

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires April 4, 2013)

Subject: Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges

Purpose: Establish the process requirements and charges associated with development of hydropower at a Bureau of Reclamation facility where Reclamation has the statutory right for power development. The benefits of this Directive and Standard (D&S) are improved internal and external communication, efficiency, and transparency of LOPP requirements.

Authority: The Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388); the Town Sites and Power Development Act of 1906 (Act of April 16, 1906, ch. 1631, 34 Stat. 116); the Reclamation Project Act of 1939 (Act of August 4, 1939, ch. 418, 53 Stat. 1187); and other applicable laws, executive orders, judicial decisions, policies, regulations, and acts relating to individual dams or projects.

Approving Official: Director, Technical Resources

Contact: Power Resources Office, 86-61600

1. **Introduction.** A LOPP is a contractual right given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. A LOPP project must not impair the efficiency of Reclamation project power or water deliveries, jeopardize public safety, or negatively affect any other Reclamation project purposes. The terms and conditions for the use of any Reclamation owned facilities and lands related to the LOPP project will be addressed in the LOPP. A LOPP is used when Reclamation has authority to develop power on any or all features of a Federal project. This authority is based on the Town Sites and Power Development Act of 1906, the Reclamation Project Act of 1939, project-specific statutes, and sometimes from Congressional reports and other documents associated with those statutes. The Town Sites and Power Development Act of 1906 authorized the Secretary of the Department of the Interior to lease surplus power or power privileges. The Reclamation Project Act of 1939 Section 9(c) extended the contract term to a maximum of 40 years for the sale of power or LOPP, giving preference to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof; it also gives Reclamation the authority to collect specific charges for a LOPP.
2. **Applicability.** This D&S applies to all Reclamation employees that work on LOPP activities, and is applicable to any LOPP project where a solicitation for a LOPP project is issued after the release of this D&S. This D&S does not apply to activities necessary for Federal development of a powerplant at a site where Reclamation has development

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authority. If Reclamation determines that it is in the best interest of the Government to investigate Federal development of the site, the timeframes in this D&S do not apply.

3. **Project-Specific Authorities Control.** LOPP processes may involve projects or facilities that are subject to project-specific statutes, regulations, judicial decisions, existing contracts, or other authorities. These specific authorities will control the LOPP process if there is a conflict with this D&S.
4. **Definitions.**
 - A. **Conduit.** Any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity or conveyance of water over or through a dam, its abutments, or foundation via existing or proposed conveyance features.
 - B. **Federal Energy Regulatory Commission (FERC) License.** A legal authorization issued by FERC to an entity authorizing the construction and operation of a hydroelectric project for a specified term, typically 30-50 years. Under the November 6, 1992, Memorandum of Understanding (MOU) between Reclamation and FERC, FERC licenses are issued at Reclamation facilities where power development was not authorized from project-specific statutes, Congressional reports, and other documents associated with those statutes.
 - C. **Gross Revenue.** Any revenue from the sale of energy or Renewable Energy Certificates (REC's) from the LOPP project., or if the energy is consumed by the Lessee any avoided costs from deliveries, exchanges, or displacement of energy from the LOPP project not including energy used for normal station service needed for the LOPP powerplant operations.
 - D. **LOPP.** A LOPP is a contractual right issued by Reclamation to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes.
 - E. **Lessee.** Any entity issued a LOPP.
 - F. **LOPP Lead.** The Reclamation employee that manages the Preliminary Lease and LOPP as determined by the regional power manager or area office manager.
 - G. **Preference Entity.** Municipalities and other public corporations or agencies; and also cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof.

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- H. **Preliminary Lease.** An agreement between Reclamation and the Preliminary Lessee that outlines the responsibilities of Reclamation and the Preliminary Lessee during the negotiation of the LOPP, and directs that the potential Lessee must enter into a cost recovery agreement to provide advance funding to Reclamation before Reclamation incurs any costs for work related to the Preliminary Lease or LOPP. A Preliminary Lease is non-transferrable and does not guarantee that a LOPP will ultimately be awarded.
- I. **Preliminary Lessee.** An entity issued a Preliminary Lease.
- J. **REC.** A verifiable certificate laying claim to and accounting for the associated attributes of generation from units that qualify as renewable generation under state regulatory requirements (such as Renewable Portfolio Standards) and in voluntary market programs.
- K. **Transferred Work.** A Reclamation project facility where the operation and maintenance (O&M) of that facility is carried out by a non-Federal entity under the provisions of a formal O&M transfer contract.
5. **Responsibilities.**
- A. **Regional Directors.** Regional directors, or their designees, are responsible for:
- (1) notifying the Power Resources Office and the Dam Safety Office of a formal request for hydropower development;
 - (2) contacting their power and water stakeholder and Power Marketing Administrations to determine interest in funding Federal development of the powerplant prior to the solicitation of any LOPP project;
 - (3) determining jurisdiction for hydropower development no later than 30 calendar days after receipt of a formal request for such development;
 - (4) obtaining concurrence from the Senior Advisor, Hydropower on jurisdiction;
 - (5) ensuring that the processes outlined below are carried out in the defined timeframes;
 - (6) designating responsibility for development of the LOPP and oversight of the proposed hydropower development;

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- (7) making the final determination on what entity will be awarded a Preliminary Lease;
- (8) sending the official notification of selection of the Preliminary Lessee no later than 7 calendar days after selection;
- (9) resolving requests for extensions of the timeframes for development under a LOPP that are outlined in this D&S;
- (10) ensuring National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and other statutory compliance;
- (11) notifying the Senior Advisor, Hydropower regarding NEPA approach pursuant to Paragraph 9.A. of this D&S;
- (12) resolving public safety, security, and O&M recommendations concerning the LOPP project's impact to Reclamation facilities;
- (13) reviewing and signing the LOPP upon concurrence from the Senior Advisor, Hydropower; and
- (14) establishing a maximum timeframe for construction.

B. Senior Advisor, Hydropower. The Senior Advisor, Hydropower, or his or her designee is responsible for:

- (1) overseeing, reviewing, and revising Reclamation's LOPP D&S and processes;
- (2) coordinating with regional directors and FERC regarding jurisdictional questions and issues;
- (3) setting up an annual meeting with the regions, the Power Resources Office, the Dam Safety Office, and the Technical Service Center to discuss upcoming LOPP workload;
- (4) reviewing the annual LOPP charge periodically at an interval of not greater than 5 years to ensure consistency with the parameters of the Reclamation Act of 1939; and

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- (5) reviewing annual LOPP charges for a LOPP project where energy produced by the project replaces current consumption of Reclamation Project Use Power as defined in Reclamation Manual D&S, *Project Use Power* (FAC 04-06).
- C. **Chief, Dam Safety Office.** The Chief, Dam Safety Office is responsible for advising the regional director on public safety issues, the work required to correct those issues, and the timeline and estimated cost for that work.
- D. **Regional Power Manager or Area Office Manager.** The regional power manager or area office manager, as designated by the regional director, is responsible for:
- (1) preparing and ensuring publication of a public solicitation for applications for a LOPP within 60 calendar days of the formal determination of jurisdiction of authority;
 - (2) notifying the Power Resources Office and the Dam Safety Office of the intent to issue a notice to solicit LOPP proposals prior to such issuance;
 - (3) notifying the appropriate power marketing agency (PMA) of the intent to issue a notice to solicit LOPP proposals prior to such issuance;
 - (4) notifying any entity with a Reclamation contract that relates to power, water use, or capacity right, associated with the project or projects involved in the LOPP proposal, and any other appropriate stakeholders of the intent to issue a notice to solicit LOPP proposals prior to such issuance;
 - (5) creating a selection team to review the LOPP proposals; and
 - (6) assigning a LOPP lead.
- E. **LOPP Lead.** The LOPP lead is responsible for:
- (1) coordinating, on or before the LOPP solicitation, with the Reclamation offices (i.e., the appropriate region and area offices, the Power Resources Office, the Dam Safety Office and the Technical Service Center) that will be potentially involved in the LOPP to discuss the scope of the project, timelines, resources, public and dam safety issues, and other technical issues;
 - (2) ensuring that under circumstances where a Federal water user or Federal power customer organization has operation, maintenance, and replacement (OM&R) transfer contracts associated with the existing Federal project but are not a participant in the proposed LOPP that a meeting will be held within 30 calendar

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days of the issuance of the Preliminary Lease between Reclamation, the Preliminary Lessee, and that water user/power customer to understand the roles and responsibilities in the LOPP process, and that the agreed upon terms, roles and responsibilities resulting from this meeting will be documented in a manner agreeable to the parties involved;

- (3) coordinating a meeting with Reclamation and the Preliminary Lessee to discuss Reclamation's involvement in the public safety aspects of the project;
- (4) coordinating and ensuring the collection of all necessary studies, analyses, designs, plans, specifications, and related material associated with the proposed powerplant facilities from the Preliminary Lessee and/or Lessee;
- (5) coordinating and ensuring the Reclamation review of all necessary studies, analyses, designs, plans, specifications, and related material associated with the proposed powerplant facilities within 45 calendar days of receipt of those studies from the Preliminary Lessee and/or Lessee; and
- (6) ensuring the collection and accounting of the necessary funding from the Preliminary Lessee and/or Lessee, in advance of expenditures, to cover all Reclamation costs for work performed for the Preliminary Lease or LOPP.

F. **Selection Team.** The selection team is responsible for:

- (1) reviewing all proposals received from the LOPP solicitation; and
- (2) providing a recommendation to the regional director for award of the Preliminary Lease.

6. **Jurisdiction for Hydropower Development.** Requests to develop hydropower at Reclamation facilities will be evaluated under the November 6, 1992, MOU between Reclamation and FERC (Appendix A) to determine which agency has jurisdiction over the project and to address potential jurisdiction issues between the two agencies. If Reclamation and FERC alter the 1992 MOU in the future, the version of the Reclamation-FERC agreement at the time of the LOPP solicitation will govern jurisdiction between the agencies. The Senior Advisor, Hydropower and the respective regional director will coordinate and agree on jurisdiction before proceeding with the LOPP solicitation.

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7. Solicitation and Selection of Lessee.

- A. Reclamation will solicit proposals for hydropower development under a LOPP through a public process to ensure fair and open competition. LOPP solicitations will either be independently initiated by Reclamation or initiated by Reclamation at the request of a third party.
- B. The solicitation for LOPP proposals will allow up to 90 calendar days from the date of publication for applicants to submit proposals, and the selection team will have 30 calendar days to review the proposals and provide a recommendation of award to the regional director.
- C. To be considered for selection, the applicant's proposed LOPP project must not impair the efficiency of Reclamation project power or water deliveries, impact structural integrity of the project, jeopardize public safety, or negatively affect any other Reclamation project purposes. Reclamation will give more favorable consideration to proposals that (1) are well-adapted to developing, conserving, and utilizing the water and natural resources; and (2) clearly demonstrate that the offerer is qualified to develop the hydropower facility and provide for long-term operations and maintenance.
- D. Preference in granting a Preliminary Lease and LOPP will be in accordance with Section 9(c) of the Reclamation Project Act of 1939.
 - (1) For Conduit LOPP projects where the project will be located on a site where a Federal water user organization has OM&R transfer contracts associated with the existing Federal project, preference will first be granted to that entity provided that the proposal is at least as well-adapted to developing, conserving, and utilizing the water and natural resources as other submitted proposals, and that the Federal water user organization is well qualified to develop and provide for long-term operations and maintenance of the hydropower facility.
 - (2) For all other LOPP projects, Reclamation will give equal preference to all entities that qualify as Preference Entities, provided that the proposal is at least as well-adapted to developing, conserving, and utilizing the water and natural resources as other submitted proposals, and that the Preference Entity is well qualified to develop and provide for long-term operations and maintenance of the hydropower facility.
 - (3) If one applicant is a Preference Entity, and the other is not, and the plans of the applicant who is not a Preference Entity are better adapted to develop, conserve, and utilize in the public interest the water resources of the project, Reclamation will inform the Preference Entity of the specific reasons why its plans are not as

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well adapted and afford up to 30 calendar days for the Preference Entity to render its plans at least as well adapted as the other plans. All other applicants will be informed of this action. If the plans of the Preference Entity are rendered at least as well adapted within the time allowed, Reclamation will favor the Preference Entity. If the plans are not rendered at least as well adapted within the time allowed, Reclamation will favor the other applicant.

E. Minimum Reclamation LOPP solicitation requirements are:

- (1) The LOPP solicitation must include the scoring criteria for how proposals will be evaluated.
- (2) If the LOPP solicitation is for a site that is a transferred work, that information must be revealed in the solicitation. In these cases, the solicitation will include a provision that indicates that failure to provide a letter of cooperation from the operator of the transferred work could result in a low evaluation score when multiple proposals are under consideration.
- (3) Reclamation will require interested parties to submit a proposal explaining in as precise detail as is practicable how the hydropower potential at the site would be developed. The solicitation will require that a proposal provide:
 - (a) Information relevant to the qualifications of the proposing entity to plan and implement such a project, including but not limited to, information about preference status; type of organization; length of time in business; experience in funding, design, and construction of similar projects; industry rating(s) that indicate financial soundness and/or technical and managerial capability; experience of key management personnel; history of any reorganizations or mergers with other companies; and any other information that demonstrates the interested entity's organizational, technical, and financial ability to perform all aspects of the work. Proposals will include a discussion of past experience in operating and maintaining similar facilities and provide references as appropriate.
 - (b) Geographical locations and descriptions of principal structures and other important features of the proposed development including roads and transmission lines. Proposals must estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Proposals must also describe the daily, weekly, monthly, and annual pattern of expected generation under average, wet, and dry hydrological conditions; the ability of generation to provide ancillary services such as regulation, spinning reserves, and voltampere reactive

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support; and information on the reliability of the generation, potential maintenance outage schedule, and duration. If capacity and energy can be delivered to another location, either by the proposing entity or by potential third party transmission agents, the proposal must specify where that capacity and energy can be delivered. The proposal must describe the concepts and contractual arrangements (including the involved parties) related to transmission interconnection, power sales, and the proposed approach to third party transmission if required.

- (c) Existing title arrangements or a description of the ability to acquire title to or the right to occupy and use lands necessary for the proposed LOPP project, including such additional lands as may be required during construction.
- (d) A description of studies necessary to adequately define impacts of the proposed LOPP project on the Reclamation project, historic properties (if such are present), and the environment. The proposal must describe any significant environmental issues associated with the proposed LOPP project and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. The proposal will explain any proposed use of the LOPP project for conservation and utilization of the available water resources in the public interest.
- (e) A detailed description of any contractual arrangements with the entity having operation and maintenance responsibility for the Reclamation project feature(s) that are proposed for utilization in the hydropower development under consideration. The proposal must define how the LOPP project would operate in harmony with the Reclamation project and existing applicable contracts related to O&M of Reclamation project feature(s) being considered for modification.
- (f) Plans for assuming liability for damage to the operational and structural integrity of the Reclamation project caused by construction, operation, and/or maintenance of the hydropower development.
- (g) The organizational structure planned for the long-term O&M of any proposed hydropower development.
- (h) A management plan, including schedules of these activities as is applicable, to accomplish activities such as planning, NEPA compliance, NHPA compliance, ESA compliance, necessary studies, LOPP project development, design, construction, safety plan, facility testing, and the start of hydropower production.

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- (i) An estimate of development costs. These costs will include all investment costs such as the cost of studies to determine feasibility; NEPA compliance; NHPA compliance; ESA compliance; other statutory compliance; design; construction; financing as well as the amortized annual cost of the investment; annual OM&R expense for the hydropower development; lease payments to the United States; expenses associated with the Reclamation project; and anticipated return on investment. If there are additional transmission expenses associated with the development of the LOPP project, these expenses must also be included. The proposal must identify proposed methods of financing the LOPP project. The proposal must include an economic analysis that compares the present worth of all benefits and costs of the hydropower development.

8. Timeframes for Development under a LOPP.

- A. **LOPP on Dams.** The Preliminary Lessee will be provided a maximum of 24 months from the date of issuance of the Preliminary Lease to complete the requirements set forth in the Preliminary Lease and to sign the LOPP. The Lessee will have a maximum of 1 year from the date of the execution of the LOPP to complete final designs, specifications, etc., and an additional 1 year to begin construction. A maximum of 4 years is allowed, from the date of the Preliminary Lease to the beginning of construction. Maximum timeframes for construction will be determined by the regional director. The above timeframes will only be extended for just cause resulting from actions and/or circumstances that are beyond the control of Reclamation or the Lessee. Just cause and timeframe adjustments will be determined solely by the regional director.
- B. **LOPP on Conduits.** The Preliminary Lessee will have a maximum of 15 months from the date of issuance of the Preliminary Lease to complete the requirements set forth in the Preliminary Lease and to sign the LOPP. The Lessee will be provided a maximum of 9 months from the date of the execution of the LOPP to complete final designs, specifications, etc., and an additional 1 year to begin construction. A maximum of 3 years is allowed, from the date of Preliminary Lease agreement to the beginning of construction. Maximum timeframes for construction will be determined by the regional director. The above timeframes will only be extended for just cause resulting from actions and/or circumstances that are beyond the control of Reclamation or the Lessee. Just cause and timeframe adjustments will be determined solely by the regional director.

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9. Development, Construction, and O&M.

- A. A LOPP project with a capacity of 15 Megawatts or less will be evaluated under exclusion category 516 DM 14.5C(3) to determine if it is eligible for a categorical exclusion (CE) and whether any extraordinary circumstances (43 CFR 46.25) exist. Consideration for a CE does not guarantee that a CE will be appropriate. In some cases, a higher level of NEPA evaluation will be required.
- B. The LOPP lead will collect, and coordinate the review of, all studies from the Preliminary Lessee and/or Lessee that are necessary for Reclamation to ensure that the efficiency of Reclamation project power or water deliveries will not be impaired, to ensure the public safety and the continued safe operation and structural integrity of the Reclamation facilities, and to ensure compliance with NEPA, ESA, and NHPA commitments. A value engineering study is not required. A listing of studies that the LOPP lead will consider is included in Appendix B.
- C. NEPA, ESA, NHPA, and other statutory compliance will be the financial responsibility of the Preliminary Lessee and will be completed during the Preliminary Lease phase prior to execution of the LOPP. Terms and conditions resulting from NEPA, ESA, NHPA, and other statutory compliance will be incorporated in the LOPP and will be the financial responsibility of the Lessee.
- D. At those Reclamation projects where Reclamation, through a PMA, has responsibility for repayment of a portion of the project, or is otherwise provided right of first refusal by law, that PMA will be given the first opportunity to purchase the energy and, if applicable, REC's produced by the project. The PMA is not obligated to purchase the generation from the proposed hydropower facility. At the time the Preliminary Lease is issued, the Preliminary Lessee must coordinate with the PMA to offer the energy and REC's produced under the LOPP for purchase. The PMA will have 60 calendar days from the initial offer to make a decision whether to purchase the power and REC's. If such a decision cannot be made within that timeframe, the Lessee will have the right to market the energy and REC's produced by the project to others.
- E. Reclamation reserves the right to conduct or direct the completion of analyses, designs, and data collection which directly affect public safety aspects of the facilities into which the Lessee's powerplant facilities are to be integrated. Reclamation will review all analyses, designs, plans, specifications, and related material associated with all other features of the proposed powerplant and appurtenant facilities (i.e., those features which do not directly affect public safety). Work shall not proceed with various aspects of the project until Reclamation's approval has been obtained. Reclamation will oversee the construction effort, including on-site inspection, focusing primarily on the work which directly affects the public safety aspects of their facilities.

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- F. Title to the Federal facility, and any modifications to the facility, remain with the United States. Title to the proposed installed powerplant facility is held by the Lessee unless legislated or contracted otherwise.
- G. Reclamation can deny the issuance of a LOPP or withdraw a previously issued Preliminary Lease or LOPP at any time based on inadequate design information, unsatisfactory environmental impacts, safety concerns, security concerns, detrimental impact to the Reclamation project, or any other legitimate reason as determined by the regional director.
- H. At a minimum the following conditions must be addressed in the LOPP:
- (1) The structural and operational integrity of existing Reclamation facilities or associated Federal projects must not be impaired by construction, operation, or maintenance of the Lessee's powerplant facilities. Powerplant construction, operation, or maintenance must not: interfere with the existing or future project operations; jeopardize existing water rights; alter compliance with environmental requirements or commitments; impair the efficiency of the project for irrigation purposes; impair the operations of, or entitlements to, Reclamation hydroelectric facilities; impair security; impede the correction of public safety deficiencies, or create any public safety related deficiency, recreation hazards, or other safety problems. Reclamation will share its plans with the Preliminary Lessee to correct public safety related issues at the Reclamation facility which are known at the time of the LOPP negotiations. Public safety issues which emerge at a later date could require adjustments to the location, design, construction, and/or operations of the Lessee's powerplant facilities. Costs associated with such adjustments will be the responsibility of the Lessee.
 - (2) The Preliminary Lessee will provide the LOPP lead evidence of a comprehensive and sufficient performance bond for the construction of the project, and a comprehensive and sufficient surety bond to cover any Reclamation costs for removal of the facilities and the clean-up or restoration of the site due to the installation or operation of the Lessee's plant. The amount of the bonds will be determined on a project-by-project basis.
 - (3) The Federal government will have the first right to purchase the powerplant should the Lessee need to sell the facilities to which it has title. LOPPs shall not be transferred or facilities sold without written approval of the Reclamation regional director.
 - (4) Reclamation will not be responsible for the economic and technical feasibility of the Lessee's powerplant facility, and the Lessee must agree to indemnify the

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United States for any loss or damage resulting from actions under the LOPP and any act of neglect or omission of the Lessee or the United States in connection with its performance under the LOPP. The Lessee shall have no claim against the United States for loss of generation caused by the normal or extraordinary O&M of the Reclamation project including, but not limited to, the quantity, quality, or timing of water or power delivered by the Reclamation project. The Lessee will be required to modify operations required by any future legal constraints associated with the operation of the Reclamation project.

- (5) Access to and operation of the existing Reclamation facilities must be sustained during the construction, OM&R of the Lessee's powerplant facilities.
- (6) Reclamation will inspect the powerplant and related facilities to the extent necessary to ensure public safety and compliance with NEPA, ESA, NHPA and other statutory commitments. Reclamation's inspections will be in addition to inspections performed by the Lessee. The LOPP will contain provisions requiring the Lessee to address any recommendations issued by Reclamation within the timeframes determined by the regional director. Costs associated with the implementation of these recommendations will be the responsibility of the Lessee. Reclamation reserves the right to shut down the operation of the powerplant or remedy problems at the expense of the Lessee if the recommendations are not followed or if an emergency situation exists.
- (7) Physical security of existing facilities shall be maintained by Reclamation, or its designee, during construction, operation, and maintenance activities. The Lessee shall not interfere with Reclamation security activities and will be subject to search, background checks, etc., as deemed necessary by Reclamation to protect the physical and information technology security of Reclamation facilities. The Lessee will be responsible for any incremental security costs incurred by Reclamation that result from the construction of the Lessee's proposed powerplant and associated facilities. The Lessee will be required to have security procedures and practices commensurate with security requirements, as determined by Reclamation.
- (8) The Lessee will be required to compensate Reclamation for lost generation and other interruptions to operations at Reclamation facilities due to construction, O&M, or any other extraordinary event at the Lessee's facilities.

10. **Projects on Transferred Works.** Under circumstances where a Federal water user organization has OM&R transfer contracts associated with the proposed Reclamation owned development site but are not a participant in the proposed LOPP, then LOPP contracts will

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include their involvement, as appropriate. The Lessee shall share in the cost of OM&R of the existing Federal facilities that benefit the proposed installed power facility. If there is a possibility that these costs may apply, the LOPP solicitation will indicate it as such.

11. **LOPP Charges.**

A. **Administrative Charges.** Prior to any work conducted by Reclamation for the Preliminary Lease or LOPP, the Preliminary Lessee and/or Lessee shall provide in advance of expenditures the necessary funding to cover all Reclamation costs. These costs include any and all work related to NEPA, NHPA, ESA, other statutory compliance, development, construction, O&M, inspections, security of the Lessee's power facilities, review of all other necessary studies, analyses, designs, plans, specifications, and related material associated with the proposed powerplant, and any other related administrative costs. Reclamation shall give the Preliminary Lessee and/or Lessee an itemized and detailed estimate of these costs based on its understanding of the LOPP project, and the Preliminary Lessee and/or Lessee shall pay in advance in accordance with an agreed upon funding plan. Any increase in funding requirements beyond the originally agreed upon amount will be negotiated with the Preliminary Lessee and/or Lessee before Reclamation incurs those costs. Any unused funds will be returned to the Preliminary Lessee and/or Lessee without interest. Reclamation shall set up a new cost authority number to keep track of all Reclamation costs related to the LOPP project.

B. **Annual LOPP Charge.**

(1) The Reclamation Act of 1939 Section 9 (c) states:

Any sale of electric power or Lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper.

(2) The LOPP charge is assessed annually, and begins when the powerplant first initiates commercial operation. This charge will not apply to existing LOPP agreements where a rate has been negotiated prior to the issuance of this D&S.

(a) **Standard LOPP Charge.** The annual LOPP charge is set at \$3/kilowatt of installed nameplate capacity plus 6 percent of the project's Gross Revenue. This rate will be periodically reviewed at an interval not greater than 5 years,

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and adjusted within each LOPP to ensure that it is consistent with the parameters of the Reclamation Act of 1939. Such adjustments will not be applied retroactively.

- (b) **Discounted LOPP Charge.** For entities that are already responsible for project O&M repayment for the site of the LOPP project, recognition of that contribution to O&M will be made through a reduction of the LOPP charge. The reduced annual LOPP charge is set at \$2/kilowatt of installed nameplate capacity plus 4 percent of the project's Gross Revenue. This rate will be periodically reviewed at an interval not greater than 5 years, and adjusted within each LOPP to ensure that it is consistent with the parameters of the Reclamation Act of 1939. Such adjustments will not be applied retroactively.
- (c) **Offsetting Reclamation Project Use Power.** For a LOPP project where energy produced by the project replaces current consumption of Reclamation Project Use Power (PUP), and that Reclamation generation can be marketed through the PMA, the annual charge may be lowered upon review by the Senior Advisor, Hydropower provided that the LOPP charge plus the additional benefit of the marketed generation are sufficient to repay the costs identified in the Reclamation Act of 1939. Where the LOPP powerplant is offsetting project needs other than that provided by Reclamation PUP, the full LOPP charge pursuant to Paragraphs 4.C.; 11.B.(2)(a); and 11.B.(2)(b) of this D&S shall apply.

12. **Disposition of Annual LOPP Charges.** Unless otherwise directed by specific project authorizations, in accordance with Section 5 of the Town Sites and Power Development Act of 1906, the LOPP charge paid by the Lessee to Reclamation shall be deposited in the Reclamation fund as a credit to the Reclamation project and are applied against the total outstanding reimbursable repayment obligation for reimbursable project construction costs of the Federal project on which the LOPP is issued pursuant to the existing construction cost allocation (not applied only against power construction costs). If the outstanding reimbursable repayment obligation for project construction costs is satisfied, then the LOPP payments will be held as a statutory credit for the project or program until an eligible reimbursable project expense is incurred against which the credit can be applied. While LOPP payments are not considered incidental revenues, Paragraphs 6.A., 6.A.(1), and 7 of Reclamation Manual D&S, *Crediting Requirements for Incidental Revenues* (PEC 03-01) describe how Reclamation will apply LOPP credits to the project.