Area would help protect visual resources of this recreation area.⁴⁸ However, because the dam, valve house, tailrace, and spillway are already within the viewshed of the picnic area and Article 409 requires that the powerhouse blend-in with those features, a visual barrier is not needed and is not required by the license.

⁴⁵ See EA at 45 and 103.

⁴⁶ Water Quality Monitoring and Management Plan (Article 402), Hazardous Substances and Spill Prevention Plan (certification condition 5), Bypass Flow Plan (certification condition 6), Erosion and Sediment Control Plan (Article 403), Terrestrial Wildlife Resource Management Plan (Forest Service 4(e) condition 10).

⁴⁷ See EA at 82 and 99.

⁴⁸ See EA at 82 and 100.

COMMENTS ON THE ENVIRONMENTAL ASSESSMENT

82. In its December 11, 2015 comments on the EA, Oregon DFW expressed concern that the staff-recommended alternative did not include certain section 10(j) recommendations and section 4(e) and certification conditions for fish passage and fish entrainment.⁴⁹ Oregon DFW suggested that the EA be revised to consider only the following three alternatives: (1) No-Action Alternative, (2) the Applicant's Proposal,⁵⁰ and (3) Applicant's Proposal with Staff-Recommended conditions.⁵¹ Oregon DFW also suggested that Commission staff reanalyze the fish passage and fish entrainment measures that were not recommended and conduct that analysis from a perspective of "in-lieu of fish passage facilities."

83. Under the comprehensive planning standard of section 10(a) of the FPA, including the equal consideration provision of section 4(e) of the FPA, the Commission must decide whether to issue a license to Baker County for the Mason Dam Project and what conditions to place on any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes (such as flood control, irrigation, or water supply) for which licenses are issued, the Commission must give equal consideration to the purposes of: (1) energy conservation; (2) the protection of, mitigation of damage to, and enhancement of fish and wildlife resources; (3) the protection of recreational opportunities; and (4) the preservation of other aspects of environmental quality.

⁴⁹ The measures not recommended by Commission staff in the EA are: (1) replacement of the Silver Creek Culvert; (2) enhancement of the McCully Fork Culvert; (3) monitoring the culvert enhancement sites; (4) creation and \$1,000 annual contribution to a Philips Reservoir stocking supplementation fund; (5) installation of a fish screen at the Shaw-Stewart Diversion; and (6) creation and contribution of \$90,000 to a Powder River Screening Fund.

⁵⁰ Baker County's proposal included the section 10(j) recommendations and section 4(e) and 401 water quality certification conditions for fish passage and fish entrainment that were not recommended by Commission staff.

⁵¹ The EA considers the following four alternatives: (1) Baker County's proposal (which includes all the mandatory conditions); (2) Baker County's proposal with staff modifications (staff alternative); (3) the staff alternative with mandatory conditions; and (4) no action.

84. Had Commission staff automatically included all of the mandatory 4(e) and certification conditions in the staff alternative as suggested by Oregon DFW the Commission would have significantly narrowed its scope when determining whether or not a project is best adapted to a comprehensive plan for improving or developing a waterway. Further, the Commission is required to independently evaluate the consequences of a proposed project; it cannot rely solely on the recommendations of state and local agencies.⁵² By adopting the proposed and recommended measures without independent scrutiny, the Commission would have been inconsistent with sections 10(a) and 4(e) of the FPA..

85. Additionally, as discussed above in the *Water Quality Certification* section, Commission staff did not recommend the fish passage and fish entrainment measures because it determined the measures are not needed to mitigate project effects, and because they do not otherwise relate to the Mason Dam Project. Evaluating these measures against a hypothetical project with fish passage and entrainment facilities as Oregon DFW suggests would serve no relevant purpose. Rather, Commission staff utilized the No-Action Alternative to establish the baseline environmental conditions for which the action alternatives would be compared against.⁵³ The Commission's choice of current environmental conditions as the baseline for environmental analysis has been affirmed by the courts.⁵⁴

ADMINISTRATIVE PROVISIONS

A. Annual Charges

86. The Commission collects annual charges from licensees for administration of the FPA. Under section 11.1(d)(6) of the regulations, administrative annual charges for municipalities (i.e., Baker County) begin on the date project operation commences.⁵⁵

⁵² *Steamboaters v. FERC*, 759 F.2d 1382, 1394 (9th Cir. 1985).

⁵³ *Pacific Gas & Electric*, 106 FERC ¶ 61,065 at P 55 (2004), *order on reh'g*, 107 FERC ¶ 61,232 (2004), *order denying reh'g*, 108 FERC ¶ 61,266 (2004), *appeals filed*, *Friends of the Eel River v. FERC*, 9th Cir. No. 04-73862 (Aug. 5 2004) and *Cal. Sportfishing Protection Alliance, et al. v. FERC*, 9th Cir. No. 04-73498 (July 14, 2004).

⁵⁴ *American Rivers v. FERC*, 187 F.3d 1007, 1018 (1999), *amended and rehearing denied*, 201 F.3d 1186 (9th Cir. 1999); *Conservation Law Foundation v. FERC*, 216 F.3d 41, 45-46 (D. C. Cir. 2000).

⁵⁵ 18 C.F.R. § 11.1(d)(6) (2016). Baker County may seek total or partial exemption from the assessment of annual charges provided that the power generated is (*continued ...*)

87. The Commission assesses annual charges for the use of its lands (other than lands adjoining or pertaining to a federal dam).⁵⁶ The Mason Dam Project will occupy 9.39 acres of federal land administered by the Forest Service and 1.54 acres at the dam administered by Reclamation. Rather than assessing charges for the use of the 1.54 acres at the dam, the Commission assesses a charge for the use of a government dam.⁵⁷

88. Accordingly, Article 201 provides for the collection of funds for administration of the FPA, for 9.39 acres of federal land occupied by the project's transmission line right-of-way, and for use of a government dam.

A. Exhibit F and G Drawings

89. The Commission requires licensees to file sets of approved project drawings in electronic file format. The Exhibit F and G drawings are approved and Article 202 requires the filing of these drawings.

B. Project Financing

90. To ensure that there are sufficient funds available for project construction, operation, and maintenance, Article 203 requires the licensee to file for Commission approval documentation of project financing necessary for construction, operation, and maintenance of the project at least 90 days before starting any construction associated with the project.

C. Headwater Benefits

91. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 204 requires the licensee to reimburse such entities for these benefits.

D. Start of Construction

92. Section 13 of the FPA requires the licensee to commence construction within two years from the issuance date of the license, for which the deadline may be extended once

sold without profit or is used by the licensee for municipal purposes. *See id.* §§ 11.1(d)(2), 11.6. Baker County must request this exemption and provide sufficient documentation that it meets these requirements. *Id.* § 11.6.

⁵⁶ 18 C.F.R. § 11.2(a) (2016).

⁵⁷ 18 C.F.R. § 11.3 (2016).

for two additional years.⁵⁸ Furthermore, the licensee must obtain all of the necessary approvals from the Reclamation and the Commission prior to the start of project construction.⁵⁹ Therefore, the burden is on the licensee to obtain these approvals and commence construction within the time frames required under section 13 and as specified in this license. The licensee is expected to work diligently with the Reclamation and other relevant entities to secure the necessary approvals to allow it to timely commence project construction and pursue it to completion. Article 301 requires the licensee to commence construction of the project works within two years from the issuance date of the license and complete construction of the project within five years from the issuance date of the license.

E. Review of Final Plans and Specifications

93. Article 302 requires the licensee to provide the Commission's Division of Dam Safety and Inspection (D2SI)-Portland Regional Engineer with final contract drawings and specifications, a supporting design report consistent with the Commission's engineering guidelines, a Quality Control and Inspection Program, a Temporary Construction Emergency Action Plan, and a Soil Erosion and Sedimentation Control Plan.

94. Article 303 requires the licensee to provide the Commission's D2SI-Portland Regional Engineer with approved cofferdam and deep excavation construction drawings.

95. Article 304 requires the licensee to provide a Public Safety Plan for the project to the Commission's D2SI-Portland Regional Engineer.

96. Article 305 requires the licensee to notify and coordinate with the Commission's D2SI-Portland Regional Engineer on any proposed modifications to the project resulting from the environmental requirements of the license to ensure that these modifications do not adversely affect the project works, dam safety, or project operation.

97. Where new construction or modifications to the project are involved, the Commission requires licensees to file revised drawings of project features as-built. Article 306 provides for the filing of these drawings.

⁵⁸ Under section 13, failure to timely commence project construction will result in termination of the license. 16 U.S.C. § 806 (2012).

⁵⁹ See, e.g., Article 203, documentation of project financing; Article 302, approval of contract plans and specifications; Article 304, cofferdam and deep excavation drawings; Article 305, public safety plan; and Article 306, access agreement with Reclamation.

F. Use and Occupancy of Project Lands and Waters

98. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 411 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.

STATE AND FEDERAL COMPREHENSIVE PLANS

99. Section 10(a)(2)(A) of the FPA⁶⁰ 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.⁶¹ Under section 10(a)(2)(A), federal and state agencies filed comprehensive plans that address various resources in Oregon. Of these, staff identified and reviewed 23 comprehensive plans that are relevant to the Mason Dam Project and found an inconsistency with one of the plans.⁶²

100. The proposed project would not meet the primary visual quality objectives of the 1990 Wallowa-Whitman Land and Resource Management Plan (1990 Plan)⁶³ because a portion of the project's proposed overhead transmission line would alter the form, line, and color of the characteristic landscape in the foreground and middle ground views in the Wallowa-Whitman National Forest, as seen from Black Mountain Road.⁶⁴

⁶⁰ 16 U.S.C. § 803(a)(2)(A) (2012).

⁶¹ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2016).

⁶² The list of applicable comprehensive plans can be found in section 5.4 of the EA.

⁶³ Available at: <http://www.fs.usda.gov/detail/wallowa-whitman/landmanagement/planning/?cid=stelprdb5259879>, retrieved on June 27, 2016. See Forest Service's draft Visual Resource report filed on March 31, 2015.

⁶⁴ Under the 1990 Plan, the primary visual quality objectives for the National Forest in the project area are designated "Retention," i.e., management activities and decisions are meant to not be visually evident, and any changes in the landscape should blend with frequently found landscape characteristics.

101. The proposed transmission line will be 0.8 miles long, and its right of way will run next to Black Mountain Road, and only a small portion of the transmission line (i.e., about 0.2 mile) would be located on National Forest lands.⁶⁵ In the EA, Commission staff found that the effects on aesthetic resources by the project's transmission line would be limited⁶⁶ because of the line's relatively short length, the first section of the line would be adjacent to the dam and visually similar to existing facilities, and the rest of the line would follow the existing Black Mountain Road.⁶⁷ Therefore, as discussed in more detail below, it is reasonable to authorize the project.

SAFE MANAGEMENT, OPERATION, AND MAINTENANCE OF THE PROJECT

102. Staff reviewed Baker County'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

103. To assess the need for power, staff looked at the needs in the operating region in which the project is located. The project is located in the North West Power Pool (NWPP) within the Western Energy Coordinating Council of the North American Electric Reliability Corporation (NERC). NERC annually forecasts electrical supply and demand nationally and regionally for a 10-year period. According to NERC's 2014 long-term reliability assessment, demand for power in the NWPP region is projected to grow at an annual growth rate of 1.63 percent for summer and 1.36 percent for winter during the period from 2015 through 2024. Based on this, staff concludes that the project's power will help meet a need for power in the region.

⁶⁵ The Forest Service states that it will need to amend its 1990 Plan to correct any inconsistencies with its plan. *See* Forest Service's draft Visual Resource report filed on March 31, 2015. We assume that the Forest Service will do so, inasmuch as it is a signatory to the Settlement Agreement for the project whereby the parties agree that the project will be constructed and operated consistent with, inter alia, the Forest Service's section 4(e) conditions.

⁶⁶ *See* EA at 82.

⁶⁷ *Id.*

PROJECT ECONOMICS

104. In determining whether to issue a 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.*,⁶⁸ 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.

105. In applying this analysis to the Mason Dam Project, staff considered three options: no-action, Baker County's proposal, and the project as licensed herein. Under the no-action alternative, the project would not be built. As proposed by Baker County, the levelized annual cost of constructing and operating the Mason Dam Project is \$324,631, or \$43.16/MWh. The proposed project would generate an average of 7,510 MWh of energy annually. When the estimate of average generation is multiplied by the alternative power cost of \$52.71/MWh,⁶⁹ the total estimated value of the project's power is \$395,879 in 2015 dollars. The project's cost is subtracted from the value of the project's power, to determine whether the proposed project is economically beneficial. Therefore, in the first year of operation, the project would cost \$71,738, or \$9.55/MWh, less than the likely alternative cost of power.

106. As licensed herein with the mandatory conditions and staff-recommended measures, the levelized annual cost of constructing and operating the project will be about \$325,214, or \$43.30/MWh. Based on the same average annual generation of 7,510 MWh as proposed, the project will produce power valued at \$395,879 when multiplied by the \$52.71/MWh value of the project's power. Therefore, in the first year of operation, project power will cost \$70,655, or \$9.41/MWh, less than the likely cost of alternative power.

107. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system

⁶⁸ 72 FERC ¶ 61,027 (1995).

⁶⁹ The alternative power cost was provide in the application and is based on Idaho Power's Schedule 85 of year 2016 avoided costs for intermittent hydropower for projects smaller than 10 MW.

(ancillary service benefits). These benefits include their the ability to help maintain the stability of a power system, such as by 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.

COMPREHENSIVE DEVELOPMENT

108. Sections 4(e) and 10(a)(1) of the FPA⁷⁰ require the Commission to give equal consideration to 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.

109. The EA for the project contains background information, analysis of effects, and support for related license articles. Based on the record of this proceeding, including the EA and the comments thereon, licensing the Mason Dam Project as described in this order will 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 the license.

110. Based on Commission staff's independent review and evaluation of the project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, the Mason Dam Project as licensed herein, is selected and found to be best adapted to a comprehensive plan for improving or developing the Powder River.

111. This alternative was selected because: (1) issuance of an original license will serve to provide a beneficial, dependable, and inexpensive source of electric energy; (2) the required environmental measures will protect and enhance fish and wildlife resources, water quality, and recreation, aesthetic, and cultural resources; and (3) the 3.4 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

⁷⁰ 16 U.S.C. §§ 797(e) and 803(a)(1) (2012).

LICENSE TERM

112. Section 6 of the FPA⁷¹ provides that original licenses for hydropower projects shall be issued for a period not to exceed 50 years. The Commission's general policy is to issue a 50-year license for projects located at a federal dam.⁷² Accordingly, the license is issued for a term of 50 years.

The Director orders:

(A) The license is issued to Baker County, Oregon (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 Mason Dam Hydroelectric Project No. 12686. 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.

(B) The Mason Dam Hydroelectric Project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, described in the project description and the project boundary discussion of this order.

(2) Project works consisting of: (1) a new 4-foot-wide, 8-foot-tall, approximately 30-foot-long access tunnel leading to; (2) a bifurcation chamber within the dam, where a; (3) bifurcation from the existing 56-inch diameter discharge conduit to a new 105-foot-long, 72-inch-diameter penstock will be located; (4) a 40-foot by 28-foot powerhouse housing a single 3.4-MW horizontal shaft Francis Turbine/generator unit; (5) a modification to the existing stilling basin consisting of a 50-foot-long, 28-foot-wide concrete apron and a 50-foot-long concrete retaining wall terminating at the end of the existing stilling basin; (6) a new 0.8-mile-long, 12.47-kV overhead transmission line; (7) a new 8,700-square-foot substation interconnecting to Idaho Power's 138-kV transmission line; and (8) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibit A shown below:

Exhibit A: The following sections of Exhibit A filed on April 30, 2013: Section vii2 entitled "Proposed Project Facilities" on pages 17 through 20.

⁷¹ 16 U.S.C. § 799 (2012).

⁷² See *City of Danville, Virginia*, 58 FERC ¶ 61,318 at 62,020 (1992).

Exhibit F: The following Exhibit F drawings filed on December 5, 2013:

<u>Exhibit F Drawing</u>	<u>Drawing No. 12686-</u>	<u>Description</u>
Sheet F-1	1	Proposed Site Plan
Sheet F-2	2	Proposed Outlet Works Features
Sheet F-3	3	Proposed Powerhouse Plan and Section

Exhibit G:

<u>Exhibit G Drawing</u>	<u>Drawing No. 12686-</u>	<u>Description</u>
Sheet G-1	4	Project Boundary Map

(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 or other rights that are necessary or appropriate for the operation or maintenance of the project.

(C) The Exhibits A, F and G described above are approved and made part of this license.

(D) This license is subject to the conditions submitted by the Oregon Department of Environmental Quality under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1) (2012), 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. Forest Service under section 4(e) of the FPA, as those conditions are set forth in Appendix B to the order.

(F) 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 C to this order.

(G) This license is subject to the incidental take terms and conditions of the biological opinion submitted by the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act, as those conditions are set forth in Appendix D to this order.

(H) This license is also subject to the articles set forth in Form L-2 (October

1975), entitled “Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States” (*see* 54 F.P.C. 1792, *et seq.*), as reproduced at the end of this order, and the following additional articles:

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

- a) 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 3,400 kilowatts.
- b) Recompensing the United States for the use, occupancy, and enjoyment of 9.19 acres of its land for transmission line right-of-way.
- c) Recompensing the United States for the use of a government dam.

Article 202. *Approved Exhibit Drawings.* Within 45 days of the date of issuance of this license, as directed below, the licensee must file the approved exhibit drawings (F-1, G-1, etc.) in electronic file format on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC.

a) Digital images of the approved exhibit drawings must be prepared in electronic format. Prior to preparing each digital image, the FERC Project-Drawing Number (i.e., P-12686-1 through P-12686-4) must be shown in the margin below the title block of the approved drawing. 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). Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [P-12686-1, F-1, Proposed Site Plan, MM-DD-YYYY.TIF]. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY - black & white raster file

FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4

(also known as T.6 coding scheme)

RESOLUTION – 300 dpi desired, (200 dpi min)

DRAWING SIZE FORMAT – 24” x 36” (minimum), 28” x 40” (maximum)

FILE SIZE – less than 1 megabyte desired

Each Exhibit G drawing 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 georeferencing 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.

b) Project boundary GIS data must be in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format). The filing must 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 georeferenced 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) must include: FERC Project Number, data description, date of this License, and file extension in the following format [P-12686, boundary polygon/or point data, MM-DD YYYY.SHP]. The data must be accompanied by a separate text file describing the spatial reference for the georeferenced 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 must include: FERC Project Number, data description, date of this license, and file extension in the following format [P-12686, project boundary metadata, MM-DD-YYYY.TXT].

Article 203. Documentation of Project Financing. At least 90 days before starting construction, the licensee must file with the Commission for approval, the licensee's documentation for the project financing. The documentation must show that the licensee has acquired the funds, or commitment for funds, necessary to construct, operate, and maintain the project in accordance with this license. The documentation must include, at a minimum, financial statements, including a balance sheet, income 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 financial statements must be prepared in accordance with generally accepted accounting principles and signed by an independent certified public accountant. The

licensee must not commence project construction associated with the project before the filing is approved.

Article 204. *Headwater Benefits.* If the licensee's project is directly benefited by the construction work of another licensee, a permittee, or of the United States on a storage reservoir or other headwater improvement, the licensee must 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, 18 C.F.R. § 11 (2016).

Article 301. *Start of Construction.* The licensee must commence construction of the project works within 2 years from the issuance date of the license and must 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 the start of any construction, the licensee must submit one copy of its plans and specifications and supporting design document 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 to the D2SI-Portland Regional Engineer must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sedimentation Control Plan. The licensee may not begin construction until the D2SI-Portland Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 303. *Cofferdam and Deep Excavation Construction Drawings.* Should construction require cofferdams or deep excavations, the licensee must: (1) have a Professional Engineer who is independent from the construction contractor, review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction; and (2) ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of any cofferdams or deep excavations, the licensee must submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI), of the approved cofferdam and deep excavation construction drawings and specifications, and the letters of approval.

Article 304. *Public Safety Plan.* Within 60 days from the start of construction, the licensee must submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI) of a Public Safety Plan. The plan must include a description of all safety devices and signage needed

to warn the public of fluctuations in flow from the project or otherwise protect the public in the use of project lands and waters. The plan must also include a map showing the location of all public safety measures. For guidance on preparing public safety plans the licensee can review the *Guidelines for Public Safety at Hydropower Projects* on the FERC website.

Article 305. *Project Modification Resulting from Environmental Requirements.* If environmental requirements under this license require modification that may affect the project works or operations, the licensee must consult with the Commission's Division of Dam Safety and Inspections-Portland Regional Engineer. Consultation must allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 306. *As-built Exhibits.* Within 90 days of completion of construction of the facilities authorized by this license, the licensee must file with the Commission for approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built.

Article 401. *Operation and Coordination Agreement.* Within 30 days of completing the Operation and Coordination Agreement required by Ordering Paragraph (F) and specified in condition 5 of Appendix D of the license, the licensee must file, for informational purposes, the agreement with the Commission.

Article 402. *Project Water Quality Monitoring and Management Plan.* Within 6 months of license issuance, the licensee must file, for Commission approval, the Project Water Quality Monitoring and Management Plan required by condition 2 of Appendix A of the license.

The plan must be developed after consultation with the Oregon DEQ, Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and the U.S. Forest Service. The licensee must 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 a specific description of how the agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for agencies to comment before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on site-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 403. *Revised Erosion and Sediment Control Plan.* Within 6 months of license issuance, and at least 90 days prior to the start of any ground-disturbing activity,

the licensee must file with the Commission, for approval, a revised Erosion and Sediment Control Plan. The revised plan must be consistent with condition 8 of Appendix B of this order, and include a provision that the plan be implemented at all sites where project related ground disturbing activity occur and throughout the term of the license.

The plan must be developed after consultation with the U.S. Forest Service, U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation, Oregon Department of Fish and Wildlife, and the Oregon Department of Environmental Quality. The licensee must include with the revised plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and a specific description of how the agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for agencies to comment before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filings must include the licensee's reasons, based on site-specific information.

The Commission reserves the right to require changes to the plans. Upon Commission approval, the licensee must implement the plans, including any changes required by the Commission

Article 404. Revised Revegetation and Noxious Weed Management Plan. Within 6 months of license issuance, but at least 90 days prior to the start of any ground-disturbing activity, the licensee must file with the Commission, for approval, a revised Revegetation and Noxious Weed Management Plan. The revised plan must be consistent with condition 9 of Appendix B of this order, and include provisions that the plan will be implemented at all sites where project-related ground disturbing activities occur and be implemented throughout the term of the license.

The plan must be developed after consultation with the U.S. Forest Service, U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation, Oregon Department of Fish and Wildlife, and the Oregon Department of Environmental Quality. The licensee must include with the revised plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and a specific description of how the agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for agencies to comment before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filings must include the licensee's reasons, based on site-specific information.

The Commission reserves the right to require changes to the plans. Upon Commission approval, the licensee must implement the plans, including any changes required by the Commission

Article 405. Reservation of Authority to Prescribe Fishways. Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or

to provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior pursuant to section 18 of the Federal Power Act.

Article 406. *Columbia River Basin Fish and Wildlife Program.* The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal and state fish and wildlife agencies, affected Indian Tribes, or the Northwest Power and Conservation Council, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 407. *Silver Creek Culvert Replacement Report.* Within 120 days of completion of the Silver Creek culvert replacement project, required by Ordering Paragraph (G) and specified in Appendix D of the license, the licensee must concurrently submit a report to the U.S. Fish and Wildlife Service and the Commission documenting implementation of the Silver Creek culvert replacement and compliance with the terms and conditions of Appendix D. The report must document the dates and times of activities conducted, descriptions of the construction actions, and describe the project as completed. The report must also include the level of incidental take that has been observed, including injured, distressed or dead bull trout or their prey species, and shall describe numbers of bull trout transferred upstream.

Article 408. *Notification of Unanticipated Event or Emergency.* The licensee must notify the Commission, and where appropriate, the U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, U.S. Forest Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon Water Resources Department of any unanticipated or emergency events related to the project where fish and wildlife or their habitats are threatened or harmed as soon as possible but not later than 24 hours after becoming aware of such an event. Within 10 days of the initial notification of such an event, the licensee must file a detailed report with the Commission that identifies: (a) the nature and chronology of the event; (b) the circumstances that lead-up to the event; (c) any corrective actions taken; and (d) any recommended measures to ensure similar events do not occur in the future.

Article 409. *Aesthetic Resources.* The license must, after consultation with the Forest Service, design the powerhouse and appurtenant facilities to match, to the extent feasible, the setting and existing facilities in the vicinity of the project. This design must include, at a minimum, a color for the powerhouse that blends with the surrounding area of large cobble. Photographic documentation must be submitted to the Commission within 60 days of completion of project construction to ensure all new facilities comply with this article.

Article 410. Protection of Undiscovered Cultural Resources. If the licensee discovers previously unidentified cultural resources during the course of constructing, maintaining, or developing project works or other facilities at the project, the licensee must stop all land-clearing and land disturbing activities in the vicinity of the resource and consult with the Oregon State Historic Preservation Officer (SHPO), Forest Service (if the cultural resource is on lands under its jurisdiction), and Confederated Tribes of the Umatilla Indian Reservation (Umatilla) (if the cultural resource is aboriginal) to determine the need for any cultural resource studies or measures. If no studies or measures are needed, the licensee must file with the Commission documentation of its consultation with the Oregon SHPO, and depending on the lands involved, with the Forest Service, and if the finds are aboriginal, with the Umatilla, accordingly.

If a discovered cultural resource is determined to be eligible for the National Register of Historic Places (National Register), the licensee must file for Commission approval a Historic Properties Management Plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the Oregon SHPO, and other appropriate consulting parties. In developing the HPMP, the licensee must use the Advisory Council on Historic Preservation and the Federal Energy Regulatory Commission's Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects, dated May 20, 2002. The HPMP must include the following items: (1) a description of each discovered property, indicating whether it is listed in or eligible to be listed in the National Register; (2) a description of the potential effect on each discovered property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the HPMP.

The licensee must not resume land-clearing or land-disturbing activities in the vicinity of a cultural resource discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

Article 411. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee must 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 must 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 must 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 must require multiple use and occupancy of facilities for access to project lands or waters. The licensee must 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 must: (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 must

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 file a letter to with the Director, Office of Energy Projects, Federal Energy Regulatory Commission, 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 Commission's authorized representative, 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 must 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 must 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 must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; ; and (ii) the grantee must 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 must 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 must 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

(I) The licensee must 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.

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(J) 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 Federal Power Act, 16 U.S.C. § 8251 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2016). 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.

Ann F. Miles
Director
Office of Energy Projects

Form L-2
(October, 1975)

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**OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY CLEAN WATER
ACT § 401 CERTIFICATION CONDITIONS****Mason Hydroelectric Project
FERC Project No. 12686**

Upon Federal Energy Regulatory Commission (FERC) issuance of a license for the Mason Dam Hydroelectric Project (Project), Baker County must comply with the following § 401 Certification conditions:

- 1) Project Operation: Throughout the life of the FERC license, Baker County must operate its hydroelectric facility in a “run-of-release” mode. Baker County will neither cause deviation from requirements dictated by the Bureau of Reclamation (Reclamation) or the Baker Valley Irrigation District (BVID) for magnitude, frequency, and ramping rates of stream flow, nor adversely impact Reclamation’s management of water discharged from Mason Dam. Baker County must enter into an agreement with Reclamation to coordinate transfer of flows between Reclamation, BVID and the Project in a manner which achieves Reclamation’s and BVID’s flow objectives.
- 2) Monitoring Dissolved Oxygen and Total Dissolved Gas:
 - a) Within ninety (90) days of issuance of the FERC license, Baker County, in consultation with the Oregon Department of Environmental Quality (DEQ), must, as necessary to ensure consistency with these § 401 Certification Conditions, revise the Dissolved Oxygen Compliance Plan attached to these § 401 Certification Conditions as Exhibit A and submit the revised plan for DEQ approval as the Project Water Quality Monitoring and Management Plan (WQMMP). Upon approval, the WQMMP becomes part of these § 401 Certification Conditions for the Project for the purposes of any federal license or permit.

The WQMMP must include: applicable dissolved oxygen (DO) and total dissolved gas (TDG) criteria; monitoring methodology; reporting schedule; air admission procedures; and procedures for suspending operation during DO or TDG violations in accordance with Condition 2b. Baker County must measure

DO at the downstream gage location (USBR gage PHL) continuously during Project operations. Baker County must download and evaluate DO data on a weekly basis. During Project operation, Baker County must also measure TDG in the Project Tailrace and at the USBR gage PHL for a minimum of seventy-two (72) hours under minimum flow and maximum flow conditions. Concurrent with DO and TDG measurements, Baker County must also record flow and water temperature at the USBR gage PHL, as well as record power generation from the Project. Baker County must report all DO, TDG, flow, water temperature and power generation data to DEQ within ninety (90) days of the end of each hydropower operating season, or December 30, whichever comes first.

- b) If it is determined that Project operations are contributing to downstream violations of the applicable DO standard, TDG standard or the Antidegradation standard, Baker County must follow the procedures in the WQMMP, including project shutdown, as necessary. If taking the actions described in the WQMMP do not correct the problem and allow water quality standards to be achieved, Baker County must consult with DEQ to evaluate whether any modifications to the Project or Project operations can mitigate the impacts to water quality. If DEQ determines that such modifications can reverse such impacts, Baker County must propose the modifications to DEQ, and following DEQ's approval, Baker County must implement the approved modifications. Baker County may operate the Project during the development and implementation of modifications if conditions allow water quality standards to be met.
- c) The WQMMP must include provisions to address water quality monitoring equipment malfunctions. The WQMMP must include the following:
 - i. Procedures and measures that will be implemented to prevent monitoring equipment malfunctions;
 - ii. Procedures for identifying the occurrence and nature of any monitoring equipment malfunctions that may occur;
 - iii. Plan, schedule, and corrective measures that will be implemented to address monitoring equipment malfunctions;

- iv. Procedures for notifying DEQ of the occurrence and nature of monitoring equipment malfunctions, corrective measures implemented, and recommencement of monitoring equipment operation.
- v. Procedures and timelines for Project shutdown as may be necessitated by monitoring equipment malfunctions;
- vi. Plan and schedule for maintenance and calibration of field test equipment.

Baker County must notify DEQ within twenty-four (24) hours in the event of monitoring equipment failure. Upon evaluation of the situation, DEQ may direct Baker County to suspend operation of the Project until monitoring equipment may be repaired or replaced. DEQ may condition its authorization to restart the facility on a review of the response to the malfunction which provides DEQ with reasonable assurance that an adequate remedial solution has been implemented.

3) Protection of Beneficial Uses; Compliance With Other Requirements of State Law:

Baker County must implement mitigation measures in lieu of fish screening and passage in accordance with the Fish Screening Exemption and the Fish Passage Waiver for the Mason Dam Project that were signed by the Oregon Department of Fish and Wildlife on February 7, 2014, and signed by Baker County on February 12, 2014. These documents are included as Appendix C of the Agreement in Principal (AIP) for the Project.

4) Erosion and Sediment Control Plan:

a) During construction of the Project, Baker County must follow the Erosion and Sediment Control Plan included in Appendix C of the Clean Water Act § 401 Water Quality Certification Application submitted to DEQ on May 28, 2013 or future DEQ-approved revisions of that plan. Baker County must also obtain a NPDES 1200C stormwater permit as applicable, during construction and other ground disturbance activities.

b) In-Water Work

For projects that require in-water work, Baker County must obtain, as applicable, a removal-fill permit from Oregon Department of State Lands, a dredge and fill permit from the U.S. Army Corps of Engineers pursuant to Clean Water Act §404 and a Clean Water Act §401 water quality certification from DEQ. In-water work that could potentially create an artificial obstruction to native migratory fish, as

defined by OAR 635-412-0005(3) and (32), respectively, such as rock weirs, must meet Oregon Department of Fish and Wildlife fish passage criteria under OAR 635-412-0035.

- 5) Hazardous Substances Spill Prevention and Cleanup Plan: Baker County must implement and maintain the Hazardous Substances and Spill Prevention and Cleanup Plan included in Appendix D of the Clean Water Act § 401 Water Quality Certification Application submitted to DEQ on May 28, 2013 or future DEQ-approved revisions of that plan. In the event of a spill or release or threatened spill or release to the Powder River, Baker County must immediately implement the plan and notify Oregon Emergency Response System (OERS) at 1-800-452-0311.
- 6) Bypass Flow Plan: Baker County must implement and maintain the Bypass Flow Plan included in Appendix F of the Clean Water Act § 401 Water Quality Certification Application submitted to DEQ on May 28, 2013 or future DEQ-approved revisions of that plan.
- 7) General Conditions:
 - a) Implementation: Baker County must provide DEQ evidence that Baker County has received all required permits and approvals before Project construction.
 - b) § 401 Certification Modification: Without limiting DEQ's discretion to take other actions in accordance with OAR Chapter 340, Division 48, and, as applicable, 33 USC 1341, DEQ may modify the Certification to add, delete, or modify Certification conditions as necessary and feasible to address:
 - i. Adverse or potentially adverse Project effects on water quality or designated beneficial uses that did not exist or were not reasonably apparent when this Certification was issued;
 - ii. TMDLs;
 - iii. Changes in water quality standards;
 - iv. Any failure of Certification conditions to protect water quality or designated beneficial uses when the Certification was issued; or
 - v. Any change in the Project or its operations that was not contemplated by this Certification that might adversely affect water quality or designated beneficial uses.

c) Other Federal Permits: Upon applying for any federal license or permit authorizing a discharge to waters of the United States other than the new FERC license, Baker County must provide written notice of such application and of any proposed changes or new activity requested to be authorized under the application since issuance of this § 401 Certification. DEQ will notify Baker County and the applicable federal agency either that: (1) this § 401 Certification is sufficient for purposes of the federal license or permit; or (2) in light of new information related to the activity requested to be authorized under the application that could result in water quality impacts, there is no longer reasonable assurance of the activity's compliance with state water quality standards. In the latter event, DEQ will consider the new information, solicit and consider public and agency comment as required by law, and issue a 401 certification determination for purposes of the federal license or permit.

d) Project Changes: Baker County must notify DEQ of any change in ownership or to the Project, including changes to Project structures, construction, operations, and flows. Baker County must obtain DEQ review and approval before undertaking any such changes to the Project that might affect water quality (other than changes authorized by the new FERC license required by or considered in the §401 Certification).

e) Project Repair or Maintenance: Baker County must obtain DEQ review and approval before undertaking Project repair or maintenance activities that might affect water quality (other than repair or maintenance activities authorized by the new FERC license required by or considered in this §401 Certification). DEQ may, at Baker County's request, approve specified repair and maintenance activities on a periodic or ongoing basis.

f) Project Inspection: Baker County must allow DEQ such access as necessary to inspect the Project area and Project records required by this Certification at reasonable times as necessary to monitor compliance with § 401 certification conditions.

g) Posting of § 401 Certification: Baker County must post a copy of these certification conditions in a prominent location in the Mason Dam Powerhouse.

h) Water Quality Standards Compliance: Notwithstanding the conditions of this certification, no wastes will be discharged and no activities will be conducted which will violate state water quality standards.

i) Project-Specific Fees: In accordance with ORS 543.080, Baker County must pay a Project-specific fee for DEQ's costs of overseeing implementation of the conditions of this Certification as follows:

Project-Specific Fee

To implement the conditions of this Certification, Baker County must pay project-specific fees of \$4,000 during each of the first five (5) years beginning July 1 of each year following issuance of a FERC License in 2013 dollars adjusted according to the formula below, made payable to State of Oregon, Department of Environmental Quality.

Adjustment

Fee amounts must be adjusted annually, according to the following formula:

$$AD = D \times (CPI-U)/(CPI-U-June 2012)$$

Where:

AD = Adjusted dollar amount payable to agency.

D = Dollar amount pursuant to Project Specific Fee above,

CPI-U = the most current published version of the Consumer Price Index-Urban. The CPI-U is published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by written agreement between DEQ and Baker County.

Payment Schedule

Fees must be paid pursuant to a written invoice from DEQ. Except as provided below, project-specific fees will be due on July 1 of each year following issuance of a FERC License. Baker County must pay an initial prorated payment to DEQ within thirty (30) days of license issuance, for the period from the date of license issuance to the first June 30 which follows license issuance.

Credits

DEQ will credit against this amount any fee or other compensation paid or payable to DEQ, directly or through other agencies of the State of Oregon, during the preceding year (July 1 to June 30) for DEQ's costs of oversight.

Expenditure Summary

DEQ shall, on a biennial basis, provide Baker County with a summary of project-specific expenditures.

Duration

Baker County will pay a Project-specific fee following FERC license issuance and for five (5) years after the first July 1 following post-test commencement of commercial power generation, unless DEQ terminates it earlier because oversight is no longer necessary. One year before the expiration of the fee, or earlier if mutually agreed, DEQ and Baker County shall review the need, if any, to modify, extend, or terminate the fee, in accordance with ORS 543.080. Baker County must pay any project-specific fee required after such review as provided in ORS 543.080.

APPENDIX B**USDA FOREST SERVICE FEDERAL POWER ACT FINAL SECTION 4(e)
TERMS AND CONDITIONS****Mason Hydroelectric Project
FERC Project No. 12686**

LICENSE CONDITIONS NECESSARY FOR PROTECTION AND UTILIZATION OF THE WALLOWA WHITMAN NATIONAL FOREST IN CONNECTION WITH THE APPLICATION FOR LICENSE AND AGREEMENT-IN-PRINCIPLE FOR THE MASON HYDROELECTRIC PROJECT, FERC PROJECT NO. 12686.

I. GENERAL (Standard Form L-1)

License articles contained in the Federal Energy Regulatory Commission's (Commission) Standard Form L-1 issued by Order No. 540, dated October 31, 1975, cover those general requirements that the Secretary of Agriculture, acting by and through the USDA Forest Service, considers necessary for adequate protection and utilization of the land and related resources of the Wallowa Whitman 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 National Forest System lands and resources. These terms and conditions are based on those resources 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), and any other law specifically establishing a unit of the National Forest System or prescribing the management thereof (such as the Wilderness Act or Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved Land and Resources 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 National Forest System lands shall also be included in any license issued for the Mason Hydroelectric Project (Project).

The USDA Forest Service reserves the authority to add to, delete from, or modify the preliminary terms and conditions contained herein in the event that the licensee, the USDA Forest Service or other Parties withdraw from the Agreement-in-Principle under the

procedures identified Section II.F of the Agreement-in-Principle prior to the Commission's issuance of a new license for the Project.

Condition No. 1 - Implementation of the License on National Forest System Lands

The Licensee shall not commence implementation of habitat or ground-disturbing activities on National Forest System (NFS) lands until the Licensee has received a special use authorization from the USDA Forest Service.

Approval of Changes on NFS Lands after License Issuance. Notwithstanding any License authorization to make changes to the Project, the Licensee shall receive written approval from the USDA Forest Service prior to making changes in the location of any constructed Project features or facilities on NFS lands, or in Project uses of NFS lands, or any departure from the requirements of any approved exhibits for Project facilities located on NFS lands filed by the Licensee with the Commission. Following receipt of such approval from the USDA 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 USDA Forest Service for such changes. The Licensee shall file an exact copy of the report with the USDA Forest Service at the time it is filed with the Commission.

Coordination with Other Authorized Uses on NFS Lands. In the event that portions of the Project area are under federal authorization for other activities and permitted uses, the Licensee shall consult with the USDA Forest Service to coordinate such activity with authorized uses before starting any activity on NFS land that the USDA Forest Service determines may affect another authorized activity.

Site-Specific Plans. The Licensee shall prepare site-specific plans subject to review and approval by the USDA Forest Service for habitat and ground-disturbing activities on NFS lands affected by the Project required by the License, including such activities contained within resource management plans required by the License to be prepared subsequent to License issuance. The Licensee shall prepare site-specific plans for planned activities one year, or as otherwise agreed to by USDA Forest Service, in advance of implementation dates required by the License, except for those activities planned in the first year after license issuance where the Licensee shall timely prepare site-specific plans for activities to allow USDA Forest Service review in advance of implementation. For emergency situations, where corrective or mitigation actions must be implemented immediately, the

Licensee will coordinate with the USDA Forest Service to expedite approvals and/or permits.

Site-specific plans shall include:

1. A map depicting the location of the proposed activity, the total acres impacted, and GPS coordinates.
2. A description of the USDA Forest Service land management area designation for the location of the proposed activity, the source where the description was obtained, and applicable standards and guidelines.
3. Where required by regulatory procedures, a description of alternative locations, implementation designs and mitigation measures considered including erosion control and effectiveness monitoring designed to meet applicable standards and guidelines.
4. Draft biological evaluations or assessments including survey data as required by regulations applicable to habitat or ground-disturbing activities on NFS lands in existence at the time the plan is prepared.
5. An environmental analysis of the proposed action consistent with the USDA Forest Service policy and regulations for implementation of the National Environmental Policy Act (NEPA) in existence at the time the plan is prepared for FERC Licensed projects on NFS lands. Environmental Analysis completed by the Commission or others may be relied upon as appropriate on a project specific basis as agreed to by USDA Forest Service.
6. A Spill Prevention and Control, and Hazardous Materials Plan for hazardous materials storage, spill prevention and cleanup on NFS lands, as needed, will be provided to USDA Forest Service for review and approval before work commences.

Condition No. 2 - Surrender of License

At least one year in advance of filing an application for license surrender, the Licensee shall prepare a restoration plan for National Forest System lands approved by the USDA Forest Service. The restoration plan shall identify improvements to be removed, restoration measures, and time frames for implementation and shall be filed with the Commission as part of the surrender application.

Condition No. 3 - Indemnification

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 Licensee's use and/or occupancy of NFS lands authorized by this License. This indemnification and hold harmless provision applies to any acts and omissions of the Licensee or the Licensee's assigns, agents, employees, affiliates, subsidiaries, fiduciaries, contractors, or lessees in connection with the Licensee's use and/or occupancy of NFS lands 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, 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 (other than as contemplated by the license); or (4) the release or threatened release of any solid waste, hazardous substances, pollutant, contaminant, or oil in any form in the environment.

Condition No. 4 - Reservation of Authority

The Licensee shall implement, upon order of the Commission, such additional conditions as may be identified by the Secretary of Agriculture, pursuant to the authority provided in Section 4(e) of the Federal Power Act, as necessary for the adequate protection and utilization of the public land reservations under the authority of the USDA Forest Service, provided that such additional conditions are necessary, based on compelling evidence, to address changed circumstances.

Condition No. 5 - Resource Coordination

The Licensee shall hold an Annual Resource Coordination meeting at least 60 days preceding the anniversary of the effective date of the new License with the Mason Dam Project Stakeholders (Stakeholders). Stakeholders shall consist of the Bureau of Reclamation (USBR), Oregon Department of Environmental Quality (ODEQ), Oregon Department of Fish and Wildlife (ODFW), Oregon Water Resources Department (OWRD), USDA Forest Service (USFS), and US Fish and Wildlife Service (USFWS). Additional participants may be included as agreed to by the Stakeholders and Licensee. The purpose of the Annual Resource Coordination meeting is to exchange information

and coordinate efforts for implementing the Federal Energy Regulatory Commission (Commission) Project License and ongoing Project operations and maintenance (O&M) activities. The frequency of the Resource Coordination meetings may be revised, if agreed to, in writing within 30 days of notice, by all Stakeholders and Licensee. If a Stakeholder does not respond by the deadline its non-response is considered to be supportive of the proposal to change the frequency of the Resource Coordination meetings.

At least 30 days before the Annual Resource Coordination meeting, the Licensee shall provide to the Stakeholders a draft Annual Report and Work Plan (Annual Report) consisting of the following elements:

- A. summary of the previous calendar year's Project management activities, monitoring results, and compliance with the License terms and conditions;
- B. draft current year work plan which describes planned Project activities underway or to be implemented in the current year; and,
- C. draft out-year work plan which describes the Project activities planned for the following year.

The Stakeholders will review the draft Annual Report at the Annual Resource Coordination meeting with the objectives of:

- A. providing comments to clarify material in the draft Annual Report;
- B. discussing and approving any revisions to the current year Project work plan, as suggested by the Licensee based on monitoring results; and
- C. discussing and agreeing upon the out year Project work plan. The final Project work plan will be subject to the approval of the USFS.
- D. a non-response by a Stakeholder by the deadline agreed to by the Stakeholders is considered to be supportive of the Annual Report.

Within thirty (30) days following the Annual Resource Coordination meeting, the Licensee shall provide a revised Annual Report to Stakeholders that is responsive to Stakeholder concerns and comments. The Licensee shall provide Stakeholders a 30-day review of the revised Annual Report. If the Licensee does not address a Stakeholder concern, the Licensee shall document the issue and explain why it was not addressed in the Annual Report. The Licensee will send copies of the final Annual Report to the Commission and the Stakeholders within ninety (90) days following the Annual Resource Coordination meeting.

If the Stakeholders agree not to have an Annual Resource Coordination meeting then the Licensee shall provide the Stakeholders a draft Annual Report sixty (60) days prior to the anniversary of License issuance. Within thirty (30) days of receiving the draft Annual Report, the Stakeholders will provide comments to the Licensee. The Licensee shall provide Stakeholders a revised Annual Report that is responsive to Stakeholder concerns. If the Licensee does not address a Stakeholder concern, the Licensee shall document the issue and explain why it was not addressed to the satisfaction of the Stakeholder in the Annual Report. The Licensee shall allow Stakeholders 30 days to review the revised Annual Report. The Licensee will send copies of the final Annual Report to the Commission and the Stakeholders within thirty (30) days following the anniversary of the effective date of the License.

The Licensee or any Stakeholder may seek to resolve any disagreements in relation to implementation of the License in accordance with the dispute resolution process in Section D of the Mason Dam Hydroelectric Project Agreement in Principle, unless otherwise directed by the Commission. The Licensee shall notify the Commission of the dispute if the dispute resolution process is invoked by any party. Once the dispute resolution process is completed, the Licensee shall file notice to the Commission including documentation of the resolution (i.e., the resolved study, operating or implementation plan, report, or facility design).

Condition No. 6 - Fish Entrainment and Passage

The Licensee shall implement the following habitat improvement measures to mitigate Project-related affects to redband trout, a USFS- Regional Forester's and State of Oregon Sensitive Species and, bull trout, a federally listed species. The goals of these mitigation measures are to maintain a recreational fishery in Phillips Reservoir, reduce fish mortality caused by irrigation diversions, and improve fish passage upstream of the Project and in bull trout critical habitat above the Project

The Licensee shall undertake the following mitigation measures:

- A. Install the Shaw-Stewart Diversion Fish Screen (Shaw-Stewart Screen) to mitigate for a portion of the native redband trout and other native fish that may be entrained through the Project during operation. Within ninety (90) days of initiation of Project operation, the Licensee shall submit proposed drawings for

the Shaw-Stewart Screen to ODFW for its review and final approval. Within the next approved in-water work period subsequent to drawing approval, the Licensee shall install, or have installed, the approved the Shaw-Stewart Screen. ODFW must approve the constructed Shaw-Stewart Screen before the project is deemed complete. The Licensee shall be responsible for ensuring the operation and maintenance of the Shaw-Stewart Screen structure for the term of the License..

- B. Provide funding to ODFW for a Powder River Screening Fund to mitigate for the remaining portion of native redband trout and other native fish that may be entrained through the Project during operation. The Licensee shall provide a total of \$90,000 (2013 dollars adjusted as defined below in Section B(3)) to the Powder River Screening Fund. The Licensee shall establish a segregated interest-bearing account dedicated to funding the Powder River Screening Fund. The Licensee shall bear all costs associated with management of the account. In years two (2), four (4), six (6) and eight (8) following initiation of Project operation, the Licensee shall deposit \$22,500 (2013 dollars adjusted as defined below in Section B(3)) into the aforementioned account. All funds shall be retained in the account to be available in accordance with the goals of this Condition.

1. Funds from the Powder River Screening Fund will be used to finance fish screening mitigation projects on water diversions within the Powder River Basin that are protective of redband trout and other native fish. Screening mitigation project implementation that fully utilizes all funds within the Powder River Screening Fund shall be completed within ten (10) years of the initiation of Project operation unless the Stakeholders agree to an extension of time in which to utilize funds.

Both the Licensee and Stakeholders may propose potential screening mitigation projects for consideration. Review and final recommendation by the Licensee and Stakeholders to ODFW for its final decision on funding for proposed projects will occur at the Annual Coordination meetings or other meetings organized by the Licensee relating to the Powder River Screening Fund. The Licensee will coordinate with ODFW and other entities as appropriate to implement the screening projects.

2. 2013 dollars shall be adjusted using the following formula:

AD= Payable Amount x (CPU-U)/ (CPI-U-month and year of signing)

Where:

AD = Adjusted dollar amount payable by the License as required in Section B and C.
CPI-U = the most current published version of the Consumer Price Index-Urban. The CPI-U is published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. If that index ceases to be published, any reasonable equivalent index published by the Bureau of Economic Analysis may be substituted up written agreement between the Parties.

- C. Provide \$1,000 (in 2013 dollars adjusted as defined in B(3)) for each year of the License to the Phillips Reservoir Stocking Supplementation Fund to mitigate for the hatchery stocked rainbow trout that may be entrained through the Project during operation.
- D. Replace the culvert on Silver Creek at USFS Road 5540-030 spur with an open bottom arch culvert to meet USFS and ODFW fish passage criteria as defined in the National Marine Fisheries Service (NMFS) Anadromous Salmonid Passage Facility Design (NOAA 2011) and Oregon Administrative Rule (OAR) 635-412-0035. This action will be completed prior Project operation.
- E. Modify the existing box culvert on McCully Fork that passes under Granite Hill Highway 520 (known as the Elkhorn Drive Scenic Byway) to meet fish passage criteria as in Condition 3D, above. The Licensee shall develop a roughened channel below the culvert and make modifications within the culvert in order to meet USFS and ODFW fish passage criteria. This action will be completed prior to Project operation.
- F. Monitor the mitigation sites at McCully Fork and Silver Creek annually for the first five (5) years after completion of mitigation actions and every fifth (5th) year thereafter, throughout the life of the License, to document that fish passage design criteria, as defined in Condition 3D, are being met. If monitoring indicates that fish passage consistent with design criteria is not being provided and the sites are not performing as designed, the Licensee, in consultation with the Stakeholders, shall determine the cause and, during an approved in-water work period and in coordination with USFS, shall modify the mitigation to rectify the problems as necessary to ensure fish passage criteria are met. When construction is complete on the fish passage structures,

all improvements will be the property of the USFS, except the concrete box culvert at McCully Fork on Granite Hill Highway 520.

- G. Report all mitigation activities identified in Condition 6, and implementation and monitoring of those mitigation actions in the Annual Report per Condition No. 5– Resource Coordination.

Condition No. 7 - Water Quality

The Licensee shall meet all federal and state water quality standards required by the Clean Water Act in accordance with the water quality certification issued by Oregon Department of Environment Quality (ODEQ) under section §401 of the Clean Water Act.

Condition No. 8 - Erosion and Sediment Control

Within 6 months following License issuance, the Licensee shall revise the Erosion and Sediment Control Plan (ESCP), Appendix D of Final License Application (FLA, December 5, 2013), to include measures A through E below. The Licensee shall coordinate and consult with the USDA Forest Service for its review and approval of the ESCP. Upon the USDA Forest Service approval and within six months following License issuance, the Licensee shall file the ESCP with the Commission. After Commission approval, the Licensee shall implement the ESCP.

The goal of the ESCP is to describe the specific rehabilitation techniques and monitoring elements necessary to mitigate all ground disturbing activities during Project construction, operation and maintenance for the life of the new License. Site-specific implementation of the ESCP shall be for the excavation of the power house and tailrace, construction of the power house, construction and rehabilitation of the transmission line and substation, the rehabilitation of the Mason Dam access area (Powder River Recreation Site), and rehabilitation of the Black Mountain Road (USFS Road # 1145).

- A. For three (3) years following completion of Project construction, the Licensee shall monitor sediment and erosion control measures for compliance with performance measures described below, as pertinent to the following areas: spoil pile produced from power house and tailrace excavation; power house, tailrace and penstock construction sites; the transmission line, power pole, and substation construction and site; Black Mountain Road (USFS road # 1145); and the Mason Dam access area (Powder River Recreation Site); and any off road disturbance.

The Licensee shall ensure that (a) ground cover in disturbed areas equals or exceeds 80 percent of that in an undisturbed control area with similar vegetation and is adjacent to the Project area; and (b) species composition in disturbed areas equals or exceeds 75 percent non-weedy species. Soil erosion areas shall be reported if rills exceed two (2) inches in depth or six (6) inches in width. If soil erosion is reported, the Licensee shall implement erosion control measures consistent with the ESCP to remedy the erosion.

- B. If re-vegetation requirements are not met within three (3) years post construction, the Licensee shall consult with the USDA Forest Service to identify and implement measures including, but not limited to reseeded, additional mulch, soil amendments and supplemental irrigation to ensure establishment of vegetation where required.
- C. For all License conditions that require in-water work, the Licensee shall obtain, as applicable, a removal-fill permit from Oregon Department of State Lands (ODSL), a dredge and fill permit from the US Army Corps pursuant to Clean Water Act (CWA) § 404 and a CWA §401 water quality certification from ODEQ. The in-water work period in the Powder River is as follows: downstream of Mason Dam from July 1 through October 31, upstream of Mason Dam from July 1 through August 31, or as allowed by a variance as approved by ODSL in consultation with ODFW.
- D. In the event of future construction activities associated with the Project, the Licensee shall consult with the USDA Forest Service 90-days before commencing any Project-related land-clearing, land disturbing, or spoil-producing activities, and incorporate the USDA Forest Service recommendations into a comprehensive plan to control erosion, dust, and slope stability and to minimize the quantity of sediment or other potential water pollutants resulting from Project construction, spoil disposal, and Project operation and maintenance.
- E. The Licensee shall report all mitigation activities identified in Condition 8, and implementation and monitoring of those mitigation actions in the Annual Report per Condition No. 5 - Resource Coordination.

Condition No. 9 - Revegetation and Noxious Weed Management

Within six months following License issuance, the Licensee shall revise the Re-Vegetation/Noxious Weed Management Plan (RNWMP), Appendix E of Final License Application (December 5, 2013), to include measures A through E below. The Licensee shall coordinate and consult with the USDA Forest Service for its review and approval of the RNWMP. Upon USDA Forest Service approval and within six months following License issuance, the Licensee shall file the RNWMP with the Commission. After Commission approval, the Licensee shall implement the RNWMP.

The goals of the RNWMP are to 1) describe the Licensee's obligations to reduce construction and operational impacts to native vegetation, restore native vegetation, and monitor revegetation establishment; and 2) describe the Licensee's requirement for the prevention, suppression, containment, eradication, control and monitoring of invasive non-native plant species in the Project area for the term of the new License.

Site-specific implementation of the RNWMP shall be for an additional 100 feet beyond the FERC Project boundary in the vicinity of the powerhouse and tailrace area, an additional 25 feet beyond the FERC Project boundary on each side of the transmission line corridor, a 25 foot buffer for the Interconnect corridor (an additional 3,650 feet up the Black Mountain road to the 065 spur road and a 2,720 feet up the spur road to the Idaho Power Transmission line corridor), and the rehabilitation of the Mason Dam access area (Powder River Recreation Site).

- A. The Licensee shall implement the noxious weed control measures found in current invasive plant management direction for the Pacific Northwest Region and/or the Wallowa-Whitman National Forest. Prior to implementation, the Licensee shall coordinate with the USFS, Wallowa-Whitman District Invasive Species Coordinator to develop treatment plans and ensure appropriate techniques are used consistent with current management direction. The USDA Forest Service will provide the Licensee with a mitigation/Project design checklist that outlines the actions and measures that must be taken during treatment activity on NFS lands, and a treatment tracking report that contains specific information about the treatment activity.
- B. The Licensee shall monitor noxious weed control and re-vegetation efforts for three (3) years post construction, two (2) times per year (spring and fall), and every third (3rd) year thereafter on all lands described above.

- C. The Licensee shall ensure that (a) ground cover in disturbed areas equals or exceeds 80 percent of that in an undisturbed control area with similar vegetation and is adjacent to the Project area; and (b) species composition in disturbed areas equals or exceeds 75 percent non-weedy species.
- D. If re-vegetation requirements are not met within three (3) years post construction, the Licensee shall consult with Stakeholders to identify and implement measures including, but not limited to reseeding, additional mulch, soil amendments and supplemental irrigation to ensure establishment of vegetation where required.
- E. The Licensee shall report all mitigation activities identified in Condition 9, and implementation and monitoring of those mitigation actions in the Annual Report per Condition No. 5 - Resource Coordination.

Condition No. 10 - Terrestrial Wildlife Resources

Within three months of License issuance and before any ground disturbing construction activities, the Licensee shall develop a Terrestrial Wildlife Resource Management Plan (TWRMP) to minimize the impacts of Project construction, operation and maintenance to wildlife including, but not limited to, bald eagles. The TWRMP shall include measures that avoid disturbance to nesting bald eagles by timing power line construction outside the nesting season, construct the transmission lines to prevent accidental electrocution and to provide safe bird perching, and to provide a strategy to mitigate for any permanent loss of terrestrial habitat.

The Licensee shall coordinate and consult with the USDA Forest Service for its review and approval of the TWRMP. Upon the USDA Forest Service approval and within three months following License issuance and before any ground disturbing construction activities, the Licensee shall file the TWRMP with the Commission. After Commission approval, the Licensee shall implement the TWRMP.

The Licensee shall avoid all construction, operation and maintenance activities within ¼ mile (1 mile for the use of explosives) of the active bald eagle nest site between January 1st and August 31.

The Licensee shall implement measures to minimize adverse interactions between Project power lines and birds. All new or rebuilt power poles shall be constructed and

maintained in accordance with the Avian Protection Plan Guidelines (APPG 2005), which is intended to be used in conjunction with *Suggested Practices for Raptor Safety on Power Lines: The State of the Art in 2006* (APLIC 2006) and *Reducing Avian Collisions with Power Lines: The State of the Art in 2012* (APLIC 2012). These standards should be applied to all transmission line upgrades.

The Licensee shall consult with the USDA Forest Service to identify onsite locations to mitigate for the permanent loss of terrestrial habitat associated with construction of the powerhouse, tailrace channel, penstock, parking area, transmission line and substation area. The Licensee shall remove noxious weeds and re-vegetate the mitigation site(s) as directed in Condition No. 9 above.

The Licensee shall report all mitigation activities identified in Condition 10, and implementation and monitoring of those mitigation actions in the Annual Report per Condition No. 5 - Resource Coordination.

Condition No. 11 - Historic and Archaeological Resources

The Licensee shall immediately cease all construction activities should the Licensee or its contractors encounter any cultural material (i.e., historic or prehistoric), and shall immediately notify the Wallowa-Whitman National Forest Archaeologist, Oregon State Historic Preservation Office and the Confederated Tribe of the Umatilla Indian Reservation of the discovery.

Condition No. 12 – Recreation Kiosk

Prior to commencing any ground disturbing activities for the construction of the Project, the Licensee shall, in consultation with the USDA Forest Service, design, construct and install a recreational visitor interpretation kiosk within the Powder River Recreation Site access area. The kiosk shall be constructed to USDA Forest Service standards and installed per USDA Forest Service direction. The goal of the interpretive kiosk is to describe the historical Project area events and the proposed Project construction and operation.

Upon completion of the kiosk design, construction and installation, the kiosk shall become the property of the USDA Forest Service and the USDA Forest Service shall assume responsibility for its operation and maintenance.

Condition No. 13 – USDA Forest Service Roads and Recreation Sites

Prior to commencing any Project construction, the Licensee shall consult with the USDA Forest Service to develop and finalize a mutually agreed upon Transportation Plan for the Black Mountain road # 1145 and the Powder River Recreation Site. The Licensee shall file the final Plan with the Commission to maintain a complete Project record. The goal of the Plan is to provide for visitor recreation and timber hauling use on the Black Mountain Road (USDA Forest Service Road #1145) and recreational access to the Powder River Recreation Site.

The Transportation Plan shall be enforceable for the duration of the Project construction and any post-construction rehabilitation of the Black Mountain road and the Powder River Recreation Site.

APPENDIX C

U.S. DEPARTMENT OF THE INTERIOR, U.S. BUREAU OF RECLAMATION FEDERAL POWER ACT PRELIMINARY SECTION 4(e) TERMS AND CONDITIONS

Mason Hydroelectric Project FERC Project No. 12686

4(e) License Article No. 1

Reclamation shall review and approve the design of licensee's designed cofferdams and deep excavations prior to the start of construction and during construction to ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdams and deep excavations, the licensee shall file with the FERC Regional Engineer, Division of Dam Safety and Inspections, one copy of the approved cofferdam construction drawings and specifications and a copy of Reclamation approval letter(s). 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 as defined in the construction and coordination agreement between the licensee and Reclamation.

4(e) License Article No. 2

The licensee shall provide the FERC Regional Engineer two copies of all correspondence between the licensee and Reclamation. The FERC Regional Engineer shall not authorize construction of any project work until Reclamation's written approval of construction plans and specifications has been received by the FERC Regional Engineer.

The design and construction of those facilities that would be an integral part of, or could affect the structural integrity or operation of, the federal facilities shall be done in consultation with and subject to review and approval of Reclamation. The design drawings shall be approved by Reclamation at 30 percent, 75 percent, and 100 percent completion stages. Two sets of design drawings shall be forwarded at each completion stage to the Reclamation Pacific Northwest Region Construction Engineering Group (CEG) Program Manager. Construction of the project must conform to design drawings. Any subsequent changes in the design and construction of the project must be approved by the CEG Program Manager in writing prior to implementation.

4(e) License Article No. 3

The licensee's construction, operation, and maintenance of the project works, and project investigations related to hydropower development, must not weaken, damage, or affect the structural integrity or operation of the federal facilities, or reduce or impair the capability to provide for the purposes and services of the Baker Project, and shall be subject to periodic or continuous (fulltime) inspections by Reclamation as deemed appropriate by Reclamation. Periods of continuous inspection may be, but are not limited to, instances where the dam embankment, outlet pipes, valves, or other permanent appurtenances are disturbed or modified. Any construction, operation, or maintenance deficiencies or difficulties detected by Reclamation will be immediately reported to the licensee and to the FERC Regional Engineer. Any similar deficiencies discovered by the licensee shall be immediately reported to the FERC Regional Engineer and the CEG Program Manager.

Reclamation shall report to the FERC Regional Engineer, the need to stop construction, operation, or maintenance while awaiting resolutions of any deficiency or difficulty 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, safety, or operation of the Federal facilities under its jurisdiction, Reclamation shall have the authority to stop construction, operation, or maintenance activities until the problem or situation is resolved to the satisfaction of Reclamation. Operation of the FERC licensed powerplant shall be secondary to the operation and maintenance of the Federal facilities for the Baker Project purposes.

4(e) License Article No. 4

The licensee shall enter into a construction and coordination agreement with Reclamation at least 60 days prior to entering onto the Federal facilities for construction or performing any ground disturbing activities. This agreement shall (1) establish the appropriate level of coordination, identify points of contact, and access to the affected Federal facilities; (2) provide for Reclamation's review and approval of all appropriate hydroelectric project designs, specifications, construction, operation, or maintenance related activities, and environmental and cultural compliance activities; (3) identify ownership, land use, easement, and water right requirements; (4) define the roles and responsibilities of the licensee and Reclamation during construction and pre-construction activities; (5) establish requirements for an emergency action plan; (6) establish compliance with Reclamation Safety and Health standards for all work performed by the licensee or their contractor or subcontractors while on the Federal facilities; (7) provide for 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; (8) include provisions to indemnity and release of claims for Reclamation, including, but not limited to any loss of hydroelectric project power generation or the introduction of invasive species into the hydroelectric project; (9) establishment of a construction bond or irrevocable letter of credit for the protection of Reclamation; (10) identify procedures for site security including entry and exit procedures and requirements and qualifications of the licensee's employees and to have access to portions of sensitive areas of the federal facilities; and identify other agreements required by Reclamation.

This agreement shall establish the licensee's responsibility to pay, in advance, all costs for Reclamation's work activities associated with the licensee's project for pre-construction, construction, and operation of the FERC project with the exception that the licensee shall not be required to pay for services that would be otherwise provide to the public or other entities at no charge whether or not the licensee's project was constructed.

This agreement shall be signed and executed prior to Reclamation initiating any work activities associated with the Hydroelectric Project.

The FERC Regional Engineer shall be invited to attend discussion or negotiation meetings related to the construction and coordination contract and subsequent operation agreements.

4(e) License Article No. 5

The licensee shall enter into an operation and coordination agreement with Reclamation at least 30 days prior to first discharge of flow releases through the hydroelectric project. This agreement shall (1) establish the roles, requirements, and responsibilities for coordination and management of flow releases from Mason Dam; (2) provide for emergency procedures and coordination in case the licensee fails to discharge Reclamation required flows; (3) provide any other agreements required by Reclamation; (4) establish roles and responsibilities of the licensee regarding the operation and maintenance of the hydroelectric project in conjunction with the federal project's own operation and maintenance; (5) establish periodic or continuous inspections of the hydroelectric project; and identify any other operating agreements required by Reclamation.

The operation agreement shall be subject to revision by the mutual consent of the licensee and Reclamation as experience is gained by actual project operation.

4(e) License Article No. 6

The timing, quantity, and location of water releases and release changes from Mason Dam will be at the sole discretion of Reclamation. Reclamation will not alter operations or maintenance of the Federal facilities or any associated Federal Reclamation project for the development of the proposed Hydroelectric 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.

4(e) License Article No. 7

The licensee shall have no claim against the United States arising from any future changes made to meet authorized federal purposes, from the effect of any changes made in releases from or operation of the federal facilities, from modifications resulting from dam safety requirements, or from any changes in reservoir levels of the Mason Dam.

4(e) License Article No. 8

The licensee shall recognize and agree to the primary right of any Federal work, either by Reclamation or the Baker Valley Irrigation District, associated with the Federal facilities, associated facilities, access roads, and the operation and maintenance thereto, whether ongoing at the time of commencement of work by the licensee or initiated subsequent to start of the work by the licensee, and to coordinate licensee's work with the Federal work.

4(e) License Article No. 9

The licensee is advised that any hydroelectric facilities and associated components which are located on lands under the jurisdiction of the Reclamation may only be used for the authorized construction, operation, or maintenance of such facilities as specifically granted to the licensee by FERC. 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.

4(e) License Article No. 10

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.

4(e) License Article No. 11

The licensee shall ensure that all equipment entering the project area be free of aquatic and terrestrial invasive species and their propagules (such as an egg, bud, seed, spore or other offshoot) that aid in dispersal of the species in accordance with State of Oregon rules, regulations and standards.

APPENDIX D

[The Appendix has been modified as shown in bracketed text to clarify the requirements of the license.]

U.S. Fish and Wildlife Service's Biological Opinion's Reasonable and Prudent Measures and Terms and Conditions

Mason Dam Hydroelectric Project

8.3 Reasonable and Prudent Measures

The Service believes that the following reasonable and prudent measures (RPMs) are necessary and appropriate to minimize impacts of incidental take of bull trout. [Baker County] shall:

1. Minimize the effects to bull trout from in-water work activities including construction, de-watering and re-watering of the Silver Creek culvert replacement area by implementing the terms and conditions in this incidental take statement. Measures shall be taken to minimize to the fullest extent possible the duration and extent of in-water work (July 1-August 31), and to time such work when the impacts to bull trout are minimized.
2. Minimize the risk of adverse effects to bull trout due to fish removal, handling, or transportation activities.
3. Report monitoring and project activity results.

8.4 Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, [Baker County] must comply with the following terms and conditions, which will implement the reasonable and prudent measures described above. These terms and conditions shall be incorporated as mandatory requirements of the permit issued to Baker County. The implementation of the terms and conditions within this Opinion will further reduce the risk of impacts to bull trout and critical habitat within the Silver Creek culvert replacement project area. These terms and conditions are non-discretionary.

1. To implement RPM 1 (minimize the effects to bull trout during the construction, de-watering, and re-watering phases of the project), [Baker County] must:
 - a. Have a project inspector monitor construction activities frequently to ensure the following provisions are met during the period of in-water work, and

- b. Only conduct the project within the in-water work from July 1-August 31. Any adjustments to the in-water work period will be first approved by, and coordinated with the Service, Forest Service, and [Oregon Department of Fish and Wildlife (ODFW)]; and
 - c. Minimize the time of the Silver Creek channel de-watering and heavy machinery in the de-watered creek channel to the greatest extent possible, and
 - d. Monitoring the use and condition of heavy equipment and controlling pollution and hazardous substances such as fuel, grease, and hydraulic fluid from entering the waterway, and
 - e. Minimize the alteration or disturbance of stream banks and existing riparian vegetation by:
 - i. Installing of bank protection material shall be placed to maintain normal waterway configuration whenever possible, and
 - ii. Installing and maintaining appropriate silt fencing during project activities, and
 - iii. Not removing trees larger than 10-inches in diameter without prior consultation with the Forest Service and the U.S. Fish and Wildlife Service, and
 - f. Minimize turbidity during instream activities by:
 - i. Reducing the amount and duration of in-stream work to the greatest extent possible.
2. To implement RPM 2 (Minimize the risk of adverse effects to bull trout due to fish removal, handling, or transportation activities), [Baker County] shall:
- a. Conduct fish rescue efforts with implemented electrofishing protection measures (NOAA 2000), as described in the Supplemental Information provided in the formal consultation request, prior to the Silver Creek dewatering and culvert replacement;
 - b. Minimize the time of handling, storage, and transport of electrofished bull trout; and
 - c. If during visual observations trapped or isolated bull trout are detected, capture them, if feasible, and move them above the blocknet to more hospitable habitats.

3. To implement RPM 3 (monitoring and project activity reporting requirements), [Baker County] shall:
 - a. Within 120 days of completion of the culvert replacement project, [Baker County] will submit a report to the Service documenting the implementation of the action as proposed and compliance with the terms and conditions indicated above is completed. The report will include dates and times of activities, description of the construction actions and outcome of the project. The report should also include the level of incidental take that has been observed, including injured, distressed or dead bull trout or their prey species, and shall describe numbers of bull trout transferred upstream. Submit the report to: La Grande Field Office, 3502 Highway 30, La Grande, OR 97850.

Document Content(s)

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