

136 FERC ¶ 62,224  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

George Wenschhof

Project No. 14230-000

ORDER GRANTING EXEMPTION FROM LICENSING (CONDUIT)

(Issued September 14, 2011)

**Introduction**

1. On July 15, 2011, and supplemented July 28, 2011, George Wenschhof (applicant or exemptee) filed an application to exempt the proposed 23-kilowatt (kW) Meeker Wenschhof Hydroelectric Project from the licensing requirements set forth in Part I of the Federal Power Act (FPA).<sup>1</sup> The small conduit hydropower project would be located on an existing irrigation pipeline on the applicant's ranch near the town of Meeker, in Rio Blanco County, Colorado. The project would not occupy any federal lands. As discussed below, I am issuing a conduit exemption for the project.

**Project Description**

2. The Meeker Wenschhof Hydroelectric Project would consist of a proposed powerhouse containing one generating unit with an installed capacity of 23 kW and appurtenant facilities. The applicant estimates that the project would have an average annual generation of 100,000 kilowatt-hours.

3. The project would be located on the applicant's existing irrigation system. The applicant diverts water for irrigation from the Miller Creek Ditch, located southeast of the proposed project. The water travels through irrigation pipelines to a valve that slows the

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<sup>1</sup> Under Part I of the FPA, 16 U.S.C. §§ 792-823 (2006), the Commission issues licenses to non-federal interests authorizing the construction, operation, and maintenance of water power projects on navigable waters of the United States, on federal lands, and on streams subject to Congress' jurisdiction. Pursuant to section 30 of the FPA, 16 U.S.C. § 823, the Commission is authorized to exempt from the licensing requirements of Part I of the FPA any facility (not including a dam or other impoundment) that is constructed, operated, or maintained for the generation of electric power and is located on non-federal lands and uses for generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption (and not primarily for the generation of electricity).

flow of the water before it is discharged into a buried cistern. The cistern supplies irrigation water to the applicant's lower pastures.

4. The Meeker Wenschhof Hydroelectric Project would involve the installation of a new 23 kW turbine generating unit in a proposed powerhouse to be located at the end of the irrigation pipeline. The turbine generator unit will replace the existing valve located upstream of the buried cistern. The applicant proposes to operate the project only during irrigation season; therefore, the proposed project will not change the timing, location, or amount of water delivered to the existing irrigation system.

### **Background**

5. On July 28, 2011, the Commission issued public notice of the conduit exemption application, establishing August 29, 2011, as the deadline for filing comments, motions to intervene, and competing applications. On August 22, 2011, the U.S. Department of the Interior stated that it had no comments on the proposed project. No other comments or motions to intervene were filed.

### **Water Quality Certification**

6. On September 1, 2011, the Colorado Department of Public Health and Environment issued a water quality certification for the Meeker Wenschhof Project (see Appendix A).

### **Section 30(c) Conditions**

7. Section 30(c) of the FPA<sup>2</sup> requires the Commission to include in its conduit exemptions such terms and conditions as may be prescribed by federal and state fish and wildlife agencies to prevent loss of, or damage to, fish and wildlife resources and to otherwise carry out the purposes of the Fish and Wildlife Coordination Act.<sup>3</sup> Standard article 2 of this exemption requires compliance with the terms and conditions prepared by federal or state fish and wildlife agencies to protect fish and wildlife resources. No federal or state fish and wildlife agencies submitted terms and conditions for this exemption.

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<sup>2</sup> 16 U.S.C. § 823a(c) (2006).

<sup>3</sup> 16 U.S.C. §§ 661-667e (2006).

## **Environmental Assessment**

8. Pursuant to section 380.4(a)(14) of the Commission's regulations,<sup>4</sup> Commission staff is not required to prepare an environmental assessment or an environmental impact statement for conduit exemption applications. Nonetheless, I have considered the environmental information in the exemption application and other pertinent information, and find that issuance of this order is not a major federal action significantly affecting the quality of the human environment.

## **Administrative Conditions**

### **1. Annual Charges**

9. The Commission collects annual charges from exemptees for the administration of its hydropower program. Under the regulations currently in effect, projects with an installed capacity of 1,500 kW or less, like this project, are not assessed an annual charge, as explained in article 7.

### **2. Start of Construction**

10. Standard article 3 provides that the Commission may revoke the exemption if construction of the generating facilities has not begun in two years or is not completed within four years of the date this exemption is issued. Article 8 states that the Commission may terminate the exemption if construction of the project works described in this exemption has not begun within two years or is not completed within four years of the date this exemption is issued.<sup>5</sup>

### **3. Exhibit F and G Drawings**

11. The applicant filed three Exhibit F drawings and three Exhibit G maps on July 15, 2011, and three revised Exhibit G drawings on July 28, 2011. Staff reviewed the drawings and determined that only Exhibit F-1 and the revised Exhibits G-1 and G-2 are necessary and will be approved. Although these Exhibit F and G drawings are being approved, the Commission requires exemptees to file sets of approved project drawings on microfilm and in electronic file format. Article 9 requires the exemptee to file the

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<sup>4</sup> 18 C.F.R. § 380.4(a)(14) (2011).

<sup>5</sup> The start-of-construction deadline in standard article 3 (contained in the attached E-1) refers to the project's generating facilities. The deadline in article 8 applies to on-the-ground construction of other project works.

Exhibit F and G drawings approved in Ordering Paragraph (C) in microfilm and electronic file formats.

12. Under article 10, I am requiring the exemptee, within 90 days of completion of construction of the project facilities, to file revised Exhibit F and G drawings showing the as-built conditions.

#### **4. Operation and Maintenance**

13. Ensuring that the exempted project is fit for use is an important public interest function of the Commission. Article 11 states that if the exemptee causes or allows essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, the Commission will deem it the intent of the exemptee to surrender the exemption.

#### **5. Exemptee Liability**

14. Section 10(c) of the FPA provides that licensees, and not the United States, are liable for “damages occasioned to the property of others by the construction, maintenance, or operation of the project works ... .”<sup>6</sup> To clarify that exemptees would be similarly liable, article 12 states that the exemptee is liable for damages to the property of others.

#### **6. Property Rights**

15. Pursuant to 18 C.F.R. § 4.31(b)(2), an applicant for a conduit exemption is required to demonstrate that, at the time it files its exemption application, it has all real property interests in any lands required for the construction and operation of the project.<sup>7</sup> The application filed on July 15, 2011, contains documentation that the applicant has the necessary property rights to develop and operate the project. However, because an exemption is issued in perpetuity, article 13 reserves the Commission’s authority to revoke the exemption if in the future the exemptee fails to maintain sufficient rights to comply with the terms and conditions of the exemption.

#### **7. Review of Final Plans and Specifications**

16. To ensure that the exemptee is constructing and operating a safe and adequate project, article 14 requires the exemptee to file final contract drawings and specifications

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<sup>6</sup> 16 U.S.C. § 803(c) (2006).

<sup>7</sup> 18 C.F.R. § 4.31(b)(2) (2011).

for the pertinent features of the project for Commission approval prior to commencing construction.

The Director orders:

(A) The Meeker Wenschhof Hydroelectric Project is exempted from the licensing requirements of Part I of the Federal Power Act, and subject to the articles specified below.

(B) The project consists of:

(1) All lands to the extent of the exemptee's interests in those lands, enclosed by the project boundary shown by Exhibit G-1 filed on July 28, 2011.

(2) The following project works: a new powerhouse containing a single Pelton turbine generating unit with an installed capacity of 23 kilowatts (kW) and appurtenant facilities. The applicant estimates the project would have an average annual generation of 100,000 kilowatt-hours. The project works generally described above are more specifically shown and described by the portions of Exhibits A, F, and G below:

Exhibit A: Exhibit A, pages 5 though 8, 11, 12, and 14 through 20 of the application, filed on July 15, 2011.

Exhibits F and G: The following Exhibit F drawing filed on July 15, 2011, and the Exhibit G drawings filed on July 28, 2011.

<b>Exhibit No.</b>	<b>FERC Drawing No.</b>	<b>Drawing Title</b>
F-1	P-14230-1	Wenschhof Hydroelectric Powerhouse
G-1	P-14230-2	Project Area and Boundary
G-2	P-14230-3	Hydro Plant Location

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project, or other rights that are necessary or appropriate in the operation or maintenance of the project.

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

(D) This exemption is also subject to the articles set forth in Form E-1 entitled "Standard Terms and Conditions of Exemption from Licensing" (attached), and the following additional articles:

**Article 7.** *Administrative Annual Charges.* The exemptee shall pay the United States annual charges, effective the date of commencement of project construction, as determined in accordance with the provisions of the Commission's regulations in effect from time to time, for the purpose of reimbursing the United States for the cost of administration of the Commission's hydropower program. The authorized installed capacity for that purpose is 23 kilowatts. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts will not be assessed annual charges.

**Article 8.** *Start of Construction.* The Commission may terminate this exemption if actual construction of any proposed or required project works has not begun within two years or has not been completed within four years from the issuance date of the exemption. If an exemption is terminated under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing for the same project within two years of the termination.

**Article 9.** *Exhibit Drawings.* Within 90 days of the date of issuance of this order, the exemptee shall file the approved exhibit drawings in aperture card and electronic file formats, as described below.

(a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., P-14230-1, etc.) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, etc.), Drawing Title, and date of this order shall be typed on the upper left corner of each aperture card. See Figure 1.

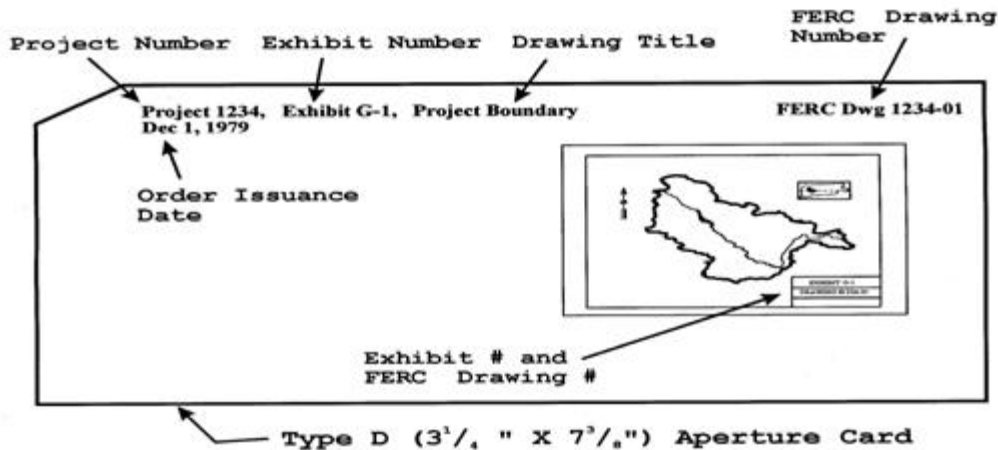


Figure 1 Sample Aperture Card Format

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections San Francisco Regional Office.

(b) The exemptee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections San Francisco Regional Office. **Exhibit F drawings must be identified as (CEII) material under 18 C.F.R. § 388.113(c).** Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this order, and file extension in the following format [e.g., P-14230-1, F-1, Wenschhof Hydroelectric Powerhouse, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file  
 FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4  
 RESOLUTION – 300 dpi desired, (200 dpi min)  
 DRAWING SIZE FORMAT – 24" X 36" (min), 28" X 40" (max)  
 FILE SIZE – less than 1 MB 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 vector (or 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.

(c) The exemptee shall file two separate sets of the project boundary data in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The filing shall include both polygon data and all reference points shown on the individual project boundary drawings. A single electronic boundary polygon data file is required for the project boundary. The georeferenced electronic boundary data file must be positionally accurate to  $\pm 40$  feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-14230, boundary polygon/or point data, MM-DD-YYYY.SHP]. The filing 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 shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-14230, project boundary metadata, MM-DD-YYYY.TXT].

**Article 10.** *As-built Exhibit F and G Drawings.* The exemptee shall file, for Commission approval, within 90 days from completion of construction of the subject facilities, revised Exhibit F and G drawings showing the as-built conditions.

**Article 11.** *Operation and Maintenance.* The Commission may determine that the exemptee has impliedly surrendered this exemption if essential project property is removed or destroyed or becomes unfit for use, without adequate replacement; or if the project is abandoned or good faith project operation or maintenance is discontinued; or if the exemptee refuses or neglects to comply with the terms of the exemption and the lawful orders of the Commission.

**Article 12.** *Liability.* The exemptee shall be liable for all damages occasioned to the property of others by the construction, operation, or maintenance of the project works or works appurtenant or accessory thereto, constructed under this exemption and in no event shall the United States be liable therefore.

**Article 13.** *Property Rights.* The Commission reserves the right to require the exemptee to gain additional property rights, if such rights become necessary to develop, operate, or maintain the project or to achieve compliance with the terms and conditions of the exemption. The Commission may revoke this exemption if, at any time, the exemptee does not hold sufficient property rights in the land or project works necessary to develop, maintain, and operate the project.

**Article 14.** *Contract Drawings and Specifications.* The exemptee shall, at least 60 days prior to the start of construction, submit one copy to the Commission's Division



of Dam Safety and Inspections San Francisco Regional Office and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the final contract drawings and specifications. The Commission may require changes in the plans and specifications to assure a safe and adequate project. The exemptee shall not start any construction activities before getting a prior authorization from the Commission's San Francisco Regional Office.

(F) 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 FPA, 16 U.S.C. § 8251 (2006), and the Commission's regulations at 18 C.F.R. § 385.713 (2011). The filing of a request for rehearing does not operate as a stay of the effective date of this exemption, or of any other date specified in this order. The exemptee's failure to file a request for rehearing shall constitute acceptance of this order.

Edward A. Abrams  
Director  
Division of Hydropower Administration  
and Compliance

E-1 Form  
**Standard Terms and Conditions of Exemption from Licensing**  
18 C.F.R. § 4.94 (2011)

Any exemption granted under § 4.93 of the Commission's regulations, 18 C.F.R. § 4.93 (2011), for a small conduit hydroelectric facility is subject to the following standard terms and conditions:

**Article 1.** The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt facility. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

**Article 2.** The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish and wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

**Article 3.** The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the effective date of this exemption. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

**Article 4.** In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

**Article 5.** The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies or falsehoods were made by or on behalf of the applicant.

**Article 6.** Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.

APPENDIX A

STATE OF COLORADO

Bill Ritter, Jr., Governor  
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S. Laboratory Services Division  
Denver, Colorado 80246-1530 8100 Lowry Blvd.  
Phone (303) 692-2000 Denver, Colorado 80230-6928  
TDD Line (303) 691-7700 (303) 692-3090  
Located in Glendale, Colorado  
<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

September 1, 2011

George Wenschhof  
2458 County Road 13  
PO Box 928  
Meeker, Colorado 81641

**Re: Section 401 Water Quality Certification**  
**Colorado 401 Certification No.:** 4286  
**FERC No.:** P-14230  
**Description:** Utilization of existing head pressure to generate power to offset electrical demand of a center pivot irrigation system  
**Location:** 39° 59' 40.72' -107° 55' 3.48' in Rio Blanco County, Colorado  
**Watercourse:** White River, Lower Colorado River Basin, Segment COLCWH03 of White River Sub-basin  
**Designation:** Reviewable

Dear Mr. Wenschhof:

The Colorado Department of Public Health and Environment (CDPHE), Water Quality Control Division (Division) has completed its review of the subject Federal Energy Regulatory Commission (FERC) Permit Application, and our preliminary determination with the issuance of the State of Colorado 401 Certification Public Notice (5 CCR 1002-82.5(B)). An antidegradation review has also been completed pursuant to Regulation No. 31, Basic Standards and Methodologies for Surface Water (5 CCR 1002-31). The Division's review concluded that no new or increased impacts to water quality should occur as a result of this project.

**This letter shall serve as official notification that the Division is issuing "Regular Certification" in accordance with 5 CCR 1002-82.5(A)(2).**

The 401 Certification issued by the Division pursuant to 5 CCR 1002-82.3(C) shall apply to both the construction and operation of the project for which a federal license or permit is required, and shall apply to the water quality impacts associated with the project. This certification does not constitute a relinquishment of the Division's authority as defined in the Colorado Water Quality Control Act, nor does it fulfill or waive any other local, state, or federal regulations.

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George Wenschhoff  
September 1, 2011  
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If you have any questions or need additional information, please contact John C. Hranac at (303) 692-3586.

Sincerely,



John C. Hranac  
Water Quality Assessor  
Water Quality Control Division  
Colorado Department of Public Health and Environment

Attachment –Certification Requirements 5 CCR 1002-82.6(A)

cc: Federal Energy Regulatory Commission, Ms. Kimberly Bose  
Applicant's Agent, Mr. Ryan Broshar, SRA International  
File

## APPENDIX A

### 82.6 Certification Requirements:

- (A) The following requirements shall apply to all certifications:
- (1) Authorized representatives from the Division shall be permitted to enter upon the site where the construction activity or operation of the project is taking place for purposes of inspection of compliance with BMPs and certification conditions.
  - (2) In the event of any changes in control or ownership of facilities where the construction activity or operation of the project is taking place, the successor shall be notified in writing by his predecessor of the existence of the BMPs and certification conditions. A copy of such notification shall be provided to the Division.
  - (3) If the permittee discovers that certification conditions are not being implemented as designed, or if there is an exceedance of water quality standards despite compliance with the certification conditions and there is reason to believe that the exceedance is caused, in whole or in part, by the project, the permittee shall verbally notify the Division of such failure or exceedance within two (2) working days of becoming aware of the same. Within ten (10) working days of such notification, the permittee shall provide to the Division, in writing, the following:
    - (a) In the case of the failure to comply with the certification conditions, a description of (i) the nature of such failure, (ii) any reasons for such failure, (iii) the period of non-compliance, and (iv) the measures to be taken to correct such failure to comply; and
    - (b) In the case of the exceedance of a water quality standard, (i) an explanation, to the extent known after reasonable investigation, of the relationship between the project and the exceedance, (ii) the identity of any other known contributions to the exceedance, and (iii) a proposal to modify the certification conditions so as to remedy the contribution of the project to the exceedance.
  - (4) Any anticipated change in discharge location and/or quantities associated with the project which may result in water quality impacts not considered in the original certification must be reported to the Division by submission of a written notice by the permittee prior to the change. If the change is determined to be significant, the permittee will be notified within ten days, and the change will be acknowledged and approved or disapproved.

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- (5) Any diversion from or bypass of facilities necessary to maintain compliance with the terms and conditions herein is prohibited, except (i) where unavoidable to prevent loss of life or severe property damage, or (ii) where excessive storm drainage or runoff would damage any facilities necessary for compliance with limitations and prohibitions herein. The Division shall be notified immediately in writing of each such diversion or bypass.
- (6) At least fifteen days prior to commencement of a project in a watercourse, which the Division has certified, or conditionally certified, the permittee shall notify the following:
  - (a) Applicable local health departments;
  - (b) Owners or operators of municipal and domestic water treatment intakes which are located within twenty miles downstream from the site of the project; and
  - (c) Owners or operators of other intakes or diversions which are located within five miles downstream from the site of the project.

The permittee shall maintain a list of the persons and entities notified, including the date and form of notification.

- (7) Immediately upon discovery of any spill or other discharge to waters of the state not authorized by the applicable license or permit, the permittee shall notify the following:
  - (a) Applicable local health departments;
  - (b) Owners or operators of municipal and domestic water treatment intakes which are located within twenty miles downstream from the site of the project; and
  - (c) Owners or operators of other intakes or diversions which are located within five miles downstream from the site of the project.

The permittee shall maintain a list of the persons and entities notified, including the date and form of notification.

- (8) Construction operations within watercourses and water bodies shall be restricted to only those project areas specified in the federal license or permit.

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- (9) No construction equipment shall be operated below the existing water surface unless specifically authorized by the 401 certification issued by the Division.
- (10) Work should be carried out diligently and completed as soon as practicable. To the maximum extent practicable, discharges of dredged or fill material shall be restricted to those periods when impacts to designated uses are minimal.
- (11) The project shall incorporate provisions for operation, maintenance, and replacement of BMPs to assure compliance with the conditions identified in this section, and any other conditions placed in the permit or certification. All such provisions shall be identified and compiled in an operation and maintenance plan which will be retained by the project owner and available for inspection within a reasonable timeframe upon request by any authorized representative of the Division.
- (12) The use of chemicals during construction and operation shall be in accordance with the manufacturers' specifications. There shall be no excess application and introduction of chemicals into state waters.
- (13) All solids, sludges, dredged or stockpiled materials and all fuels, lubricants, or other toxic materials shall be controlled in a manner so as to prevent such materials from entering state waters.
- (14) All seed, mulching material and straw used in the project shall be state-certified weed-free.
- (15) Discharges of dredged or fill material in excess of that necessary to complete the project are not permitted.
- (16) Discharges to state waters not identified in the license or permit and not certified in accordance therewith are not allowed, subject to the terms of any 401 certification.
- (17) Except as otherwise provided pursuant to subsection 82.7(C), no discharge shall be allowed which causes non-attainment of a narrative water quality standard identified in the Basic Standards and Methodologies for Surface Waters, Regulation #31 (5 CCR 1002-31), including, but not limited to discharges of substances in amounts, concentrations or combinations which:

## APPENDIX A

- (a) Can settle to form bottom deposits detrimental to beneficial uses; or
- (b) Form floating debris, scum, or other surface materials sufficient to harm existing beneficial uses; or
- (c) Produce color, odor, or other conditions in such a degree as to create a nuisance or harm existing beneficial uses or impart any undesirable taste to significant edible aquatic species, or to the water; or
- (d) Are harmful to the beneficial uses or toxic to humans, animals, plants, or aquatic life; or
- (e) Produce a predominance of undesirable aquatic life; or
- (f) Cause a film on the surface or produce a deposit on shorelines.