

## Lease of Power Privilege Comments – FAC 04-08 (09/17/2014)

Comments on the Bureau of Reclamation’s February 11, 2014, Temporary Reclamation Manual Release for Reclamation’s Lease of Power Privilege (LOPP) Requirements and Process Directive and Standard (D&S).

C #	Topic	FAC TRMR-61 D&S Section <sup>1</sup>	Comment	Reclamation Response <sup>2</sup>
1	Applicability	2	"Applicability. This D&S applies to all Reclamation employees that work on LOPP activities, and is applicable to any LOPP project where a solicitation for a LOPP project is issued or a formal request received after the release of this D&S. This D&S does not apply to activities necessary for Federal development of a powerplant at a Reclamation site."	Agree. D&S has been revised to incorporate comment.
2	Applicability	2	"If the Regional Director determines that it is in the best interest of Reclamation to investigate Federal development of the site, the timeframes in this D&S do not apply" <i>When? Referencing 5.A(6), only over 1 MW?</i>	This determination would be made prior to soliciting proposals. As indicated in Section 5.A.6, this would only apply to LOPP projects potentially larger than 1 MW.
3	Responsibilities	5	Under Section 5, Responsibilities, the language regarding the review by the Dam Safety Office should be revised to clarify that such review is only required where safety concerns have been identified.	Agreed. Comment accepted.
4	Jurisdiction for Hydropower Development	6	<i>Contrary to express language of the Tipton Bill!!!</i>	Reclamation is implementing PL 113-24 as interpreted by Congress, as an example see Senate Report 113-039, and collectively interpreted by Reclamation and the Federal Energy Regulatory Commission.

<sup>1</sup> Column refers to D&S sections as listed in FAC TRMR-61, published on February 11, 2014.

<sup>2</sup> Sections referred to in “Reclamation Responses” are consistent with published FAC 04-08.

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5	Solicitation and Selection of Lessee	7	Where Section 9(c) of the Reclamation Project Act of 1939, as amended by the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act, requires that LOPP leases "not be incompatible with the purposes of the project" and may not "create any unmitigated financial or physical impacts to the project" as such leases are an incidental use of federal facilities, protective language reflective of this mandate should be restated throughout the draft LOPP Directives and Standards. While the draft LOPP Directives and Standards state that selection of a lessee will be in accordance with Section 9(c) and that "the proposed LOPP project must not impair the efficiency of Reclamation generated power or water deliveries, impact structural integrity of the project, jeopardize public safety, or negatively affect any other Reclamation project purposes" this language should be found throughout the Directive and Standard. FAC TRMR-61, page 8. Such protective language should be to Section 10, Projects on Transferred Works, in particular to emphasize that the involvement of the irrigation districts in the LOPP process serves this function in addition to protecting the irrigation district's other interests.	Thank you for the comment. This condition is mentioned in numerous sections, including Section 1, 7.A, 9.C.1, and 9.D.1. The language will remain as is.
6	Solicitation and Selection of Lessee	7	Under Section 7, Solicitation and Selection of Lessee, for LOPP on conduits, a separate provision should be added for when the Formal Request for Development is made by the irrigation district or water user on a transferred work to clarify that such a request will not require public solicitation on alternative proposals as the irrigation district or water user has statutory priority for development.	Thank you. Additional language has been added to Section 7.A.2(a) to clarify this point.
7	Timeframes	8	While it is understandable that there is significant political pressure to develop small conduit hydropower facilities, this should not be allowed to interfere with the mandate to protect Reclamation projects and their primary purposes. Under the current Timeframes for Development Under a LOPP, it is foreseeable that multiple applications will not only overburden Reclamation's ability to process them, but may also prevent irrigation districts from adequately responding with alternative development proposals without a set process to apply for an extension. Currently, an extension to the timeframes set forth in the draft LOPP Directives and Standards is only permitted for "just cause resulting from actions and/or circumstances that are beyond the control of Reclamation or the Preliminary Lessee/Lessee." FAC TRMR-61, p. 12. This is insufficient to give adequate protection to irrigation	Nothing in the D&S allows for the interference with the primary purpose(s) of the Reclamation project. On the contrary, this condition is mentioned in numerous sections, including Section 1, 7.A, 9.C.1, and 9.D.1. By allowing the Regional Director to adjust timeframes, Section 8 provides sufficient flexibility to address this concern.

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			districts who may intend to submit competing applications as a protective measure for their transferred works, especially where the determination of just cause and the length of an extension are within the sole discretion of the Regional Director. There should also be a provision for the extension of these timelines in the event that Reclamation receives so many applications that it interferes with its ability to ensure the protection of the primary purposes of the Reclamation projects while simultaneously meeting the deadlines set forth in the draft LOPP Directives and Standards.	
8	Timeframes for Development under LOPP	8	"The above timeframes will only be extended for just cause resulting from actions and/or circumstances that are beyond the control of Reclamation or the Preliminary Lessee/Lessee." <i>What if Reclamation caused the delay?</i>	In the unlikely event that Reclamation is at fault for the delay, timeframes may be extended by the Regional Director pursuant to Section 8.
9	Timeframes for Development under LOPP	8	Regarding these Directives and Standards, we believe timeframes for development under a LOPP should be based on the complexity of the project. For some projects the proposed times would be sufficient. However, we believe the time for decisions on a project the size of Diamond Fork for example would be too short. The environmental process alone could extend beyond 24 months on a complex project. The time frames are important and necessary but we believe they could be agreed to up front in the initial stages of the proposal process on a project by project basis.	Agree that not all projects are the same, and some will take longer than others. Regional Director can extend the timeframes in these instances. See Sections 5.A.10, 8.A, and 8.B.
10	Timeframes for Development under LOPP	8	Page 12, Timeframes - Clarification needs to be provided for the potential issue of numerous applications being filed simultaneously. It is foreseeable that multiple applications for development could be filed at the same time, overwhelming the USBR and individual operating entities. Will these be considered "circumstances beyond the control of Reclamation"? Will operating entities also be given additional time, beyond 60 days, to accept or reject a LOPP?	Regional Director is able to adjust timeframes to account for circumstances like this. See Section 8.
11	Development, Construction, and O&M	9	Review should be limited to the safe passage of water and impact on Reclamation facilities. Review of power plant design is often not needed.	Review of power plant is important to understand the overall design and impact of the project. That said, Reclamation's primary interest is ensuring there is no impact to water deliveries and Reclamation facilities.

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12	Development, Construction, and O&M	9	<p>The draft LOPP Directives and Standards currently require both a performance bond for construction and a commercial surety bond to cover any costs for removal and restoration. FAC TRMR-61, p. 15. <u>Irrigation districts should be exempt from this requirement to the extent that their general liability for the operation of maintenance of the facilities is covered by other contracts with Reclamation.</u> Additionally, there is some question whether the surety bond will provide sufficient protection if a hydropower development is abandoned by a third party; additional requirements for the bond and other security should be established to protect the Reclamation project. This is especially important as many of the third party developers do not intend to operate the hydropower development themselves, to the extent that the risk of abandonment is substantial.</p>	<p>The general liability for the O&amp;M of the federal facility, as covered in the formal transfer contract would not extend to a privately owned LOPP plant. The bonding requirements, as well as Lessee selection process provides sufficient protection for the Reclamation project.</p>
13	Development, Construction, and O&M	9	<p>The mandatory conditions also require that the Lessee 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 in connection with its performance under the LOPP." FAC TRMR-61, p. 16. For leases on transferred works, this obligation to indemnify should extend to the operating irrigation district as well as the United States. For leases with Washington irrigation districts, the irrigation district should be exempt from this provision, as under Washington State law, any contract with the United States that purports to indemnify against liability for damages caused by or resulting from the negligent acts or omissions of the United States, its employees, or agents is not enforceable unless expressly authorized by state law" and the districts are currently without such authorization. RCW 89.12.050(2). Because the indemnification language in the draft LOPP Directives and Standards require indemnification for "actions under the LOPP" which arguably includes actions by Reclamation and its agents, Washington irrigation districts are without authority to enter into the LOPP agreement.</p>	<p>Thank you the comment. If the indemnity clause, as written, violates state law, the Regional Director will resolve this issue on a project-by-project basis.</p>
14	Development, Construction, and O&M	9	<p>As with the indemnification provision, the requirement under a LOPP for the compensation for lost generation and other interruptions to operations at Reclamation facilities should extend to the irrigation districts, especially where the hydropower development is on transferred works.</p>	<p>The protections set forth in the D&amp;S are designed to protect federal assets and project operations - which in turn, protect operators of transferred works and other project beneficiaries. Additional projection for operators of</p>

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				transferred works may be dealt with under Section 10.
15	Project on Transferred Works	10	The Draft D&S also fails to require sufficient involvement from Water User Associations where such associations are not participants in a proposed LOPP. Paragraph 10 of the D&S provides for limited involvement by Water User Associations that have transfer contracts associated with the proposed development site. However, the Draft D&S provides that such involvement will be “as appropriate.” This type of limited and discretionary involvement is not sufficient. OWRC urges Reclamation to explicitly provide for the inclusion of any Water User Association that has a contract associated with the relevant Reclamation facility if the association requests to be included.	Thank you for the comment. The D&S features a number of provisions that prescribe Water Users Association involvement (e.g. Sections 5.A.4 - 5.A.6, 5.A.17, 5.D.3, 5.F.2, and 10). Specifically, Section 10 is designed to ensure that transferred work operators are included in the LOPP contract. In general, Reclamation and Water Users Association share similar interests (e.g. protection of the federal asset, maintaining project efficiency, continued water deliveries, etc.) and the D&S seeks to adequately protect those interests.
16	Project on Transferred Works	10	Many Water User Associations, such as OWRC’s members, lack sufficient funds to analyze each LOPP proposal that is submitted to determine whether the proposed project could adversely affect the associations’ operations. This creates the potential for a LOPP to adversely affect OWRC’s members and leave those members without a viable means by which to protect their interests. Because Water User Associations are most familiar with their operations, they are in the best position to evaluate the potential impacts to their operations from a proposed project. As such, those entities submitting LOPP proposals should be required to reimburse Water User Associations for certain expenses incurred in reviewing design drawings, submissions to Reclamation and/or FERC, and other project-related documents (e.g., the cost of retaining third-party engineers, attorneys, and other consultants and professionals necessary to perform such review).	Likewise, Reclamation may struggle with funding and time. That said, it is a priority of the Administration to encourage and support the development of reliable, renewable hydropower at existing federal facilities.

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17	Project on Transferred Works	10	Irrigation districts operating and maintaining transferred works bear a substantial amount of responsibility for these improvements and it is crucial that they have greater authority to deny or require conditions on third party applications. Recently, the Washington State Legislature explicitly granted irrigation districts with the authority "to approve and condition placement of hydroelectric generation facilities by entities other than the district on water conveyance facilities operated or maintained by the district." 2014 Engrossed Substitute House Bill 1417, Section 6. Under the current draft LOPP Directive and Standard, irrigation districts operating and maintaining transferred works are only involved in the development of LOPP contracts "as appropriate." FAC TRMR-61, Section 10. This language is simply inadequate in addressing the operational cooperation and contractual obligations between the Bureau of Reclamation and the irrigation districts in operating and maintaining federal facilities on Reclamation projects. Fundamentally with transferred works, the irrigation district, as the operating entity, is likely to have more information about the potential disruption a hydropower development may pose to the project improvements and it therefore must be involved in a greater and more certain capacity in the LOPP process in order to fulfill the statutory requirement that hydropower generation will not impair the federal project or jeopardize public safety.	Disagree that Section 10 is inadequate. Agree that the operating entity has an intimate understanding of the transferred work, hence Sections 5.A.4 - 5.A.6, 5.A.17, 5.D.3, 5.F.2, and 10.
18	Project on Transferred Works	10	Projects on Transferred Works. Under circumstances where a district and/or water user organization has OM&R transfer contracts..."	Section now reads, "Under circumstances where a district or water user organization..."
19	Project on Transferred Works	10	Projects on Transferred Works. Under circumstances where a water user organization has OM&R transfer contracts.."	Thank you for the comment.
20	Project on Transferred Works	10	"the LOPP contracts will include their involvement, as appropriate" <i>When?</i>	When appropriate, during the LOPP contract negotiation process.

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21	Project on Transferred Works	10	"The Lessee shall share in the cost of OM&R of the existing Federal facilities that benefit the proposed installed power facility." <i>How determine?</i>	A portion of the Annual LOPP charge covers the cost of O&M of the existing Federal facility, and a portion of the charge covers capital repayment of the existing Federal facility.
22	Project on Transferred Works	10	Page 16, Projects on Transferred Works 10 - This section should require the operating entities approval. Washington State Law grants authority to Districts to approve and condition placement of hydro facilities on facilities that they have O&M responsibilities for. Please recognize this in this section.	Thank you for the comment. The D&S features a number of provisions that prescribe operating entity involvement (e.g. Sections 5.A.4 - 5.A.6, 5.A.17, 5.D.3, 5.F.2, and 10). Specifically, Section 10 is designed to ensure that transferred work operators are included in the LOPP contract. In general, Reclamation and operating entities share similar interests (e.g. protection of the federal asset, maintaining project efficiency, continued water deliveries, etc.) and the D&S seeks to adequately protect those interests. The language will remain as written.
23	LOPP Charges	11	Lastly, the Draft D&S does not specify whether a fee is required to be paid by Water User Associations or other entities that are operating "transferred works". It is OWRC's position that fees should terminate or be reduced once the federal debt obligations for the construction of the project have been paid. We recommend that Reclamation provide additional detail about how the LOPP fee will be applied and used, including how it will be used by Reclamation to administer the program.	See D&S Sections 11 and 12.

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24	LOPP Charges	11	I. LEASE PAYMENT: CREDA understands that the 2014 Draft is intended to update the prior D&S to incorporate provisions of recently passed legislation (which CREDA supported), and it appears that the revisions primarily address timeframes associated with the process, as well as distinguishing two lease charges based on whether the Lessee provides om&r on the specific facility. CREDA's previous comments supported a simplified methodology and pricing mechanism for development at conveyance facilities (now defined as Small Conduit Hydropower), which the 2014 Draft has done, but we continue to be concerned about appropriate cost recovery through the standard 3 mill rate applicable to development on dams. The 2014 Draft has also extended the rate review period from 5 years to 10 years. Given that the program is in its infancy, would it be more appropriate to consider a re-evaluation at the earlier date?	The previous active D&S also had a review of 10 years. The 5 years was included in a previous draft D&S, but due to comments received it was changed to 10 years.
25	No Rights Created by D&S	13	<i>To the extent that the D&amp;S defines or explains contract terms and conditions, this provision will not prevent its use in a controversy</i>	Thank you for the comment.
26	LOPP Charges	11.A	"Prior to any work conducted by Reclamation for the Preliminary Lease or LOPP, the Preliminary Lessee and/or Lessee shall provide in advance of expenditures the necessary funding to cover all Reclamation costs pursuant to a cost recovery agreement. 4.1 -> pursuant to a cost recovery agreement	Comment accepted.
27	LOPP Charges	11.A	"Reclamation shall give the Preliminary Lessee and/or Lessee an itemized and detailed estimate of these costs based on its understanding of the LOPP project..." <i>prior to entering into the CRA?</i>	In the interest of expediting the process, this detailed estimate will be provided whenever completed, which may come before the cost recovery agreement is signed.
28	LOPP Charges	11.B	LOPP increase tied to CPI should be dropped in favor of 1.5% escalation . Escalation tied to CPI is difficult to finance.	A 1.5% escalation rate is significantly lower than the historic 30 year average of 3%. The CPI has been replaced by GDP inflator for deterring inflation rates. Annual rate increases have been capped at 3% for evaluation lease fees.



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29	LOPP Charges	11.B(2)	Section 11.B.(2) establishes the framework for calculation of the annual LOPP charge and states that: "Calculation of LOPP payments will begin after the initial successful startup and testing of the generating equipment, or within 20 days of the commencement of initial startup and testing of the generating equipment, whichever comes first." NWRA notes that for many conduit hydropower projects power generation may be sessional or limited in scope. Our members are committed to adding additional hydropower to the grid but some are concerned that the current framework does not account for these timing challenges. They are concerned that this method for determining the annual LOPP charge may create a burden that could make the economics of adding additional hydropower difficult in some circumstances. They also note that the first few years of powerplant operation will be important to project success. Our members are committed to fully paying any and all LOPP payments but ask that Reclamation exercise responsible flexibility and work with irrigation districts when calculating payment schedules and associated timelines.	The annual LOPP charge is a function of the mill rate (2-3 mills) and gross energy produced by the facility. If the facility is not generating energy (e.g. due to seasonal flows), no charge will be assessed during that period.
30	LOPP Charges	11.B(2)(c)	III. PROJECT USE POWER: Section 11.B.(2)( c) contains language dealing with project use power and what appears to be an "offset" of project use power by LOPP power. The provision has not only annual charge implications, but marketing implications, as well as potential revenue implications. We would like to discuss the intent and application of this language with Reclamation and Western at your earliest convenience, and may have additional comments following that discussion.	Thank you for the comment. Due to the unlikelihood that LOPP power would be used to "offset" project use power and for the implications noted, Section 11.B.(2)(c) has been removed from the final D&S.
31	LOPP Charges	11.B(2)(c)	<i>This is not federal power; will Reclamation be buying the power? If federal project use power is made surplus and marketable by a PMA, doesn't the LOPP power become federal?</i>	Section 11.B.2.c has been removed.
32	LOPP Charges	11.B(2)(c)	<i>"Where the LOPP powerplant is offsetting project needs other than that provided by Reclamation PUP..." How can power for "project needs" not be PUP?</i>	Section 11.B.2.c has been removed.

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33	Definitions	4.L	"Reserved Work. Those Reclamation project facilities owned by <del>Reclamation</del> the United States where Reclamation has retained responsibility for carrying out operation and maintenance activities." This edit aligns Reserved Work and Transferred Work definitions.	Thank you for the comment. The language will remain as is.
34	Definitions	4.O	"Water Users Association. A non-governmental organization that has a contract with Reclamation for the <del>use</del> delivery of <del>Reclamation project</del> water through Reclamation project facilities."	Water Users Associations may be governmental organizations. Language will remain as written.
35	Responsibilities	5.A(10)	"resolving requests for extensions of the timeframes related to the solicitation process..." <i>Not conduit?</i>	Conduit development falls within this authority.
36	Responsibilities	5.A(12)	<i>How?</i>	To be left to the RD's discretion.
37	Responsibilities	5.A(13)	<i>When?</i>	When appurtenant.
38	Responsibilities	5.A(14)	<i>When?</i>	As necessary.
39	Responsibilities	5.A(3)	<i>What if he doesn't concur? A veto?</i>	Determining jurisdiction is a collaborative process, between the RD, Senior Advisor, and support staff. No "veto" is necessary.
40	Responsibilities	5.A(4)	"notifying the irrigation district or water users association operating or receiving water through the applicable transferred conduit by letter within 14 calendar days after receiving the <del>request</del> Formal Request to develop at a transferred conduit;"	This section refers to transferred conduits, and will remain as is.
41	Responsibilities	5.A(4)	<i>Assumes only user.</i>	There would only be one operator of the transferred conduit.
42	Responsibilities	5.A(5)	"notifying all irrigation district(s) and/or water users association(s) receiving water from the applicable reserved conduit by letter within 14 days of receiving the <del>request</del> Formal Request to develop hydropower at a reserved conduit;"	Comment accepted.

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43	Responsibilities	5.A(5)	<i>Others? Muni's Indians?</i>	Pub.L. 113-24 grants first right of refusal to irrigation districts and water users associations. If a Municipality or Tribe qualifies as either an irrigation district or water users association, as defined in the D&S, they will receive the same treatment.
44	Responsibilities	5.A(6)	<i>When? Why for conduits? How + when decide?</i>	Meeting will occur prior to soliciting proposals. Both conduits and dams may be eligible for federal development. Decision criteria will be determined at the meeting.
45	Responsibilities	5.B(2)	<i>Veto?</i>	Determining jurisdiction is a collaborative process, between the RD, Senior Advisor, and support staff. No "veto" is necessary.
46	Responsibilities	5.B(3)	<i>Who pays for this?</i>	Reclamation. This meeting may be conducted at low cost, via phone.
47	Responsibilities	5.C, 5.D(1)	Page 5, Responsibilities 5.C. and D.(1) - both refer to the Dam Safety Office being involved in the process. We do not believe that is necessary, or applicable, for conduit projects.	It is possible that public safety issues may exist at conduits and therefore the Dam Safety Office shall remain involved.
48	Responsibilities	5.D(1)	<i>When?</i>	As written, prior to such issuance.
49	Responsibilities	5.D(2)	<i>When?</i>	As written, prior to such issuance.
50	Responsibilities	5.D(3)	"notifying any entity with a Reclamation or PMA contract that relates to power, water use, or capacity right..." <i>Duplicates, conflicts with 5.A(4)(5)(12). When? How?</i>	Section ensures that all stakeholders will be notified of Reclamation's intent to solicit proposals for LOPP development. The medium for communication would be left to the discretion of the Regional Power Manager or Area Office Manager and would be done prior to the issuance

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				of the solicitation. This does not conflict with previous sections.
51	Responsibilities	5.D(3)	"other appropriate stakeholders of the intent to issue a notice to solicit LOPP proposal prior to such issuance;" <i>Who? NGO's? If not notified, can sue?</i>	All appropriate stakeholders. This will be determined by the Regional Director or his/her designee.
52	Responsibilities	5.D(3)	"... intent to issue a notice to solicit LOPP proposals prior to such issuance;" <i>receipt of formal request on conduit?</i>	Do not understand comment.
53	Responsibilities	5.D(4)	Page 6, Responsibilities 5.D.(4) - unneeded if operating entity is applicant.	Agreed. This issue is explained in Section 7.
54	Responsibilities	5.D(6)	<i>When?</i>	Before LOPP proposals are received.
55	Responsibilities	5.D(5)	<i>When?</i>	Before the LOPP solicitation.
56	Responsibilities	5.E(2)	<i>What about Formal Requests for conduit LOPP?</i>	Thank you for the comment. D&S has been revised to clarify this issue. See Section 4.E.1.
57	Responsibilities	5.F(1)	"coordinating before the LOPP solicitation" <i>What?</i>	Thank you for the comment.
58	Responsibilities	5.F(2)	"... the agreed upon terms, roles, and responsibilities resulting from this meeting will be documented in a manner agreeable to the parties involved:" <i>What if parties don't get agreement? Creating a veto power?</i>	The LOPP project would not move forward until an agreement is met. Do not understand what is meant by "creating a veto power."
59	Responsibilities	5.F(3)	<i>When?</i>	After the Preliminary Lease is awarded.
60	Responsibilities	5.F(4), 5.F(5)	<i>Same 45 days?</i>	Studies, analyses, designs, plans, specifications, and related materials associated with the proposed powerplant facilities are to be reviewed within 45 days of receipt.
61	Responsibilities	5.F(6)	<i>Time frame?</i>	Section 8 defines timeframes related to the LOPP contract.
62	Responsibilities	5.F(7)	<i>When?</i>	During the Preliminary Lease period. See Section 4.I.

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63	Responsibilities	5.F(7)	"in advance of expenditures..." <i>Since must be triggered by Formal Request, what happens + who pays before cost recovery agreement signed?</i>	Reclamation.
64	Responsibilities	5.F(8)	<i>When?</i>	As they are received.
65	Jurisdiction for Hydropower Development	6.B	Section 6.B of the D&S notes that hydropower development at Reclamation Dams will continue to be evaluated by the Federal Energy Regulatory Commission (FERC). Some of NWRA's members would like clarification on this position in light of the authorizations contained in PL 113-24.	Pub.L. 113-24 - Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act LOPP authority does not apply to dams.
66	Solicitation and Selection of Lessee	7, General	<p>One final comment on the terminology used in the draft LOPP Directives and Standards is that the language often refers to "LOPP project," "Reclamation project," and "project." It becomes unclear what type of project "project" is referring to and perhaps could be clarified by referring to "LOPP projects" as "LOPP developments" or some other term in order to distinguish it from Reclamation projects. An illustration of this issue is demonstrated by the following language in 7. Solicitation and Selection of Lessee:</p> <p>To be considered for selection, the proposed LOPP project must not impair the efficiency of Reclamation generated power or water deliveries, impact structural integrity of the project (which project?), jeopardize public safety, or negatively affect any other Reclamation project purposes.</p>	Thank you for the comment. D&S has been revised to clarify this issue.
67	Solicitation and Selection of Lessee	7.A(1)	"Reclamation will solicit..." <i>Does not apply to conduit</i>	Agree. Section refers specifically to dams. See subsection header.
68	Solicitation and Selection of Lessee	7.A(1)(d)	<i>What if competing Preference Entities?</i>	Competing preference entities will be evaluated on the merits of the proposals.
69	Solicitation and Selection of Lessee	7.A(1)(d)	Page 8, Solicitation and Selection of Lessee 7.A(1)(d)- as written, assumes Preference Entity plans are not as well qualified as another applicant's.	Thank you for the comment. Section 7.A.1.d has been revised to address this concern.

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70	Solicitation and Selection of Lessee	7.A(2)	Section 7.A(2) discusses the processes and timelines for executing a Formal Request for Development. It provides irrigation districts and water users associated with the conduit a right of first refusal to accept or reject the LOPP. NWRA supports the right of first refusal being offered to applicable irrigation districts. We ask for additional clarification on how the 60 day timeframe would be adhered to if numerous Formal Requests for Development, at different sites within a single irrigation district, were received at the same time or within close proximity to one another. Considering development opportunities at multiple sites within a small timeframe could prove challenging to some of our members and we ask that Reclamation consider these circumstances and work with water users by providing additional time if needed.	Reclamation agrees that this scenario could pose a challenge. Whereas the 60 day timeframe will remain, the D&S authorizes the Regional Director to extend timeframes.
71	Solicitation and Selection of Lessee	7.A(2)(a)	"Transferred Conduits. Upon received a Formal Request for Development..." <i>Only, no solicitation</i>	Yes.
72	Solicitation and Selection of Lessee	7.A(2)(b)(ii)	"If multiple irrigation districts and/or water users associations <del>has</del> have expressed an interest in developing the LOPP..."	Thank you. Comment accepted.
73	Solicitation and Selection of Lessee	7.A(2)(b)(ii)	"The Reclamation Selection Team will review all proposals and provide a recommendation to the Regional Director for award of the Preliminary Lease." <i>Time frame?</i>	Selection Team will have 30 calendar days to review the proposals and provide a recommendation of award. D&S has been revised to reflect this timeframe.
74	Solicitation and Selection of Lessee	7.A(2)(b)(iii)	If <del>the</del> all irrigation district(s)...	Thank you. Comment accepted.
75	Solicitation and Selection of Lessee	7.B	<i>Dams only?</i>	No. There can be solicitations for conduits.
76	Solicitation and Selection of Lessee	7.B(1)	"scoring criteria..." <i>When developed? Uniform?</i>	Due to the unique nature of each proposed LOPP site, scoring criteria will developed on a case by case basis, prior to the solicitation.

C #	Topic	FAC TRMR-61 D&S Section <sup>1</sup>	Comment	Reclamation Response <sup>2</sup>
77	Solicitation and Selection of Lessee	7.B(2)	"If the LOPP solicitation is for a site that is a transferred work..." <i>This concept for dams [7.A(1)] and that for conduits [7.A(2)(a)(ii) and (b)(iii)] appear to conflict.</i>	These do not conflict. There are separate solicitation/selection processes for projects on dams versus projects on conduits/canals per PL 113-24.
78	Solicitation and Selection of Lessee	7.B(3)	<i>What if tribe wants to ...</i>	Hand written comment. Cannot read handwriting.
79	Solicitation and Selection of Lessee	7.B(4)(e)	Section 7.B.(4)(e): The last sentence should be deleted as it is duplicative with the second sentence, as well as being overly broad and potentially onerous to encouraging development of this renewable resource.	Including this sentence allows Reclamation to better compare competing proposals.
80	Solicitation and Selection of Lessee	7.B(4), 7.B(4)(a), 7.B(4)(b)	<i>When?</i>	Up to 150 calendar days. Timeframes will be identified in the proposal.
81	Solicitation and Selection of Lessee	7.B(4), 7.B(4)(a), 7.B(4)(b)	<i>If an applicant does all this work, what prevents another applicant from copying it and competing with the first applicant?</i>	Proposals are reviewed by Reclamation and are kept private. Do not understand the basis for this concern.
82	Development, Construction, and O&M	9(c)(4)	Section 9.C.(4): Please consider revising this sentence as follows: "The PMA is not obligated to purchase the generation OR PROVIDE ANCILLARY OR TRANSMISSION SERVICES from the proposed hydropower facility."	PMA's are under no obligation to do this. This issue would need to be addressed by the PMA's and is outside the scope of the D&S.
83	Development, Construction, and O&M	9.A	"Reclamation can deny the issuance of a LOPP or withdraw a previously issued Preliminary Lease or LOPP at any time based on inadequate design information, unsatisfactory environmental impacts, safety concerns, security concerns, detrimental impact to the Reclamation project, or any other legitimate reason as determined by the Regional Director." <i>Not adverse impacts?</i>	As stated within the section, Reclamation can deny the issuance of a LOPP or withdraw a previously issued Preliminary Lease or LOPP at any time based on a number of conditions, including <i>detrimental impact</i> to the Reclamation project or any other legitimate reason as determined by the Regional Director.

C #	Topic	FAC TRMR-61 D&S Section <sup>1</sup>	Comment	Reclamation Response <sup>2</sup>
84	Development, Construction, and O&M	9.B	<i>Delays caused by this should be excused</i>	In the unlikely event that Reclamation is at fault for the delay, timeframes may be extended by the Regional Director pursuant to Section 8.
85	Development, Construction, and O&M	9.C(4)	The LOPP Directives and Standards should include more detail regarding both the process whereby a PMA may exercise its right to "the first opportunity to purchase the energy" and how Reclamation may exercise its "first right to purchase the powerplant." Both of these provisions raise many questions regarding the procedures that will be implemented under such options and should be clarified by Reclamation. In regards to the first opportunity to purchase the energy granted to the PMA, there needs to be an alternative provision acknowledging and providing for situations in which there are existing contractual obligations granting the first right to purchase to other entities. The provision as it currently stands may hinder the development of hydropower facilities by irrigation districts that have already granted first rights to third parties that are currently purchasing energy from existing facilities.	<p>Additional clarification has been added to D&amp;S (Section 9.C.4): For small conduit hydropower development there is no requirement to offer the PMA the first opportunity to purchase the energy and, if applicable, the RECs produced by the project.</p> <p>Reclamation will work with the Lessee on a case by case basis if there are additional questions or concerns.</p>
86	Development, Construction, and O&M	9.C(4)	"... that PMA will be given the first opportunity to purchase the energy and, if applicable, RECs produced by the project." This is not federal power. What is the legal authority for this? Reclamation only is leasing a facility. What if the district or WUA wants to keep power?	<p>Note that PMAs may purchase non-federally generated power. The Lessee must give the PMA the first opportunity to purchase the power, but the Lessee is under no obligation to sell generation or RECs to the PMAs if an agreement cannot be met.</p> <p>Addition clarification has been added to D&amp;S (Section 9.C.4): For small conduit hydropower development there is no requirement to offer the PMA the first opportunity to purchase the energy and, if applicable, the RECs produced by the project.</p>



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87	Development, Construction, and O&M	9.C(4)	".... that PMA will be given the first opportunity to purchase the energy and, if applicable, RECS produced by the project." <i>Why? The PMA doesn't need RECs!</i>	Currently, RECs for qualifying generation marketed through the PMA are transferred to preference customers. Preference customers may be subject to State Renewable Portfolio Standards.
88	Development, Construction, and O&M	9.C(4)	<p>II. PMA INVOLVEMENT/MARKETING: CREDA appreciates the inclusion of language regarding PMA involvement in the process. We continue to believe it important the appropriate PMA be involved in evaluating LOPP applications for projects (possibly other than Small Conduit Hydropower proposals). 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&amp;S require that Reclamation consult with the PMA in a manner that leaves sufficient time for the PMA to, in turn, have sufficient time to consult with its customers before making a determination whether to purchase the output of a project. <u>Is a 60 calendar day period from the time of the offer to the PMA sufficient to permit the PMA to consult with its customers? 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?</u> Previously drafted FAC 04-08 specifically stated that the right of refusal would be based on "a cost-based rate". In a recent presentation by Reclamation on the Draft 2014, this issue was raised, and we propose a discussion with Reclamation and the Western Area Power Administration on this issue as well as the lease payment crediting language (Section 12). We believe this appears to be an equitable approach, provided that these credits are established only 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.</p>	<p>Thank you for the comment. We believe that 60 days is a sufficient window for PMAs to consult with power customers. The offer may be set at whatever price the Potential Lessee sees fit (the offer does not need to be cost-based). In the event the PMA declines the offer, the Potential Lessee is under no obligation to maintain the same pricing when it proceeds to sell to the market.</p> <p>We agree that small conduit hydropower should be exempted from this process. Addition clarification has been added to D&amp;S (Section 9.C.4): For small conduit hydropower development there is no requirement to offer the PMA the first opportunity to purchase the energy and, if applicable, the RECs produced by the project.</p>

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89	Development, Construction, and O&M	9.C(4)	Page 14, Development, Construction and O&M, 9.C.(4) - Granting the PMA right of first refusal to purchase energy generated conflicts with existing contractual agreements operating entities have with current power purchasers. Will existing contracts be given any consideration in the process?	Reclamation will work with the Lessee on a case by case basis if existing contractual obligations granting the first right to purchase to other entities exist. Additional clarification has been added to D&S (Section 9.C.4): For small conduit hydropower development there is no requirement to offer the PMA the first opportunity to purchase the energy and, if applicable, the RECs produced by the project. Reclamation will work with the Lessee on a case by case basis if there are additional questions or concerns.
90	Development, Construction, and O&M	9.D	Security of performance payment bond for the entire cost of facility should be dropped in favor of letter of credit or other security in amounts only needed to restore Water flow bypass around power plant and rehab Reclamation property. Fund requirement for operation and maintenance should be dropped if proceeding is provided as it conflicts with ability to finance project.	Thank you for the comment. D&S has been revised to allow either a Performance Bond or Irrevocable Letter of Credit. See Section 9.D.6. Note that there is no fund requirement for O&M.
91	Development, Construction, and O&M	9.D	Paragraph describes the minimum conditions that must be addressed in the LOPP contract. The provisions in that paragraph provide significant protections to the United States but generally do not extend the same protection to Water User Associations. For example, Paragraph 9.D(7) provides 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 in connection with its performance under the LOPP.” Water User Associations should receive the same protection for loss or damage resulting from actions under the LOPP that affect Water User Associations’ ability to delivery water to their members.	The protections set forth in the D&S are designed to protect federal assets and project operations - which in turn, protect operators of transferred works and other project beneficiaries. Additional protection for Water Users Associations may be dealt with under Section 10.

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92	Development, Construction, and O&M	9.D(4)	Page 15, Development, Construction and O&M, 9.D.(4) - While inspecting, the USBR needs to ensure, along with public safety and regulatory compliance, the primary purpose of the facilities, irrigation, is protected.	Thank you for the comment. The section reads, "Reclamation will inspect the powerplant and related facilities to the extent necessary to ensure public safety and compliance with NEPA, ESA, NHPA, and other statutory commitments." A statutory commitment of the Reclamation Project Act of 1939 (section 9c) is that the LOPP will not impair the efficiency of the project for irrigation purposes. Therefore, the inspection will ensure that the irrigation function is protected.
93	Development, Construction, and O&M	9.D(4)	Page 15, Development, Construction and O&M, 9.D.(4) - Additionally, in this section, how will disagreements be resolved? What method?	We do not want to prescribe a one size fits all method to resolve disagreements. There should be flexibility - the LOPP Lead may assist here.
94	Development, Construction, and O&M	9.D(5)	"The Lessee will be required to have security procedures and practices commensurate with security requirements, as determined by Reclamation." <i>For a propeller in a weir box?</i>	Thank you for the comment.
95	Development, Construction, and O&M	9.D(6)	<i>Need for small conduit?</i>	Yes.

C #	Topic	FAC TRMR-61 D&S Section <sup>1</sup>	Comment	Reclamation Response <sup>2</sup>
96	Development, Construction, and O&M	9.D(6)	Page 15, Development, Construction and O&M, 9.D.(6) - Bonds are appropriate for construction but are not preferred for removal and clean up many years past development. At a minimum the administration of retaining bonds is cumbersome. This should be a requirement of third party applicants, not operating entities. Operating entities will already have O&M responsibility for the facility contractually.	<p>Thank you for the comment. The general liability for the O&amp;M of the federal facility, as covered in the formal transfer contract would not extend to a privately owned LOPP plant. The bonding requirements, as well as Lessee selection process provides sufficient protection for the Reclamation project.</p> <p>Note that the D&amp;S has been revised to allow either a Performance Bond or Irrevocable Letter of Credit. See Section 9.D.6.</p>
97	Development, Construction, and O&M	9.D(7)	Paragraph 9.D(7) also provides that “[t]he Lessee shall have no claim against the United States for loss of generation caused by the normal or extraordinary O&M of the Reclamation project.” Again, Water User Associations should receive similar protection from claims by the Lessee for loss of generation caused by the normal or extraordinary O&M of the Reclamation project to the related facilities of the Water User Association.	The protections set forth in the D&S are designed to protect federal assets and project operations - which in turn, protect operators of transferred works and other project beneficiaries. Additional projection for Water Users Associations may be dealt with under Section 10.
98	Development, Construction, and O&M	9.D(7)	Section 9.D.(7) establishes protections for the United States from the Lessee. NWRA notes that many irrigation districts face the same management challenges as Reclamation and should be afforded similar protection. We encourage Reclamation to consider language in the D&S that states: “the Lessee shall have no claim against an irrigation district for loss of generation caused by the normal or extraordinary O&M of the project including, but not limited to, the quantity, quality, or timing of water or power delivered by project. The Lessee will be required to modify operations required by any future legal constraints associated with the operation of the project.”	The protections set forth in the D&S are designed to protect federal assets and project operations - which in turn, protect operators of transferred works and other project beneficiaries. Additional projection for Water Users Associations may be dealt with under Section 10.

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99	Development, Construction, and O&M	9.D(7)	Page 15, Development, Construction and O&M, 9.D.(7) - It is not lawful for irrigation districts in Washington State to indemnify the USBR. Please find an alternative method, such as naming the USBR as an additional insured, to address Reclamation's concerns.	Thank you the comment. If the indemnity clause, as written, violates state law Reclamation will work with the Lessee on a case by case basis to address and reconcile these concerns.
100	Development, Construction, and O&M	9.D(7)	Page 15, Development, Construction and O&M, 9.D.(7) - This section is the appropriate place to comment on the need for liability coverage for the operating entity and its landowners. A third party developer needs to carry liability insurance sufficient to cover the exposure of interrupted water deliveries to high value crops in the event of an interruption in water service caused by the operation of their hydropower facilities. Consequential damages need to be addressed.	The protections set forth in the D&S are designed to protect federal assets and project operations - which in turn, protect operators of transferred works and other project beneficiaries. Additional protection for Water Users Associations may be dealt with under Section 10.
101	Development, Construction, and O&M	9.D(8)	Paragraph 9.D(8) requires the Lessee “to compensate Reclamation for lost generation and other interruptions to operations at Reclamation facilities due to construction, O&M, or any other extraordinary events at the Lessee’s facilities.” No similar provision is included in the Draft D&S to protect Water User Associations.	The protections set forth in the D&S are designed to protect federal assets and project operations - which in turn, protect operators of transferred works and other project beneficiaries. Additional projection for Water Users Associations may be dealt with under Section 10.
102	Development, Construction, and O&M	9.D(8)	Section 9.D.(8) discusses remedies that a Lessee must provide to Reclamation, if the Lessee’s facilities cause interruptions to operations at Reclamation facilities. As written this section would require compensation to Reclamation for lost power generation costs. NWRA asks that the cost of purchasing replacement power for the affected PMA customers be considered when assessing compensation. We also suggest extending compensation to water users for any disruption of operations caused by a Lessee’s facility. If the interruption occurs on a transferred work we would encourage compensation be provided to the entity managing the transferred work or their designee.	The protections set forth in the D&S are designed to protect federal assets and project operations - which in turn, protect operators of transferred works and other project beneficiaries. Additional projection for Water Users Associations may be dealt with under Section 10.

C #	Topic	FAC TRMR-61 D&S Section <sup>1</sup>	Comment	Reclamation Response <sup>2</sup>
103	Development, Construction, and O&M	9.D(8)	Section 9.D.(8): This provision may be inconsistent with others in which there is a requirement that the project not impair existing operations and power generation 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.	This provision provides an additional layer of protection to Reclamation as well as Reclamation water and power customers. The measurement for this compensation may be discussed during LOPP contract negotiations.
104	Development, Construction, and O&M	9.D(8)	Page 16, Development, Construction and O&M, 9.D.(8) - replace "event at the Lessee's" with "event at or caused by Lessee's".	Comment accepted. Thank you.
105	Development, Construction, and O&M	9.D(9)	Ownership of the hydro plant and equipment must always remain in Lessee hands with no reversion to Reclamation. Otherwise financing may not be obtainable.	The Lessee retains title to the LOPP plant. Only if the Lessee sells or disposes of the plant, could Reclamation purchase the plant.
106	Development, Construction, and O&M	9.D(9)	Section 9.D.(9) states that "Reclamation will have the first right to purchase the powerplant should the Lessee need to sell or dispose of the facilities in which it has title". It also notes that the Reclamation Regional Director must give written approval before a facility is sold or transferred. NWRA believes that irrigation districts with an interest in the accompanying conduit should be notified in writing prior to the disposal, sale, and transfer or decommissioning of any associated powerplant. In addition, NWRA believes that associated irrigation districts should given the right of first refusal on powerplants that are for sale. Our members believe that this is consistent with the intent of the PL 113-24 as well as Section 7.A(.2) of the D&S.	Thank you for the comment. Reclamation will retain the right of first refusal on LOPP plants if the Lessee should need to sell or dispose of the facility. If Reclamation refuses to purchase the LOPP plant, it may become available to Water Users and Irrigation Districts for purchase. It is not clear how Pub.L. 113-24 applies here.
107	Development, Construction, and O&M	9.D(9)	"... should the Lessee want to sell or dispose of the facilities in which it has title." <i>Wants?</i>	Thank you for the comment.

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108	Development, Construction, and O&M	9.D(9)	"... should the Lessee want to sell or dispose of the facilities in which it has title." <i>How demonstrate?</i>	Thank you for the comment.
109	Development, Construction, and O&M	9.D(9)	Section 9.D.(9): In the event Reclamation is interested in purchasing the powerplant "should the Lessee need to sell or dispose of the facilities...", 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.	Agree. There is not a built in timeframe for this. The transaction will take as long as it needs to take.
110	Development, Construction, and O&M	9.D(9)	Page 16, Development, Construction and O&M, 9.D.(9) - Specify how purchase price will be determined.	Purchase price will be determined on a case by case basis by the Regional Director in coordination with power and water stakeholders and the appropriate PMA. See Section 5.A.17
111	Authority and Introduction	Authority, 1	Referencing the Authority and Introduction, <i>TRMR Doesn't recognize Tipton Bill as amendment to '39 Act</i>	Disagree. Authority reads, "Reclamation Project Act of 1939 (Act of August 4, Ch. 418, 53 Stat. 1187) as amended." Tipton Bill amended the 1939 Act. That said, we will make it more explicit even though it is adequately captured.
112	General	n/a	As a general comment we ask that Reclamation work closely with irrigation districts that will be affected by the development of hydropower on conduits that they depend on for water. As with any new program challenges will arise and good communication is often the difference between a small challenge and a big challenge. We look forward to working with our federal partners and others to continue delivering clean water and helping develop clean energy.	Thank you. We work closely with our water customers and will continue to do so for LOPP projects.

C #	Topic	FAC TRMR-61 D&S Section <sup>1</sup>	Comment	Reclamation Response <sup>2</sup>
113	General	n/a	<p>Many of the determinations made in the LOPP process as presented in the draft LOPP Directives and Standards grant substantial discretion to a singular decision-maker. What is absent from this process is an administrative appeal provision that would allow for internal resolution over disagreements with a decision. The benefit of such a procedure is apparent in regard to the many conditions that Reclamation may impose on a hydropower development that could render the project economically infeasible.</p>	<p>Decisions, including jurisdictional determinations, timeframe extensions, the award of the Preliminary Lease, etc. are delivered by a singular decision-maker, but are made in consultation with a number of parties, including technical experts, stakeholder groups, and the Lessee, as necessary. In addition, the terms of the LOPP contract are negotiated with the Lessee. With that said, it is the priority of the Administration and Reclamation to encourage and support the development of reliable renewable hydropower at federal facilities. Recognize that Reclamation is statutorily obligated to safeguard those facilities and project operations.</p>
114	General	n/a	<p>CREDA commented on previous versions of LOPP D&amp;S on 10/21/05, 5/29/07, 1/13/12 and 6/4/12.</p>	<p>We appreciate your comments and have incorporated many of them.</p>



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115	General	n/a	<p>As is evident from the many Reclamation facilities without hydropower installations, hydropower development is economically marginal. The risk to develop, construct, finance and operate a hydropower project is more than most public (non-Federal) agencies can assume. However, hydropower can be important in helping to meet the energy needs of our growing communities. It would be our desire that an effort be made in the Directives and Standards to create an incentive or create a partnering effort among Reclamation, the Lessee and PMA's as appropriate to allow for economically developable hydropower. In an effort to provide such an environment, we have these suggestions:</p> <p>First, providing for a cost sharing arrangement on expenses associated with the Preliminary Lease would be very beneficial. Perhaps a 50/50 split on the first \$50,000 to \$100,000 could be considered, and negotiated in the Preliminary Lease on a case by case basis depending on size and economic benefit anticipated from the project. The value of Reclamation staff review time could be part of the cost share provided by Reclamation.</p> <p>Second, leverage the contracts and relationships with PMA's and Reclamation to facilitate transmission. Allowing a project to use existing contracts and arrangements could improve access to and reduce costs of transmission.</p> <p>Third, we suggest the sharing of generation data between the Department of the Interior (DOI) and Department of Energy (DOE) be more streamlined in order to develop a consistent system to facilitate marketing of Renewable Energy Credits (REC's) from hydropower generation developed under a LOPP.</p> <p>Fourth, we suggest the annual LOPP charge be negotiated in the Lease with a amounts listed be set as maximum caps.</p>	<p>Thank you for the suggestions. See responses below.</p> <p>First, no additional cost share funding is available. However WaterSMART grants (50/50 cost share funding) are available for renewable energy projects, such as LOPP projects. See: <a href="http://www.usbr.gov/WaterSMART/weeg/index.html">http://www.usbr.gov/WaterSMART/weeg/index.html</a></p> <p>Second, transmission is a PMA issue. Whereas, Reclamation is receptive to discussing this matter with the PMAs, the D&amp;S has no authority over the PMAs.</p> <p>Third, RECs marketing is the responsibility of the LOPP developer. Currently, Reclamation does share generation data with the Department of Energy (through PMAs) and REC registries exist to support the REC market.</p> <p>Fourth, Reclamation will not negotiate rates. The rates set in the D&amp;S are adequate and reasonable.</p>

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116	General	n/a	<p>During our discussion on the LOPP process it became clear that there are two distinctly different sets of potential LOPP applicants. There are the third party developers (not USBR or the operating entity) that would like to develop sites and the operating entity. Due to the operating entity's responsibility to operate, maintain and replace the facilities they have an inherent interest in the continued operation of their system to ensure reliability for the primary purpose of irrigation.</p> <p>With that comes a certain level of acceptance of liability for their actions and the impacts to the landowners they deliver to. A third party developer does not have the same contractual obligations and therefore, the operating entity and the landowners they deliver to, will need a third party to insure for a very large liability exposure. As we look through this document it appears that it may be prudent to consider separate DNS's for operating entities and third party development applicants to address these and other variations that are difficult to separate in one document.</p>	<p>The third party operating entity would be under the same contractual obligations as any operating entity to ensure that the LOPP project does not impair the efficiency of Reclamation generated power or water deliveries, jeopardize public safety, or negatively affect any other Reclamation project purposes. A second D&amp;S for third party Lessee is unnecessary</p>
117	General	n/a	<p>We understand that a MOU between the USBR and FERC needs to clarify the jurisdictional questions that we discussed during our meeting. The final LOPP DNS should clearly state that Reclamation has jurisdiction for all hydropower development on USBR conduit facilities and no parallel LOPP and FERC licensing actions will occur.</p>	<p>Thank you for the comment.</p>
118	General	n/a	<p>We are pleased that this DNS recognizes the value of having the operating entity as the hydropower developer. It is imperative that we create a process for hydropower development on USBR facilities that in no way jeopardizes the primary purpose of the facilities, the delivery of irrigation water for the production of commercial agricultural crops.</p>	<p>Agreed. Thank you for the comment.</p>
119	General	n/a	<p>On January 13, 2012, OWRC submitted extensive comments on a similar Draft Directive and Standard (FAC 04-08). As explained in that comment letter, OWRC supports Reclamation's goal of developing a more consistent LOPP process. OWRC also supports Reclamation's efforts to include provisions in its Directives and Standards that ensure LOPP projects will not impair the efficiency of Reclamation project water deliveries. Such provisions are necessary to protect the interests of the United States and the</p>	<p>Thank you for the comment. The D&amp;S features a number of provisions that prescribe Water Users Association involvement (e.g. Sections 5.A.4 - 5.A.6, 5.A.17, 5.D.3, 5.F.2, and 10). Specifically, Section 10 is designed to ensure that transferred work operators</p>

C #	Topic	FAC TRMR-61 D&S Section <sup>1</sup>	Comment	Reclamation Response <sup>2</sup>
			<p>rights of those entities, such as OWRC’s members, that have existing water contracts with Reclamation. However, OWRC strongly urged Reclamation to incorporate additional protections into the draft to protect the interests and rights of those entities that have existing contracts with Reclamation. Those entities have made significant investments in their facilities, which could be adversely affected by the construction and operation of hydropower projects.</p> <p>OWRC appreciates that Reclamation considered OWRC’s previous comments in developing a 2012 temporary Directive &amp; Standard related to the LOPP process (FAC TRMR-52), which was similar to the current Draft D&amp;S. However, Reclamation’s response to OWRC’s 2012 comments and the provisions contained in the Draft D&amp;S reflect Reclamation’s view that it can adequately protect the interests of Water Users Associations,1 with little or no input from Water Users Associations. In OWRC’s view, Reclamation fails to recognize that Water Users Associations are often more familiar than Reclamation with the particular federal projects with which their contracts are associated. Although the Draft D&amp;S provides certain preferences and protections to entities with Operation &amp; Maintenance (“O&amp;M”) transfer contracts, the Draft D&amp;S often does not extend those preferences and protections to other Water Users Associations. OWRC strongly urges Reclamation to revise the Draft D&amp;S to better protect the interests of all Water Users Associations that could be adversely affected by the construction or operation of a hydropower development on a Reclamation facility.</p>	<p>are included in the LOPP contract. In general, Reclamation and Water Users Associations share similar interests (e.g. protection of the federal asset, maintaining project efficiency, continued water deliveries, etc.) and the D&amp;S seeks to adequately protect those interests.</p>