Lease of Power Privilege D&S Comments

Comments on Reclamation's April 4, 2012 Temporary Directive and Standard for Reclamation's Lease of Power Privilege Requirements and Process

Comment #	Topic	Comment	Response
1	General	Reclamation's *Hydropower Resource Assessment at Existing Reclamation Facilities* (March 2011) identifies four sites on the Minidoka Project that may accommodate future power development: Cascade Creek, Cross Cut, Grassy Lake, and Mile 28 on the Milner-Gooding Canal. Although the four sites identified by Reclamation on the Minidoka Project are not located within any of the Districts" boundaries, they do not support turning over any facilities to third party contractors for hydropower development if that action would jeopardize any irrigation deliveries or impair operation and maintenance of the Minidoka Project in any way. Moreover, it is the Districts' understanding that the Milner-Gooding Canal has been transferred to the American Falls Reservoir District #2 (AFRD #2). The Districts would defer any comments on that particular site to AFRD #2	A LOPP is not entered into if the action jeopardizes any irrigation deliveries or impairs operation and maintenance of the project. There are numerous protections in the D&S that address this point.
2	LOPP Charge	Finally, Reclamation should clarify that the revenue generated for Reclamation at any of the four sites listed above is properly credited to annual operation and maintenance expenses at the Minidoka Project. Although the draft manual identifies the charges to be paid to Reclamation (pages 15-16, paragraph 11), the disposition of those charges appears to only apply to outstanding reimbursable construction costs. If the construction costs for a particular project (i.e. Minidoka Project) have been fully repaid, then the charges paid to Reclamation should be applied to offset annual operation and maintenance expenses for the project. This will ensure the project contractors continue to benefit from Reclamation's leasing activities.	Per legislation, Section 5 of the Town Sites and Power Development Act of 1906, LOPP charges 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. 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. LOPP charges cannot be

Comment #	Topic	Comment	Response
			applied to annual O&M.
3	Preference	With respect to Reclamations' proposed solicitation and selection of a lessee (Page 7, paragraph 7), the Districts urge Reclamation to give a preference to existing contractors or water user entities interested in the particular project. Since the Districts and others have developed the various irrigation projects and facilities with Reclamation, they should be granted a preference in the lease of any power privileges. Accordingly, Reclamation should revise the preference entity definition. For those Districts that have reserved power contracts with Reclamation, any future power development at Reclamation's facilities should be developed to benefit existing reserved power right holders. Reclamation should clarify this point in the manual and ensure that the development and lease of any future power privileges are first used to benefit existing districts and project contractors that rely upon reserved power.	Preference is granted to existing water users, but preference does not mean sole authority to develop.
4	General	Reclamation should revise the LOPP process to provide an opportunity for public notice and comment early in the solicitation process. In the LOPP process, Reclamation solicits proposals through an open public process which is designed to "ensure fair and open competition." Reclamation is also responsible for evaluating all proposals to ensure that the issuance of a lease will be in the public interest. As described in the TRMR D&S, the LOPP program requires interested parties to submit detailed proposals explaining how they would develop hydropower potential at a given site. Anyone who wants to develop a site has an opportunity to make their best case for why they should be permitted to do so. However, the LOPP process fails to afford a similar set of rights to those stakeholders who do not intend to develop a given site but nevertheless have a direct interest in the resources that could	Public notice is provided when Reclamation solicits for proposals. Stakeholders have an opportunity to provide public comment through the NEPA process after the Preliminary LOPP is entered into. The Preliminary LOPP simply allows the selected entity to study the site and work to enter into a LOPP contract.

Comment #	Topic	Comment	Response
		potentially be affected. We recommend that Reclamation revise the TRMR D&S to include an opportunity for public comment after the initial lease solicitation. Many of the resources and issues that Reclamation must consider when determining whether or not to issue a lease (e.g. environmental and recreational concerns regarding the resource to be developed, impacts on the existing uses of reclamation facilities, or even information about the capacity or ability of a given developer) would be better informed by public comments. Providing a reasonable opportunity for public participation and comment will be critical to the success of Reclamation's LOPP program, ensuring that legitimate environmental, recreation, and other issues associated with new hydropower development are adequately addressed.	

Comment #	Topic	Comment	Response
5	NEPA	Reclamation should provide clearer guidelines regarding the applicability and use of Categorical Exclusions for LOPP projects. The TRMR D&S indicates at 9(A) (p. 11) that "[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 itis eligible for a categorical exclusion (CE) and whether any extraordinary circumstances (43 CFR 46.25 exist." American Rivers does not object to the use of a Categorical Exclusion for the purposes of NEPA compliance at appropriate hydropower projects that rely on minor modifications to existing water infrastructure. For instance, the Federal Energy Regulatory Commission (FERC) successfully uses a Categorical Exclusion (see 18 CFR § 380.4(a)(14)) to issue exemptions for small conduit hydroelectric projects. Properly defined, a Categorical Exclusion can help foster the development of meritorious energy projects, lowering the costs of environmental compliance where environmental impacts are minimal. However, we strongly object to Reclamation's reliance on a project's generating capacity as the sole criteria for determining if a hydroelectric project should be evaluated for a CE. Exclusion category 516 DM 14.5C(3), which is not specific to hydroelectric projects, addresses "minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities." The TRMR D&S' use of a sub-15 MW nameplate capacity as a threshold for determining eligibility for this exclusion category is inappropriate. First, there is no clear correlation between nameplate capacity and the physical footprint of a project or the construction activities associated with developing a project. Many hydroelectric facilities with a nameplate capacity of less than 15 MW feature fairly substantial physical infrastructure, so the TRMR D&S use of the	The 15 MW threshold was designed to allow small projects to first be looked at under the categorical exclusion (CE) 516 DM 14.5C(3). It did not guarantee that any project under 15 MW would be granted a CE, simply that a CE checklist under 43 CFR 46.215 would be the first step under the NEPA process. We do, however, agree that there may be a better way to describe whether a project can fit under the minor construction language in 516 DM 14.5C(3). Reclamation categorical exclusion (CE) 516 DM 14.5C(3) is appropriate to use for LOPP projects if the scope of the project is consistent with the terms of the CE, and there are no extraordinary circumstances. Key considerations in determining if the project is consistent with the terms of the CE are: 1) the project would utilize an existing dam or conduit; 2) points of diversion and discharge of the LOPP powerplant would be in close proximity to the existing infrastructure and would not significantly affect the flow patterns of the water source; 3)there would be no increase or change in timing of diversions and discharges; and

Comment #	Topic	Comment	Response
		15 MW criteria does not provide meaningful guidance as to whether or not construction activities would be "minor." Second, a hydroelectric facility's generating capacity does not provide an appropriate or realistic indicator of its environmental impact. Indeed, a number of hydroelectric projects with a generating capacity of less than 15 MW have been decommissioned in recent years in order to address their adverse impacts on the environment. Reclamation's use of the 15 MW criteria therefore does not provide meaningful guidance as to whether a LOPP would have unsatisfactory environmental impacts and whether the use of a Categorical Exclusion would be appropriate. For example, consider two hydroelectric facilities that have been decommissioned in recent years because of significant adverse environmental impacts. Both of these facilities had a fairly large physical footprint, substantial environmental impacts, and a generating capacity of less than 15 MW: • The Edwards dam on the Kennebec River in Maine was 917 feet long, 24 feet high, and had a nameplate generating capacity of 3.5 MW. • The Condit dam on Washington's White Salmon River was 417 feet long, and 125 feet high, bypassed ~1 mile of river, and had a nameplate generating capacity of 14.7 MW. Of course, one should not infer from these two examples that all projects with a generating capacity of 15 MW or less would not be appropriate for a Categorical Exclusion under exclusion category 516 DM 14.5C(3). Indeed, many potential projects ought to qualify for a CE, and the TRMR D&S conversely makes clear that "consideration for a CE does not guarantee that a CE will be	4)the primary purpose of the infrastructure would remain, e.g., most commonly irrigation. Consideration for a CE does not guarantee that a CE will be appropriate. The extraordinary circumstances considered are contained in 43 CR 46.215, and are provided in Appendix C. In cases where the project does not meet the above criteria or where any extraordinary circumstances exist, a higher level of NEPA evaluation will be required.

Comment #	Topic	Comment	Response
		appropriate." When individual considerations are taken into account, many projects should qualify and many others should not. However, the TRMR D&S fails to provide any meaningful distinction between these two types of projects. If Reclamation's goal in using a CE is to provide potential lessees with increased certainty regarding the level of regulatory scrutiny that their proposed project is likely to encounter, then relying on an arbitrary generating capacity as the sole published criteria for determining CE eligibility fails to achieve it. The TRMR D&S does not provide potential lessees with any meaningful information to help them determine whether or not a given project proposal would require a full NEPA review. We recognize that hydropower and its environmental impacts are highly case- and site-specific, so it is unlikely that Reclamation could provide developers with 100% certainty that a given project would or would not qualify for a CE. However, if Reclamation were replace or supplement the TRMR D&S' arbitrary capacity-based criteria with a more meaningful set of guidelines that addressed project configuration, operation, and potential impacts to public resources, it could provide developers with a far greater degree of certainty. Such criteria are not unknown. For instance, the State of Colorado, in cooperation with the FERC, has developed a pilot program to expedite the regulatory authorization of new small scale hydropower projects that are being added to existing infrastructure. In a Memorandum of Understanding, Colorado and FERC articulate a set of rough-cut criteria that were intended to help potential developers determine if a project would be eligible for the pilot program: • The project will be located within an existing water delivery system;	

Comment #	Topic	Comment	Response
		• The project will use existing infrastructure, including points of diversion and discharge; • There will be no increased stream diversions; • The project will be entirely contained by existing waterway structures; • The primary purpose of the infrastructure will remain, e.g., most commonly municipal water supply and irrigation; • There will be no significant change in operation of the infrastructure; • The water delivery system has all necessary water rights, permits, licenses or other approvals required by any local, state, or federal authority; • The project will not adversely affect water quality; • The project will not adversely affect fish passage; • The project will not adversely affect a threatened or endangered species; • The project will not adversely affect a cultural resource; • The project will not adversely affect a recreational resource While these criteria may or may not be appropriate for Reclamation's LOPP process, they offer potential developers considerably more guidance and detail than a single arbitrary number. We strongly encourage the Bureau of Reclamation to follow this example and develop a more thorough and meaningful set of criteria to help guide potential lessees and provide additional information about whether a given project might qualify for a CE.	
6	General	As I understand, with FERC, there is Bureau of Indian Affairs involvement in meeting section 4(e) of the FPA. However, with the LOPP, as I understand, the BIA is not involved in meeting any	Although not specifically called out in the TRMR D&S, BIA would be brought into the process through NEPA if appropriate. The

Comment #	Topic	Comment	Response
		requirements or considerations on behalf of tribes. Is this something that would change in the future? Or reasons that this is not required?	D&S is designed to show how NEPA fits into the LOPP process, but does not attempt to make additional NEPA policy. Please see http://www.usbr.gov/nepa/docs/NEPA_Handbook2012.pdf for guidance. In addition, we have now included language under Sec. 5.A.(10) to ensure Tribal consultation for applicable projects.
7	General	Although not addressed in the D&S, prior discussions and site investigations indicate that potential hydropower facilities fall into at least two distinct categories: very small development at delivery/conveyance facilities (e.g. canals), and development at water storage facilities such as existing dams, outlet works, or after bays. Energy from conveyance developments is usually quite limited, seasonal, and related to "run-of-river" operations. Some of the delivery facilities are operated and maintained by irrigation districts or water user organizations that may be able to integrate the new energy into their operations, and eliminate most concerns with non-preference marketing. Such development could have de minimus energy and the costs associated with administering a complex lease program could far outweigh anything that it produces. We believe that it may be worthwhile to define a simplified methodology and pricing mechanism for development at these sites, while preserving more in-depth analyses and marketing coordination for plants at storage sites. We suggest, as an initial examination, a ***simplified methodology for plants less than 5 megawatts at conveyance facilities.*** This will allow Bureau staff to devote most of their efforts toward significant developments that may impact multipurpose facilities, affect preference marketing, and produce both capacity and energy for the lessee. We believe it is imperative that the appropriate PMA be involved in evaluating LOPP applications for projects other than the	While small projects on conveyance facilities (or on existing dams) can have minimal impacts, each project has its own characteristics. Reclamation must look at each project on its merits. If a project is anticipated to have minimal impacts there are functions within the D&S (such as a NEPA categorical exclusion) that can streamline the process. Reclamation agrees that it is important to include the power and water stakeholders, and the power marketing administrations, early in the process. Reclamation has include the following language: Section 5.A.(4): contacting their power and water stakeholders and Power Marketing Administrations to coordinate a meeting to determine interest in funding Federal development of the powerplant prior to the solicitation of any LOPP project if the project is larger than 1 MW; In 5.D.(3): notifying any entity with a Reclamation or PMA contract that relates to power, water use, or capacity right, associated

Comment #	Topic	Comment	Response
		proposed small conduit projects. The PMA should have important information regarding the value of power, and whether wheeling would be required (and is available). Since the firm power customers have repayment responsibility for Western as well as Reclamation costs, pursuant to their contracts with the PMA, it is important that the D&S require the PMA to consult with its customers prior to making a determination whether to purchase the output of a project. Given the D&S outlines a 60-day proposed timeframe under which the PMA must make a determination, we need to ensure that advance customer consultation is built into that timeframe. In addition, efficient pricing and term information must be available to the PMA so that it is able to make informed business decisions. The LOPP Lead could ensure that information is provided by the Preliminary Lessee. In addition, does the Potential Lessee have sufficient information from Reclamation in order to make a bonafide price offer to the PMA? In the event the PMA declines the offer, is the Potential Lessee obligated to maintain the same pricing when it proceeds to sell to the market? Previously drafted FAC 04-08 specifically stated that the right of refusal would be based on "a cost-based rate". The current draft appears to take a significant departure from that concept. Section 9.D. should be revised to specifically refer to "cost-based rate". This consultation objective could be achieved by including a requirement of Reclamation to convene a meeting of the affected PMA and the power customers at the outset of the process.	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;
8	LOPP charge methodology	The LOPP rate should be based on a methodology that mirrors costs existing federal power contractors must pay. The revised D&S includes a 5-year reassessment, but provides no linkage between the rate and a cost-based methodology. Please consider adding language that would provide detail regarding the foundational elements of the rate methodology so that future rate revisions could be guided under a consistent methodology. We suggest additional discussion on the rate-setting methodology.	A LOPP is not federal development of a power project. It is private development that utilizes a federal facility. Reclamation must collect charges per the Reclamation Act of 1939 Sec. 9(c). and allocate those charges via Section 5 of the Town Sites and Power Development Act of 1906.

Comment #	Topic	Comment	Response
		We would like some assurance and specific language to ensure that there is appropriate crediting of lease payments to the appropriate revenue stream and its associated power repayment study. This will ensure that the lease payment flows into the proper repayment stream and mitigates power rates in the same manner as do power revenues from existing power and transmission contracts. The D&S notes that If the reimbursable repayment obligation is satisfied, then the LOPP payments could be held as a statutory credit until an eligible expense is incurred against which the payment can be applied. We believe this is an equitable proposal, provided that these credits only be established after all repayment obligations are satisfied, including Aid to Irrigation. Otherwise, power users will continue to pay for facilities that should not be receiving aid due to the availability of a new revenue stream. Please consider adding language that would direct that lease proceeds be credited to the relevant project in accordance with the crediting priority established in that project's power repayment study.	The LOPP charge has been adjusted based on the numerous comments that have been received in the two public comment periods. The new rate is set at 3 mills/kwh. Further detail on how the rate was derived is included in the new D&S as appendix D. This methodology will be reviewed every 10 years, and the posted methodology will be used for any future revisions.
9	General	What is intended by including "or conveyance of water over or through a dam….."?	There has been concern that the initial definition of a conduit could include an existing penstock of a dam since many of Reclamation dams are used primarily to deliver water through the project system for irrigation.
10	General	Suggest adding "capacity and ancillary products" to the list referring to what is included in the Gross Revenue calculation.	Gross revenue is no longer a basis for the LOPP charge. See new section 11.B.
11	General	Suggest adding "or PMA" prior to "contract"; also, what is intended by including "other appropriate stakeholders"? Who makes that determination as to appropriateness?	Added "or PMA". Appropriateness is determined by the Power Manager or Area Office Manager depending on who the Regional Director designated the responsibility to under section D.
12	General	Suggest removing "Federal" before "water user" and "power customer." As written this implies that the entity(ies) are federal in nature.	Thank you. Change has been made.

Comment #	Topic	Comment	Response
13	General	Suggest removing "Federal" – same comment as 4 above.	Thank you. Change has been made.
14	General	This provision may be inconsistent with others in which there is a requirement that existing operations and power generation not be impacted by the project's construction or maintenance. This provision indicates that the Lessee will have to compensate Reclamation for lost generation or power impacts, but the amount or measurement for this compensation has not been explained. In past cases, Reclamation has limited the penalty to lost revenue at the firm electric service rate, which is insufficient to cover the costs of replacement power for the PMA customers. This also highlights the need for close coordination with the PMA.	Reclamation will determine the amount of compensation based on the unique characteristics of the event.
15	PMA	The term should be RECs (no apostrophe). Also, these provisions raise the same issues associated with the PMA's decision whether to purchase the output from projects other than the small conduit applications. In the event the federal government is interested in purchasing the powerplant "should the lessee need to sell the facilities", if the agency is Reclamation, there must be sufficient advance consultation with the current customers who have financial responsibility for repayment of Reclamation's costs, depending on the source of the funds utilized to make the purchase. Even if appropriated dollars were used, the issue of om&r costs must be addressed prior to a decision being made. See our suggestion above regarding Reclamation convening a meeting with affected power customers and the appropriate PMA. Please also consider adding "or dispose of" after "sell" in 9.H.(3).	Added Sec.5.A.(15). Section designed to ensure coordination between Reclamation, water and power stakeholders, and PMA.
16	Preference	These sections include language that refers to a proposal being "at least as well-adapted to developing, conserving, and utilizing the water and natural resources…". What is intended by this subjective test? What "natural resources" are being considered? These provisions could potentially disadvantage preference applicants if they must "compete" financially with private developers in addressing aspects beyond strict project construction and maintenance. What criteria would be used to assess "at least as well-adapted" when comparing applications? Given the	This language has been removed.

Comment #	Topic	Comment	Response
		subjectivity of this criterion, we suggest it be removed.	
17	Preference	The information requested in this paragraph to be included in the LOPP proposal has proven adequate in enabling Western to characterize the potential hydropower production in the proposals we have reviewed so far.	Thank you for the comment.
18	Timeframes	The 60 calendar day period for analyzing and exercising the first right of refusal to purchase the output from the LOPP project is a subject of confusion, and perhaps some clarification is needed. In the three separate LOPP proposals this office has received in the last year or so, we received the proposal at the same time as Reclamation (or CUPCA), and were involved in the analysis and selection process of the preferred proposal. We were able to analyze the proposals based on the information received and come to a conclusion as to Western's interest in purchasing the proposed project; and in some cases have given the results of our analysis to the project proposers, power customers, and Reclamation. In none of the three cases, however, has Western received any indication from Reclamation or CUPCA as to when the official 60 day period began or ended, or at what point in the future it might begin. This ambiguity has made it more difficult to us to know whether our analysis and communication is considered an official determination, or just preliminary discussion and analysis leading to a final determination. This is an area where I think the LOPP coordination process between Reclamation and the PMA needs to be improved.	The official 60 day period starts from the point that the Preliminary Lessee makes the initial offer to sell the energy and/or RECs to the PMA. Language has been added to the D&S to clarify this.
19	LOPP Charge	It is unclear to me what "…an appropriate share of the construction investment at not less than 3 per centum per annum,…" Is the 3% an interest rate on the appropriate share? Or is 3% of the construction investment the minimum appropriate share?	Reclamation's interpretation is that the provision of the statute calls for Reclamation to first determine an appropriate share of the construction investment and next determine an interest rate of at least 3 percent on that appropriate share of the construction

Comment #	Topic	Comment	Response
			investment.
20	LOPP Charge	I still believe a fixed charge per installed KW is too much, particularly based on temporary power production tied to limited, 5 to 6 month, irrigation seasons. A fixed charge also does not recognize short term power purchase agreements as our local electrical cooperative will only contract for 10 years. Afterwards, particularly the RECs may disappear yet the fixed charge continues. I believe the charge should be solely on power produced, kilowatt hours, and be 5% maximum. I believe this will severely the financial viability of many small hydropower projects. The nature of hydropower, large upfront investment, requires sufficient cash flow to proceed. The fixed charges will severely inhibit the necessary revenues to cover principal & interest payments on debt. Should interest rates rise, many more projects will become too risky and not be developed. Since there are no intended impacts to Reclamation facilities any additional income from new hydropower appears to be a positive for Reclamation.	Thank you for the comment. Charge has been adjusted to 3 mills per kwh produced.
21	LOPP Charge	I believe this is a good attempt to recognize that many applicants are currently paying back the construction costs and handling OM&R charges. I would still recommend having no fixed charge per installed kilowatt for the reasons above that will preclude many projects from going forward.	Agreed. Charge has been adjusted to 3 mills per kwh produced.
22	Timeframes	The 15 months from Preliminary to signed LOPP must obviously include a NEPA process that is not always in the applicant's ability to control. On a Conduit, it should be less problematic than a Dam installation, but still could exceed expectations. I would therefore recommend 24 months from Preliminary to signed LOPP. The 9 months to go from a signed LOPP to a final design appears too constrained. This may be possible should the installation be pretty straight forward, but certainly could be an extreme hardship on applicant, their engineer and other stakeholders such as the local power cooperative , which must approve substantial	For most cases the timeframes described provide adequate time to complete the tasks necessary. When this is not the case, the regional director has the authority to adjust/extend the timeframes.

Comment #	Topic	Comment	Response
		interconnection details. I would recommend 18 months for this step. Post design would likely have the applicant finalizing interconnection agreements and financing prior to going out to bid for construction. Therefore the single one year (12 months) to get under construction is also very pressing and does not allow adequate time to fully explore and negotiate all the necessary agreements and approvals to install a hydropower project. Many of these steps will also take internal approvals, such as a Water or Conservancy District Board, a Coop Board or other group that only meets monthly. This would also inhibit successful hydropower installations on a compressed schedule. I would therefore suggest 24 months, 2 years, would be a more appropriate time from signed LOPP to start of construction.	
23	General	We do not understand the reference to Reclamation "development authority". Does that mean that there is a specific authorized feature of a project that Reclamation has not developed and is therefore off limits to an applicant? Currently Reclamation only has jurisdiction over its facilities that are part of a project authorization that includes power development. One could read this paragraph as saying that any proposed application where Reclamation has jurisdiction could be denied on the basis of Reclamation deciding to do itself. We doubt that was the intent but this divergent point of who does what needs clarifying. No one wants to go through a process or begin to go through a process only to find out that the agency has decided to do it itself.	Development authority means that there is a project, or feature of a project, where hydropower has been authorized for development but Reclamation has not developed power at that site. LOPP is only used for sites that fall into this category (see 1992 MOU between FERC/Reclamation Appendix A of the D&S). Prior to the solicitation of proposals, but after a formal request to begin the LOPP process, the regional director will contact their power and water stakeholders and Power Marketing Administration to coordinate a meeting to determine interest in funding Federal development of the site in lieu of LOPP. If it is decided that Federal development is appropriate a solicitation for a LOPP will not take place. This has been the case in previous LOPP projects, and in all cases a LOPP solicitation has gone out for non-federal

Comment #	Topic	Comment	Response
			development.
24	General	We do not understand the meaning of the phrase "conveyance of water over or through a dam, its abutments, or foundation via existing or proposed conveyance features." This is an addition to the definition of conduit that has been used in pending federal legislation and is very close to the definition used by the Federal Energy Regulatory Commission (FERC). Are there existing conveyance features that convey water over or through a dam, its abutments, or foundation? We are not familiar with such facilities but knowing what is already out there may make it easier for us to understand why this addition is important and necessary.	The concern was that without this clarification, a penstock already located at a dam would be considered a "conduit". Even if a penstock exists at the site, Reclamation will consider this kind of development to be at a dam, not a conduit. Full text of definition: 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.**
25	General	The term "formal request" first appears in subparagraph 5.A(3) on page 4. There is no discussion within the document about what constitutes a formal request, what paperwork is required for such a request and whether or not there is any information requirement that precedes it. Yet it is the precipitating event of the process, initiating everything that follows. We presume without knowing that receiving a formal request will initiate the process within Reclamation to decide whether or not Reclamation will turn the requester aside and develop the site in question. Certainly Reclamation would make that decision early and not let an applicant spend a lot of time and money before shutting them out. That Reclamation decision should have a timeline of its own in order to ensure an applicant that it will not get played.	Language added to definitions section 4.C.: **Formal Request.** An official letter to the regional director from a potential non-federal developer requesting that the LOPP process be initiated at a site or sites.
26	General	The term "requests for extension of time" appears in subparagraph 5.A(9) and appears to only apply to timeframes outlined in the Lease of Power Privilege (LOPP). Reclamation does intend to consider extension requests for an entity holding a Preliminary	Added language: resolving requests for extensions of the timeframes for development under a **Preliminary Lease and/or LOPP** that are outlined in this D&S;

Comment #	Topic	Comment	Response
		Lease. See Section 8. That reference should be included here.	
27	General	The appropriate Regional Power Manager or Area Office Manager is responsible for ensuring the publication of solicitations for applicants for a LOPP, apparently after being notified of the receipt of a "formal request" and a "formal determination of jurisdiction (5.A(3)). The 3 following responsibilities are all intended to precede that event. The list appears to have been created backwards rather than forwards. Just as importantly, this duty includes notifying "any other appropriate stakeholders". If someone claims to be an appropriate stakeholder and was not notified, is that grounds for stopping work on the timeline? Is there a remedy for being excluded? What standard is supposed to be applied in the various regions to decide who is an "appropriate" stakeholder? It is our experience that these discretionary vague terms only lead to conflict. Reclamation should consider clarifying this mechanism.	Language has been moved per comment. Appropriate stakeholders will be determined by the Regional Power Manager/Area Office Manager depending on who is designated by the regional director.
28	LOPP Charge	We do not understand why gross revenue would be something that includes renewable energy certificates (RECs). If one of your water districts or water users associations or someone else is going to spend money, go through this process and essentially do all the work and pay Reclamation for its oversight, why would gross revenue be the parameter for deciding the fee and most especially why would it also include the REC. Reclamation has done absolutely nothing except allow a portion of one of its facilities to be utilized at someone else's total expense to generate electricity. The portion of the facility used will most likely be very small in comparison to the overall project of which the site is a part. In a shopping center lease, the triple net lease would be based on gross revenue of whatever store is occupying that particular space but not on its tax breaks. Moreover, for small projects, say 5 megawatts or below, the paperwork to keep track of these calculations and collections would be more expensive than the revenue that would be created. We think the basis for charging needs to be rethought. All of the comments we have seen show	LOPP charge structure has been modified to a mill/kwh charge.

Comment #	Topic	Comment	Response
		that everyone wants the new facilities owner or benefactor to pay a fair share of project obligations. To the best of our knowledge, there has been no real public debate over how one would calculate that. Nor has there been any debate over what concepts should be used for the very smallest of facilities that should not have to go through the entire process. In short, a one-size-fits-all rate structure will only inhibit the development of additional hydropower in Reclamation facilities in our view. We think this process needs work.	
29	LOPP Charge	In Section 10 and then in Section 11, this subject is treated. We do not understand why charges would be determined differently on transferred works rather than those that have not been transferred. A turbine is a turbine. A project is a project. If there is capital repayment, there is capital repayment. If there is O&M, there is O&M. Determining what a fair contribution to these costs ought to be depends on a number of factors, including whether the project is paid out or not and whether the particular installation has any impact on project O&M. LOPP charges ought to be fair and ought to be simple. One-size-fits-all charging will not promote the widest range of hydropower development on existing Reclamation facilities. We agree that an installation that is devoted to project use and thus relieves Reclamation from supplying that power from the project itself should be treated differently than others. But we also believe that small installations should have a simplified method of contributing to costs in terms of charges that are rational and don't require a lot of paperwork. A 50 megawatt power plant at a dam and a 1 megawatt turbine in a conduit are two totally different things. They should be recognized as such in the charging scheme that Reclamation ultimately settles on.	For a transferred work, the O&M costs are already borne by the entity that the work is transferred to. If this is the entity that is developing the site, it does not seem appropriate to charge the entity for O&M through the LOPP charge for that site. In these cases the reduced charge captures the capital repayment portion of the overall charge, but backs out the O&M component. The charge is now a mill/kwh charge. This is simple to apply for all projects regardless of size.

Comment #	Topic	Comment	Response
30	PMA	In subparagraph (2), federal power customer organizations are added to a requirement that Reclamation meet with a federal water user that has an operation, maintenance and replacement transfer contract with the relevant project but is not a participant in the proposed LOPP. Reclamation law only allows irrigation districts and water users associations to play that role and so the reference to a federal power customer organization is inappropriate where it is placed. It should be inserted on the next line after the word "project". It is certainly worthwhile to bring federal power customer organizations into these dialogues early and we think this is a good provision. However, the qualification of the federal power organization should be not based on a task it cannot by law undertake. We are also concerned because we are not sure whether the 30-day requirement follows after the issuance of the Preliminary Lease or comes before. Whichever is intended should be clarified but we rather suspect that your water and power customers would prefer it being before and not after you've already selected a Preliminary Lessee. The same paragraph also requires a documentation of "agreed upon terms, roles and responsibilities resulting from this meeting". What happens if agreement does not ensue? Are the terms, roles and responsibilities those outlined in an already issued Preliminary Lease? Is the documentation in question to become part of the Preliminary Lease? Part of the LOPP? The same assumption about agreeing is also found in Section 6 noting the need for agreement on jurisdiction between the Senior Advisor, Hydropower and the respective Regional Director. Here again, what if they don't agree? What happens? What if FERC doesn't agree?	In response to the first portion of this comment, the language is changed to: ensuring that under circumstances where a water user organization has operation, maintenance, and replacement (OM&R) transfer contracts associated with the existing Federal project, or where a power customer organization receives Reclamation generated hydropower from the existing Federal project, but are not a participant in the proposed LOPP that a meeting will be held within 30 calendar days after 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; In response to "agreeing", every effort will be given to reaching agreement with all of the affected parties.
31	PMA	In paragraph 9.D. and again in subparagraph H(3), there is a discussion of right of first refusal. One provision relates to PMAs and the other to "the federal government", whatever that means. Is this a clerical error? If not, are you saying that the local air force base could swoop in and take the turbine power away from	No, the local air force base could not swoop in and take the turbine power away from the irrigation district, and there was never language allowing the "Federal government" to arbitrarily take the turbine power away

Comment #	Topic	Comment	Response
		the irrigation district? Is there a real need to a right of first refusal for small conduit installations? What would the PMA do with a 12 kV turbine?	from the irrigation district. The language was as follows: "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." IF the lessee needs to sell or dispose of the facility the "Federal government" should have the first right to purchase that facility since it is utilizing a Federal (in this case Reclamation) asset. In order to avoid any further confusion, "Federal government" has been changed to "Reclamation".
32	Preference	In paragraph C., there are criteria that Reclamation intends to apply that "will give more favorable consideration to proposals" that meet two criteria. The two criteria talk about developing and conserving and utilizing water and natural resources. We fail to see what that has to do with putting a turbine in a conduit. Reclamation will also favor an application that demonstrates that the offeror is qualified to develop the facility and to maintain it but does not say how one demonstrates those qualifications. Is an irrigation district that wants to put a turbine in a conduit but has never done so before less qualified than a private company that would do that same thing merely because the company has done it elsewhere? Does the preference stated in the following paragraph override the considerations in paragraph C.? In the following subparagraphs in paragraph D., the language in subparagraph (1) is not the same as in paragraph C. Subparagraph (2) does not address the issue of what happens when there are two	Concerning "utilizing water and natural resources" see response to comment 16. Paragraph C refers to the merits of the proposal. Paragraph D. discusses preference as defined by Section 9(c) of the Reclamation Project Act of 1939. To maintain continuity of the project, if a preference entity operates and maintains the system where the potential LOPP project will be located, that entity will be granted additional preference. If multiple preference entities (that do not operate or maintain they system where the potential LOPP project will be located) apply for the LOPP, preference will be applied

Comment #	Topic	Comment	Response
		equally qualified preference entities, such as two irrigation districts that take water from the same conduit. Is an irrigation district that takes water less qualified automatically than the other irrigation district that's maintaining the conduit? Subparagraph (3) likewise delves into the use of preference concept but does not deal with the competing preference entity problem. Nor does it tell us what "utilize in the public interest or water resources project" is supposed to mean. If you are putting a turbine in a conduit, the water is already flowing down the conduit. You are not using the water. You are using the energy in the water and the water is continuing on down the conduit. What public interest differentiation could be made in such a situation? In paragraph 7.E., subparagraph (1) mentions "scoring criteria" but does not tell us what they will be, who will develop them, and whether or not they will be tailored to the specific solicitation or be a set of standards developed separately. In the following subparagraphs, proposal requirements must include expected generation under average, wet and dry hydrologic conditions. Are these to be predefined in the solicitation? Will they be the same for all applications or project by project standards? If these brackets have to be determined by the applicant, what standards will they use? The proposal also has to define the ability of the generation to provide ancillary services. Shouldn't there be a cutoff level of say 15 megawatts at or below which one would not expect a facility to be able to generate ancillary services? Likewise, it is really necessary to do a present worth analysis of a small turbine installation in a conduit?	equally and the proposals will be scored and ranked on the merits of the proposal. The scoring criteria will be included in the solicitation. The solicitation is the responsibility of the Regional Power Manager/Area Office Manager.

Comment #	Topic	Comment	Response
33	Timeframes	The Temporary Directive & Standard (D&S) is structured along lines of responsibility by various officials within the Bureau of Reclamation. As such, it is very difficult to get a sense of when things are supposed to happen and what timelines exist for seeing to it that they do. A number of the tasks assigned to various people are not identified as being associated with any particular timeline and the timelines that are stated in the D&S. For that reason, we have attempted to create a timeline that would show a potential applicant the path it would have to take between expressing a "formal request" to Reclamation and actually having an operating electrical device. Our timeline is attached. It contains a number of question marks that indicate that the timeframe and positioning of that particular task was not identified. In our view, it is this very sort of checklist that potential applicants need up front in order to understand what they are getting into, what the requirements are and when they occur. We think Reclamation should consider developing such a timeline and going one step further by identifying the as yet un-timelined tasks as either fitting within a timeline already identified or one you assign in order to properly gauge the sequence and timing of events.	Reclamation will be setting up a LOPP webpage on the www.usbr.gov/power webpage, where additional documentation, checklists, timelines, and templates will be located. The D&S is designed as an internal directive and standard, but can still be utilized by outside entities to get an understanding of Reclamation's LOPP approach. Many elements of the D&S have been moved within the document to provide a better understanding of how the process flows, but within the Preliminary Lease and Lease phases many elements can be done concurrently. Fundamentally there are 4 major milestones in terms of the timing: 1) actions prior to the selection of the preliminary lessee (30 days to determine authority, 60 days to create the Federal Register, 150 days for applicants to respond, 30 days to review the proposals and to make a recommendation, 7 days for the RD to award the preliminary lease), 2) work during the preliminary lease to get to a LOPP contract signature (many elements can be done concurrently, but the maximum allowed is 24 months), 3) design of the plant (maximum 1 year), 4) construction of the plant (maximum 1 year to begin construction after final design).

Comment #	Topic	Comment	Response
34	Timeframes	In paragraph 5.C, the responsibility of the Chief of the Dam Safety Office is outlined but that individual's role in the timeline is nowhere to be found. The subject matter is brought up in a number of places but not with regard to the role this individual plays in executing the timeline.	Added language to clarify: **Prior to the award of a Preliminary Lease**, 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.
35	Timeframes	These two paragraphs (8.A.&B.) delineate timeframes for installation of a facility on a dam on the one hand and in a conduit on the other. They are not cross-referenced to the duties of the Regional Director nor is the prior reference cross-referenced to these or inclusive of both. Also, since the Regional Director will determine whether there is just cause for any delay, should we assume that some more detail on what that constitutes, akin to a force majeure clause in a contract, will be articulated in the Preliminary Lease and the LOPP? If not, how will this process of deciding on delays be standardized throughout the agency?	A LOPP is a LOPP regardless of whether it is on a dam or conduit. The primary difference is the timeframes that we expect the steps to be completed due to the difference in complexity between LOPP development on a dam versus development on a conduit. The role of the regional director does not need to be delineated or cross-referenced to adequately address this.
36	General	Mid-West supports the development of Leases of Power Privilege for hydropower at Reclamation facilities with equitable allocation of costs and repayment responsibilities. Leases of Power Privilege should be separate contracts from existing contractual relations between Reclamation and its irrigation districts, since these facilities are hydropower and not related to the district's mission.	Thank you for the comment. Agreed.
37	General	For Reclamation, there are basically two categories for issuing Leases of Power Privilege: small developments at irrigation district canals and conveyances and hydropower development at existing dams. Mid-West believes that different treatment of these categories would expedite consideration and development of LoPP's at these facilities. The developments at canals and conduits will perforce be small and most likely seasonal in their operations. It makes little sense to subject these potential projects to the same depth of analysis larger projects will require. Mid-West urges Reclamation to develop a simplified methodology for development of hydropower plants of less than one megawatt at canals and conveyance facilities. This approach will facilitate	Reclamation needs to protect its infrastructure and existing mission and it is appropriate to follow the LOPP procedures for each project regardless of size. If a project is anticipated to have minimal impacts there are functions within the D&S (such as a NEPA categorical exclusion) that can streamline the process.

Comment #	Topic	Comment	Response
		participation by Reclamation irrigation projects and reduce time and cost burdens for Reclamation and LOPP developers.	
38	General	Mid-West is concerned about section 9H(3) in the proposed D&S, which gives Reclamation the first right to purchase a power plant developed under LoPP "should the lessee need to sell the facilities." If Reclamation were to purchase a power plant and isolate all costs (investment, operations and maintenance) from any responsibility of federal power customers, that is one situation. However, if Reclamation intends to purchase the power plant and absorb those costs (investment and O&M) into the accounting and repayment obligations of the federal irrigation project, that is quite another matter. Mid-West strongly opposes Reclamation purchasing these facilities without protecting federal power customers (who already subsidize a significant percentage of federal irrigation development in the Pick-Sloan Missouri Basin Program) from any costs associated with that purchase or future operation.	Reclamation would only purchase the facility if it made solid business sense for Reclamation, the PMA and its customers. Language has been added to ensure the proper coordination in section 5.A.(15): coordinating a meeting with their power and water stakeholders and Power Marketing Administrations to determine the interest in a Federal purchase of the LOPP facilities pursuant to Paragraph 9.D.(9).
39	LOPP Charge	Mid-West does not understand Reclamation's proposed LOPP charge. We appreciate that Reclamation has a difficult task in establishing the LOPP charge, but seeking one charge for all of Reclamation's LOPP makes that process all the more difficult. Given the differences in statutory authorities among Reclamation's projects throughout the West as well as the demographic variation among Reclamation projects, a regional approach or by river basin might provide the flexibility to deal with this issue. The discount proposed in the D&S is troublesome for the same reason. MidWest asks that Reclamation go back to the drawing board and fashion a LOPP rate that accommodates regional differences while treating all parties equitably.	Reclamation has been tasked with providing a single rate methodology across the organization. Additional documentation has been included in Appendix D of the revised D&S. Fundamentally, the amount that Reclamation is charging is based on a prorated portion or the existing O&M and capital repayment obligation across Reclamation that is allocated to power. The mechanism of the charge that collects this prorated amount has been changed based on multiple comments, and is now a mill/kwh charge based on the gross generation of the project.

Comment #	Topic	Comment	Response
40	LOPP Charge	Paragraph 12 (page 15), which deals with disposition of LOPP charges, is equally troublesome. Mid-West believes that LOPP charges from a hydropower development at federal irrigation project should be credited to hydropower's repayment obligation at that project, just as hydropower revenues pay for a portion of that projects investment, operations and maintenance, and irrigation rate. The LOPP is, after all, a power development and not germane to the purpose of the project, which is irrigation. Language in Paragraph 12 notes that "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 ..." Does the "outstanding reimbursable repayment obligation" mean hydropower's repayment responsibility? It should. Otherwise, federal hydropower customers find themselves in the unenviable position of having their power rates subsidize development and operations of federal irrigation projects, while hydropower development and revenues at an irrigation project benefits only the irrigation investment.	LOPP only occurs on projects/features of projects that were authorized for federal development of hydropower. If it was not authorized for federal development, the project would proceed under a FERC License. The disposition of charges is directed by the Town Sites and Power Development Act of 1906**.**
41	PMA	Given the nature of the Lease of Power Privilege, early involvement of the federal Power Marketing Administration ("PMA") is important. The proposed D&S attempt to address this issue, but the time given to the PMA may not be sufficient. Reclamation should consult with the PMA - most often the Western area Power Administration ("Western") or the Bonneville Power Administration ("BPA") - to determine an adequate period for PMA review, where necessary.	Thank you for the comment. Reclamation has and will continue to be in contact with the PMAs.

Comment #	Topic	Comment	Response
42	General	Reclamation Should Identify General Scoring Criteria that Will Be Incorporated into Site-Specific LOPP Solicitations. The Draft LOPP directive stated that Reclamation would give more favorable consideration to proposals that are well-adapted to developing, conserving, and utilizing the water and natural resources at a Reclamation project. NHA commented that the final LOPP procedure should spell out the scoring criteria and their relative weights. However, Section 7(E)(1) of the Temporary D&S simply provides that a LOPP solicitation "must include the scoring criteria for how proposals will be evaluated." In its response to comments on the Draft D&S, Reclamation stated: "Due to the variability of site specific conditions, Reclamation will retain the flexibility to tailor the scoring criteria to best address the most important aspects of the project site. Additional guidance outside of the D&S may be created to more specifically address the various scenarios of the competing proposals." NHA acknowledges that LOPP solicitations should reflect site-specific considerations and agrees that Reclamation should have some flexibility in drafting LOPP solicitations. NHA also believes that Reclamation's stated goal of ensuring consistency in the LOPP program requires that general scoring criteria be established and included in the Temporary D&S and in any final LOPP procedures that are developed. In this regard, NHA offers its assistance in developing these criteria.	Reclamation recognizes that every hydropower project is potentially different depending on a number of factors, and in order to provide flexibility in recognizing these differences Reclamation will determine the appropriate scoring for each project and make this available in the solicitation of proposals.
43	General	Reclamation Should Identify a Process to Appeal a Decision Granting a LOPP. The Draft LOPP directive stated that the decision to grant a LOPP is to be made by the Regional Director. NHA recommended that the final LOPP procedure should include a formal appeals process. However, the Temporary D&S did not include any such process. NHA continues to believe that some appeal process is necessary and that such processes already exist within Interior. In its original	Thank you for the comment. Reclamation already has a chain of command that can appropriately deal with these issues.

Comment #	Topic	Comment	Response
		comments, NHA did not mean to suggest that Reclamation should create a new appeals process, but rather that it should identify the appropriate existing process that could be used should appeals arise. NHA continues to recommend that the Temporary D&S includes such a provision.	
44	General	NHA commends Reclamation's efforts to improve the LOPP process through the Temporary D&S, which will further advance development of clean and renewable hydropower on Reclamation infrastructure. With additional clarifications and modifications as outlined in these comments, the Temporary D&S will provide a more transparent and responsive process for project developers, Reclamation officials, and existing water users.In the Temporary D&S there are multiple references to broad stakeholder engagement when granting LOPP's. NHA remains committed to working with Reclamation to develop a holistic LOPP process, which includes input and early engagement from all interested parties, including project developers, water users and other stakeholders in proposed hydro development and the use of existing Reclamation infrastructure. Further, NHA reiterates its commitment to actively participating in any additional forums to further address and resolve the issues raised in the Temporary D&S and these comments.	Thank you for the comment.

Comment #	Topic	Comment	Response
45	LOPP Charge	The Proposed Annual LOPP Charge Is a Disincentive to New Development. In the Draft D&S, Reclamation proposed an Annual LOPP Charge of $5.50/kW of installed capacity plus 6% of gross revenue from the proposed project. NHA and many other parties commented that this charge was excessive and that it would make many projects at Reclamation facilities uneconomic. In Section 11(B)(2) of the Temporary D&S, Reclamation has established a "standard LOPP charge" of $3/kw plus 6% of gross revenue, and a "discounted LOPP charge" of $2/kw plus 4% of gross revenue. This discounted rate would be applicable to entities "that are already responsible for project O&M repayment for the site of the LOPP project." While NHA commends Reclamation for reducing the charge, both of the proposed charges are still high; and the applicability of the discounted charge is not clearly defined. NHA urges Reclamation to reduce both of the proposed annual LOPP charges, and to clarify who will be entitled to the discounted rate, particularly in situations where there are joint applications, for example, a private developer and entity responsible for O&M repayment. First, in its response to comments on the Draft D&S, Reclamation states that the proposed annual LOPP charge is required by Section 9(c) of the Reclamation Act of 1939. However, Reclamation does not specify what provision of the Reclamation Act mandates a particular fee or fee structure, and it appears that Reclamation's existing practice is inconsistent with the proposed requirement for a capacity charge plus a charge against gross revenues. Reclamation's Technical Report: Possible Methodologies for Use in Developing Lease of Power Privilege Rates provides examples of annual charges established under existing LOPPs. None of the examples employ a fixed capacity charge and none are calculated against gross revenues. It is, therefore, unclear why Reclamation now believes that it is	Reclamation has been tasked with providing a single rate methodology across the organization. Additional documentation has been included in Appendix D of the revised D&S. Fundamentally, the amount that Reclamation is charging is based on a prorated portion or the existing O&M and capital repayment obligation across Reclamation that is allocated to power. The mechanism of the charge that collects this prorated amount has been changed based on multiple comments, and is now a mill/kwh charge based on the gross generation of the project. If power used for project use power from Reclamation generation is offset, that power can be marketed to other preference entities. This is a benefit to Reclamation and its' power customers. If power is offset from another source, there is not a similar benefit to Reclamation and its power customers. The reduction that may be available if a LOPP applicant that is also the O&M entity for the project works in question reflects that O&M are already being financed by the entity. If an O&M entity applies for a LOPP as part of a consortium, Reclamation will take into account the O&M entity's existing obligation to perform O&M at its own expense or to reimburse Reclamation for O&M activities.

Comment #	Topic	Comment	Response
		required to impose a capacity fee. Second, the burden on project finances caused by a fee of this magnitude creates a strong disincentive against developing hydro projects at Bureau facilities, specifically the smaller hydro projects. For example, of the 373 sites identified by Reclamation in the Conduit Assessment, 205 of them would be less than 100 kW of installed capacity. 6% of gross revenue is a very high load that many projects will not be able to support, particularly given current power prices, and works against the majority of projects Reclamation has taken the time to identify as eligible for development. In addition, the large fee creates a perverse incentive to undersize facilities, particularly where flows are seasonal and the developer has no control over the flows, as is often the case at Reclamation facilities. Finally, the proposed fee may constitute a barrier to fully implementing the President's and Secretary Salazar's strategy to increase renewable energy generation by hampering a majority of these attractive smaller projects. Third, even the reduced annual LOPP charge proposed in the Temporary D&S is significantly greater than the comparable annual charge that would apply if the identical project were licensed by FERC. NHA is unclear on the basis for Reclamation's conclusion that the FERC rate "does not adequately recover" the necessary costs outlined in the Reclamation Act. Accordingly, NHA requests that Reclamation provide additional clarification on this point. Given that projects developed under a LOPP will be providing an additional revenue stream, we question whether the proposed fee structure would lead to decisions not to develop projects at Reclamation facilities. Fourth, regardless of whether Reclamation reduces the annual LOPP charge, it should clarify the applicability of the discounted rate available to entities that are already responsible for O&M payments at the site of the proposed project. Reclamation's	

Comment #	Topic	Comment	Response
		preference rules for selecting among competing LOPP proposals allow for "hybrid" proposals submitted jointly by a preference and non-preference applicant. However, the Temporary D&S does not indicate what annual LOPP charge would be applicable if the preference applicant were entitled to the discounted LOPP rate. Specifically, would the discounted rate be the only rate charged, or would Reclamation charge a "blended" rate that was a combination of the standard rate and the discounted rate? Finally, NHA requests more clarification of §11(B)(2)(c), Offsetting Reclamation Project Use Power. In particular, NHA questions what the LOPP charge plus the "additional benefit of the marketed generation" must total to allow a reduction of the LOPP charge. In addition, NHA questions why the possible reduction of annual charges is not available if a project to be developed under a LOPP allows the operator of the Reclamation facility to reduce its power purchases from sources other than Reclamation.	
46	LOPP Charge	Advance Payment of Processing Costs Is an Unnecessary Burden on Small Projects. Section 11(A) of the Temporary D&S provides that a Preliminary Lessee (or Lessee) must provide "the necessary funding to cover all Reclamation costs" prior to the initiation of any work by Reclamation. NHA does not question the obligation to reimburse Reclamation's costs, but notes that, for the smallest projects payment in full in advance may represent an insurmountable burden that would lead a developer to decide against the project in the first place. NHA recommends that Reclamation allow very small projects to pay Reclamation's anticipated costs on a quarterly basis. Reclamation could use the Conduit Assessment to identify a category of projects that would be eligible for quarterly	Reclamation does not have appropriated funds to do LOPP work. In order to process and complete the work necessary for a LOPP project, the Lessee must cover those costs.

Comment #	Topic	Comment	Response
		payments. Such a repayment stream would be more consistent with the limited resources of such developers.	
47	NEPA	Reclamation Should Establish an Expedited Process for the Smallest Projects. Section 9(A) of the Temporary D&S provides that a proposed project with a capacity not greater than 15 MW will be considered for a categorical exclusion under NEPA. NHA welcomes this proposal and believes that it will, in a responsible manner, greatly reduce the regulatory timeframe for some projects and encourage development. However, NHA urges Reclamation to explore ways to further streamline the LOPP process for the smallest projects. Reclamation could, for example, identify a class of small, low-impact projects by utilizing the Conduit Assessment. By using such an approach, NHA believes Reclamation can create an expedited LOPP process that balances appropriate regulatory review with the economics of smaller projects.	Reclamation needs to protect its infrastructure and existing mission and it is appropriate to follow the LOPP procedures for each project regardless of size. If a project is anticipated to have minimal impacts there functions within the D&S (such as a NEPA categorical exclusion) that can streamline the process.

Comment #	Topic	Comment	Response
48	Timeframes	The 90-Day Period to Respond to LOPP Proposals Should be Extended. In the Draft D&S, Reclamation proposed to allow potential applicants up to 90 days to respond to LOPP solicitations. In its original comments, NHA urged Reclamation to lengthen this time period. However, Section 7(B) of the Temporary D&S continues to provide that the solicitation for LOPP proposals "will allow up to 90 calendar days from the date of publication for applicants to submit proposals." In its response to NHA's comments, Reclamation stated that the Regional Director can adjust this deadline "if justified." The statement that the Regional Director has the ability to extend the deadline to submit proposals is apparently a reference to Section 5(A)(9) of the Temporary D&S, which provides that the Regional Director is responsible for "resolving requests for extensions of the timeframes for development under a LOPP that are outlined in this [Temporary D&S]." NHA believes that this structure does not adequately reflect the complexity of preparing a detailed proposal in response to a LOPP solicitation. First, since Section 5(A)(9) says "under a LOPP," it can be read to allow deadlines to be extended only after a LOPP has been awarded, as suggested in Section 8. Second, Section 5(A)(5) appears to contradict Section 5(A)(9), in that it states the Regional Director is responsible for "ensuring that the processes outlined below are carried out in the defined timeframes." When read with the narrow flexibility allowed by Section 5(A)(9), Section 5(A)(5) would seem to prevent the Regional Director from granting extensions of the time to submit proposals on a solicitation. Third, and more important, 90 days is simply not enough time to	Thank you for the comment. The 90 days has been extended to 150 days.

Comment #	Topic	Comment	Response
		prepare a complete and detailed LOPP proposal. Note in this regard, that Reclamation has declined to include detailed scoring criteria in the Temporary D&S, which will greatly limit a potential applicant's ability to develop a properly responsive proposal. By contrast, FERC allows an applicant six months to prepare and file a development application in competition with a previously filed preliminary permit application. Reclamation should clarify (i) that the Regional Director has the authority to extend the deadline to submit a LOPP proposal, and (ii) that the requestor need only show that the additional time, up to 90 days, is required to prepare a complete LOPP proposal responsive to the criteria specified in the LOPP solicitation.	
49	Preference	One should certainly list Tribes on equal preference footing as a Municipality, public corporation or agency, or even nonprofit organization financed by REA. Of interest and worthy of note is that the U.S.D.A. who administers the REA loans considers Tribal entities such as Utility Authorities as being qualified to receive and participate in the REA loan program. While you may be aware of Tribal/REA preference standing as being presently existing it would be beneficial and avoid potential future confusion if Tribes were inserted in text pertaining to preference entities.	Tribal entities are already considered preference entities per a July 25, 1967 DOI Solicitor opinion concerning "Indian tribes as preference customers under section 9(c) of the Reclamation Project Act of 1937".
50	Preference	Tribes should also be considered as having a superior preference for projects originating within or passing through tribal boundaries and lands which utilize surface water flowing across such tribal lands in the same context of any Federal water user or Federal power customer organization. As above in item 2, it would be beneficial to have Tribes listed as having a superior preference for projects within tribal boundaries and lands on the same footing as	Thank you for the comment. Additional favorability is applied if an entity is responsible for the operation and maintenance of a Reclamation site. If a Tribe is responsible for the operation and maintenance of the Reclamation site, that entity will receive additional favorability.

Comment #	Topic	Comment	Response
		Federal water or power customer organizations.	Additionally, the following language has been added to Sec.7.D.(3): If the LOPP solicitation is for a site that is located on Tribal lands, that information must be revealed in the solicitation. In these cases, the solicitation will include a provision that indicates that a letter of cooperation from the Tribal government will be considered favorably.
51	Preference	The lengths of time given for notification and compliance for qualified Tribal submissions which may necessarily include authorization/approval by the BIA as Trustee to the extent Tribal trust assets are involved are not feasible absent cooperation by both BPR and BIA. This should be noted also and provisions for BOR to accept any Tribal submissions needing Tribal authorization as being sufficient.	Although not specifically called out in the D&S, BIA would be brought into the process through NEPA if appropriate. The D&S is designed to show how NEPA fits into the LOPP process, but does not attempt to make additional NEPA policy. Please see http://www.usbr.gov/nepa/docs/NEPA_Handbook2012.pdf for guidance.
52	Preference	In addition, it is highly unlikely the BIA as Trustee would agree to any waiver of liability or acceptance of liabilities. (Opinion)	Thank you for the comment.
53	General	It is very important that the irrigation district and the developer work cooperatively together in developing hydropower resources that do not adversely impact irrigation operations. Perhaps there is a more effective way for the irrigation districts to "carry the hammer" and have the desired impact on the LOPP/operations integration/lessee; for example: • Reclamation could first make the selection of a preliminary lessee, without considering or scoring any relationship with the irrigation district. Reclamation would then outline the framework/expectations/milestones for the next steps toward the LOPP as the lessee works with the irrigation districts during the preliminary lease phase o Reclamation would structure/monitor the progress through quarterly review meetings with the	Thank you for the comment. To maintain continuity of operations and to ensure that the LOPP process moves smoothly from selection through operation of the LOPP plant, it is important for any developer to work closely with whatever entity operates and maintains the infrastructure.

Comment #	Topic	Comment	Response
		district and preliminary lessee, or whatever o If the preliminary lessee does not/cannot successfully develop a structure/relationship with the irrigation district that is acceptable to all three parties (Reclamation, the Lessee, and the District), then Reclamation would not proceed with the Lease (c) It would seem that this could be structured as a "performance requirement" under the preliminary lease, and, therefore, not subject to the same "fair and open competition" requirements that are mandated in a federal solicitation process	
54	General	LOPP should not be considered by Reclamation for potential projects to be located on private land (Ref. Page 9, Section 7 E (3)(c)), unless: • The US government has an easement that specifically includes hydropower development and the easement area is large enough to encompass all proposed or potential project works • The federal government procures the land or land rights in perpetuity for the proposed project from the private landowner in ADVANCE of issuing the RFP for the LOPP • There are inherent problems with LOPP on private land, assuming Reclamation cannot provide the power of eminent domain for any LOPP leases on private land; for example, for Reclamation to actually consider entering into an LOPP on private land, any proposer would have to have the real property rights in hand, in perpetuity, needed to construct and operate the project (a) Any proposer(s) having the real property rights in hand would then, essentially, end up having "preference" in any competitive offering for an LOPP by Reclamation for the site. If there is no legal basis for this preference, it could	LOPP is for the utilization of the Reclamation facility regardless of any underlying land rights. Land rights issues must be addressed in the LOPP proposal as stated in section 7.D.(4)d.: 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. Land right issues will also be dealt with under Appendix B of the D&S. If private lands are necessary to complete the LOPP project, the LOPP developer would need to get access to those lands before any LOPP contract were realized.

Comment #	Topic	Comment	Response
		be challenged by others as an "unfair advantage" in the open solicitation for proposals of any LOPP (or, conversely, if the proposer(s) having the real property rights are not selected as the lessee, they could likewise block the project permanently/sue Reclamation, as an "illegal taking" of their property rights)	
55	General	Selection team - the D & S should state the minimum number of selection team members, and composition/who they represent, if possible (are they all internal Reclamation employees?) How many from the local field office vs elsewhere?	Thank you for the comment. The selection team will be determined by the Regional Power Manager or Area Office Manager (whichever is assigned by the Regional Director).
56	General	The Draft D & S states that the jurisdiction of Reclamation vs. FERC will be decided in accordance with the 1992 MOU (Ref. Page 7, Section 6, a copy of the MOU is also included as Appendix A of the D & S) • Recommend deleting the subsequent sentence, "If Reclamation and FERC alter the 1992 MOU..." (and that the D & S will still apply) o Can't predict future events or their impact on the D & S o MOU states that the MOU can be cancelled at any time by either partyMay be legislative or other changes unrelated to the 1992 MOU which govern "jurisdiction" of project facilities	Under section 6: 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. IF this language is not sufficient given any future changes, the D&S will be modified to address whatever those changes would be.
57	General	Not sure why Appendix B-1 is separated off of the rest of the D & S, and appears after the whole MOU between FERC and Reclamation?	The reference to Appendix B comes after the reference to Appendix A (the FERC/Reclamation MOU) in the D&S.

Comment #	Topic	Comment	Response
58	LOPP Charge	If possible, the fee structure (Ref. Page 16, Section 11 B (2)) should be the same as that used by FERC, as mandated for FERC in the FPA (Ref. 16 USC Section 803 (b)) for all federally - owned facilities; FERC is required to collect charges for the United States "for recompensing it for the use, occupancy, and enjoyment of its lands and other property" • These annual charges currently "assessed" by FERC for licensed projects by private entities using Reclamation facilities must be approved by the Secretary of Interior, according to the FPA, so the structure FERC uses presumably already has been approved by DOI as meeting cost recovery requirements • Reclamation may want to explore if there may be a "defensible" basis for making these fees the same (as FERC's fee scale), while still satisfying the requirements of the Reclamation Act of 1939; possibly by tying the fees to the 1981 MOU between FERC and the Department of Interior entitled "Joint Participation in non-federal development .... power lease charge and use of lands administered by the Water and Power Resources Service" (Ref. Page 7, Section 3 (a)), which states: o "The Commission and Water and Power staff will continue to review the annual charge issue in an effort to develop a **generic methodology for a reasonable annual charge to be assessed for the use of Water and Power facilities.**" o Both agencies using the same annual charge method, particularly for private hydro development in Reclamation facilities (whether licensed by FERC or developed under an LOPP), would seem to make the most sense o Using the current FERC scale would, hopefully, provide a more simplified, recognized/accepted	Thank you for the comment, but the LOPP fee structure is governed by Section 9(c) of the Reclamation Project Act of 1939.

Comment #	Topic	Comment	Response
		method of "cost recovery" for use of federal assets for hydropower development (vs. % of revenue method proposed in draft LOPP) • Not sure of the legal basis for structuring the fee as a percent of revenue (Ref. Page 16, Section 11 B (2)) since that would not be "cost recovery based" for Reclamation, per OMB. The fee structure should not be based on revenue of the proposer: o Irrigation districts or other consumers of electricity may be able to use the additional power generation as "replacement" for power they presently consume, so the % of revenue model would not work or be equitable in these cases, as 2 identical hydroelectric plants (one using the "avoided cost" or "replacement electricity" model vs. another on a Power Purchase Agreement with a utility) would be assessed/paying extremely different charges to the government for the exact same use of government assets/facilities. o The government should re-coup a "fair" amount of its sunk capital costs, but 6% of gross revenue seems very high vs. the expected profitability of these small plants (and may make them undevelopable/"upside down") • If possible, there should be a provision that the fee may be waived for projects under 2000 hp (FERC uses 1500 watts), as provided in the Federal Power Act, and currently practiced by FERC for other licensed plants on Reclamation-owned facilities. o In the interest of encouraging small hydro, perhaps Reclamation could investigate a "defensible" tie for a waiver to the 1981 MOU with FERC, and the FPA.	

Comment #	Topic	Comment	Response
59	PMA	The first right of refusal of PMA's to purchase the power should be clarified: "The preliminary Lessee must coordinate with the PMA to offer the energy and REC's produced under the LOPP for purchase." (Ref. Page 12, Section 9 D) • Who sets the price/terms? - Does the preliminary lease holder have the exclusive right to set the price and all terms of the lease (other than the 40 yr max, as required by Reclamation Law), for acceptance/rejection of the PMA? Alternatively, if the PMA has any authority to set price/terms, these should be required by the D & S to be specifically stated in the RFP for the LOPP, up front, as part of the requirements included in the solicitation	The developer would presumably bring a price to the PMA to negotiate over. Reclamation through the D&S does not have any authority over how a PMA will interact with the LOPP developer. The D&S only directs how Reclamation will proceed with a LOPP.
60	PMA	The Draft D & S states the federal government will have the first right to purchase the plant if the project owner decides to sell (Ref. Page 13, Section 9 H (3)) • Same comment as PMA clause above - Who sets the price/terms of the sale? Does the project owner have the exclusive right to set the price and all terms of the sale? Alternatively, if the federal government (Reclamation) has authority to set price/terms, the procedures/rules/methods for setting the price should be spelled out or referenced in the solicitation	Thank you for the comment. This would be negotiated.

Comment #	Topic	Comment	Response
61	Preference	The Draft LOPP states that "Reclamation will solicit proposals for hydropower development under a LOPP through a public process to ensure fair and open competition " (Ref. Page 7, Section 7 A). However, the current draft provides a direct, unfair advantage to irrigation districts which has not been authorized by Congress. While it is understandable that Reclamation and the irrigation districts feel that the districts should "control" any hydropower developments in the systems they operate for Reclamation, Reclamation policy cannot conflict with law. There is no apparent legal authority under current law for Reclamation to implement preference or unfair advantage specific to the irrigation districts in its regulations and standards. Although the Draft LOPP states that preference will be in accordance with Section 9(c) of the Reclamation Project Act of 1939, the current draft is not in accordance with this section; specifically: • The Draft LOPP currently provides "first preference" for irrigation districts having a Transferred Works contract with Reclamation (Ref. Page 8, Section 7 D ((1)) o No such preference "class" is provided in the cited Reclamation Project Act • The Draft LOPP directly states that a proposal score will be downgraded if there is no letter of cooperation from the irrigation district (Ref. Page 8, Section 7 E(2)) o This essentially lets the irrigation district do the selection of the entity/successful proposal, instead of Reclamation, before any proposals are even submitted o Discourages/eliminates any true competition and sets up a conflict of interest from the start, as the irrigation district can/is expected to be both be a proposer/bidder themselves and a "cooperator" with other bidders • The Draft LOPP requires that the proposer describe or	Section 9(c) of the 1939 Act is the authority for the preference arrangement for two reasons. First, Section 9(c) grants preference to “municipalities, and other public corporations or agencies” and “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.” Many irrigation districts and other existing Reclamation contractors meet this criteria as they are typically “other public corporations or agencies” created pursuant to state laws. Second, Section 9(c) requires a LOPP cannot be issued “unless, in the judgment of the Secretary it will not impair the efficiency of the project for irrigation purposes.” Reclamation is responsible for exercising the judgment of the Secretary and the Department in this matter. Reclamation’s judgment is that providing favorable treatment to irrigation districts and other entities that already O&M projects under contract with Reclamation is the most effective way to meet the statutory criteria to “not impair the efficiency of the project for irrigation purposes” because these entities are inherently familiar with the projects they operate and are in the best position to maintain project efficiency while operating a LOPP. Providing more favorable scoring to entities that O&M the project works at issue with a particular LOPP relates directly to Section 9(c)’s mandate to “not impair the efficiency

Comment #	Topic	Comment	Response
		provide evidence of its contractual relationship with the local irrigation district in its proposal (Ref. Page 10, Section 7 E (3)(e)) o This allows the irrigation district to "block" or "bless" any entity before any proposals are submitted for Reclamation review • The Draft LOPP states that the fees charged to the local irrigation district will be 33% to 50% less than charged to a private developer or other municipal entity (Ref. Page 16, Section 11 B (2)(b)) o This represents a special "subsidy" to irrigation districts at the expense of taxpayers, and has not been authorized by Congress o This acts to restrain competition as it puts all other entities at a disadvantage in the solicitation o (c) The scale of fees charged to any private user of federal facilities should be the same (theoretically, from a strictly cost-based accounting perspective, it would seem that outside entities not part of the Repayment Contract for that project should be given the "discount", as the revenues from the LOPP lease are set aside, under the current model, to help pay the historic construction costs/future improvement costs of that Reclamation project (not related to the new LOPP project), which, in turn, theoretically would reduce the remaining total burden on other existing Repayment Contracts for that project)	of the project for irrigation purposes" as described above. This factor is not a sub-category within the preference consideration; it is an additional factor to be considered along with preference and other statutory criteria. Cooperation with the local O&M entity is encouraged because that local O&M entity often controls factors essential to potential hydropower development, such as volume, timing, and location of water flows in project features to meet project purposes. While selection factors favor involvement and cooperation with the local O&M entity, that entity is not guaranteed a LOPP application if its proposal is not acceptable. Reclamation retains the option, for example, to choose a superior application from another entity. The local O&M entity cannot "block" a LOPP site when Reclamation determines that better proposals could exist from non O&M entities. The reduction in O&M fees for LOPP recipients that already O&M the project works in question reflects that such entities are, through contract with Reclamation, already performing O&M on the Project works at their own expense or reimbursing Reclamation for performing O&M on the project works. The reduction in this charge reflects that these entities are already paying for O&M activities on the project works and should not be charged again for those

Comment #	Topic	Comment	Response
			activities. These entities are required to assume O&M activities or reimburse Reclamation for O&M activities by a variety of general and project-specific statutes implemented through contracts with Reclamation. Reduced O&M charges do not affect the benefit of accelerated project repayment associated with LOPP revenues because the O&M fees charged repay actual O&M costs incurred and are not part of the LOPP revenues used to repay the capital debt of a project. To the extent that an organization qualifying as a preference entity applies for a LOPP through a consortium or through another entity, it must demonstrate to Reclamation's satisfaction that such preference also applied to the entity seeking the application.
62	Preference	The only "preferences" which should be provided in the LOPP (Ref. Page 7, Section 7 D) are those that have been Congressionally approved, and/or mandated, including those mandated in Section 9 (c) of the Reclamation Act of 1939. • Other federally mandated preferences which may be applicable and should be considered include small and disadvantaged businesses, such as SBA 8(a) • If Reclamation proceeds with preference to irrigation districts, the current law(s) needs to be changed FIRST so that such preference is legally authorized. Without changing the law, Reclamation would be open to appeals and lawsuits after selection of the lessee, which will delay	Reclamation will consider other applicable statutory factors in making its LOPP selections. The cited reference to Section 8(a) of the Small Business Act does not apply here since LOPP arrangements are not procurement matters.

Comment #	Topic	Comment	Response
		projects for potentially years and needlessly waste taxpayer dollars • Reclamation also may want to consider the following: o Preference classes actually discourage creative partnerships between private companies, utilities, and the districts, as the districts would be "giving up" their "preference rights" to partner with any entity not in the "preference" class, even if a partnership was the best arrangement for constructing and operating the plant (which has often been found to be the case) o Most recent hydro projects are structured and developed under a separate LLC for various legal, insurance, accounting/tax and other reasons; presumably, the "preference classes" (including irrigation districts) would be barred from submitting any proposal under any name which was not the exact same name as their preference class legal name/entity (FERC has had years of dealing with this issue in trying to implement municipal preference). So, for example, the irrigation districts actually would be forced to do business in a way that may add unnecessary risk/cost to their members so as to not "lose" their preference.	

Comment #	Topic	Comment	Response
63	Preference	In the interest of "fair and open competition", the review and scoring of proposals for the preliminary lease by Reclamation should in no way include or be based on the proposer's previous/existing relationship with the irrigation district; • The effect of which is to provide an unfair advantage to the irrigation district itself, or any "partner" the irrigation district selects, regardless of the merits or capabilities of the other proposers • Also presents a built-in "conflict of interest" between the irrigation district's own proposal and any other potential proposals for the same project • Discourages other creative approaches to the project/plant from being brought to the table • Instead, in the interest of fair and open competition, the future relationship between the proposer and the irrigation district could be structured by and required by Reclamation (with input from the irrigation district), and expected to develop during the preliminary lease period (as a "performance requirement"), and not be a required part of the proposal for a preliminary lease	Please see response to comment 61.
64	Preference	No explanation for Reclamation "scoring" is given if more than one entity having "preference" under the law provides a proposal for LOPP (Ref. Page 8, Section 7 D (2)); assume the selection "between" 2 or more "preference" applicants will be based on the remaining factors?	Scoring is dealt with in the solicitations. If there are two preference entities that submit proposals for a project they will be judged on the remaining scoring criteria as outlined in the solicitation.

Comment #	Topic	Comment	Response
65	General	The current version of the LOPP Agreement quite an achievement but in its current version it is not bankable by standard project finance standards and thus the industry will remain by and large unattractive to project developers and the finance industry. In the current condition very little private equity sector investment will flow into this industry, compared to the amount of investment that solar and wind has previously attracted and currently still attracts. Due to the competitive nature of attracting investment funds within the renewable sector (wind, solar, biomass etc), the nearly dormant and infant small hydro sector of the renewable energy industry needs a fresh approach that attracts private sector investment whilst putting in place the appropriate safeguards to cover the necessary risks. The risks and returns of the small hydro sector needs to compete with those currently available in the wind, solar and biomass sectors otherwise investment will not take place in small hydro. The energy industry (traditional brown, and renewables including wind, solar and biomass) predominantly relies on a type of finance called “project finance” to finance projects. This type of finance involves sponsor equity provided from the developer, and debt provided from a bank experienced in lending to renewable energy projects. In order for a developer obtain debt financing from a bank, apart from project economics the bank will look at all contracts and agreements including the LOPP. Banks will seek to determine if the risks have been appropriately identified and addressed prior to any lending taking place in order to minimize the risk of payment defaults. Due to the current draft of the LOPP agreement and the missing key component input from the private investment sector to make this a bankable LOPP, can the Bureau reach out and establish a further dialogue to engage the experienced developers (track record in developing renewable projects), bankers (track record of	Thank you for the comment. Reclamation supports non-federal development at Reclamation facilities, and there are currently multiple projects moving forward through the LOPP process. Reclamation’s main objective is to ensure that a project does not have any negative impacts on existing Reclamation systems and operations. In addition, Reclamation is required to collect LOPP charges that cover an equitable amount of the construction costs and O&M costs of the Reclamation facilities that the LOPP project benefits from. Reclamation understands that project financing is a potential barrier to these kinds of projects, which is why the current D&S clearly describes all of the potential costs that a developer must consider.

Comment #	Topic	Comment	Response
		renewable projects financed) and lawyers (track record of bankable renewable contracts and agreements drafted) in the renewable sector to provide adequate feedback so that a bankable LOPP can be drafted?	
66	General	The fact that the Lessee must agree to indemnify the 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 most likely makes the LOPP un-bankable and un-financeable. Please provide a clearer definition as to why the Lessee needs to indemnify the United States for a loss or damage and any neglect or omission of the United States. The following clause needs to be further defined and clarified in order not to appear as a broad "Regulatory Out". (A Reg Out is seen as a major project investment and financing impediment.) The Clause that needs to be modified states: "The Lessee will be required to modify operations required by any future legal constraints associated with the operation of the Reclamation project."	The clause associated future legal constraints is intentionally broad and is designed to protect the federal government from future legal changes that may affect any project operation, including potential LOPP arrangements.

Comment #	Topic	Comment	Response
67	LOPP Charge	These percentages are too high from a project economics perspective. These percentages will kill many, many otherwise feasible projects because of the heavy burden on project economics. Can they be lowered to be more reasonable? It is worth noting that these high percentages are found in the oil and gas industry and thus this is often the origination of these high percentages. In the renewable space, the large majority of projects have a percentage of between 1 to 3 percent. It is extremely rare to see 4- 5% projects getting built due to the strain on economics in the renewable field. The time period of 5 years is too short prior to adjustment, and needs to be at least 15 years to make the project bankable. Can these time periods be extended to 15 years? A short time period increases the level of risk and uncertainty. This will have a heavy burden on the project as investor and bankers may see this as a fatal flaw, thus killing the projects.	LOPP projects utilize infrastructure that has been built for Reclamation project purposes with appropriated and/or power and water customer funds. Without this existing infrastructure, hydropower would not be viable without large scale capital investment of dams and canal systems. Reclamation is required to recover an appropriate share of the annual operation and maintenance costs, an appropriate share of the construction costs, and any other fixed charges as deemed proper by the Secretary of the Interior. Reclamation's LOPP rate of 3 mills per kwh is an equitable rate that satisfies these requirements.
68	PMA	What if the developer would like to see the power to another entity such as a utility- are there clear guidelines on who gets priority to purchase power? Are power purchase rates equal to each offtaker?	The relevant PMA will be given the first opportunity to purchase the energy at a rate acceptable to both parties. If agreement cannot be reached within 60 days, the developer may sell the energy to others.
69	Preference	Can the definition of a Preference Entity either be expanded to provide for private sector participation? Thus providing a fairer playing field private sector investors and developers to participate in.	Preference is defined by law in 9(c) of the Reclamation Project Act of 1939.
70	Preference	This clause does not provide a level playing field for private sector investors or developers. It is heavily biased towards the preference entity. This clearly indicates that a capable private sector developer could have a better proposal, only for the Preferred Entity to later modify and improve their proposal to obtain an approval, at which point the Private sector investor and developer would be excluded from the project. Can the lines that allow the preferred entity to be deleted to provide for a fairer environment and improved probability that a private sector investor or developer could participate in? Otherwise it is very clear that it is	Preference is guaranteed for LOPP by the Reclamation Act of 1939. The ability for a preference entity to have the opportunity to improve their proposal based on any deficiencies is also consistent with FERC Licensing.

Comment #	Topic	Comment	Response
		highly likely that a Preferred Entity could rely heavily on the hard professional work and development investment risked by a private sector developer and or investor.	
71	Timeframes	Can the review be extended to a longer period of say- every 15 years? This would give a greater amount of certainty to the cash flow figures and allow the developer/investor to payback the banks for loans obtained. Otherwise this would be seen as a high regulatory risk whereby the banks (and investors) could not truly know the exposure of the charges over the life of the project. As a result, if the bankers did accept this clause it would be costly and the sponsor investor/ developer would have to pay for this risk. Such increased finance costs would have to be factored into development and could unnecessarily disqualify economically marginal projects that would otherwise be viable projects. It is worth noting that the developer/investor may also have to pay lease payments for the land utilized. It is worth keeping in mind that small hydro investment is competing for investment funds from solar and wind- risks and returns will be calculated and investment funds will flow accordingly to the appropriate risk and reward levels.	Review has been extended to every 10 years.
72	General	Note: Western and Reclamation had a series of discussions related to LOPP prior to Reclamation issuing its latest draft. As part of those discussions, Western and Reclamation came to an impasse on some items and reached a resolution on others. In these comments, Western will not reiterate those items that came to an impasse, Western refers Reclamation to Western's previous comments and discussions as it relates to those matters. These comments are limited to the items that Western believes Reclamation agreed to modify but that have not been fully addressed as part of the latest LOPP draft.	Thank you for the comment.

Comment #	Topic	Comment	Response
73	General	Reclamation also has modified section 9.H.2. of the new draft policy to require a surety bond to cover clean-up costs. This is a step forward. However, Western believes the language is too narrow. The current requirements for the surety bond only cover Reclamation's costs - the surety bond should cover all the costs to remove the facilities and clean-up and restore the site. Western recommends that Reclamation add the term "commercial" before surety and delete "Reclamation" in the event the site is cleaned up and restored by someone other than Reclamation. Section 9.H.2. should be drafted to state: " ...and a comprehensive and sufficient commercial surety bond to cover any costs of removal of the facilities, clean-up, or restoration of the site." Western also recommends that on a periodic basis, Reclamation re-examine the commercial surety bond and retain the flexibility to adjust it based on current risk factors by modifying the language as follows: "The amount of the bonds will be determined on a project-by- project basis and the commercial surety bond shall be periodically adjusted over the life of the project based on then current risk factors."	Language has been modified to: The Lessee must provide the LOPP lead evidence of a comprehensive and sufficient performance bond for the construction of the project, and a comprehensive and sufficient commercial surety bond to cover any costs for the removal of the facilities and the clean-up or restoration of the site due to the installation or operation of the Lessee’s plant.
74	General	Western continues to recommend that Reclamation take the time to examine LOPP to ensure that it is consistent with all applicable legal and regulatory requirements. Western refers Reclamation to Western's previous comments on these matters.	Thank you for the comment.
75	LOPP Charge	Western also notes that Reclamation was to provide Western with more specific information on whether the LOPP charges included project specific environmental costs such as Central Valley Project Improvement Act. Western continues to believe such costs should be fairly allocated to LOPP. Western has not received such information and did not see any such provisions in the current draft to allocate project specific costs to LOPP.	The LOPP charge includes power’s share of amortized multipurpose construction and interest costs and power’s share of Reclamation expensed, multipurpose operation and maintenance costs.

Comment #	Topic	Comment	Response
76	PMA	Western understood Reclamation was going to make modifications to LOPP to ensure there would be no adverse impacts to the marketing of Federal power. Reclamation has added language in Section 7.C. and 9.B. that clarifies the selection of the LOPP lessee and the operation of the LOPP must not impair project power deliveries. While Reclamation has made some modifications, it is still unclear whether LOPP may adversely impact the marketing of Federal power. Reclamation clearly has protected project use power deliveries from adverse impacts. Given Reclamation's use of the term Project Use Power in Section II, arguably, the term "project power" relates only to project use and not necessarily to marketing power to preference customers. As a result, Western continues to recommend language be added to clarify the marketing of Federal power is protected from adverse impacts. A simple fix is to add "marketing of Federal power" in Section 9B so the section reads as follows: " ... to ensure that the efficiency of Reclamation project power or water deliveries will not be impaired, to ensure there will be no adverse impacts to the marketing of Federal power, to ensure..."	Project power is not the same as project use power. Project power refers to all power from the Reclamation project whether that power is for project use or marketed to preference customers. Changed language from Reclamation project power to Reclamation generated power.