

FEDERAL POWER COMMISSION  
WASHINGTON, D.C. 20428

OCT 10 1966

Honorable Stewart L. Udall  
Secretary of the Interior  
Washington, D. C. 20240

Dear Mr. Secretary:

This will acknowledge your letter of July 20, 1966, approving the Memorandum of Understanding on matters relating to Section 24 of the Federal Power Act. The Commission is likewise pleased with the adoption of the Memorandum of Understanding and shall cooperate fully in implementing the procedures established therein.

We have favorably considered your request to eliminate the requirement in the Commission's letter of May 26, 1948 that the consent of a licensee or permittee be first secured prior to the disposal of mineral and vegetative materials and to reserve to the United States the right to dispose of such materials. We agree that the Act of July 31, 1947, as amended (30 U.S.C. 601, et seq.) requiring Commission approval for removal of mineral and vegetative materials from project lands, does not require approval of the permittee or licensee.

Accordingly, in future licenses and permits involving Government lands, the Commission shall incorporate a condition requiring the licensee or permittee to cooperate with the United States in the removal of such materials under said Act.

Your letter of July 20, 1966, the letter of May 26, 1948, as modified, and a copy of this letter will be attached to the aforesaid Memorandum of Understanding.

By direction of the Commission.

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Section 24 of the Federal Power Act  
(Disposal of materials under  
Act of July 31, 1947)

MAY 26 1948

The Director  
Bureau of Land Management  
Department of the Interior  
Washington 25, D. C.

Dear Sir:

Reference is made to that part of your March 24, 1948 letter (3097 "LU") concerning the disposal under the Act of July 31, 1947 of timber or other resources located on lands of the United States reserved or classified for power purposes, and to the Commission's April 27, 1948 letter to you stating that you would be informed of any Commission decision concerning the disposal of such materials.

On September 1, 1922 the Commission advised the General Land Office (S-Cooperation, General Land Office) that it had no objection to the approval of applications to remove timber from lands having potential power value, excluding from this category lands covered by an outstanding permit or license and lands covered by a pending application for permit or license under the Federal Water Power Act. This position has not changed since 1922.

Before disposing of materials, including timber, on lands reserved pursuant to the filing of applications for permits or licenses under the Federal Power Act for power projects, it is believed desirable that this Commission consent thereto, particularly since the records of your office do not differentiate between lands covered by outstanding permits or licenses and those no longer occupied but remaining reserved because of their potential power value.

Since the removal of sand, gravel or clay from lands reserved or classified for power purposes may in some instances be undesirable because of possible adverse effect on downstream developments, it is requested that such materials be disposed of only with the consent of this Commission.

Should this Commission inform you that it has no objection to the disposal of materials, including timber, from lands partly or wholly occupied under permit or license, it is recommended that the

materials be disposed of only with the written consent of the permittee or licensee, a copy of such agreement to be made a part of your file. Such an agreement would appear to be essential, since it would remove the possibility of your office or this Commission becoming involved in controversies arising through the joint use of the resources of the lands. This would be true particularly in any claim for damages.

Another matter deemed of sufficient importance to warrant discussion at this time is the use for substantial or extensive improvements of the lands reserved or classified for power purposes, such as for the erection thereon of logging camps or sawmills. It is believed desirable before such improvements are permitted, that the Commission be requested to report whether development of power in the area is proposed within the near future.

In summation -

1. This Commission has no objection to the disposal of timber from lands reserved or classified for power purposes, provided the lands are not within an outstanding permit or license or within an application for permit or license pending before this Commission;
2. It is requested that this Commission be asked to report before the Secretary of the Interior disposes of materials, including timber, on lands reserved pursuant to the filing of applications for permits or licenses under the Federal Power Act; and
3. It is requested that this Commission be asked to report before the Secretary of the Interior (a) disposes of sand, gravel or clay on lands reserved or classified for power purposes; and (b) before permitting the use of such lands for substantial or extensive improvements, such as for the erection thereon of logging camps or sawmills.

By direction of the Commission.

Very truly yours,

*Leon G. Ferry*

Secretary



UNITED STATES  
DEPARTMENT OF THE INTERIOR

JUL 21 9 06 AM '66  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

Dear Mr. Secretary:

JUL 20 1966

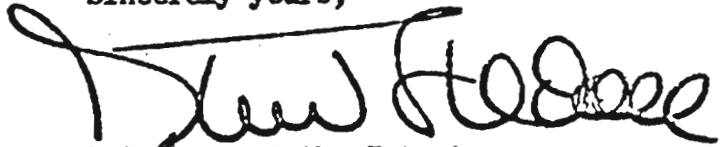
Your letter of May 9 enclosed for our approval a Memorandum of Understanding which relates to interagency procedures concerning powersite reserves. We have reviewed the Memorandum and find that it would simplify and facilitate operations and, at the same time, will continue to protect the public interest in powersite reserves. Therefore, we approve the Memorandum of Understanding.

The proposed 90-day period for the Commission to review and comment on recommendations by the Geological Survey to revoke powersite withdrawals and classifications covering lands which the Survey reports to be without power value should greatly facilitate review of the withdrawals program of this Department. The Bureau of Land Management will not process a proposal for revocation during the 90-day period and will honor the Commission's request for additional time, where additional time may be deemed necessary.

The materials and forest products disposal provisions update certain practices to the more realistic values and terms encountered in present-day sales contracts. The procedures for disposal of timber and materials from lands partly or wholly occupied under permit or license from the Commission shall remain the same as at present; except that the procedures set forth in the Commission's May 26, 1948, letter to the Director, BLM, should be amended to eliminate the requirement that the written consent of the licensee or permittee be first secured before any such materials or timber is disposed of. ~~In lieu of securing the consent of the licensee or permittee, it is~~ requested that the right of the United States, its licensees, permittees, or vendees, to remove timber or other material, pursuant to the Act of July 31, 1947, as amended, 43 U.S.C. 601, et seq. (1964) be specifically reserved in all licenses and permits hereafter issued by the Commission; provided that the removal of such materials does not unreasonably interfere with development of the power project by the licensee or permittee. To avoid redrafting of the Memorandum of Understanding, the Commission's approval of this request can be indicated at the bottom of this letter, and this letter can then be attached to the Memorandum as an addendum.

The Directors of the Bureau of Land Management and the Geological Survey have informed us of the courtesies extended by your staff in the review of existing and proposed procedures. They have also advised us of the cordial relationships and the cooperation among the several agencies in the continuing efforts toward improved administrative service. The adoption of the Memorandum signifies another milestone in mutual cooperation and understanding among Government agencies. It will be promptly implemented.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Newell H. Hodges". The signature is written in a cursive style with a large, sweeping initial "N".

Secretary of the Interior

Mr. Joseph H. Gutride  
Secretary  
Federal Power Commission  
Washington, D. C. 20426

Enclosure

FEDERAL POWER COMMISSION  
WASHINGTON 25, D.C. 20426

In reply refer to:  
OGC

MAY - 11 1966

Honorable Stewart L. Udall  
Secretary, United States  
Department of the Interior  
Washington, D.C. 20440

Dear Mr. Secretary:

Enclosed is a proposed Memorandum of Understanding between this Commission and the Department of the Interior on matters relating to Section 24 of the Federal Power Act, prepared by staff of the Commission and the Bureau of Land Management with the cooperation of the Geological Survey. The Memorandum of Understanding is approved by the Commission.

The Memorandum updates and establishes procedures for the processing of various applications involving public lands which have been withdrawn pursuant to Section 24, classified by the Geological Survey or otherwise withdrawn for power purposes. Pursuant to the procedure set forth in the Memorandum, all applications for Commission action under Section 24, many of which are currently filed directly with the Commission by individual applicants, field offices of the Bureau of Land Management, the Geological Survey or other Federal Agencies, would be directed through the Bureau of Land Management for initial review. Under this procedure, the Bureau would insure that the Commission received only those applications including lands which would be disposed of under the public land laws in the event they should be made available for such disposal by Commission action under Section 24. Another important feature of this procedure is that the factual basis for the recommendations by the Geological Survey would be transmitted with the application involving power site lands withdrawn by your Department. In our view, this would greatly expedite the processing of applications coming before the Commission under Section 24.

In addition, the Memorandum contains certain provisions on related matters which have been the subject of previous understandings between the Commission and your Department.

Honorable Stewart L. Udall

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Upon your approval of the enclosed Memorandum, the Commission will take appropriate action to amend Section 25.1 of its Regulations under the Federal Power Act to require the filing of all applications related to Section 24 through the Bureau of Land Management.

By direction of the Commission.

Secretary

Enclosure No. 3573

DATE:

MEMORANDUM OF UNDERSTANDING

Between

The Federal Power Commission And The Department Of The Interior

WHEREAS, the Federal Power Commission (FPC) has jurisdiction over the power values in the public lands which are classified, withdrawn, or reserved for power purposes by virtue of Section 24 of the Federal Power Act of June 10, 1920; and

WHEREAS, the Geological Survey (GS) has authority to classify the public lands for power and certain other purposes by virtue of the Act of March 3, 1879 (43 U.S.C. 31), and delegation from the Secretary of the Interior; and

WHEREAS, the Bureau of Land Management (BLM) has certain management jurisdiction of the surface and subsurface resources, but not including the power values therein, in public lands classified, withdrawn, or reserved for power purposes by delegation from the Secretary of the Interior; and

WHEREAS, the public interest will be served if these responsibilities are coordinated and efficiently executed;

NOW, THEREFORE, the Department of the Interior and the Federal Power Commission agree as follows: .



I. PETITIONS FOR RESTORATION OR VACATION OF POWER WITHDRAWALS UNDER SECTION 24 OF THE FEDERAL POWER ACT.

(A) After the effective date of this memorandum all petitions for restoration or vacation of power withdrawals under Section 24, shall be directed to the BLM. BLM will make a determination as to whether land disposals including exchanges and other transfers sought in petitions are consistent with proper land use. Where it is not consistent, the BLM will reject the petition (in accordance with Departmental procedures) without referral to other agencies. All other petitions, together with the BLM findings, will be referred to the FPC, through the GS, for a determination pursuant to Section 24; the GS shall make such recommendations or comment as it deems appropriate.

(B) Any petitions filed by Federal agencies and not acted upon by the FPC before the effective date of this memorandum may be referred to the BLM for processing as in paragraph A above.

(C) The BLM shall incorporate into patents or other instruments of conveyance, such restrictions as shall be prescribed by the FPC under its determinations pursuant to Section 24 restoring withdrawn lands for location, entry or selection under the public land laws.

II. CANCELLATION OF POWERSITE CLASSIFICATIONS, DESIGNATIONS OR WITHDRAWALS OF PUBLIC LANDS.

When the Director, Geological Survey (or his delegate) recommends the revocation of a powersite classification, designation or withdrawal he will do so by a memorandum to the Director, Bureau of Land Management,

requesting the promulgation of a public land order to effect it and stating the reasons for the revocation. Except where such requests are not acceptable to BLM, BLM shall transmit all such requests which shall include the technical information and data on which the recommendations are based, to FPC. The FPC will comment on the proposed revocation within 90 days or advise BLM of the need for additional time.

III. TRANSFERS NOT REQUIRING SECTION 24 DETERMINATIONS.

The BLM will refer to the FPC any allowable applications for lease or sale of powersite lands under the Recreation & Public Purposes Act (43 U.S.C. 869;1-3) for its concurrence and recommendations for special stipulations, if any. All transfers under that Act shall include the applicant's agreement:

That the U.S., its permittees, leasees, and licensees, shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any land, crops, facility installed or erected, income, or other property or investments resulting from the use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States.

IV. LAND USE PERMITS NOT REQUIRING A DETERMINATION PURSUANT TO SECTION 24.

(A) Grazing leases, licenses, and permits. Grazing privileges may be allowed by DIM without reference to FPC on lands within powersites which are not within a power project, in accordance with the Commission's determination of February 16, 1937. (See Appendix 1)

(B) Other non-mineral leases, licenses or permits. The BLM may issue, without reference to FPC, other non-mineral leases, licenses, or permits (but not rights-of-way) covering powersites which are not included within a power project, in accordance with the Commission's letter of September 29, 1950. (See Appendix 2)

Any grazing privileges or any other lease, license, or permit covered by sub-paragraphs A & B above shall include the applicant's agreement as set forth in Paragraph III.

V. MINERAL LEASES, LICENSES AND PERMITS.

BLM shall refer all mineral leases, licenses or permits to the FPC for its concurrence and recommendations for special stipulations, if any. All leases, licenses or permits shall contain the "powersite stipulation" in accordance with the FPC letter of April 3, 1957. (43 CFR 3103, See Appendix 3)

VI. MATERIALS, INCLUDING MINERAL MATERIALS AND FOREST PRODUCTS.

The BLM may sell or make other disposal of any timber, other forest vegetation, minerals or other materials from powersite lands so long as the lands involved are not within a power project, and where the contracts

include the purchaser's agreement set forth in Paragraph III above. No disposal contract shall be issued for a term exceeding five years, except with prior consent of the FPC.

VII. RIGHTS-OF-WAY.

(A) Transmission line powersite reserves. Pursuant to FPC determination of April 17, 1922 (43 CFR 2022.2) BLM may restore lands so classified subject to Section 24 without reference to FPC for determination. (See Appendix 4)

(B) Other rights-of-way. BLM will transmit all right-of-way applications involving powersites to the FPC, through the GS, for recommendation concerning allowance, as well as for any special conditions or stipulations which FPC may deem necessary to protect the power values. With reference to recordation of right-of-way uses by the United States, see Appendix 5.

VIII. OTHER TRANSACTIONS.

Proposed grants, including leases, licenses, permits or other uses not falling in the preceding categories, shall be referred to FPC, through the GS, for its recommendations.

IX. BLM CONSTRUCTION PROGRAM.

BLM will refer to the FPC, through the GS, its plans for construction of facilities (recreation, administrative, etc.) on powersite lands for advice and comment as to the consistency of the plans with the preservation of powersite values and reserves.

X. IMPLEMENTATION OF PROCEDURES.

The parties to this memorandum of understanding shall take necessary steps to implement the procedures established herein.

Consent to establishment of grazing districts, issuance of grazing permits, and leasing for grazing purposes under the act of June 20, 1934, as amended, (Government lands reserved for power purposes).

Upon request under date of November 2, 1935, by the Acting Director, Division of Grazing, Department of the Interior, for consent of the Commission, pursuant to the Act of June 20, 1934, c. 605, 48 Stat. 1269, to the establishment of grazing districts and the issuance of grazing permits on lands of the United States withdrawn, classified, or otherwise reserved for power purposes, except in those instances where grazing will interfere with such purposes; and

Upon request under date of December 7, 1935, by the Acting Secretary of the Interior, for consent of the Commission, pursuant to the act of June 20, 1934 (48 Stat. 1269), as amended by the act of June 26, 1935 (49 Stat. 1976), to the leasing under Section 15 of said act as amended, of isolated tracts of lands of the United States, withdrawn for power purposes;

The Commission upon consideration of the matter finds and determines:

That the establishment of grazing districts, the issuance of grazing permits and the leasing for grazing purposes, under said act as amended, of lands of the United States theretofore or thereafter withdrawn, classified, or otherwise reserved for power purposes, but not including lands embraced within the project area of any power project theretofore licensed by the Commission or otherwise authorized by the United States, will not injure or destroy the value of such lands for the purposes of power development nor otherwise abridge the jurisdiction of the Commission; provided, that such grazing districts shall be established and such permits and leases for grazing permits issued subject to the following conditions:

- (1) That the establishment of the grazing district or the issuance of the grazing permit or lease for grazing purposes shall in no wise diminish or affect the jurisdiction of the Commission at any time to issue permits or licenses pursuant to the provisions of the Federal Power Act; and that the issuance by the Commission of a license shall immediately and automatically terminate such grazing district, permit, or lease for grazing purposes as to all lands within the project area described in such license;
- (2) That the establishment of the grazing district or the issuance of the grazing permit or lease for grazing purposes involving lands withdrawn for power purposes shall in no wise diminish or affect the jurisdiction



## CHAPTER 4.11 POWER SITES

## APPENDIX 1 Sheet 2 of 2

of the Commission at any time to make further determinations that the value of any of such lands for the purposes of power development will not be injured or destroyed by location, entry or selection, as provided by Section 24 of the act, and none of such lands shall be declared open, otherwise than as heretofore provided, to location, entry or selection except upon such further determination by the Commission; and any such further determination shall immediately and automatically terminate such grazing district, permit, or lease for grazing purposes as to any lands involved in such further determination.

Now, therefore, the Commission consents to the establishment of such grazing districts and the issuance of grazing permits and leases for grazing purposes of lands of the United States reserved for power purposes subject to the conditions heretofore set out;

Provided, however, that this determination and consent shall be effective for lands embraced within grazing districts, as of the date of the establishment of such districts, and for isolated tracts of lands leased for grazing purposes, it shall be in effect when such leases are issued, provided that notice thereof is received by this Commission from the General Land Office, Department of the Interior, within 90 days thereafter, such notice to include full legal description of the lands withdrawn for power purposes which are involved.

Thereupon the Commission adjourned.

Frank R. McMich  
Chairman

ATTEST:

Leon M. Fugate  
Acting Secretary

## CHAPTER 4.11 POWER SITES

## APPENDIX 2 Sheet 1 of 2

EPR General

September 29, 1950

Bureau of Land Management  
Department of the Interior  
Washington 25, D. C.

Dear Sir:

This Commission is in receipt of two letters dated July 21, 1950, from Mr. H. Byron Beck, Regional Administrator, for the Colorado-Utah Region (17) of your Bureau, with reference to the issuance of special land use permits involving several small tracts of vacant public land within sections 25 and 20, T. 40 S., R. 22 E., Salt Lake Meridian, Utah, withdrawn in Power Site Reserve No. 122.

It is noted that quite a number of like cases have been referred, from your Regional Offices, to this Commission for similar consideration and that there could be some modification of the present procedure whereby your Bureau might more expeditiously process applications for special land use permits that involve power site lands.

The expression "power site land" generally includes lands embraced in water power designations, power site reserves, power site classifications, final power permits and lands withdrawn under Section 24 of the Federal Power Act pursuant to the filing of application for preliminary permit or license with this Commission.

It is our understanding that under existing regulations (42 C.F.R. 250) of your Bureau the issuance of special land-use permits does not restrict the acquisition in the lands of rights by others including rights-of-way under existing laws. However, damages to improvements of the permittees by the taking of the lands for other purposes do not appear to be controlled by the provisions of the aforesaid regulations.

This Commission recognizes the possibility that the lack of control over the improvements which may be placed upon the power site lands, in some instances through the issuance of a number of permits within a given area, may increase the cost of the power project to such a degree as to prove the development of the site infeasible. Because of this factor the Commission believes it both desirable and essential that in any such permit issued there be inserted therein the following or similar proviso:

Rel. 123 4/29/58

"The permittee further agrees that the United States, its permittees or licensees, for purposes of power development, shall not be held liable for any damage to crops, buildings or other improvements of the permittee resulting from the construction, operation and maintenance of any power project works upon the lands herein described."

The Commission has no objection to the issuance of special-land-use permits involving power site lands in accordance with the aforesaid recommendations.

By direction of the Commission.

Secretary



### APPENDIX 3

Form 4-1223  
(June 1960)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

#### POWERSITE STIPULATION

The lessee or permittee hereby agrees:

(a) If any of the land covered by this lease or permit was, on the date that the lease or permit application or offer was filed, within a powersite classification, reservation, or project on which an application for a license or preliminary permit is pending before the Federal Power Commission or on which an effective license or preliminary permit had been issued by the Federal Power Commission under the Federal Power Act, or on which an authorized power project (other than one owned or operated by the Federal Government) had been constructed, the United States, its permittees or licensees shall have the prior right to use such land for purposes of power development so applied for, licensed, permitted or authorized, and no compensation shall accrue to the mineral lessee or permittee for loss of prospective profits or for damages to improvements or workings, for any additional expense caused the mineral lessee as a result of the taking of said land for power development purposes. It is agreed, however, that where the mineral lessee or permittee can make adjustments of his improvements to avoid undue interference

with power development, he will be permitted to do so at his own expense. Furthermore, occupancy and use of the land by the mineral lessee or permittee shall be subject to such reasonable conditions with respect to the use of the land as may be prescribed by the Federal Power Commission for the protection of any improvements and workings constructed thereon for power development.

(b) If any of the land covered by this lease or permit is on the date of the lease or permit within a powersite classification or reservation which is not governed by the preceding paragraph, the lease or permit is subject to the express condition that operations under it shall be so conducted as not to interfere with the administration and use of the land for powersite purposes to a greater extent than may be determined by the Secretary of the Interior to be necessary for the most beneficial use of the land. In any case, it is agreed that where the mineral lessee or permittee can make adjustments to avoid undue interference with power development, he will be permitted to do so at his own expense.

General Determination Under Section 24 of Federal Power Act as to Lands Applied for, Occupied, and Used for Transmission-line Purposes

The executive secretary of the Federal Power Commission having called to the attention of the Commission the desirability of making a general determination under the provisions of section 24 of the Federal Water Power Act with respect to lands of the United States theretofore or thereafter reserved or classified as power sites which are applied for, or occupied and used for, transmission-line purposes only, the Commission at its meeting of April 17, 1922, voted as follows:

(1) That where lands of the United States have heretofore been, or hereafter may be, reserved or classified as power sites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes has been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the commission determines that the value of such lands so reserved or classified or so applied for or authorized, will not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Water Power Act.

(2) That when notice is given to the Secretary of the Interior of reservations made under the provisions of section 24 of the Federal Water Power Act, such notice shall indicate what lands so reserved, if any, may, in accordance with the determination of the preceding paragraph, be declared open to location, entry, or selection subject to the reservation of said section 24.

APPENDIX 5

VOLUME V LANDS

PART 4 WITHDRAWALS & RESERVATIONS

CHAPTER 4.11 POWER SITES

FEDERAL POWER COMMISSION  
Washington 25, D. C.

EPR-General  
Recordation of Rights-of-Way  
(44 L. D. 513)

January 10, 1963

The Director  
Bureau of Land Management  
Department of the Interior  
Washington 25, D. C.

Dear Sir:

This Commission in recent months has received copies of numerous serial register pages, accompanied by power value reports prepared by the Geological Survey, concerning requests filed with the Portland Land Office by the District offices of your Bureau for the recordation upon its records of rights-of-way on power site lands for facilities of the United States pursuant to 44 L. D. 513.

It appears that many of such rights-of-way are primarily for roads to facilitate the harvesting of timber products from the lands and have been in place for many years. Other of the rights-of-way appear of more recent development and, while not so stated, it is presumed some of the requests for recordation passing through this office may involve timber roads proposed for construction.

The recordation of such rights-of-way upon your office records is primarily to put the public on notice that some portion or portions of the respective legal subdivisions have been appropriated for public purposes. It is considered that such use of power site lands by the United States would not materially affect their power value and the Commission has no objection to their recordation without referral to this office.

Should such facilities be proposed for construction or improvement by the United States which would substantially increase the cost of power development, the Commission would appreciate the opportunity to appraise and report on the power potential of the power site lands involved.

By direction of the Commission.

J. H. Gutride

Secretary

Encl. 2/2 3/18/63