

Reclamation Manual

Directives and Standards

| | |
|----------------------------|--|
| Subject: | Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges |
| Purpose: | Establish the process requirements and charges associated with development of hydropower at a Bureau of Reclamation facility where Reclamation has the authority for power development. The benefits of this Directive and Standard (D&S) are improved internal and external communication, efficiency, and transparency of LOPP requirements. |
| Authority: | Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388); the Town Sites and Power Development Act of 1906 (Act of April 16, 1906, ch. 1631, 34 Stat. 116); the Reclamation Project Act of 1939 (Act of August 4, 1939, ch. 418, 53 Stat. 1187); the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2013 (Act of August 9, 2013, 127 Stat. 498); and other applicable laws, Executive Orders, judicial decisions, policies, regulations, and acts relating to individual dams or projects. |
| Approving Official: | Deputy Commissioner – Operations |
| Contact: | Power Resources Office (86-51000) |

1. **Introduction.** A LOPP is an arrangement given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. A LOPP project must not impair the efficiency of Reclamation generated power or water deliveries, jeopardize public safety, or negatively affect any other Reclamation project purposes. The terms and conditions for the use of any Reclamation-owned facilities and lands related to the LOPP project will be addressed in the LOPP. A LOPP is used when Reclamation has authority to develop power on any or all features of a Federal project. This authority is based on the Town Sites and Power Development Act of 1906, the Reclamation Project Act of 1939, and project-specific statutes. The Town Sites and Power Development Act of 1906 authorized the Secretary of the Department of the Interior to lease surplus power or power privileges. The Reclamation Project Act of 1939, Section 9(c), as amended by the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2013, authorizes a maximum term of 40 years for a LOPP, gives the first opportunity to enter into a LOPP at Reclamation conduits to irrigation districts and water users associations operating or receiving water from such conduits, and gives 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. Section 9(c) also gives Reclamation the authority to collect specific charges for a LOPP.
2. **Applicability.** This D&S applies to all Reclamation employees that work on LOPP activities, and is applicable to any LOPP project where a solicitation for a LOPP project is issued or a formal request is received after the release of this D&S. This D&S does not

Reclamation Manual

Directives and Standards

apply to activities necessary for Federal development of a powerplant at a Reclamation site. 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.

3. Definitions.

- A. **Conduit.** Any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity or conveyance of water over or through a dam, its abutments, or foundation via existing or proposed conveyance features.
- B. **Federal Energy Regulatory Commission (FERC) License.** A legal authorization issued by FERC to an entity authorizing the construction and operation of a hydroelectric project for a specified term, typically 30-50 years.
- C. **Formal Request for Development.** 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.
- D. **Irrigation District.** The term irrigation district means any irrigation, water conservation or conservancy, multicounty water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.
- E. **Lessee.** Any entity issued a preliminary lease or LOPP.
- F. **LOPP.** A LOPP is a contractual authorization issued by Reclamation to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes.
- G. **LOPP Lead.** The Reclamation employee that manages the preliminary lease and LOPP as determined by the regional power manager or area office manager.
- H. **Preference Entity.** Municipalities and other public corporations or agencies including tribes,¹ and also cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof.
- I. **Preliminary Lease.** An agreement between Reclamation and the lessee that outlines the responsibilities of Reclamation and the lessee during the negotiation of the LOPP,

¹ Tribes functioning as local governments qualify for preference under Section 9(c) of the Reclamation Project Act of 1939, as amended (Act of August 4, 1939, ch. 418, 53 Stat. 1187). See Solicitor's Opinion Barry P, Frank, M-36771 (July 25, 1967).

Reclamation Manual

Directives and Standards

and directs that the potential lessee must enter into a cost recovery agreement to provide advance funding to Reclamation before Reclamation incurs any costs for work related to the preliminary lease or LOPP. A preliminary lease is non-transferrable and does not guarantee that a LOPP will ultimately be awarded.

- J. **Renewable Energy Certificates (RECs).** A verifiable certificate laying claim to and accounting for the associated attributes of generation from units that qualify as renewable generation under state regulatory requirements (such as Renewable Portfolio Standards) and in voluntary market programs.
 - K. **Reserved Work.** Those facilities owned by Reclamation where Reclamation has retained responsibility for carrying out operation and maintenance (O&M) activities.
 - L. **Small Conduit Hydropower.** A hydropower plant constructed at a conduit with the capability of producing 5 megawatts or less of electric capacity.
 - M. **Transferred Work.** A Reclamation project facility where the O&M of that facility is carried out by a non-Federal entity under the provisions of a formal O&M transfer contract.
 - N. **Water Users Association.** An organization that has a contract with Reclamation for the use or delivery of Reclamation project water.
4. **Responsibilities.**
- A. **Regional Directors.** Regional directors, or their designees, are responsible for:
 - (1) notifying the Power Resources Office and the Dam Safety Office of a Formal Request for Development;
 - (2) determining jurisdiction for hydropower development no later than 30 calendar days after receipt of a Formal Request for Development;
 - (3) obtaining concurrence from the Senior Advisor, Hydropower, on jurisdiction;
 - (4) notifying the irrigation district or water users association operating the applicable transferred work conduit by letter within 14 calendar days after receiving the request to develop at a transferred work conduit;
 - (5) notifying all irrigation district(s) and/or water users association(s) receiving water from the applicable reserved work conduit by letter within 14 days of receiving the request to develop hydropower at a reserved work conduit;

Reclamation Manual

Directives and Standards

- (6) contacting their power and water stakeholders and power marketing administration (PMA) to coordinate a meeting to determine interest in funding Federal development of the powerplant prior to the solicitation of any LOPP project potentially larger than 1 megawatt;
- (7) ensuring that the processes outlined below are carried out in the defined timeframes;
- (8) making the final determination on what entity will be awarded a preliminary lease within 14 calendar days after receiving recommendation from selection committee pursuant to Paragraph 4.E.(2) of this D&S;
- (9) sending the official notification of selection of the lessee no later than 7 calendar days after selection;
- (10) resolving requests for extensions of the timeframes related to the solicitation process and development under a preliminary lease and/or LOPP that are outlined in this D&S;
- (11) ensuring National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and other statutory compliance;
- (12) ensuring appropriate tribal consultation for applicable LOPP projects;
- (13) notifying the Senior Advisor, Hydropower, regarding NEPA approach pursuant to Paragraph 9.C.(2) of this D&S;
- (14) resolving dam safety, physical security, cybersecurity, and O&M recommendations concerning the LOPP project's impact to Reclamation facilities;
- (15) reviewing and signing the LOPP upon concurrence from the Senior Advisor, Hydropower;
- (16) establishing a maximum timeframe for construction; and
- (17) coordinating a meeting with their power and water stakeholders and PMA to determine the interest in a Federal purchase of the LOPP facilities pursuant to Paragraph 9.D.(9) of this D&S.

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

- (1) overseeing, reviewing, and revising Reclamation's LOPP D&S and processes;

Reclamation Manual

Directives and Standards

- (2) coordinating with regional directors and FERC regarding jurisdictional questions and issues;
 - (3) setting up an annual meeting with the regions, the Power Resources Office, the Dam Safety Office, and the Technical Service Center to discuss upcoming LOPP workload;
 - (4) reviewing the annual LOPP charge periodically at an interval of every 10 years to ensure consistency with the parameters of the Reclamation Project Act of 1939; and
 - (5) if funding is available, providing a breakdown structure for work performed by Reclamation prior to execution of preliminary lease agreement.
- C. **Chief, Dam Safety Office.** Prior to the award of a preliminary lease, the Chief, Dam Safety Office, is responsible for advising the regional director on known dam safety issues, the work required to correct those issues, and the timeline and estimated cost for that work.
- D. **Regional Power Manager or Area Office Manager.** The regional power manager or area office manager, as designated by the regional director, is responsible for:
- (1) notifying the Power Resources Office, the Dam Safety Office, and the appropriate PMA of the intent to issue a notice to solicit LOPP proposals prior to such issuance;
 - (2) notifying any entity with a Reclamation or PMA contract that relates to power, water use, or capacity right, associated with the project or projects involved in the LOPP proposal, and any other appropriate stakeholders of the intent to issue a notice to solicit LOPP proposals prior to such issuance;
 - (3) if applicable, pursuant to Paragraph 7 in this D&S, preparing and ensuring publication of a public solicitation for applications for a LOPP within 60 calendar days of the formal determination of jurisdiction of authority;
 - (4) creating a selection team to review the LOPP proposals;
 - (5) assigning a LOPP Lead; and
 - (6) notifying the Power Resources Office, the Dam Safety Office, and the appropriate PMA that a preliminary lease has been executed.
- E. **Selection Team.** The selection team is responsible for:
- (1) reviewing all LOPP proposals; and

Reclamation Manual

Directives and Standards

- (2) providing a recommendation to the regional director for award of the preliminary lease.

F. **LOPP Lead.** The LOPP Lead is responsible for:

- (1) coordinating before the LOPP solicitation with the Reclamation offices (i.e., the appropriate region and area offices, the Power Resources Office, the Dam Safety Office, environmental program offices, and the Technical Service Center) that will be potentially involved in the LOPP to discuss the scope of the LOPP project, timelines, resources, public and dam safety issues, environmental compliance, and other technical issues;
- (2) ensuring that under circumstances where a water user organization has O&M transfer contracts associated with the existing Federal project, or where a power customer 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 lessee, and that water user/power customer to understand the roles and responsibilities in the LOPP process, and that the agreed upon terms, roles, and responsibilities resulting from this meeting will be documented in a manner agreeable to the parties involved;
- (3) coordinating a meeting with Reclamation and the lessee to discuss Reclamation's involvement in the public safety aspects of the LOPP project;
- (4) coordinating and ensuring the collection of all necessary studies, analyses, designs, plans, specifications, and related material associated with the proposed powerplant facilities from the lessee;
- (5) coordinating and ensuring the Reclamation review of all necessary studies, analyses, designs, plans, specifications, and related material associated with the proposed powerplant facilities within 45 calendar days of receipt of those studies from the lessee;
- (6) creating and negotiating the LOPP contract;
- (7) ensuring the collection and accounting of the necessary funding from the lessee, in advance of expenditures, to cover all Reclamation costs for work performed for the preliminary lease or LOPP;
- (8) submitting to the Senior Advisor, Hydropower, copies of the following documents: public solicitation (if applicable pursuant to Paragraph 7 in this D&S), preliminary lease, NEPA documentation (i.e., categorical exclusion, environmental assessment, or environmental impact statement), cost-recovery agreement, and LOPP contract; and

Reclamation Manual

Directives and Standards

- (9) coordinating on-site facility inspections in accordance with Paragraph 9.D.(4) of this D&S.
5. **Project-Specific Authorities Control.** LOPP processes may involve projects or facilities that are subject to project-specific statutes, regulations, judicial decisions, existing contracts, or other authorities. These specific authorities will control the LOPP process if there is a conflict with this D&S.
6. **Jurisdiction for Hydropower Development.**
- A. **Hydropower Development at Reclamation Conduits.** In accordance with 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 of 2013, Reclamation has jurisdiction for authorizing all conduit hydropower development on Reclamation-owned facilities through LOPP.
- B. **Hydropower Development at Reclamation Dams.** Requests to develop hydropower at Reclamation dams will be evaluated under the 1992 Memorandum of Understanding (MOU) between Reclamation and FERC (Appendix A) to determine which agency has jurisdiction over the project and to address potential jurisdiction issues between the two agencies. If Reclamation and FERC alter the 1992 MOU in the future, the version of the Reclamation-FERC agreement at the time of the LOPP solicitation will govern jurisdiction between the agencies. The Senior Advisor, Hydropower, and the respective regional director will coordinate and agree on jurisdiction before proceeding with the LOPP solicitation.
7. **Solicitation and Selection of Lessee.**
- A. Selection of a lessee will be in accordance with Section 9(c) of the Reclamation Project Act of 1939, as amended. 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 Reclamation project, jeopardize public safety, or negatively affect any other Reclamation project purposes.
- (1) **LOPP on Dams.**
- (a) Reclamation will solicit proposals for hydropower development on dams under a LOPP through a public process (such as the Federal Register) to ensure fair and open competition. LOPP solicitations will either be independently initiated by Reclamation or initiated by Reclamation upon receiving a Formal Request for Development by an interested party.
- (b) The solicitation for LOPP proposals will allow up to 150 calendar days from the date of publication for applicants to submit proposals, and the selection team

Reclamation Manual

Directives and Standards

will have 30 calendar days to review the proposals and provide a recommendation to the regional director for award of the preliminary lease.

- (c) Reclamation will give preference to all entities that qualify as preference entities, provided that the preference entity is well qualified to develop and provide for long-term O&M of the hydropower facility.
- (d) If one applicant is a preference entity and the other is not, and the preference entity's proposed plans are not as well qualified as the non-preference entity's plans, Reclamation will inform the preference entity of the specific reasons why its plans are not as well qualified and afford up to 30 calendar days for the preference entity to render its plans at least as well qualified as the other plans. All other applicants will be informed of this action. If the plans of the preference entity are rendered at least as well qualified within the time allowed, Reclamation will favor the preference entity. If the preference entity's plans are not rendered at least as well qualified within the time allowed, Reclamation will favor the other applicant.

(2) **LOPP on Transferred Work Conduits.**

- (a) Upon receiving a Formal Request for Development from the irrigation district or water users association operating the applicable transferred work conduit, Reclamation will allow the entity up to 150 calendar days after receipt of the Formal Request for Development to submit a proposal for hydropower development that includes the information required in Paragraphs 7.C.(4)(b) through 7.C.(4)(i) in this D&S. During the 150 calendar day timeframe, Reclamation will not solicit proposals from other entities and no other entity is eligible to receive the LOPP. Once a proposal deemed acceptable by the selection team is received, the selection team will provide a recommendation to the regional director for award of the preliminary lease. The selection team will have 14 calendar days to review all proposals.
- (b) Upon receiving a Formal Request for Development from a party other than the irrigation district or water users association operating the applicable transferred work conduit, Reclamation will first offer the LOPP to the operating entity. Following the offer, Reclamation will allow up to 60 calendar days for the irrigation district or water users association to either accept or reject, in writing, the opportunity to develop hydropower through a LOPP.
 - (i) If the irrigation district or water users association has interest in developing hydropower through a LOPP, the entity will be allowed 150 calendar days after acceptance to submit a proposal for hydropower development that includes the information required in Paragraphs 7.C.(4)(b) through 7.C.(4)(i) in this D&S. During the 150 calendar day timeframe, Reclamation will not solicit proposals from other entities and no other

Reclamation Manual

Directives and Standards

entity is eligible to receive the LOPP. Once a proposal deemed acceptable by the selection team is received, the selection team will provide a recommendation to the regional director for award of the preliminary lease. The selection team will have 14 calendar days to review all proposals.

- (ii) If the irrigation district or water users association rejects the opportunity to develop hydropower through a LOPP or fails to submit an acceptable proposal within the 150 calendar day timeframe, Reclamation will solicit proposals through a public process (such as a local news publication or Federal Register Notice) to ensure fair and open competition. Preference will apply as detailed in Paragraphs 7.A.(1)(c) and 7.A.(1)(d).

(3) **LOPP on Reserved Work Conduits.**

- (a) Upon receiving a Formal Request for Development, Reclamation will first offer the LOPP to the irrigation district or water users association receiving water from the applicable reserved work conduit. Following the offer, Reclamation will allow up to 60 calendar days for the irrigation district or water users association to either accept or reject, in writing, the opportunity to develop hydropower through a LOPP.
 - (i) If only one irrigation district or water users association has interest in developing hydropower through a LOPP, the entity will be allowed 150 calendar days after acceptance to submit a proposal for hydropower development that includes the information required in Paragraphs 7.C.(4)(b) through 7.C.(4)(i) in this D&S. During the 150 calendar day timeframe, Reclamation will not solicit proposals from other entities and no other entity is eligible to receive the LOPP. Once a proposal deemed acceptable by the selection team is received, the selection team will provide a recommendation to the regional director for award of the preliminary lease. The selection team will have 14 calendar days to review all proposals.
 - (ii) If multiple irrigation districts and/or water users associations have expressed an interest in developing hydropower through a LOPP, the entities will be allowed 150 calendar days following the end of the 60 calendar day timeframe defined in Paragraph 7.A.(2)(b)(i) to submit proposals for hydropower development that includes the information required in Paragraphs 7.C.(4)(b) through 7.C.(4)(i) in this D&S. During the 150 calendar day timeframe, Reclamation will not solicit proposals from other entities and no other entity is eligible to receive the LOPP. The Reclamation selection team will review all proposals within 30 calendar days and provide a recommendation to the regional director for award of the preliminary lease.

Reclamation Manual

Directives and Standards

- (iii) If all irrigation districts or water users associations reject the opportunity to develop hydropower through a LOPP or fail to submit an acceptable proposal within the 150 calendar day timeframe, Reclamation will solicit proposals through a public process (such as a local news publication or Federal Register Notice) to ensure fair and open competition and follow the procedures detailed in Paragraphs 7.A.(1)(a) through 7.A.(1)(d).
- B. The above timeframes will only be extended for just cause resulting from actions and/or circumstances that are beyond the control of Reclamation or the lessee. Just cause and timeframe adjustments will be determined solely by the regional director.
- C. Minimum Reclamation LOPP solicitation and proposal requirements are:
 - (1) The LOPP solicitation must include the scoring criteria for how proposals will be evaluated.
 - (2) If the LOPP solicitation is for a site that is a transferred work, that information must be revealed in the solicitation, and proposals must define how the LOPP project would operate in harmony with the Reclamation project and existing applicable contracts related to O&M of Reclamation project feature(s) being considered for modification. In these cases, a letter of cooperation or contractual arrangement from the operator of the transferred work will be considered favorably.
 - (3) If the LOPP solicitation is for a site that is located within the external boundaries of an Indian reservation or a dependent community, information about the site location must be disclosed in the solicitation. Further, the solicitation must include a provision that indicates that a letter of cooperation from the applicable tribal government, addressing LOPP topics such as land access and other land-related issues, will be considered during the review of submitted proposals.
 - (4) Reclamation will require interested parties to submit a proposal explaining in as precise detail as is practicable how the hydropower potential at the site would be developed. The solicitation will require that a proposal provide:
 - (a) Information regarding whether the applicant qualifies as a preference entity. If the proposal is made by a group of entities or by a subdivision of an entity, then the application must explain whether and why the applicant or applicants qualify as preference entities.
 - (b) Information relevant to the qualifications of the proposing entity to plan and implement such a project, including but not limited to: type of organization; length of time in business; experience in funding, design, and construction of similar projects; industry rating(s) that indicate financial soundness and/or technical and managerial capability; experience of key management

Reclamation Manual

Directives and Standards

personnel; history of any reorganizations or mergers with other companies; and any other information that demonstrates the interested entity's organizational, technical, and financial ability to perform all aspects of the work. Proposals will include a discussion of past experience in developing, operating, and maintaining similar facilities and provide references as appropriate.

- (c) Geographical locations and descriptions of principal structures and other important features of the proposed development including roads and transmission lines. Proposals must estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Proposals must also describe the daily, weekly, monthly, and annual pattern of expected generation under average, wet, and dry hydrological conditions; the ability of generation to provide ancillary services such as regulation, spinning reserves, and voltampere reactive support; and information on the reliability of the generation, potential maintenance outage schedule, and duration. If capacity and energy can be delivered to another location, either by the proposing entity or by potential third party transmission agents, the proposal must specify where that capacity and energy can be delivered. The proposal must describe the concepts and contractual arrangements (including the involved parties) related to transmission interconnection, power sales, and the proposed approach to third party transmission if required.
- (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.
- (e) A description of studies necessary to adequately define impacts of the proposed LOPP project on the Reclamation project, historic properties (if such are present), and the environment. The proposal must describe any significant environmental issues associated with the proposed LOPP project and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. The proposal will explain any proposed use of the LOPP project for conservation and utilization of the available water resources in the public interest.
- (f) Plans for assuming liability for damage to the operational and structural integrity of the Reclamation project caused by construction, operation, and/or maintenance of the hydropower development.
- (g) The organizational structure planned for the long-term O&M of any proposed hydropower development.

Reclamation Manual

Directives and Standards

- (h) A management plan, including schedules of these activities as applicable, to accomplish activities such as planning; NEPA compliance; NHPA compliance; ESA compliance; necessary studies; LOPP project development; design, construction, safety plan, and facility testing; and the start of hydropower production.
- (i) An estimate of development costs. These costs will include all investment costs such as the cost of studies to determine feasibility; NEPA compliance; NHPA compliance; ESA compliance; other statutory compliance; design; construction; financing as well as the amortized annual cost of the investment; annual O&M expense for the hydropower development; lease payments to the United States; expenses associated with the Reclamation project; and anticipated return on investment. If there are additional transmission expenses associated with the development of the LOPP project, these expenses must also be included. The proposal must identify proposed methods of financing the LOPP project. The proposal must include an economic analysis that compares the present worth of all benefits and costs of the hydropower development.

8. Timeframes for Development Under a LOPP.

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

Reclamation Manual

Directives and Standards

9. Development, Construction, and O&M.

- 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, physical security concerns, or cybersecurity concerns, detrimental impact to the Reclamation project, or any other legitimate reason as determined by the regional director.
- B. Reclamation reserves the right to conduct or direct the completion of analyses, designs, and data collection which directly affect public safety aspects of the facilities into which the lessee's powerplant facilities are to be integrated. Reclamation will review all analyses, designs, plans, specifications, and related material associated with all other features of the proposed powerplant and appurtenant facilities (i.e., those features which do not directly affect public safety). Work shall not proceed with various aspects of the project until Reclamation's written approval has been obtained. Reclamation will oversee the construction effort, including on-site inspection, focusing primarily on the work which directly affects the public safety aspects of their facilities.
- C. At minimum, the actions to be completed during the preliminary lease prior to the LOPP contract are as follows:
- (1) The LOPP Lead will collect and coordinate the review of all studies from the lessee that are necessary for Reclamation to ensure that the efficiency of Reclamation-generated power or water deliveries will not be impaired, to ensure the public safety and the continued safe operation and structural integrity of the Reclamation facilities, and to ensure compliance with NEPA, ESA, and NHPA commitments. A value engineering study is not required. A listing of studies that the LOPP Lead will consider is included in Appendix B.
 - (2) NEPA, ESA, NHPA, and other statutory compliance will be the financial responsibility of the lessee and will be completed during the preliminary lease phase prior to execution of the LOPP. Terms and conditions resulting from NEPA, ESA, NHPA, and other statutory compliance will be incorporated in the LOPP and will be the financial responsibility of the lessee.
 - (a) Reclamation categorical exclusion (CE) 516 Department Manual 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:
 - (i) the project is a small conduit hydropower project; or
 - (ii) the project has the following characteristics:

Reclamation Manual

Directives and Standards

- (aa) would utilize an existing dam or conduit;
 - (bb) 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;
 - (cc) there would be no increase or change in timing of diversions and discharges; and
 - (dd) the primary purpose of the infrastructure would remain, e.g., most commonly irrigation.
- (b) Consideration for a CE does not guarantee that a CE will be appropriate. The extraordinary circumstances considered are contained in 43 Code of Federal Regulations 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.
- (3) Reclamation will share its plans with the lessee to correct public safety related issues at the Reclamation facility which are known at the time of the LOPP contract negotiations. Public safety issues which emerge at a later date could require adjustments to the location, design, construction, and/or operations of the lessee's powerplant facilities. Costs associated with such adjustments will be the responsibility of the lessee.
- (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. For other hydropower development at Reclamation projects where revenues derived through a PMA are used for repayment of a portion of the project, or is otherwise provided right of first refusal by law, that PMA will be given the first opportunity to purchase the energy and, if applicable, RECs produced by the project. The PMA is not obligated to purchase the generation or RECs from the proposed hydropower facility. At the time the preliminary lease is issued, the lessee must coordinate with the PMA to offer the energy and RECs produced under the LOPP for purchase. The PMA will have 60 calendar days from the time the lessee makes the initial offer to sell the energy and/or RECs to the PMA to make a decision whether to purchase the energy and RECs. If such a decision cannot be made within that timeframe, the lessee will have the right to market the energy and RECs produced by the project to others.
- D. At a minimum, the following conditions must be addressed in the LOPP contract:
- (1) The structural and operational integrity of existing Reclamation facilities or associated Federal projects must not be impaired by construction, operation, or maintenance of the lessee's powerplant facilities. Powerplant construction,

Reclamation Manual

Directives and Standards

operation, or maintenance must not: interfere with the existing or future project operations; jeopardize existing water rights; alter compliance with environmental requirements or commitments; impair the efficiency of the project for irrigation purposes; impair the operations of, or entitlements to, Reclamation hydroelectric facilities; impair physical security or cybersecurity; impede the correction of public safety deficiencies; or create any public safety related deficiency, recreation hazards, or other safety problems.

- (2) Title to the Federal facility, and any modification to the facility, remain with the United States. Title to the proposed installed powerplant facility, and associated revenue streams, is held by the lessee unless legislated or contracted otherwise.
- (3) Access to and operation of the existing Reclamation facilities must be sustained during the construction and O&M of the lessee's powerplant facilities.
- (4) Reclamation will inspect the powerplant and related facilities to the extent necessary to ensure the LOPP project does not impair the efficiency of Reclamation generated power or water delivers, jeopardize public safety, or negatively affect any other Reclamation project purposes. Inspections will also ensure the LOPP project is in compliance with NEPA, ESA, NHPA, and other statutory commitments. Reclamation's inspections will be in addition to inspections performed by the lessee. The LOPP will contain provisions requiring the lessee to address any recommendations issued by Reclamation within the timeframes determined by the regional director. Costs associated with the implementation of these recommendations will be the responsibility of the lessee. Reclamation reserves the right to shut down the operation of the powerplant or remedy problems at the expense of the lessee if the recommendations are not followed or if an emergency situation exists.
- (5) Physical security of existing facilities shall be maintained by Reclamation, or its designee, during construction and O&M activities. The lessee shall not interfere with Reclamation security activities and will be subject to inspection, background investigations, etc., as deemed necessary by Reclamation to protect the physical security and cybersecurity of Reclamation facilities. The lessee will be responsible for any incremental security costs incurred by Reclamation that result from the construction or O&M of the lessee's proposed powerplant and associated facilities. The lessee will be required to have physical security and cybersecurity procedures and practices commensurate with security requirements, as determined by Reclamation.
- (6) The lessee must provide the LOPP Lead evidence of a comprehensive and sufficient performance bond or irrevocable letter of credit (ILC), as determined by the LOPP Lead, for the construction of the project, and a comprehensive and sufficient commercial surety bond or ILC, as determined by the LOPP Lead, to

Reclamation Manual

Directives and Standards

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. The amount of the bonds or ILC will be determined on a project-by-project basis, as determined by the LOPP Lead.

- (7) Reclamation will not be responsible for the economic and technical feasibility of the lessee's powerplant facility, and the lessee must agree to indemnify the 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. The lessee shall have no claim against the United States for loss of generation caused by the normal or extraordinary O&M of the Reclamation project including, but not limited to, the quantity, quality, or timing of water or power delivered by the Reclamation project. The lessee will be required to modify operations required by any future legal constraints associated with the operation of the Reclamation project.
 - (8) The lessee will be required to compensate Reclamation for lost generation and other interruptions to operations at Reclamation facilities due to construction, O&M, or any other extraordinary event at or caused by the lessee's facilities.
 - (9) 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. LOPPs shall not be transferred or facilities sold without written approval of the regional director.
10. **Projects on Transferred Works.** Under circumstances where a district or water user organization has O&M transfer contracts associated with the proposed Reclamation-owned development site but are not a participant in the proposed LOPP, then LOPP contracts will include their involvement, as appropriate. The lessee shall share in the cost of O&M of the existing Federal facilities that benefit the proposed installed power facility. If there is a possibility that these costs may apply, the LOPP solicitation will indicate it as such.
11. **LOPP Charges.**
- A. **Administrative Charges.** Prior to any work conducted by Reclamation for the preliminary lease or LOPP, the lessee shall provide in advance of expenditures the necessary funding to cover all Reclamation costs pursuant to a cost recovery agreement. These costs include any and all work related to NEPA, NHPA, ESA, and other statutory compliance; development; construction; O&M; inspections; security of the lessee's power facilities; review of all other necessary studies, analyses, designs, plans, specifications, and related material associated with the proposed powerplant; and any other related administrative costs. Reclamation shall give the lessee an itemized and detailed estimate of these costs based on its understanding of the LOPP project, and the lessee shall pay in advance in accordance with an agreed upon funding plan. Any increase in funding requirements beyond the originally agreed upon amount will be negotiated with the lessee before Reclamation incurs those costs. Any unused funds

Reclamation Manual

Directives and Standards

will be returned to the lessee without interest. Reclamation shall set up a new work breakdown structure to keep track of all Reclamation costs related to the LOPP project.

B. Annual LOPP Charge.

- (1) The Reclamation Act of 1939, Section 9(c), states: “Any sale of electric power or Lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper.”
- (2) 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. The rate methodology will be reviewed every 10 years to ensure that it is consistent with the parameters of the Reclamation Act of 1939. This charge will not apply to existing LOPP agreements where a rate has been negotiated prior to the issuance of this D&S.
 - (a) **Standard LOPP Charge.** The annual LOPP charge is set at 3 mills per kilowatt-hour (kWh) of gross energy produced by the facility, measured at the generator, to the United States for the use of the Reclamation facility. This rate will increase each year commensurate with inflation based on the average of the previous 5 years of the Gross Domestic Product (GDP) Price Deflator. If the 5-year GDP Price Deflator average shows no change or deflation, the LOPP rate will remain the same as the previous year’s rate. The rate of increase of the 5-year GDP Price Deflator average will be capped at 5 percent. The methodology that was used to set the Standard LOPP charge is included in Appendix D.
 - (b) **Discounted LOPP Charge.** For entities that are already responsible for project O&M repayment for the site of the LOPP project, recognition of that contribution to O&M will be made through a reduction of the LOPP charge. The reduced annual LOPP charge is set at 2 mills per kWh of gross energy produced by the facility, measured at the generator, to the United States for the use of the Reclamation facility. This rate will increase each year commensurate with inflation based on the average of the previous five years of the GDP Price Deflator. If the 5-year GDP Price Deflator average shows no change or deflation, the LOPP rate will remain the same as the previous

Reclamation Manual

Directives and Standards

year's rate. The rate of increase of the 5-year GDP Price Deflator average will be capped at 5 percent. The methodology that was used to set the discounted LOPP charge is included in Appendix D.

12. **Disposition of Annual LOPP Charges.** Unless otherwise directed by specific project authorizations, in accordance with Section 5 of the Town Sites and Power Development Act of 1906, the LOPP charge paid by the lessee to Reclamation shall be deposited in the Reclamation fund as a credit to the Reclamation project and are applied against the total outstanding reimbursable repayment obligation for reimbursable project construction costs of the Federal project on which the LOPP is issued pursuant to the existing construction cost allocation (not applied only against power construction costs). If the outstanding reimbursable repayment obligation for project construction costs is satisfied, then the LOPP payments will be held as a statutory credit for the project or program until an eligible reimbursable project expense is incurred against which the credit can be applied. While LOPP payments are not considered incidental revenues, Paragraphs 6.A., 6.A.(1), and 7 of Reclamation Manual D&S, *Crediting Requirements for Incidental Revenues* (PEC 03-01), describe how Reclamation will apply LOPP credits to the project.
13. **No Rights Created by D&S.** Like all other D&S documents, this D&S is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: _____

Release No. _____

Ensure all employees needing this information are provided a copy of this release.

Reclamation Manual Release Number and Subject

Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: _____

Date: _____