



Please stand by. The FERC Small Hydro Webinar will start momentarily.

For the audio portion of this webinar dial:

1-800-369-1791  
Pass Code: 8021137

June 22, 2011



Federal Energy Regulatory Commission

# Exemptions and Licenses Webinar

June 22, 2011



# Webinar Contents

1. Introductions
2. Contact Information
3. Ground Rules
4. Overview of Exemptions
5. Conduit Exemptions
6. 5 MW Exemptions
7. Exemption Application Process
8. Legal Issues
9. Hydropower Licenses for Small Projects
10. Webinar Questions
11. Webinar Evaluation



# Introductions



Lesley  
Kordella

Katie Liberty



Chris Chaney

Keri Hatley



Mike Spencer

Shana Murray





# Contact Information

Small/Low Impact Hydropower Hotline:

Telephone: **1-866-914-2849**

or

E-mail: [smallhydro@ferc.gov](mailto:smallhydro@ferc.gov)



# Ground Rules

If you have questions during the webinar:

- Your phone will be muted during the presentation; you will not be able to comment or ask questions during the webinar.
- Send your questions to the host using the chat box in the lower right corner of your screen.
- Because we may not be able to answer all of your questions due to time limits, you can also submit questions to the small hydro web site after the webinar and you will receive a response.



# Federal Energy Regulatory Commission

## Overview of Exemptions

# FERC's Hydropower Jurisdiction

- Located on a navigable waterway;
- Occupies lands of the United States;
- Uses surplus water from a federal dam; OR
- Located on Commerce clause waterway, post-1935 construction, and affects interstate or foreign commerce.



# Licenses Under Part I of the FPA

- An exemption is not a form of deregulation, it is a statutory provision that allows an applicant to be exempt from some or all of Part I of the Federal Power Act.
- This program is intended for small projects that would result in minor environmental effects (e.g., projects that involve little change to water flow and use and are unlikely to affect threatened and endangered species).

# Two types of FERC Exemptions

- Conduit exemptions  
Section 30 of the FPA and  
18 CFR 4.90-96
- 5-MW exemptions  
Sections 405 and 408 of PURPA and  
18 CFR 4.101-108



# Federal Energy Regulatory Commission

## Conduit Exemptions

# What is a Conduit Exemption?

- Issued in perpetuity
- 15 megawatts or less for non-municipal projects and 40 megawatts or less for municipal projects
- Conduit constructed primarily for non-power purposes
- Power facility located entirely on non-federal lands
- Subject to mandatory fish and wildlife conditions (section 30(c) conditions)
- Categorically exempt from NEPA, although EA needed in some circumstances
- Boundary is only around power facility

# Key Definitions

- Conduit [18 C.F.R. § 4.30(b)(2)]
  - Any manmade water conveyance
    - operated for the distribution of water for agricultural, municipal, or industrial consumption
    - not primarily for the generation of electricity



# Key Definitions

- Small Conduit Hydroelectric Facility  
[18 C.F.R § 4.30(b)(28)]

- All structures, fixtures, equipment, and lands used and useful in the operation or maintenance of the project
- Specifically excludes the conduit and associated transmission lines

# Qualifications

- Utilize hydroelectric potential of a conduit
- Located entirely on non-Federal land
- Maximum Installed Capacity
  - 15 MW for private entities
  - 40 MW for municipal entities
- Not an integral part of a dam
  - Dam [18 C.F.R § 4.30(b)(4)]
    - Any structure that impounds water

# Qualifications

- Project must discharge water:
  - Into a conduit,
  - Directly to a point of consumption, or
  - Into a natural body of water if an equal or greater quantity of water is withdrawn downstream into a conduit that is **part of the same water supply system.**

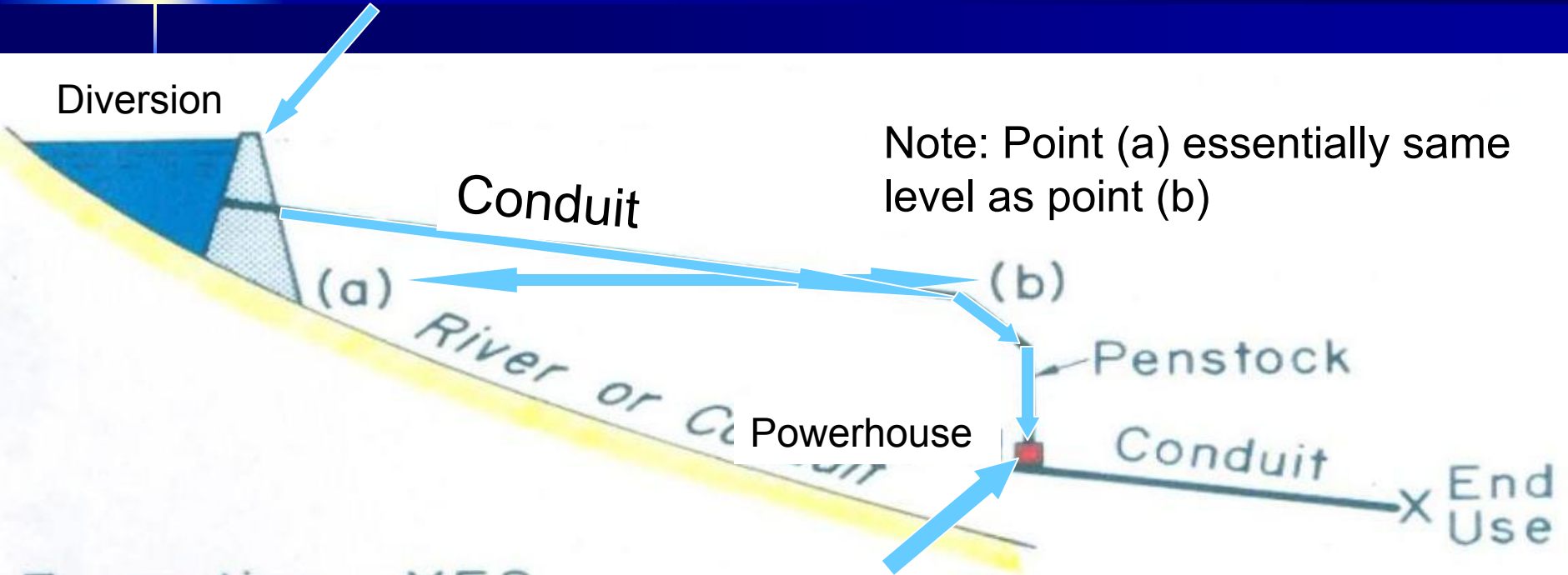


# Qualifications

- Does not rely on the construction of a dam which would create any portion of the hydrostatic head

\*Unless that construction would occur even if the hydroelectric facilities were not installed

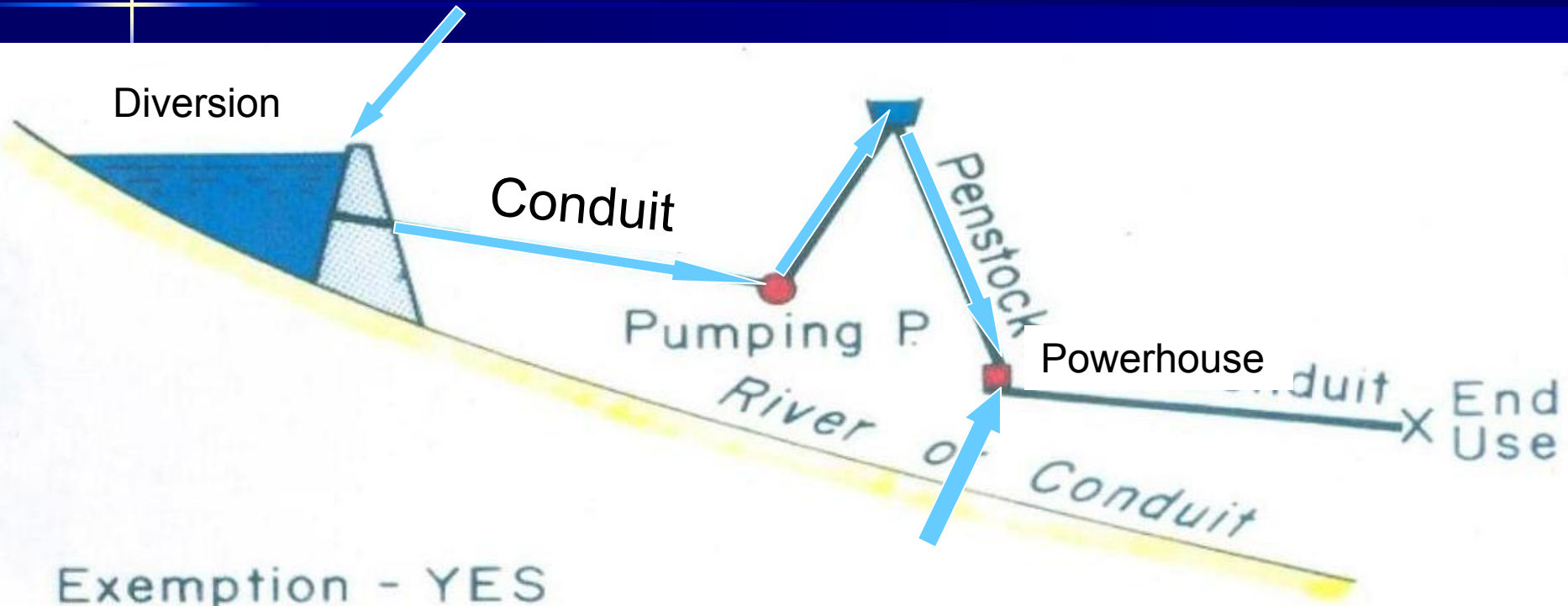
# Example 1



Exemption - YES

Reason - Hydraulic head created by topography

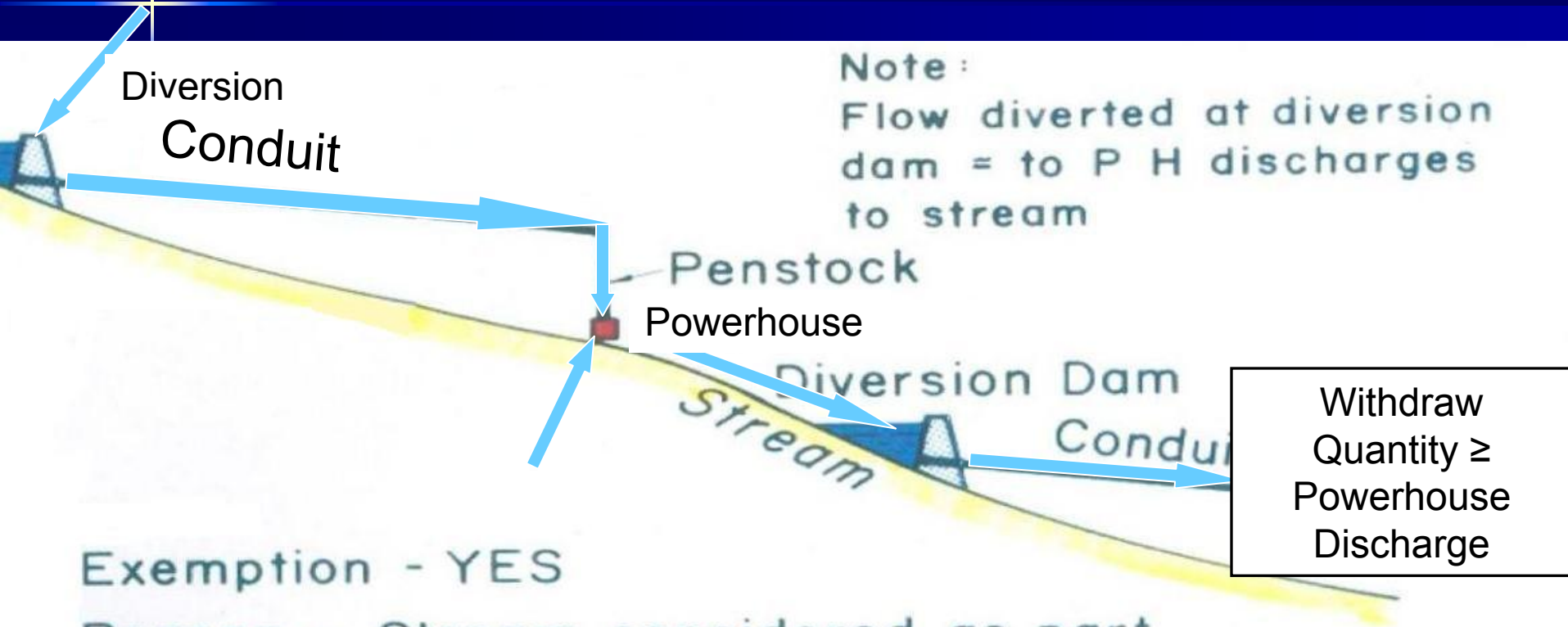
# Example 2



Exemption - YES

Reason - Hydraulic head created by pumping plant

# Example 3



Note:  
Flow diverted at diversion dam = to P H discharges to stream

Penstock  
Powerhouse

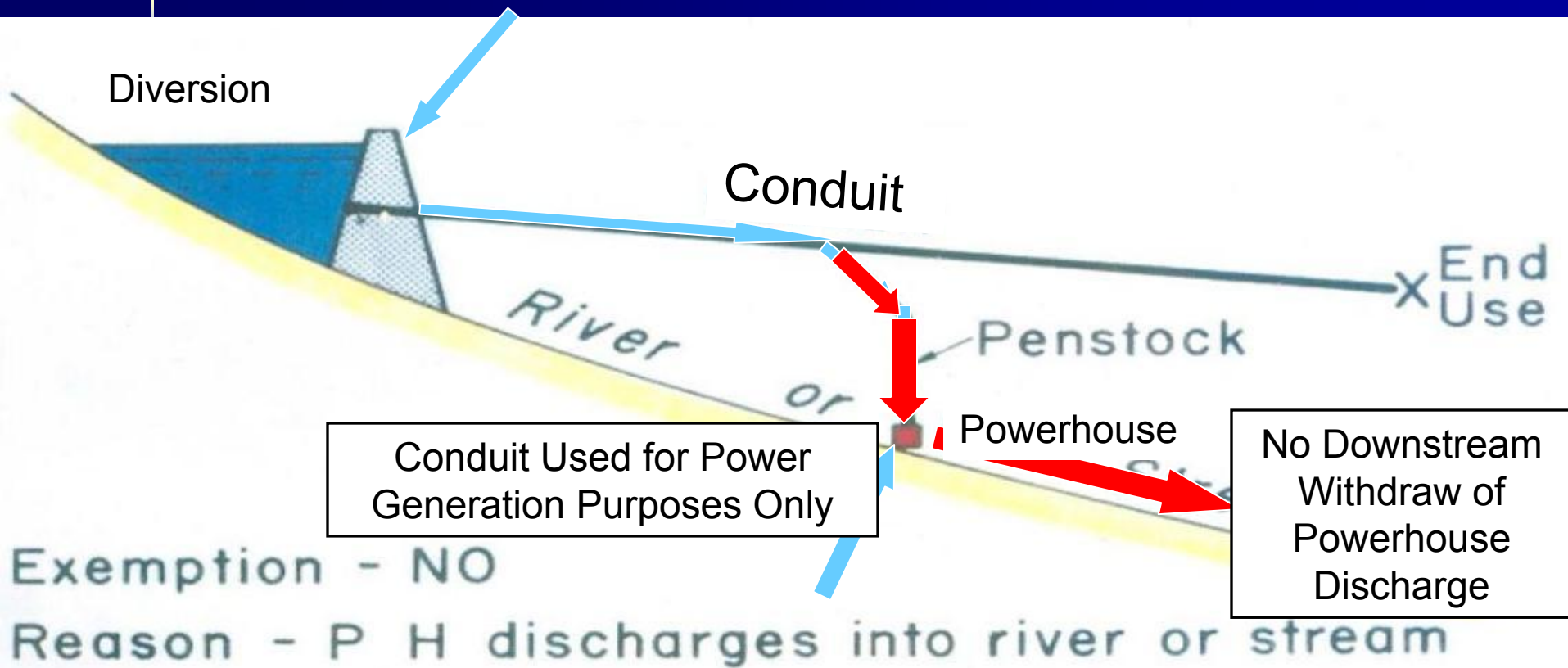
Diversions Dam  
Stream  
Diversions Conduit

Withdraw Quantity  $\geq$  Powerhouse Discharge

Exemption - YES

Reason - Stream considered as part of conveyance

# Non-Qualifying Example





# Conduit Questions

Please submit questions to the host using the chat box icon in the lower right hand corner of your screen.





# Federal Energy Regulatory Commission

## 5 Megawatt Exemptions



# What is a 5 MW Exemption?

- Exemptions have no expiration
- Issued in perpetuity
- 5 megawatts or less
- If the project exists, must add capacity
- Built at an existing dam or use a natural water feature
- Subject to mandatory fish and wildlife conditions (section 30(c) conditions)
- Require NEPA analysis
- Boundary is same as a licensed project (include dam and reservoir)
- Applicant must possess all real property rights at time of filing unless on federal land



# Two Forms of 5 MW Exemptions

- At an existing dam
- Or at a natural water feature



# Qualifications for a 5 MW Exemption at an Existing Dam

- Commission has defined a 5-MW exemption as follows:

A project where a powerhouse is located no further than 500 feet from the existing project dam and which would derive a significant portion of head from the dam (at least 36 percent).

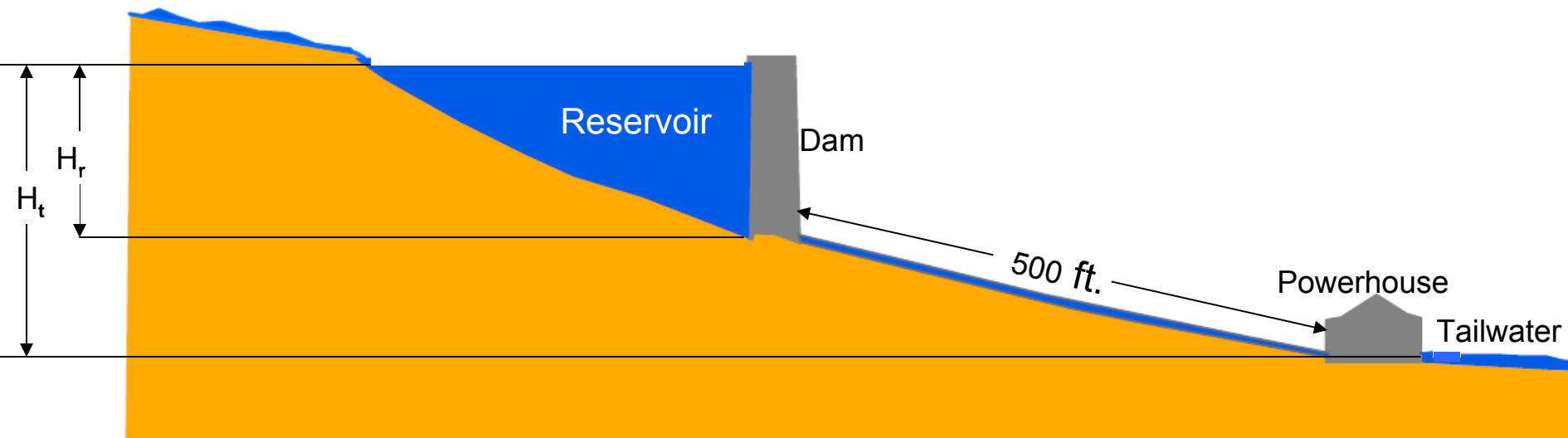
See Troy Rehearing P-13381-002 issued May 19, 2011.

## Physical Criteria for 5 MW Exemptions at an Existing Dam

1. The powerhouse can't be more than 500 feet from the Dam
2.  $H_r \div H_t =$  no less than 36 percent

$H_r$  = Height of the dam

$H_t$  = Total Height from the top of the dam to the top of the tailwater



# Qualifications for a 5 MW Exemption at a Natural Water Feature

- Use a natural water feature the project would have to utilize a natural water feature, such as a natural lake, waterfall, or the gradient of a natural stream, without the need for a dam or man-made impoundment
- Cannot retain water behind any structure for the purpose of a storage and release operation.



## 5 MW Questions

Please submit questions to the host using the chat box icon in the lower right hand corner of your screen.



Federal Energy Regulatory Commission

Exemption Application Process

# Three Stages of Prefiling

- File Preliminary Information
- Consult Stakeholders
- Gather Information
- Prepare License Application

# Prefiling

## ■ Stage one

- Assemble an Initial Consultation Document (refer to website template). Mail the ICD to Resource Agencies, Affected Indian tribes and members of the public likely to be interested.
- Request Fish and Wildlife Agencies provide estimate of fees for reimbursing any reasonable costs for reviewing and setting any terms and conditions for the project. (18 C.F.R Section 4.302)
- Announce the joint meeting and set the date of meeting 30 to 60 days from mailing the ICD.



# Joint Meeting

- Public notice, at least 14 days in advance, the joint meeting between the applicant, resource agencies and the interested public will be held.
- Hold meeting at project site or a site nearby and provide for site visit. At the meeting, explain and discuss the project.

# Prefiling

## ■ Stage two

- Interested parties and resource agencies provide comments on the project and request studies within 60 days of the joint meeting.
- Perform the studies and use the information to draft an exemption application
- Send draft application to interested parties and resource agencies and give 90 days for them to provide comments.

# Prefiling

## ■ Stage three

- File exemption application with FERC (18 C.F.R. section 4.107)
- Make certain that application:
  1. Provides proof and explanation (if necessary), at the time of filing, that the applicant has all real property interests to all project features unless on federal land.
  2. Provide proof that the Fish and Wildlife agencies have been asked to estimate fees to process the application.

Details of the contents of the application and procedures to follow can be found on the website: [www.ferc.gov](http://www.ferc.gov)

The screenshot displays the FERC website's 'Small/Low Impact Hydropower Program' licensing page. The browser window title is 'FERC: Hydropower - Licensing - Small/Low Impact Hydropower Program - Microsoft Internet Explorer provided by FERC'. The address bar shows the URL 'http://www.ferc.gov/industries/hydropower/gen-info/licensing/small-low-impact.asp'. The page features the FERC logo and navigation menus. The main content area is titled 'Small/Low Impact Hydropower Program' and includes a text size selector (S, M, L). A central text block explains that under the Federal Power Act (FPA), FERC regulates non-federal hydropower resources and issues three types of development authorizations: conduit exemptions, 5-megawatt (MW) exemptions, and licenses. A sidebar on the left lists various categories like Electric, Hydropower, and Natural Gas. A 'Get Started' section provides links for 'FERC Authorization', 'Exemption or License', 'Information About Projects Nearby', 'Off-Limits Sites', and 'Related Websites'. A 'Prepare an Application' section lists steps: 'Process Overview', 'File Preliminary Information', 'Consult Stakeholders', 'Gather Information', and 'Prepare Application'. An 'Expedite your Project' section offers links for 'What You Can Do', 'What FERC Can Do', and 'Projects Issued in Less Than 1 Year' (with a '2015 UPDATED' badge). A 'CONTACT' box on the right provides the telephone number 1-866-914-2849 and email 'smallhydro@ferc.gov'. A 'QUICK LINKS' section includes links to a July 29, 2010 testimony, a tri-fold brochure, and an MOU with the State of Colorado. The Windows taskbar at the bottom shows several open applications, including 'Inbox - Mic...', '5 mw exemp...', 'FERC: Hydro...', 'Microsoft Ex...', 'Document1 ...', and 'Document2 ...', with the system clock showing 3:21 PM.

FERC  
FEDERAL ENERGY REGULATORY COMMISSION

ABOUT MEDIA DOCUMENTS & FILINGS INDUSTRIES LEGAL RESOURCES MARKET OVERSIGHT ENFORCEMENT CAREERS CONTACT US FOR CITIZENS

Electric  
Hydropower  
Annual Charges  
Dam Safety and Inspections  
Environment  
Industry Activities  
General Information  
Licensing  
Compliance and Administration  
Comprehensive Plans  
Handbooks  
Guidelines  
Workshops  
Regulation  
Natural Gas  
Oil

Industries >> Hydropower >> General Information >> Licensing

Small/Low Impact Hydropower Program

Under the Federal Power Act (FPA), FERC regulates the nation's non-federal hydropower resources. FERC issues three types of development authorizations: conduit exemptions, 5-megawatt (MW) exemptions, and licenses. This website explains how to obtain Commission authorization to construct and operate small/low-impact projects while assuring adequate protection of environmental resources. This program is intended for small projects that would result in minor environmental effects (e.g., projects that involve little change to water flow and use and are unlikely to affect threatened and endangered species).

Get Started

- FERC Authorization
- Exemption or License
- Information About Projects Nearby
- Off-Limits Sites
- Related Websites

Prepare an Application

- Process Overview
  - File Preliminary Information
  - Consult Stakeholders
  - Gather Information
  - Prepare Application

Expedite your Project

- What You Can Do
- What FERC Can Do
- Projects Issued in Less Than 1 Year **2015 UPDATED**

CONTACT

Telephone: 1-866-914-2849  
Email: [smallhydro@ferc.gov](mailto:smallhydro@ferc.gov)

QUICK LINKS

- July 29, 2010 - Jeff Wright's testimony on Small Hydropower: Prospects of Expanding Low-Impact and Affordable Hydropower **PDF**
- Tri-fold Brochure **PDF**
- MOU with State of Colorado **PDF**

# Expediting the Exemption Application Process

Factors that May Reduce Time and Costs:

- Unlikely to affect threatened and endangered species or need fish passage
- Little change to water flow use
- Applicant builds stakeholder consensus
- Applicant owns all lands needed for project construction and operation
- Application is complete



# Exemption Application Process

Please submit questions to the host using the chat box icon in the lower right hand corner of your screen.



# Federal Energy Regulatory Commission

## Legal Issues

# Section 30(c) Conditions

- All exemptions are subject to mandatory fish and wildlife conditions as set out in section 30(c) of the FPA.
- Conditions can be filed by: FWS, NMFS, and/or state fish and wildlife agency.



# Section 30(c) Fees

- Section 4.302 of the regulations requires an exemption application to contain a fee or bond and a statement of the cost estimate that a Federal or state fish and wildlife agency will incur to set mandatory terms and conditions under section 30(c) of the FPA.

# Project Boundary

- Conduit – powerhouse/turbine and any appurtenant facilities (i.e. penstock or discharge pipe) but not the conduit itself or transmission line.
- 5-MW – reservoir, dam, penstock, discharge pipe, powerhouse, turbine, transmission line, etc.

# Property Rights

- You must show in your application that you have the real property rights for all of your project features.
- Conduits cannot be located on federal lands.
- 5-MW exemptions can be located on federal lands. The exemptee will have one year after the exemption is issued to get the rights to occupy federal lands from the federal land management agency (i.e. a special use permit from Forest Service).

# Property Rights

- Proof of real property rights includes: a deed; a lease, an easement, or a right-of-way.
- The name on the property document must be the same name as the applicant.
- To clarify that you have the rights to all of your project components: (1) highlight the pertinent parts of your property rights documents; AND (2) show your property boundary on your project boundary map (i.e. the Exhibit G).



# Property Rights - Example

Grantor A to Grantee B

Warranty Deed V.31 P.138, Relevant Language

"... to the middle of the Natchaug River, thence North Easterly by said river to the dam..."

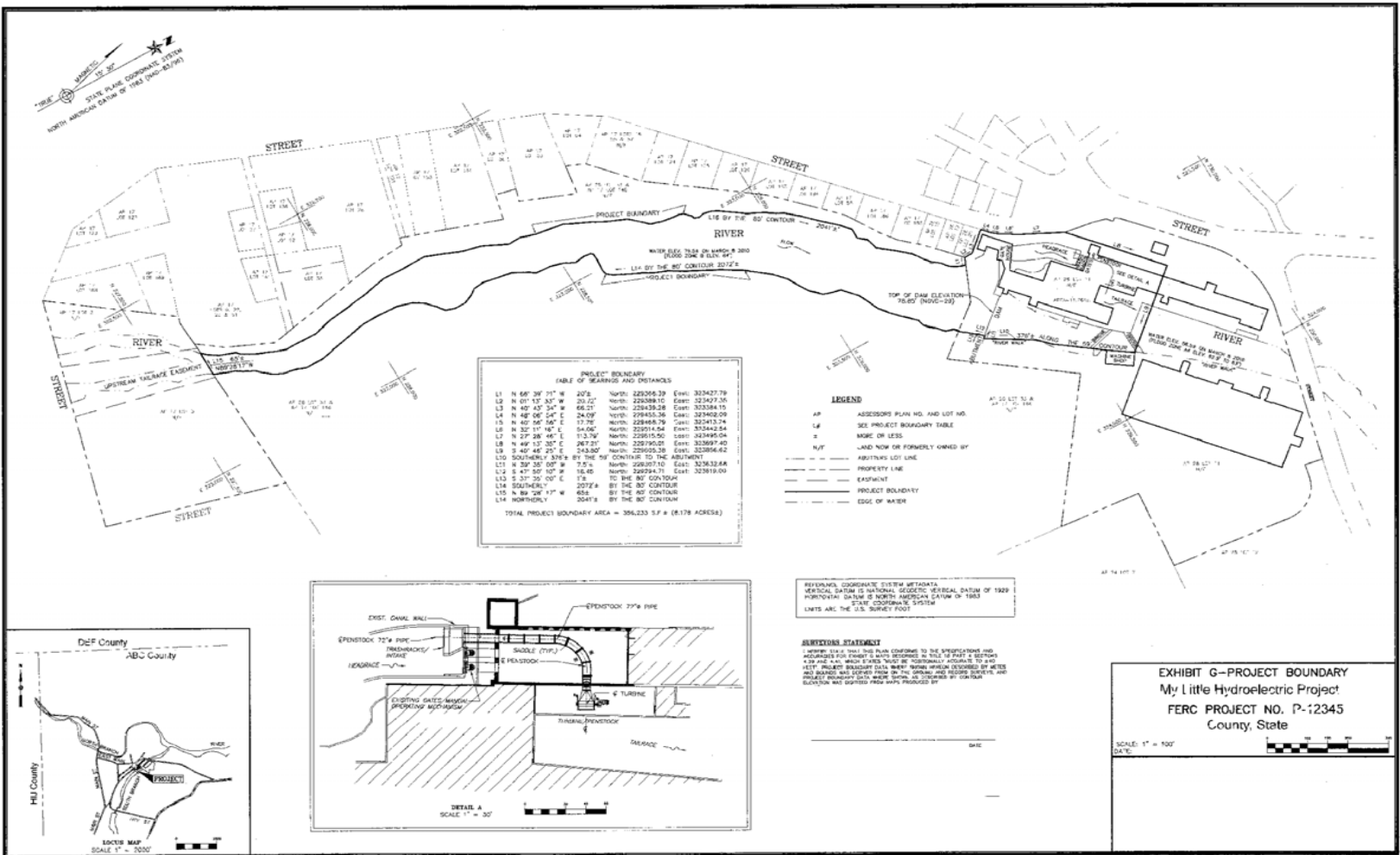
"all right and title to ... pass and repass to and from said dam on both banks of said river for the purpose of keeping said dam in repair ..."

# Property Rights - Example

“Beginning at a concrete monument located at a southerly line of X Road, which point marks the northwesterly corner of the land now or formerly of the United States and the northeasterly corner of the herein described parcel. The line runs:

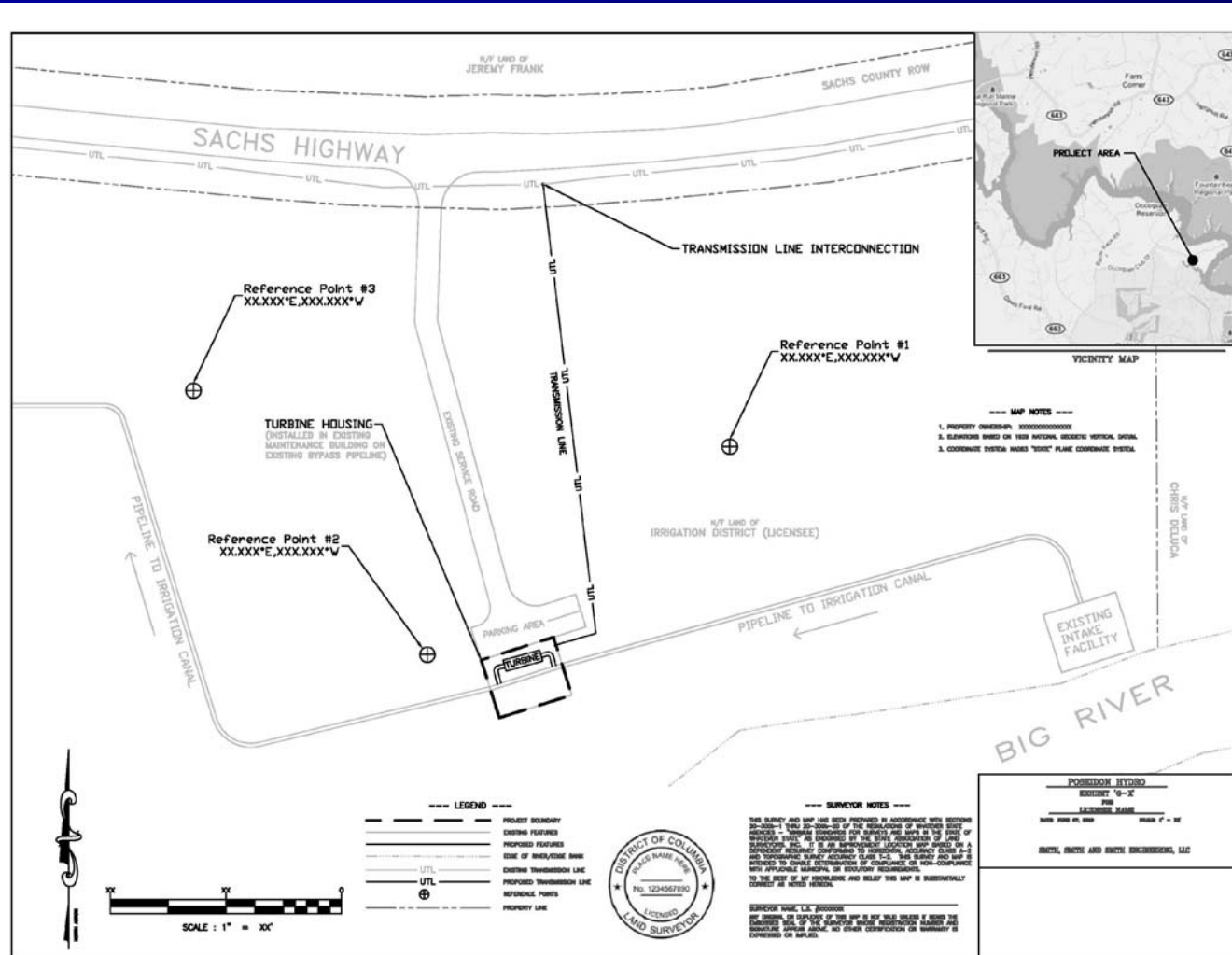
THENCE S 08° - 11" -20"E, a distance of 175.10 feet to a concrete monument . . .”

# Property Rights - Example





# Property Rights - Example





# Legal Questions

Please submit questions to the host using the chat box icon in the lower right hand corner of your screen.



# Federal Energy Regulatory Commission

## Hydropower Licenses for Small Projects

# What if my Application does not Qualify for an Exemption?

- Most applicants are able to transition from an exemption application to a license application without difficulty.
- \*Applicants may need to include additional information to their exemption application in order to fulfill information requirements for a license application.

# Applying for a License

- Most of the same procedural steps apply to both traditional license and exemption applications
- Three-step Prefiling:
  - File Preliminary Information
  - Consult Stakeholders
  - Gather Information
  - Prepare a License Application

# Examples of Issued Licenses for Small Projects

- Arrow Canyon Hydroelectric Project  
No. 13569- Nevada  
*license within 5 months*
  
- Afton Hydroelectric Project  
No. 13301- Wyoming  
*license within 8 months*

# Exemption or a License?

- Things you can do if you're still not sure if your project qualifies as an exemption:
  - Refer to the FERC Small Hydro/Low-Impact website at [www.ferc.gov](http://www.ferc.gov).
  - Call the small hydro hotline **1-866-914-2849**.
  - Send FERC your project proposal or a draft of your application for review.



# Webinar Questions

Please submit questions to the host using the chat box icon in the lower right hand corner of your screen.





# Webinar Evaluation

We will be sending you an evaluation form to get your input about this webinar

---

Please take a few moments to complete the evaluation

---

Your comments are important



If you have any questions or comments related to the web site, applications, templates, or process call:

**Telephone: 1-866-914-2849**

or

**E-mail: [smallhydro@ferc.gov](mailto:smallhydro@ferc.gov)**