

174 FERC ¶ 62,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp

Project No. 1744-041

ORDER ISSUING NEW LICENSE

(March 19, 2021)

INTRODUCTION

1. On May 30, 2018, PacifiCorp filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),¹ an application for a new license to continue to operate and maintain the Weber Hydroelectric Project No. 1744 (Weber Project or project). The 3.85-megawatt (MW) project is located on the Weber River near the City of Ogden in Weber, Morgan, and Davis Counties, Utah. The project occupies 15.51 acres of federal land within the Uinta-Wasatch-Cache National Forest managed by the U.S. Forest Service (Forest Service).²

2. As discussed below, this order issues a new license for the project.

BACKGROUND

3. The Federal Energy Regulatory Commission (Commission) issued the current license for the project on June 28, 1990, with an effective date of June 1, 1990, which expired on June 1, 2020.³ Since then, PacifiCorp has operated the project under an annual license pending the disposition of its application for a new license.

4. PacifiCorp's license application includes a Memorandum of Agreement (MOA) between PacifiCorp, the Utah Division of Wildlife Resources (Utah DWR), the U.S. Department of the Interior, the U.S. Fish and Wildlife Service (FWS), the Forest Service, the U.S. Bureau of Reclamation (Reclamation), American Whitewater, the Davis and Weber Counties Canal Company (DWCCC), Trout Unlimited, the Weber Basin Water

¹ 16 U.S.C. §§ 797(e) and 808.

² Because the project occupies lands of the United States, section 23(b)(1) of the FPA, 16 U.S.C. § 817(1), requires that it be licensed.

³ *PacifiCorp dba Utah Power & Light Company*, 51 FERC ¶ 62,316 (1990).

Conservancy District, and the Weber River Water Users Association (MOA parties).⁴ The MOA memorializes the MOA parties' agreement regarding protection, mitigation, and enhancement measures for the project.

5. On October 16, 2018, the Commission issued a public notice accepting the application for filing, soliciting motions to intervene and protests, indicating the application was ready for environmental analysis and,⁵ setting December 15, 2018, as the deadline for filing motions to intervene, comments, final recommendations, terms and conditions, and prescriptions.⁶ The Utah Department of Natural Resources, Trout Unlimited, American Whitewater filed timely motions to intervene.⁷ American Whitewater included comments with its motion to intervene. The Forest Service filed final conditions and a notice of intervention on December 17, 2018.⁸ None of the interveners oppose the project.

6. Commission staff issued an environmental assessment (EA) on April 28, 2020, analyzing the impacts of the proposed project and alternatives to it. Comments on the EA were filed by PacifiCorp, Trout Unlimited, American Whitewater, the U.S. Environmental Protection Agency, and 24 individuals.

7. The interventions, conditions, comments, and recommendations have been fully considered in determining whether, and under what conditions, to issue this license.

⁴ PacifiCorp filed an amended MOA on September 11, 2020, to reflect modifications to the language in its measure to enhance whitewater boating in the bypassed reach.

⁵ 83 Fed. Reg. 53,462 (October 23, 2018).

⁶ The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 C.F.R. § 385.2007(a)(2) (2020). Because the 60-day filing deadline fell on a Saturday (i.e., December 15, 2018), the filing deadline was extended until the close of business on Monday, December 17, 2018.

⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c).

⁸ Under Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, the Forest Service became a party to the proceeding upon timely filing of its notice of intervention. *Id.* § 385.214(a).

PROJECT DESCRIPTION

A. Project Area

8. The Weber Hydroelectric Project is located in the Weber River Basin, within Weber Canyon, a narrow, steep-walled canyon with highly altered riverine and canyon floor environments. The high degree of alteration is due to the I-84 freeway and its associated bridges and infrastructure, as well as various non-project pipelines, cable and fiber utility lines, a Union Pacific Railroad Company (UPRC) railroad track corridor, the project diversion dam and penstock, and other river diversion structures nearby.

9. The Weber River originates near Reids Peak in the Uinta Mountains, in Summit County, Utah, flows west to Oakley, Utah, then flows through Reclamation's Echo and Rockport Reservoirs, through the Weber Project, and ultimately terminates at the Great Salt Lake.

B. Project Facilities

10. The Weber Project includes: (1) a 114-foot-long, 27-foot-high concrete diversion dam with a spillway crest elevation of 4,789.18 feet (NAVD-88) that consists of: (a) two 29-foot-long by 8.7-foot-high radial gates; (b) one low-level outlet gate; (c) a 3-foot-wide by 18-foot-long non-operative fish passage structure that is used to pass minimum flows and ice through a calibrated slide gate opening, hereafter referred to as the "ice chute"; and (d) a 35-foot-wide intake structure located at the left abutment that contains a 22-foot-wide by 31-foot-long by 19-foot-tall concrete intake box; (2) an 8.4-acre forebay with a gross storage capacity of approximately 42 acre-feet; (3) a 9,110-foot-long, 66-inch to 76-inch-diameter steel penstock partially encased in concrete; (4) a powerhouse containing one 3,850-kilowatt (kW) generating unit; (5) a reinforced concrete tailrace located underneath the powerhouse floor with water discharged over a weir on the south side of the powerhouse directly into the Weber River approximately 1.7 miles downstream of the diversion dam; (6) a 77-foot-long, 46-kilovolt (kV) transmission line which connects to the Weber substation (substation is not part of the Weber project); and (7) appurtenant facilities.

11. The Weber Project includes a small recreation site located on Forest Service land north of the project diversion dam along portions of the forebay and bypassed reach that consists of a paved access road, paved parking lot, asphalt path, fishing platform, and picnicking amenities.

C. Project Boundary

12. The current project boundary encompasses 18.48 acres, including 15.51 acres of federal land, and the project facilities listed above.

13. PacifiCorp proposes to modify the project boundary by adding the following: (1) an area from the diversion dam to approximately 520 feet downstream situated between the project recreation site and the penstock to provide additional area needed for project operation and maintenance; (2) portions of the I-84 freeway access roads that provide direct access to the powerhouse and surrounding project facilities and are currently used during project operation; (3) an area between the powerhouse access road and the Weber River shoreline, and an area between the powerhouse access road and edge of the I-84 freeway right-of-way to enclose access roads, buildings, and maintenance areas required for project operation and maintenance; and (4) areas along the upstream, eastern end of the Weber forebay to more accurately align the project boundary with the forebay shoreline.

14. PacifiCorp also proposes to remove the following: (1) areas along the upstream (eastern) end of the forebay to more accurately align the project boundary with the forebay shoreline; (2) an area along the northern edge of the recreation site and access road to improve alignment with existing project facilities and avoid encroachment on an I-84 freeway rest area; (3) an area immediately east of the intersection of the project access road and the I-84 freeway rest area access road to avoid encroachment on the I-84 freeway rest area; and (4) an area downstream of the powerhouse and transmission line that includes a non-project substation, and the non-project DWCCC irrigation diversion dam.

D. Current Project Operation

15. PacifiCorp operates the project in a run-of-river mode such that outflow from the project approximates inflow. The intake structure is located on the dam between the low-level gate and the south buttress wall. Diverted flows are conveyed in a 9,110-foot-long, 66-inch to 76-inch-diameter steel penstock partially encased in concrete to the powerhouse and returned to the Weber River via the tailrace.

16. The project diverts a maximum of 320 cubic feet per second (cfs) and Article 401 of the current license requires PacifiCorp to maintain a continuous minimum stream flow in the 1.7-mile-long bypassed reach of 34 cfs or inflow, whichever is less, from October 1 to March 31, and 34-50 cfs (flow dependent on the annual runoff forecast), or inflow, whichever is less, from April 1 to September 30. Minimum flows are passed to the bypassed reach via the ice chute, which is calibrated annually.

17. The minimum hydraulic capacity of the generating unit is 1 cfs, and the maximum hydraulic capacity is 320 cfs. When inflows to the project are greater than the hydraulic capacity plus the minimum flow requirement, the forebay level increases until it overtops the radial gates. The north spillway gate opens via automated controls when inflows cause the forebay to rise 3 to 4 inches above the normal pond elevation and closes when

the forebay level recedes to the normal pond elevation. Under high flow conditions when the forebay level continues to rise after opening the north spillway gate, an alarm is tripped when the forebay rises more than 6 inches above normal pond elevation, at which time operators are dispatched to manually raise the south spillway gate.

18. During low flow conditions, when inflows are less than the minimum hydraulic capacity plus the minimum flow requirement, flows diverted for generation are continually reduced until the unit shuts down, at which point all flows are passed into the bypassed reach at the dam via the ice chute.

19. Storage at Reclamation's upstream Echo Reservoir typically reduces inflows during the fall and winter months, except during very wet years. During the winter months, the project's forebay level controls are set to maintain a low water set point up to 12 inches below the normal pond elevation. If insufficient water is expected for generation on a longer-term basis, the forebay is drawn down and emptied by raising the spillway gates and opening the low-level outlet gate. When the forebay is emptied, the river channel carries water directly to the low-level outlet at the dam.

20. PacifiCorp performs in-person monitoring of the project daily, and when alerted and dispatched by PacifiCorp's non-project Hydro Control Center located in the town of Ariel, Washington. Additionally, PacifiCorp performs remote monitoring of the project from the Hydro Control Center.

E. Proposed Operation and Environmental Measures

Construction-Related Measures

21. To protect fishery resources, PacifiCorp proposes to construct, operate, and maintain a fish ladder suitable for the upstream passage of both Bonneville cutthroat trout (BCT) and bluehead sucker, including a fish trap. The fish ladder will be located along the right riverbank on the north side of the spillway, immediately adjacent to the ice chute where the minimum flow is released. The fish trap will be located at the upstream exit of the fish ladder.

22. To enhance recreational opportunities, PacifiCorp proposes to: (1) repave the recreation access road and path; (2) remove fencing around a former play area to improve the visual quality of the picnic area; (3) install a year-round permanent restroom; (4) construct a new, or modify an existing, picnic site to be accessible to persons with disabilities; (5) install informational signage; and (6) install steps on the existing project trail that provides river access.

Operation-Related Measures

23. To protect and enhance aquatic resources, PacifiCorp proposes to: (1) continue to operate the project in a run-of-river mode; (2) release minimum flows to the bypassed reach of 34 cfs or inflow, whichever is less, from October 1 to March 31, and 34-50 cfs to be determined annually based on a runoff forecast, or inflow, whichever is less, from April 1 to September 30; and (3) release the first 20 cfs of the minimum flows through the fish ladder and release additional flows through the ice chute.

24. To protect fishery resources, PacifiCorp proposes to: (1) maintain a full forebay during prolonged project outages, as operational constraints and winter icing conditions allow, to ensure the fish ladder operates; (2) operate the south radial gate when needed to ensure that the flow released through the ice chute provides the necessary attraction flow for fish passage; (3) operate the low-level gate when the forebay is dewatered and the fish ladder is inoperable during winter low-flow conditions or during project maintenance to provide upstream fish passage; (4) re-open the low-level gate as soon as possible to restore upstream fish passage when the fish ladder and the low-level gate are inoperable for more than 10 days; and (5) develop a fish passage consultation and communication plan (communication plan) that includes provisions for annual consultation with the MOA parties regarding interim fish passage options and operation of the fish ladder and trap.

25. To protect terrestrial resources, PacifiCorp proposes to: (1) continue annual consultation with the Forest Service on planned project operation and maintenance activities that could affect botanical and wildlife resources to determine if additional protective measures are necessary; and (2) implement measures to minimize the introduction and spread of non-native, invasive weed species and revegetate areas of ground disturbance from the proposed river access and trail improvements, fish ladder construction, and other project-related activities, as needed.

26. To enhance recreation opportunities, PacifiCorp proposes to: (1) create and maintain a webpage that provides real-time bypassed reach flow information, and information on project recreation amenities; and (2) provide annual whitewater boating flow releases to the bypassed reach (up to 320 cfs, or inflow) for 4-hour periods on four Saturdays prior to July 15.

27. To protect cultural resources, PacifiCorp proposes to implement an historic properties management plan (HPMP).

SUMMARY OF LICENSE REQUIREMENTS

28. This license, which authorizes 3.85 MW of renewable energy generation capacity, requires most of the proposed measures noted above, the Utah Department of

Environmental Quality's (Utah DEQ) water quality certification conditions (Appendix A), the Forest Service's section 4(e) conditions (Appendix B), and the staff-recommended measures described below. Combined, these measures will protect or enhance water quality, fish, wildlife, recreation, and cultural resources at the project.

29. To document compliance with the project's operational requirements, the license requires PacifiCorp to develop an operation compliance monitoring plan.

30. To guide how the proposed fish ladder is designed and operated, the license requires PacifiCorp to develop an upstream fish passage plan for the fish ladder that includes: (1) design drawings; (2) a construction schedule and description of construction methods and procedures; (3) operation and maintenance measures; and (4) an operational effectiveness evaluation.

31. To ensure that recreation improvements and whitewater boating releases are implemented and maintained appropriately, the license requires PacifiCorp to develop: (1) a recreation plan that includes (a) conceptual drawings and descriptions of the proposed and recommended recreation improvements, (b) a construction schedule and description of construction methods and procedures, and (c) provisions for operating and maintaining the project recreation site and recreation improvements; and (2) a whitewater boating flow release plan that includes (a) schedules and procedures for releasing the annual whitewater flows, (b) provisions for monitoring and reporting whitewater boating use, and (c) provisions for reporting to the Commission the results of consultation and evaluation-related activities for each previous year's scheduled releases, including any proposed changes to the boating flow release regime.

32. To ensure that public access is provided to recreational opportunities in the project bypassed reach that are directly affected by project flows, the license requires PacifiCorp to modify the project boundary to enclose a river access trail that extends west from the project recreation site, no further than the right-of-way of the eastbound lanes of the I-84 freeway overpass, and to designate and maintain the trail as a project recreation facility.

WATER QUALITY CERTIFICATION

33. Under section 401(a)(1) of the Clean Water Act,⁹ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the Clean Water Act

⁹ 33 U.S.C. § 1341(a)(1).

provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.¹⁰

34. On December 4, 2018, PacifiCorp applied to Utah DEQ for water quality certification for the Weber Project. On December 13, 2018, Utah DEQ acknowledged receipt of the application. On April 24, 2019, Utah DEQ issued a certification for the Weber Project that includes 15 conditions, 6 of which (conditions 9, 10, and 12 through 15) are general or administrative in nature and are not discussed further.

35. The remaining 9 conditions require PacifiCorp to: (1) construct and operate a fish ladder suitable for upstream passage of Bonneville cutthroat trout and bluehead sucker, the design of which must include a fish trap (condition 1); (2) not conduct work on the fish ladder from February to June to allow for the movement and spawning of the Bonneville cutthroat trout and the bluehead sucker (condition 2); (3) coordinate with project stakeholders during and after construction of the fish ladder for work related to, but not limited to, channel dewatering, fish salvage, and fish trap operation and maintenance (condition 3); (4) maintain a continuous minimum stream flow in the bypassed reach of 34 cfs or inflow, whichever is less, from October 1 to March 31, and a continuous minimum flow of 34-50 cfs (dependent on annual runoff forecast) or inflow, whichever is less, from April 1 to September 30 (condition 4); (5) provide approximately 20 cfs of the required minimum flow via the fish ladder, once the fish ladder is operational (condition 5); (6) construct the fish ladder during a period of low flow, use best management practices to limit sediment discharges into stream flows during construction, and divert flows away from the construction area using a non-erodible cofferdam or other means of bypass (condition 6); (7) prior to constructing the fish ladder, (a) identify an area within the project boundary to store the excavated material, which is located at least 50 feet from the Weber River and protected using best management practices (BMP) to prevent discharges into state waters, or (b) develop a plan to transport the excavated material offsite for storage in an upland location or disposal (condition 7); (8) develop a refueling plan prior to refueling of equipment over porous ground within 500 feet from the edge of the nearest waterbody (including wetlands), 200 feet from the nearest private water supply well, or 100 feet from the nearest municipal water supply well (condition 8); and (9) not use any fill material that may leach organic chemicals (e.g., discarded asphalt), noxious weeds/seeds or nutrients (e.g., phosphate rock) into state waters (condition 11).

36. The 15 conditions of the certification are set forth in Appendix A of this order and incorporated into the license by ordering paragraph (D).

¹⁰ 33 U.S.C. § 1341(d).

SECTION 4(e) FINDINGS AND CONDITIONS

37. Section 4(e) of the FPA¹¹ provides that the Commission can issue a license for a project located within a federal reservation only if it finds that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired. As noted above, the Weber Project occupies land within the Uinta-Wasatch-Cache National Forest.

38. Commission staff has reviewed the Organic Administration Act of 1897,¹² which established the purposes for forest reservations, and the presidential proclamation(s) that created (and expanded) the Uinta-Wasatch-Cache National Forest.¹³ There is no evidence or allegation in this proceeding to indicate that relicensing the Weber Project will interfere with the purposes of the Uinta-Wasatch-Cache National Forest. Therefore, this license, as conditioned, will not interfere or be inconsistent with the purposes for which the Uinta-Wasatch-Cache National Forest was created.

39. FPA section 4(e) further requires that Commission licenses for projects located within federal reservations include all conditions that the Secretary of the department under whose supervision the reservation falls shall deem necessary for the adequate protection and utilization of such reservation.

¹¹ 16 U.S.C. § 797(e).

¹² 16 U.S.C. § 473 *et seq.*

¹³ The Uintah Forest Reserve was created by presidential proclamation approved February 22, 1897 (29 Stat. 895), and expanded and renamed (to the Uinta Forest Reserve) by subsequent presidential proclamations and executive orders. The Wasatch National Reserve—established by presidential proclamation approved August 16, 1906 (34 Stat. 3225), and Cache National Forest—established by Executive Order 802 approved May 26, 1908, and effective July 1, 1908—were similarly expanded by subsequent presidential proclamations and executive orders. By an Act of Congress on March 4, 1907 (34 Stat. 1269), forest reserves were renamed as national forests. In 1973, the Utah portion of the Cache National Forest was annexed to the Wasatch National Forest for management as the Wasatch-Cache National Forest. In 2007, the Uinta National Forest was combined with the Wasatch-Cache National Forest for management as the Uinta-Wasatch-Cache National Forest. At the time these national forests were established, the Organic Administration Act of 1897, 16 U.S.C. § 475, stipulated that all national forest lands were established and administered for watershed protection and timber production.

40. The Forest Service filed 20 final 4(e) conditions for the project on September 25, 2020.

41. Conditions 1 through 10, 12, parts of 13,¹⁴ and 14 through 16 are administrative or general in nature and are not discussed further. The remaining conditions require PacifiCorp to: (1) continue to implement an Oil Spill Prevention, Control and Countermeasure Plan (condition 11); (2) (a) develop a fish passage consultation and communication plan with provisions for PacifiCorp to consult with resource agencies and other interested parties on the operation of the fish ladder and any fishway issues, and (b) coordinate with certain MOA parties with recreation-related interests on the implementation of PacifiCorp's proposed recreation improvement measures (condition 13); (3) develop BMPs for project operation and maintenance activities that have the potential to introduce or spread aquatic and terrestrial invasive species in the project area (condition 17); (4) consult on any issues relating to special-status species and sensitive areas (condition 18); (5) develop erosion and sediment control BMPs for project operation and maintenance activities (condition 19); (6) develop a fire prevention and response plan (condition 20); and (7) implement the MOA (Part III conditions).

42. As noted above, Forest Service 4(e) condition 13 requires PacifiCorp to annually consult with resource agencies and other interested parties on fish ladder passage, operations for passage, and fishway issues and outages. PacifiCorp will operate and maintain the fish ladder and trap by following specific operation and maintenance guidelines described within an Upstream Fish Passage Plan developed in consultation with the resource agencies and approved by the Commission. With proper operation and maintenance, there is no reason to believe that the fish ladder and trap would not perform as designed. Therefore, in the EA staff did not recommend this annual consultation measure.¹⁵ However, the measure is included in the license because it is mandatory under section 4(e) of the FPA.

43. Forest Service 4(e) condition 18 requires that PacifiCorp consult on issues relating to special-status species and sensitive areas. In the EA, staff found that no proposed project activities involving ground or vegetation disturbance would occur near, or disturb, habitat for any special-status species. In addition, this license includes a standard fish and wildlife reopener article (Standard Article 15, Form L-1) that the Forest Service can use to request changes in operations that benefit special-status species and sensitive areas during the term of the license. Therefore, staff did not recommend this consultation

¹⁴ Parts a through e and part g of Forest Service 4(e) condition 13 are administrative.

measure. However, the measure is included in the license because it is mandatory under section 4(e) of the FPA.

44. The Forest Service 4(e) Part III conditions require PacifiCorp to implement the protection, mitigation, and enhancement measures described in the MOA. This includes annual consultation with the Forest Service concerning potential effects to botanical and terrestrial resources, and consultation before planned project maintenance or operational measures that would require ground-disturbing activities. In the EA, staff did not recommend this consultation measure because it is redundant with the consultation provisions within the staff-recommended plans for the fish ladder and recreation improvements, which are the only ground-disturbing activities associated with the new license and are one-time events, not recurring during the term of the license. In addition, annual consultation is redundant with Forest Service 4(e) conditions 13 and 18, which require PacifiCorp to coordinate with the Forest Service on the recreation improvements and consult on issues relating to special-status species and sensitive areas. However, annual consultation on issues relating to special-status species and sensitive areas specified in condition 18 is included in the license because it is mandatory under section 4(e) of the FPA.

45. The Forest Service's 20 revised 4(e) conditions are set forth in Appendix B of this order and incorporated into the license by Ordering Paragraph (E).

SECTION 18 FISHWAY PRESCRIPTIONS

46. Section 18 of the FPA¹⁶ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

47. No fishway prescriptions or requests for reservation of authority were filed under section 18 of the FPA.

THREATENED AND ENDANGERED SPECIES

48. Section 7(a)(2) of the Endangered Species Act of 1973¹⁷ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species or result in the destruction or adverse modification of their designated critical habitat.

¹⁶ 16 U.S.C. § 811.

¹⁷ 16 U.S.C. § 1536(a).

49. Based on FWS's Information for Planning and Consultation (IPaC) website, three federally threatened species could occur in the project area: the Ute ladies'-tresses orchid, the Canada lynx, and the Western U.S. distinct population segment (DPS) of yellow-billed cuckoo.¹⁸ No designated critical habitat is located in the vicinity of the project.

50. In the EA, staff determined that the project would have no effect on the Ute ladies'-tresses orchid because the orchid has not been documented in the project area since the 1800s and surveys conducted for the orchid did not detect the species. Staff also determined that the project would have no effect on the Canada lynx or the Western U.S. DPS of the yellow-billed cuckoo because no suitable habitat occurs in the project area for the two species.¹⁹ Therefore, no further action under the ESA is required for these species.

NATIONAL HISTORIC PRESERVATION ACT

51. Under section 106 of the National Historic Preservation Act (NHPA)²⁰ and its implementing regulations,²¹ federal agencies must take into account the effect of a proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (National Register) (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

52. The Weber Hydroelectric Project is listed on the National Register as a historic district (contributing elements include the powerhouse, dam, fish passage structure, operators camp and two related facilities, and 4 ancillary structures). Two additional historic properties are located within the project boundary, including segments of the UPRC railroad and the Historic U.S. 30S highway. To resolve any potential adverse effects to historic properties, PacifiCorp crafted an initial HPMP and filed it with their

¹⁸ See Interior's updated official list of threatened and endangered species, accessed by Commission staff using the IPaC database (<http://ecos.fws.gov/ipac/>) on December 6, 2019, and placed in the public record for this proceeding on December 9, 2019.

¹⁹ EA at 66-68.

²⁰ 54 U.S.C. § 306108.

²¹ 36 C.F.R. Part 800.

draft license application on December 12, 2017. In a letter filed on April 20, 2018, the Utah SHPO concurred with PacifiCorp's determination that there would be no adverse effect to historic properties, but stated that additional consultation may be needed if further work is undertaken by PacifiCorp, such as the construction of a new fish ladder, to address any potential effects to existing properties. As a result, on May 18, 2018, PacifiCorp filed a revised HPMP, that was developed in consultation with Commission staff, Utah SHPO, and Forest Service, that specifies consultation procedures regarding the proposed construction of a new fish ladder and new year-round permanent vault toilet facility.

53. In the EA, staff concluded that the revised HPMP provides adequate protection measures to avoid or resolve any potential adverse effects to any of the historic properties from constructing the new project facilities and concurred with the Utah SHPO's finding that relicensing the project would not adversely affect historic properties.²² Article 407 requires the implementation of the revised HPMP. However, it is possible that unknown archaeological or cultural resources could be discovered during project-related construction, operation, or other activities that require land-disturbance. Therefore, Article 408 requires PacifiCorp to stop work and consult with the Utah SHPO if previously unidentified archaeological or cultural artifacts are discovered during project operation or maintenance.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA

54. Section 10(j)(1) of the FPA²³ requires the Commission, when issuing a license, to include conditions based on recommendations submitted by federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act,²⁴ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project.

55. Neither the FWS nor the Utah DWR filed section 10(j) recommendations for the Weber Project.

²² EA at 6.

²³ 16 U.S.C. § 803(j)(1).

²⁴ 16 U.S.C. §§ 661 *et seq.*

SECTION 10(a)(1) OF THE FPA

56. Section 10(a)(1) of the FPA²⁵ requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

A. EPA Recommendations

57. In its comments on the EA, EPA recommends that PacifiCorp: (1) conduct additional water temperature monitoring in the bypassed reach because water temperatures exceeded state water quality standards during water quality studies conducted in 2016; (2) conduct a bioassessment of benthic macroinvertebrates (BMI) because the project area is located within a 20-mile section of the Weber River included on the 2010 Utah Clean Water Act 303(d) list;²⁶ (3) implement measures to minimize particulate matter and emissions in the form of airborne dust and machinery exhaust during construction activities; and (4) conduct an air quality assessment if any project-related, emissions-generating activities will occur within designated nonattainment zones for either the 2015 8-hour National Ambient Air Quality Standard (NAAQS) or the 2006 24-hour particulate matter less than 2.5 micrometers in diameter (PM_{2.5}) NAAQS.

58. The Utah DEQ water quality criteria for water temperature applicable to the 3A (coldwater fishery/aquatic life) designated beneficial use for the Weber River in the project area are a maximum of 20°C and a maximum change of 2°C. During the water quality studies conducted by PacifiCorp between February 2016 and January 2017, water temperatures recorded in the Weber River in the project area were below the relevant state criteria, except for 15 days between July 21 and August 8 when the levels were less than 21°C in the bypassed reach, as measured about 300 feet upstream of the powerhouse tailrace. The maximum change in water temperature throughout the project reach did not exceed 2°C. In reply to EPA's concerns, PacifiCorp notes that the cooler temperature of the water released at the project tailrace mitigates any slight exceedance of the state standard in the bypassed reach and that the average non-winter temperature in

²⁵ 16 U.S.C. § 803(a)(1).

²⁶ Section 303(d) of the Clean Water Act authorizes EPA to assist states, territories and authorized tribes in listing pollutant impaired waters and developing total maximum daily loads for these waterbodies.

the river below the tailrace is lower than in the bypassed reach just above the tailrace. Therefore, PacifiCorp does not believe that further water quality monitoring is warranted.

59. In the EA, staff concluded that although bypassed reach water temperatures could slightly exceed 20°C for short periods during the summer, continuing to operate the project in a run-of-river mode and maintaining the minimum flow regime released to the bypassed reach would provide sufficient water quality conditions in the Weber River in the project area to protect aquatic resources.²⁷ Therefore, the license does not require EPA's recommended additional water temperature monitoring.

60. Regarding a BMI assessment, a description and characterization of BMI can be used to indicate the general health and condition of a river, and is an indicator of water quality. However, the results of PacifiCorp's water quality monitoring in 2016 and 2017 indicate that the Weber River in the project area exhibits good water quality. Therefore, there is no basis for a license condition requiring EPA's recommended bioassessment of BMI.

61. Regarding air quality, constructing the fish ladder will occur for about nine months in a small section of the project area (0.16 acre). Given the relatively small construction footprint and relatively short construction period, any project-related effects on air quality would be minor and short term. Moreover, none of the construction activities will take place within the boundaries of the nonattainment zones identified by EPA. Therefore, the license does not require EPA's recommended air quality assessment.

B. Operation Compliance Monitoring

62. PacifiCorp proposes and Utah DEQ's certification (conditions 4 and 5) and Forest Service 4(e) Part III conditions require operational measures to protect and enhance aquatic resources of the project area. These include operating the project in a run-of-river mode, maintaining seasonal minimum flows in the project's bypassed reach, releasing specified flows via the fish ladder and ice chute, and modifying gate operations under varying flow conditions to facilitate upstream fish passage. In addition, with construction and operation of a new fish ladder, PacifiCorp will change how the minimum flows will be released to the bypassed reach and will modify gate operations to discharge water

²⁷ EA at 47-48. Utah DEQ's 401 water quality certification for the project at page 3 filed on May 1, 2019, reached a similar conclusion.

under varying river flow and project operating conditions to facilitate upstream fish passage.²⁸

63. Operation compliance monitoring allows the Commission to verify that the licensee is complying with the environmental requirements of a license. In the EA,²⁹ staff concluded that an operation compliance monitoring plan would provide a means for documenting compliance with the operational requirements of any license that may be issued. Therefore, Article 403 of this license requires PacifiCorp to prepare and file an operation compliance monitoring plan.³⁰

C. Upstream Fish Passage Plan

64. The license application includes a conceptual design for the fish ladder PacifiCorp proposes to construct and operate at the project. Utah DEQ's certification conditions I.1.a, I.1.b, I.1.c, I.2.a, and I.2.b (construction timing, coordination on channel dewatering, fish salvage, and fish ladder and trap operation and maintenance), and Forest Service 4(e) conditions 11, 13, 19, and Part III (hazardous materials management, erosion control, agency coordination, and operation) require measures related to the construction and operation of the fish ladder. In the EA, staff recommended that PacifiCorp develop a fish passage plan to allow staff to review the fish ladder design and associated construction, operation, and maintenance measures.³¹

65. In the EA, staff also concluded that conducting an evaluation of the fish ladder during its first year of operation would allow PacifiCorp time to make minor adjustments to the facility to ensure that it performs as designed prior to placing it in permanent operation.³² Therefore, Article 404 of this license requires PacifiCorp to develop a fish passage plan that includes: (1) design drawings for the fish ladder to be constructed at the project; (2) a construction schedule and description of construction methods and procedures, which incorporate the related Utah DEQ conditions; (3) fish ladder and fish trap operation and maintenance measures; and (4) provisions for a one-year operational evaluation of the new fish ladder.

²⁸ EA at 48.

²⁹ *Id.* at 118.

³⁰ *Id.* at 118.

³¹ *Id.* at 120.

³² *Id.* at 119-120.

D. Recreation Plan

66. PacifiCorp proposes to protect and enhance recreation opportunities at the project by improving existing recreation facilities, constructing new recreation facilities, and maintaining a webpage that provides real-time, approximate bypassed reach flow information. PacifiCorp also proposes to provide \$30,000 through an off-license agreement with Trout Unlimited to fund a cooperative effort to improve pedestrian river access (with concurrence from Utah Department of Transportation and the underlying land owner) outside of the project boundary at the user-created river access trail extending west from the project recreation site on land administered by the Forest Service. The proposed improvements to this trail would involve breaking up the large-boulder trail surface or backfilling the surface to create a more navigable path of smaller rock with minimal width.

67. The Forest Service requires (Part III conditions) that PacifiCorp implement the MOA, which includes PacifiCorp's proposals for recreation site improvements and the creation and operation of the bypassed reach flow information webpage.

68. In the EA, staff concluded that the proposed recreation improvements would enhance recreation at the project at a reasonable cost, but that the proposals lacked detail.³³ Staff also concluded that the widely used river access trail that extends west from the project recreation site provides access to recreational opportunities in the project bypassed reach, such as fishing and whitewater boating, which are directly affected by project flows. Staff determined that by improving and maintaining the trail, recreational access to the project bypassed reach would be enhanced and the recreational experience and safety of visitors using the trail would be improved.³⁴ Therefore, staff recommended the project boundary be modified to include the trail to ensure it is maintained during the license term. Further, staff concluded that any realignment of the trail should be determined in coordination with the Forest Service and in consultation with Utah Department of Transportation, but should extend no further than the right-of-way of the eastbound lanes of the I-84 freeway overpass. Therefore, staff recommended that PacifiCorp develop a recreation plan for its proposed project recreation site improvements that includes: (1) operation and management procedures for the project recreation site; (2) conceptual drawings and descriptions of the proposed and recommended project recreation site improvements; (3) the river access trail to be designated and maintained as a project recreation facility; (4) information regarding the creation and maintenance of a publicly-accessible webpage for indicating approximate

³³ *Id.* at 121.

³⁴ *Id.* at 85-86.

flows in the bypassed reach; and (5) a provision for consultation with the MOA parties with recreation-related interest for coordination related to recreational resources and the proposed improvements, as required by 4(e) condition 13. Therefore, Article 405 of this license requires PacifiCorp to develop a recreation plan that includes the provisions specified above and Article 203 requires that the project boundary be modified to include the informal pedestrian access river trail.

E. Whitewater Boating Flow Release Plan

69. To enhance whitewater boating in the bypassed reach, PacifiCorp proposes to annually provide flows to the bypassed reach by curtailing generation (up to 320 cfs or inflow) for 4-hour segments on four Saturdays prior to July 15. PacifiCorp proposes to determine the flow schedule and notice of the flow releases in consultation with American Whitewater, and other interested parties, with the provision that boating flows in the future may be curtailed based on use levels.

70. In the EA, staff concluded that the proposed whitewater boating flow releases would enhance whitewater boating opportunities compared to current conditions³⁵ and recommended that PacifiCorp develop a whitewater boating flow release plan that includes consultation on the annual releases and provisions for periodically evaluating whether modifications are needed. Article 406 requires the whitewater boating flow release plan.

PROJECT BOUNDARY

71. Project boundaries enclose the project works that are to be licensed and include land necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources.³⁶

72. As noted above, the current project boundary encloses 18.48 acres of land, including the Weber forebay, the Weber diversion dam, the intake structure, the non-operative fish passage structure, the penstock, the Weber powerhouse and tailrace, the transmission line, and the project recreation site.

73. PacifiCorp proposes to modify the project boundary to include: (1) existing powerhouse access roads not previously enclosed as project access roads; (2) small portions of land between the powerhouse access road and the Weber River shoreline, and

³⁵ *Id.* at 89.

³⁶ 18 C.F.R. § 4.41(h)(2).

between the powerhouse access road and the edge of the I-84 freeway right-of-way; (3) roads, buildings, maintenance areas, and a Weber River riparian area in the vicinity of the powerhouse; (4) small portions of land along the upstream extent of the forebay, east of the diversion dam; and (5) a portion of river and riparian area downstream of the diversion dam. In the EA, staff concluded that these areas should be part of the licensed project because each area provide direct access to project facilities for project operation and maintenance.³⁷ As noted in the Recreation Plan discussion above, staff also recommended that the project boundary be modified to include the user-created river access trail that extends west from the project recreation site.

74. PacifiCorp also proposes to remove from the project boundary small portions of land adjacent to: (1) the project recreation site; (2) the recreation access road; and (3) the powerhouse and transmission line. In the EA, staff concluded that the boundary modifications adjacent to the recreation site and recreation access road will remove land that is not related to project recreation, while retaining land on which project facilities and project access roads are located.³⁸ Additionally, staff concluded that the boundary modifications adjacent to the powerhouse and transmission line will remove land and non-project facilities that do not serve a project purpose, while retaining the project powerhouse access road to the project powerhouse and transmission line.

75. Article 203 of this license requires PacifiCorp to file revised Exhibit G drawings that include within the project boundary: (1) the proposed additions of lands, roads, buildings, and maintenance areas necessary for project operations and maintenance; and (2) the user-created river access trail that extends west from the project recreation site to be designated and maintained as a project recreation facility (Article 405).

ADMINISTRATIVE PROVISIONS

A. Annual Charges

76. The Commission collects annual charges from licensees for administration of the FPA and to compensate for the use and occupancy of federal lands. Article 201 provides for the collection of funds for administration of the FPA and the use and occupancy of U.S. lands.

³⁷ EA at 94.

³⁸ *Id.* at 95.

77. The revised project boundary required by Article 203 of this license will decrease the amount of federal land occupied by the project. Article 204 requires PacifiCorp to file documentation on the amount of federal land within the revised project boundary.

B. Exhibit F Drawings

78. The Commission requires licensees to file sets of approved project drawings in electronic file format. The Exhibit F drawings filed on May 30, 2018, are approved and made a part of the license (Ordering Paragraph C). Article 202 requires that the drawings to be filed in electronic file format.

C. Amortization Reserve

79. The Commission requires that for new major licenses, non-municipal licensees must set up and maintain an amortization reserve account upon license issuance. Article 205 requires the establishment of the account.

D. Headwater Benefits

80. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 206 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

E. As-Built Exhibits

81. Where new construction or modifications to the project are involved, the Commission requires licensees to file revised exhibits of project features as-built. Article 207 provides for the filing of these exhibits.

F. Use and Occupancy of Project Lands and Waters

82. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 409 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for certain minor activities such as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

G. Modification of Project Facilities

83. Article 301 requires the licensee to coordinate any modifications that would affect project works or operation resulting from the license's environmental requirements with

the Commission's Division of Dam Safety and Inspections (D2SI) – Portland Regional Office Engineer.

H. Commission Approval of Resource Plans, and Filing of Amendments

84. In Appendices A and B, there are certain water quality certification conditions and 4(e) conditions that do not require the licensee to file plans with the Commission. Additionally, certain 4(e) conditions in Appendix B contemplate unspecified long-term changes to project operations or facilities. Therefore, Article 401 requires the licensee to file, for Commission approval, certain plans required by the certification conditions, as appropriate, and file an application to amend the license prior to implementing certain long-term operational or other project-related changes contemplated in Appendices A and B.

I. Operational Deviations

85. To provide for administrative efficiency and allow the licensee the flexibility to quickly address project-related situations requiring short-term deviations, Article 402 allows planned, short-term deviations from the run-of-river and minimum flow requirements of the license after mutual agreement among the licensee, Utah DEQ, Utah DWR, FWS, and Forest Service. Article 402 specifies reporting procedures the licensee must follow regarding such planned deviations. Article 402 also includes reporting requirements that the licensee must follow in the event of unplanned deviations from operational requirements, based on the duration of the event, and any observed or reported effects of the deviations. Under the article, unplanned deviations from run-of-river operation, minimum flows, and spill prioritization requirements that do not exceed three hours in duration (from the time the deviation starts until the time compliance is resumed) and for which there are no observed or reported environmental effects, do not need to be reported to the Commission individually, but can instead be included in an annual report that describes these minor incidents. Unplanned deviations from these operational requirements that exceed three hours in duration must be reported to the Commission individually.

STATE AND FEDERAL COMPREHENSIVE PLANS

86. Section 10(a)(2)(A) of the FPA,³⁹ requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.⁴⁰ Under section 10(a)(2)(A), federal and state agencies filed 14 comprehensive plans that address various resources in Utah. Of these, staff identified and reviewed four comprehensive plans that are relevant to this project.⁴¹ No conflicts were found.

APPLICANT'S PLANS AND CAPABILITIES

87. In accordance with sections 10(a)(2)(C) and 15(a) of the FPA,⁴² Commission staff evaluated PacifiCorp's record as a licensee for these areas: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission services; (G) cost effectiveness of plans; and (H) actions affecting the public. This order adopts staff's findings in each of the following areas.

A. Conservation Efforts

88. Section 10(a)(2)(C) of the FPA⁴³ requires the Commission to consider the extent of electricity consumption efficiency improvement programs in the case of license applicants primarily engaged in the generation or sale of electric power, like PacifiCorp. PacifiCorp has engaged in progressive conservation efforts to encourage its customers to be as efficient as possible with their electric consumption. Customer conservation is encouraged through PacifiCorp's "wattsmart" energy efficiency programs, which include cash incentives for home energy upgrades. The wattsmart program includes tools and information to help customers save energy and money through calculating and comparing home energy use, identifying potential improvement areas to save money, reduce consumption, and improve energy efficiency. This program demonstrates PacifiCorp's

³⁹ 16 U.S.C. § 803(a)(2)(A).

⁴⁰ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19.

⁴¹ The list of applicable plans can be found in section 5.4 of the EA.

⁴² 16 U.S.C. §§ 803(a)(2)(C) and 808(a).

⁴³ *Id.* § 803(a)(2)(C).

efforts concerning electricity consumption efficiency consistent with section 10(a)(2)(C) of the FPA.

B. Compliance History and Ability to Comply with the New License

89. Based on a review of PacifiCorp's compliance with the terms and conditions of the current license, staff finds that PacifiCorp's overall record of making timely filings and compliance with its license is satisfactory. Therefore, staff believes that PacifiCorp can satisfy the conditions of a new license.

C. Safe Management, Operation, and Maintenance of the Project

90. Staff reviewed PacifiCorp's management, operation, and maintenance of the Weber Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. Staff concludes that the project works are in good condition, and that there is no reason to believe that PacifiCorp cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

91. Staff reviewed PacifiCorp's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Although the Weber Project was not originally licensed until 1938, it has been in operation at the same site, and in the same basic configuration, since about 1909. PacifiCorp has developed a detailed seasonal inspection and maintenance plan to identify potential problems before they occur. Staff concludes that PacifiCorp is capable of operating the project to provide efficient and reliable electric service in the future.

E. Need for Power

92. The Weber Project provides hydroelectric generation to meet part of PacifiCorp's power requirements, resource diversity, and capacity needs. The project has an installed capacity of 3.85 MW and generates, on average, 16,926 megawatt-hours (MWh) per year.

93. To assess the need for power, staff evaluated the regional need for power as reported by Western Electricity Coordinating Council (WECC) to anticipate how the demand for electricity is expected to change in the region. For the period from 2019 through 2028, WECC's 2018 Long-Term Reliability Assessment forecasts the need for over 4,000 MW of new power resources to maintain adequate capacity reserves in the assessment area.

94. Staff concludes that power from the Weber Project would meet part of the region's current and future load requirements.

F. Transmission Services

95. The project includes a 77-foot-long, 46-kV transmission line from the powerhouse to the non-project Weber substation. PacifiCorp is proposing no changes that would affect its own or other transmission services in the region. The project's generating facilities and transmission line are important elements in providing affordable renewable hydroelectric generation to meet a portion of local power requirements, resource diversity, and capacity needs in the northern Utah region of PacifiCorp's service territory.

G. Cost Effectiveness of Plans

96. PacifiCorp proposes to change project operation and add new project facilities to protect environmental resources affected by the project. Based on PacifiCorp's record as an existing licensee, staff concludes that PacifiCorp will continue to propose cost-effective project improvements under a new license, and these plans and enhancements are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

97. PacifiCorp provided opportunities for public involvement in the development of its application for a new license for the project. PacifiCorp uses the project to help meet local power needs. In addition, the project provides employment opportunities. Last, during the previous license period, PacifiCorp operated the project in a manner that provided developed recreation opportunities to the surrounding community and visitors to the area.

PROJECT ECONOMICS

98. In determining whether to issue a new license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,⁴⁴ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of

⁴⁴ 72 FERC ¶ 61,027 (1995)

reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

99. In applying this analysis to the Weber Project, staff considered three options: a no-action alternative, PacifiCorp's proposal, and the project as licensed herein.⁴⁵ Under the no action alternative, the project would continue to operate as it does now. The project has an installed capacity of 3.85 MW and generates an average of 16,926 MWh of electricity annually. The average annual project cost is about \$904,000, or \$53.4/MWh. When staff multiplies our estimate of average generation by the alternative power cost of \$55.4/MWh,⁴⁶ staff gets a total value of the project's power of \$937,000 in 2020 dollars. To determine whether the proposed project is currently economically beneficial, staff subtracts the project's cost from the value of the project's power. Therefore, the project costs \$33,000, or \$2.0/MWh, less to produce power than the likely alternative cost of power.

100. As proposed by PacifiCorp, the levelized annual cost of operating the project is \$1,257,800, or \$74.50/MWh. The project would have an installed capacity of 3.85 MW and generate an average of 16,878 MWh of electricity annually. When staff multiplies our estimate of average generation by the alternative power cost of \$55.4/MWh, staff gets a total value of the project's power of \$935,200 in 2020 dollars. Therefore, in the first year of construction and operation, the project would cost \$322,700, or \$19.1/MWh, more than the likely alternative cost of power.

101. As licensed herein, the levelized annual cost of operating the project will be about \$1,273,600, or \$75.5/MWh. The project will have an installed capacity of 3.85 MW and generate an average of 16,878 MWh of electricity annually. Based on the estimated average annual generation of 16,878 MWh, the project will produce power valued at \$935,200 when multiplied by the \$55.4/MWh value of the project's power. Therefore, in the first year of operation, project power will cost \$338,400, or \$20.1/MWh, more than the likely cost of alternative power.

102. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include their the ability to help maintain the stability of a power system, such as by quickly adjusting power output to respond to rapid changes in system load; and to respond rapidly to a major utility system or regional

⁴⁵ Details of Commission staff's economic analysis for the project as licensed herein, and for the other two alternatives, are included in section 4 of the EA.

⁴⁶ The alternative power cost is estimated based on PacifiCorp's energy and dependable capacity estimate.

blackout by providing a source of power to help restart fossil-fuel based generating stations and put them back on line.

COMPREHENSIVE DEVELOPMENT

103. Sections 4(e) and 10(a)(1) of the FPA⁴⁷ require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued must be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

104. The EA for the project contains background information, analysis of effects, and support for related license articles. Based on the record of this proceeding, including the EA and the comments thereon, licensing the Weber Project as described in this order would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if operated and maintained in accordance with the requirements of this license.

105. Based on Commission staff's independent review and evaluation of the Weber Project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, the proposed Weber Project, with mandatory conditions and staff-recommended modifications and measures, is best adapted to a comprehensive plan for improving or developing the Weber River.

106. This alternative is selected because: (1) issuance of a new license will serve to maintain a beneficial and dependable source of electric energy; (2) the required environmental measures will protect and enhance fish and wildlife resources, water quality, recreational resources, and historic properties; and (3) the annual generation of 3.85 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

⁴⁷ 16 U.S.C. §§ 797(e) and 803(a)(1).

LICENSE TERM

107. Section 15(e) of the FPA⁴⁸ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but no less than 30 years or more than 50 years.

108. On October 19, 2017, the Commission established a 40-year default license term policy for original and new licenses, effective as of October 26, 2017.⁴⁹ The Policy Statement provides for exceptions to the 40-year default license term under certain circumstances: (1) establishing a shorter or longer license term if necessary to coordinate license terms for projects located on the same river basin; (2) deferring to a shorter or longer license term explicitly agreed to in a generally-supported comprehensive settlement agreement; and (3) establishing a longer license term upon a showing by the license applicant that substantial voluntary measures were either previously implemented during the prior license term, or substantial new measures are expected to be implemented under the new license. Because none of the above exceptions apply in this case, a 40-year license for the Weber Project is appropriate.

The Director orders:

(A) This license is issued to PacifiCorp (licensee), for a period of 40 years, effective March 1, 2021 to operate and maintain the Weber Hydroelectric Project No. 1744. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, described in the project description and the project boundary discussion of this order.

(2) Project works consisting of: (1) a 114-foot-long, 27-foot-high concrete diversion dam with a spillway crest elevation of 4,789.18 feet (North American Vertical Datum 1988) that consists of: (a) two 29-foot-long by 8.7-foot-high radial gates, (b) one low-level outlet gate, (c) a 3-foot-wide by 18-foot-long non-operative fish passage structure that is used to pass minimum flows and ice through a calibrated slide gate opening, hereafter referred to as the "ice chute", and (d) a 35-foot-wide intake structure

⁴⁸ 16 U.S.C. § 808(e).

⁴⁹ *Policy Statement on Establishing License Terms for Hydroelectric Projects*, 161 FERC ¶ 61,078 (2017); 82 Fed. Reg. 49,501 (2017).

located at the left abutment that contains a 22-foot-wide by 31-foot-long by 19-foot-tall concrete intake box; (2) an 8.4-acre forebay with a gross storage capacity of approximately 42 acre-feet; (3) a 9,110-foot-long, 66-inch to 76-inch-diameter steel penstock partially encased in concrete; (4) a powerhouse containing one 3,850 kilowatt generating unit; (5) a reinforced concrete tailrace located underneath the powerhouse floor with water discharged over a weir on the south side of the powerhouse directly into the Weber River approximately 1.7 miles downstream of the diversion dam; (6) a 77-foot-long, 46-kilovolt transmission line which connects to the Weber substation (substation is not part of the Weber project); and (7) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F shown below:

Exhibit A: The following section of Revised Exhibit A filed on September 13, 2018:

- (i) Exhibit A, pages 4 to 15, entitled “Project Features.”

Exhibit F: The following Exhibit F drawings filed on May 30, 2018:

<u>Exhibit F Drawing</u>	<u>FERC No. 1744-</u>	<u>Description</u>	<u>Filename Title⁵⁰</u>
F-1	1001	Weber Development Diversion Dam and Intake House Plans, Elevations, and Sections	Diversion Dam and Intake
F-2	1002	Weber Development Pipeline Details	Pipeline Details
F-3	1003	Existing Weber Plant Plan, Elevations, and Sections	Weber Plant
F-4	1004	Existing Site Plan	Existing Site Plan

⁵⁰ These exact drawing titles must be used in the filename when filing the electronic file format drawings required in Article 202. Commission staff shortened the drawing titles due to filename character limits. There is no need to modify the titles as they appear on the drawings.

F-5	1005	Proposed Site Plan	Proposed Site Plan
F-6	1006	Fishway Plan	Fishway Plan
F-7	1007	Fishway Profile and Baffle/Pool	Fishway and Baffle-Pool
F-8	1008	Weber Penstock Profile	Weber Penstock Profile

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibits A and F described above are approved and made part of this license. Because the license requires the user-created river access trail that extends west from the project recreation site to be designated and maintained as a project recreation facility (Article 405) the Exhibit G drawing filed on May 30, 2018, does not include the trail within the current project boundary. Therefore, the Exhibit G is not approved.

(D) This license is subject to the conditions submitted by the Utah DEQ under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1), as those conditions are set forth in Appendix A to this order.

(E) This license is subject to the revised final conditions submitted on September 25, 2020, by the U.S. Department of Agriculture – Forest Service under section 4(e) of the FPA, as those conditions are set forth in Appendix B to this order.

(F) This license is also subject to the articles set forth in Form L-1(October 1975), entitled “Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States,” (*see* 54 F.P.C. 1792 *et seq.*), as reproduced at the end of this order, and the following additional articles:

Article 201. Administrative Annual Charges. The licensee must pay the United States annual charges, effective as of the first day of the month in which the license is issued, and as determined from time to time in accordance with provisions of the Commission's regulations, for the purposes of:

(a) Reimbursing the United States for the cost of administering of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 3,850 kilowatts.

(b) Recompensing the United States for the use, occupancy, and enjoyment of its lands, the amount of which to be determined pursuant to Article 204.

Article 202. Exhibit F Drawings. Within 45 days of the date of issuance of this license, as directed below, the licensee must file the approved exhibit drawings in electronic file format.

(1) The licensee must prepare digital images of the approved exhibit drawings in electronic format. Prior to preparing each digital image, the licensee must add the FERC Project-Drawing Number (i.e., P-1744-1001 through P-1744-1008) in the margin below the title block of the corresponding approved drawing. The licensee must label and file the Exhibit F drawings as Critical Energy Infrastructure Information (CEII) material under 18 CFR § 388.113 (The submission should consist of: 1) a public portion consisting of a cover letter; and 2) a CEII portion containing only the Exhibit F drawings). Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit Number, Filename Title, date of this order, and file extension in the following format [P-1744-1001, F-1, Diversion Dam and Intake, MM-DD-YYYY.TIF]. All digital images of the exhibit drawings must meet the following format specification:

IMAGERY:	black & white raster file
FILE TYPE:	Tagged Image File Format, (TIFF) CCITT Group 4 (also known as T.6 coding scheme)
RESOLUTION:	300 dots per inch (dpi) desired, (200 dpi minimum)
DRAWING SIZE:	22" x 34" (minimum), 24" x 36" (maximum)
FILE SIZE:	less than 1 megabyte desired

Article 203. Exhibit G Drawing. Within 90 days of the issuance date of this license, the licensee must file, for Commission approval, revised Exhibit G drawings that show the following boundary modifications and facilities added to the project boundary: (1) the proposed additions of lands, roads, buildings, and maintenance areas necessary for project operations and maintenance; and (2) the user-created river access trail to be designated and maintained as a project recreation facility (Article 405). In addition, to the other components of Exhibit G, the licensee must provide the project boundary data in a geo-referenced electronic format that complies with sections 4.39 and 4.41(h) of the Commission's current regulations.

Article 204. Statement of Federal Lands. Within 90 days of the issuance date of this license, the licensee must file documentation of the amount of federal land occupied

by the project. The acreage must be consistent with the federal lands identified on the revised exhibit G drawings required by Article 203.

Article 205. Amortization Reserve. Pursuant to section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project must be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee must set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee must deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee must set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee must maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves must be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios must be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity must be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 206. Headwater Benefits. If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the prior license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee must reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 207. As-built Exhibits. Within 90 days of completion of construction of the facilities authorized by this license, the licensee must file for Commission approval, revised exhibits A, F, and G, as applicable, to describe and show those project facilities as built.

Article 301. Contract Plans and Specifications. At least 60 days prior to the start of any construction, the licensee must file final design documents with the Secretary of the Commission, preferably through eFiling. The licensee must also submit two hard copies of the documents to the Division of Dam Safety and Inspections (D2SI) – Portland Regional Engineer. The design documents must include: final plans and specifications, supporting design report, Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The licensee may not begin construction until the D2SI – Portland Regional Engineer has reviewed and commented on the documents, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 302. Cofferdam and Deep Excavation Construction Drawings. Should construction require cofferdams or deep excavations, the licensee must: (1) have a Professional Engineer who is independent from the construction contractor, review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction; and (2) ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of any cofferdams or deep excavations, the licensee must file the approved cofferdam and deep excavation construction drawings and specifications, and the letters of approval with the Secretary of the Commission, preferably through eFiling. The licensee must also submit two hard copies of the documents to the Commission’s Division of Dam Safety and Inspections-Portland Regional Engineer.

Article 303. Project Modification Resulting from Environmental Requirements. If environmental requirements under this license require modification that may affect the project works or operations, the licensee must consult with the Commission’s Division of Dam Safety and Inspections–Portland Regional Engineer. Consultation must allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 401. Commission Approval, and Filing of Amendments.

(a) Requirements to File Plans for Commission Approval

The Utah Department of Environmental Quality’s (DEQ) section 401 water quality certification (WQC) (Appendix A) and the U. S. Department of Agriculture – Forest Service’s (Forest Service) section 4(e) conditions (Appendix B) require the licensee to prepare plans in consultation with other entities for the approval by the Utah DEQ or Forest Service or for submittal to the Commission, and implement specific measures without prior Commission approval. The following plans must also be

submitted to the Commission for approval by the deadlines specified below:

Utah DEQ WQC Condition No.	Forest Service 4(e) Condition No.	Plan Name	Commission Due Date
-	11	Oil Spill Prevention, Control and Countermeasure Plan	Within six months of the effective date of this license
-	13a	Fish passage consultation and communication plan	Within one year of the effective date of this license
-	17	Invasive species management plan	Within six months of the effective date of this license
-	19	Erosion and sediment control and management plan	At least 60 days prior to any new construction or nonroutine maintenance involving ground disturbance
-	20	Fire prevention and response plan	Within one year of the effective date of this license
I(3)(c)	-	Refueling plan	Prior to refueling equipment over porous ground

With each plan filed with the Commission, the licensee must include documentation that it developed the plan in consultation with the above-listed agencies and provide copies of any comments received, as well as its response to each comment. The Commission reserves the right to make changes to any plan filed. Upon Commission approval, the plan becomes a requirement of the license, and the licensee must implement the plan, including any changes required by the Commission. Any changes to the above schedule or plans require approval by the Commission before implementing the proposed change.

(b) Requirement to File Amendment Applications.

Certain Forest Service 4(e) conditions in Appendix B contemplate unspecified long-term changes to project operations or facilities (e.g., Forest Service 4(e) condition 13). These changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the license. In any amendment request, the licensee must identify related project requirements and request corresponding amendments or extensions of time as needed to maintain consistency among requirements.

Article 402. Project Operation. The licensee must operate the project in a run-of-river mode such that, at any point in time, the sum of all outflows from the project approximates the sum of all inflows to the project.

Planned Deviations

Run-of-river operation as required by this article and the minimum flow, and spill prioritization requirements required by Utah Department of Environmental Quality's conditions I.2.a and I.2.b (Appendix A), and Forest Service's Part III Project Specific Conditions (Appendix B), respectively, may be temporarily modified for short periods, of up to 3 weeks, after mutual agreement among the licensee and the Utah Department of Environmental Quality, Utah Division of Wildlife Resources, U.S. Fish and Wildlife Service, and Forest Service (collectively, resource agencies). After concurrence from the resource agencies, the licensee must file a report with the Secretary of the Commission as soon as possible, but no later than 14 days after the onset of the planned deviation. Each report must include: (1) the reasons for the deviation and how project operations were modified, (2) the duration and magnitude of the deviation, (3) any observed or reported environmental effects and how potential effects were evaluated, and (4) documentation of consultation with the resource agencies. For planned deviations exceeding 3 weeks, the licensee must file an application for a temporary amendment of the operational requirements and receive Commission approval prior to implementation.

Unplanned Deviations

Run-of-river operation and minimum flow requirements may be temporarily modified if required by operating emergencies beyond the control of the licensee (i.e., unplanned deviations). For any unplanned deviation from run-of-river operation, minimum flow, or spill prioritization requirements that lasts longer than 3 hours or results in visible environmental effects such as a fish kill, the licensee must notify the resource agencies within 24 hours, and the Commission within 14 days, and file a report as soon as possible, but no later than 30 days after each such incident. The report must include: (1)

the cause of the deviation, (2) the duration and magnitude of the deviation, (3) any pertinent operational and/or monitoring data, (4) a timeline of the incident and the licensee's response, (5) any comments or correspondence received from the resource agencies, or confirmation that no comments were received from the resource agencies, (6) documentation of any observed or reported environmental effects and how potential effects were evaluated, and (7) a description of measures implemented to prevent similar deviations in the future.

For unplanned deviations from run-of-river operation, minimum flow, or spill prioritization requirements lasting 3 hours or less that do not result in visible environmental effects, the licensee must file an annual report, by March 1, describing each incident that occurred during the prior January 1 through December 31 time period. The report must include for each 3 hours or less deviation: (1) the cause of the deviation, (2) the duration and magnitude of the deviation, (3) any pertinent operational and/or monitoring data, (4) a timeline of the incident and the licensee's response to each deviation, (5) any comments or correspondence received from the resource agencies, or confirmation that no comments were received from the resource agencies, and (6) a description of measures implemented to prevent similar deviations in the future.

Article 403. Operation Compliance Monitoring Plan. Within 6 months of the effective date of this license, the licensee must file, for Commission approval, an Operation Compliance Monitoring Plan for the Weber Project. The plan must include the following:

(1) a detailed description of how the licensee will monitor compliance with the minimum flow requirements of Utah Department of Environmental Quality's conditions I.2.a and I.2b (Appendix A), run-of-river operation and the regulation of flows through the dam to facilitate upstream fish passage required by Forest Service Part III Project Specific Conditions (Appendix B).

(2) a provision to maintain a log of project operation;

(3) a description of any gauges or other measuring devices that will be used to monitor compliance; and

(4) an implementation schedule.

The licensee must prepare the plan after consultation with the Utah Department of Environmental Quality, Utah Division of Wildlife Resources, the U.S. Fish and Wildlife Service, and U.S. Forest Service. The licensee must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it

has been prepared and provided to the agencies and specific descriptions of how agency comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 404. Upstream Fish Passage Plan. Within one year of the effective date of this license, the licensee must file, for Commission approval, an Upstream Fish Passage Plan.

The plan must include the requirements specified in the Utah Department of Environmental Quality's certification conditions I.1.a, I.1.b, I.1.c, I.2.a, I.2.b, I.3.a, I.3.b, and I.3.c (Appendix A) and Forest Service's 4(e) conditions 11, 13, and 19, and Part III Project Specific Conditions (Appendix B), and the following items:

- (1) final design drawings of the fish ladder to be constructed at the project;
- (2) a construction schedule and description of construction methods including provisions for maintaining public and pedestrian access to the project recreation site during periods when construction activities would not occur;
- (3) provisions for fish ladder and fish trap operation and maintenance; and
- (4) a description of methods to conduct a one-year operational evaluation of the new fish ladder to ensure that the fish ladder is generally operating according to the following design parameters for passing Bonneville Cutthroat trout and Bluehead sucker 150 millimeters and larger, and if not, make minor adjustments to the facility, and operation: (a) fish ladder water velocity based on fish sustained swimming speed of 3-5 feet per second or less; (b) minimum water depth of 2 feet at fish ladder entrance and exit; (c) attraction flow that matches minimum flow requirement 34-50 cfs; (d) river flow operating range from 34 cfs to approximately 2,500 cfs when the forebay is full; and (e) forebay level fluctuation operating range from 1-7 inches.

The plan must be developed after consultation with the Utah Department of Environmental Quality, Utah Division of Wildlife Resources, U.S. Fish and Wildlife Service, and Forest Service. The licensee must include with the plan, documentation of

agency consultation and copies of comments and recommendations on the plan after it has been prepared and provided to the agencies, and specific description of how the agencies' comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 405. Recreation Plan. Within one year of the effective date of this license, the licensee must file, for Commission approval, a Recreation Plan.

The plan must include the requirements specified in the Forest Service's condition 13 (coordination with certain MOA parties and Utah Department of Transportation, for PacifiCorp's protection, mitigation, and enhancement measures REC- 2, REC-5, REC-8 and REC-9) and Part III Project Specific Conditions (Appendix B), and the following items:

(1) designation of the user-created river access trail that extends west from the project recreation site as a project recreation trail, no further than the right-of-way of the eastbound lanes of the I-84 freeway overpass;

(2) protocols, including a schedule, for operating and maintaining project recreation facilities for the duration of the license term;

(3) conceptual drawings and descriptions of the project recreation improvements specified in the MOA and required by Forest Service's Part III Project Specific Conditions (Appendix B), which include the: (a) installation of a year-round permanent vault toilet facility that is accessible to persons with disabilities; (b) construction of a new picnic site (or modification of the existing site) in consultation with the Forest Service, that is accessible to persons with disabilities; (c) maintenance and repaving of access road and asphalt path; (d) reconfiguration of the former sandbox play area fencing; (e) construction of steps for improving access to the existing dirt river access trail at the west end of the recreation site; (f) improvements to the newly-designated project recreation trail that extends west beyond the recreation site; and (g) content and placement of the improved interpretive signage that includes dog waste protocols and river flow information;

(4) a construction schedule; and

(5) information regarding the creation and maintenance of a publicly accessible webpage, hosted and maintained by the licensee, for indicating approximate flows in the bypassed reach.

The plan must be developed after consultation with the Forest Service, Utah DWR, Trout Unlimited, Utah DWQ, U.S. Fish and Wildlife Service, American Whitewater, and Utah Department of Transportation (Plan Parties). The licensee must include with the plan, documentation of Plan Parties consultation and copies of comments and recommendations on the plan after it has been prepared and provided to the Plan Parties, and specific description of how the Plan Parties' comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the Plan Parties to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 406. Whitewater Boating Flow Release Plan. Within one year of the effective date of this license, the licensee must file, for Commission approval, a Whitewater Boating Flow Release Plan that includes:

(1) an initial schedule and procedures for curtailing generation (up to 320 cfs, or inflow) for 4-hour segments, on four Saturdays prior to July 15, annually, to release whitewater boating flows;

(2) a provision for monitoring and reporting whitewater boating use to American Whitewater and interested parties for each of the scheduled flow release events;

(3) a provision for consulting, on an annual basis, with American Whitewater and other interested parties regarding the prior year's flow releases to include: (a) the adequacy of river access, (b) the flow schedule, (c) the adequacy of released flows, (d) boating use levels, and (e) any proposed changes to the boating flow release regime;

(4) a provision for reporting to the Commission the results of the evaluation and consultation activities regarding each previous year's scheduled releases, including any

proposed changes to the implementation of the boating flow release regime for Commission approval;

The plan must be developed after consultation with American Whitewater and other interested parties. The plan must document the consultation and include copies of comments and recommendations on the plan after it has been prepared and provided to American Whitewater and interested parties. The plan must also include specific descriptions of how American Whitewater and interested parties' comments are accommodated by the plan. The licensee must allow a minimum of 30 days for American Whitewater and interested parties to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The plan must not be implemented until the licensees are notified by the Commission that the plan is approved. Upon Commission approval, the licensees must implement the plan, including any changes required by the Commission.

Article 407. *Historic Properties Management Plan.* The licensee must implement its revised Historic Properties Management Plan (HPMP), filed on May 18, 2018. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license.

Article 408. *Protection of Undiscovered Cultural Resources.* If the licensee discovers previously undiscovered cultural resources during the course of constructing, maintaining, or developing project works or other facilities at the project, the licensee must stop all land-clearing and land-disturbing activities in the vicinity of the resource and consult with the Utah State Historic Preservation Office (SHPO) and Forest Service (if involving their lands) to determine the need for any cultural resource studies or measures. If no studies or measures are needed, the licensee must file with the Commission documentation of its consultation with Utah SHPO and Forest Service.

If a discovered cultural resource is determined to be eligible for the National Register of Historic Places (National Register), the licensee must file for Commission approval an appended HPMP to address adequate measures to resolve any potential adverse effects to the newly discovered historic property in consultation with the Utah SHPO and Forest Service. In appending the HPMP, the licensee must use the Advisory Council on Historic Preservation and the Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The appended HPMP must include the following items: (1) a description of

each discovered property that is eligible to be listed in the National Register; (2) a description of the potential effect on each discovered property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the appended HPMP.

The licensee must not resume land-clearing or land-disturbing activities in the vicinity of a cultural resource discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

Article 409. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee must have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee must also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance, for any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee must take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee must require multiple use and occupancy of facilities for access to project lands or waters. The licensee must also ensure, to the satisfaction of the Commission's authorized representative that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining

walls, the licensee must: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project impoundment. No later than January 31 of each year, the licensee must file with the Commission a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed. No report filing is required if no conveyances were made under paragraph (c) during the previous calendar year.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located

at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must file a letter with the Commission, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Commission's authorized representative, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee must consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee must determine that the proposed use of the lands to be conveyed is not inconsistent with any approved report on recreational resources of an Exhibit E; or, if the project does not have an approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee must take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee must not unduly restrict public access to project lands or waters.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this

article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project must be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article must not apply to any part of the public lands and reservations of the United States included within the project boundary.

(G) The licensee must serve copies of any Commission filing required by this order on any entity specified in the order to be consulted on matters relating to that filing. Proof of service on these entities must accompany the filing with the Commission.

(H) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 825~~l~~, and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order. The licensee's failure to file a request for rehearing must constitute acceptance of this order.

Terry L. Turpin
Director
Office of Energy Projects

Form L-1
(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

**TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MAJOR PROJECT AFFECTING LANDS
OF THE UNITED STATES**

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and

supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is

transferred to a new licensee or to a nonpower licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full

understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration

to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Timber on lands of the United State cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the

Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 22. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 23. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 24. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 25. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 26. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 27. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 28. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 29. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 30. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the

intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 31. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 32. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Appendix A

State of Utah Division of Water Quality
Department of Environmental Quality Conditions
Filed May 1, 2019

INTRODUCTION

Pursuant to §401 of the Federal Clean Water Act (CWA), the Utah Department of Environmental Quality (DEQ), Division of Water Quality (DWQ) certifies that the applicant has provided reasonable assurance that any discharges associated with the proposed project will not violate surface water quality standards, or cause additional degradation in surface water not presently meeting water quality standards. In accordance with Section 401(a)(1) of the CWA [33 U.S.C. Sec. 1341(a)(1)], DWQ hereby issues this §401 Water Quality Certification provided any listed conditions are met and included in the corresponding Federal Energy Regulatory Commission (FERC) license.

CERTIFICATION CONDITIONS

The Federal Energy Regulatory Commission (FERC) is requested to include all of the conditions of this §401 Water Quality Certification with Conditions in the FERC license renewal. Approval is hereby given to conduct the outlined project requests as described in the Certification Application, under the following conditions:

I. Project Specific Conditions:

1. Fish Ladder

- a. PacifiCorp will construct and operate a fish ladder suitable for upstream passage of both Bonneville Cutthroat Trout (*Oncorhynchus clarkii*) and the Bluehead Sucker (*Catostomus discobolus*). The design should include a fish trap.
- b. Work on the Fish Ladder should not be conducted from February to June to allow for the movement and spawning of the Bonneville Cutthroat Trout and the Bluehead Sucker, which are both special status aquatic species.
- c. During/after construction of the fish ladder PacifiCorp should continue to coordinate with project stakeholders, for work related to, but not limited to, channel dewatering, fish salvage, and fish trap operation and maintenance.

2. Flow Requirements

- a. Previous Stream flow requirements should remain. A minimum stream flow of 34 cfs or inflow, whichever is less from October 1 to March 31 annually, and a continuous minimum flow of 34-50 cubic feet per second (cfs) (dependent on annual runoff forecast), or inflow, whichever is less from April- September 30.
- b. Once the fish ladder is installed a portion of the required minimum flow (approx. 20 cfs) should be passed through the fish ladder and the rest (approx. 14-30 cfs) should be used as attraction flow.

3. Best Management Practices (BMPs)

- a. Construction of the fish ladder should be accomplished during a period of low flow. Sediment discharges into stream flows during construction must be limited through the use of BMPs to minimize increases in turbidity downstream. Flows must be diverted away from the construction area using a non-erodible cofferdam or other means of bypass.
- b. Prior to the start of the project either (1) an area within the project boundary will be identified to store the excavated material from the constructed fish ladder, a minimum 50 feet from the Weber River and protected using proper BMPs to prevent discharges into Waters of the State or (2) a plan will be made to transport the excavated material offsite for storage in an upland location or disposal.
- c. Prior to refueling of equipment over porous ground within 500 feet from the edge of the nearest waterbody (including wetlands), 200 feet from the nearest private water supply well, or 100 feet from the nearest municipal water supply well, a refueling plan must be developed and approved by DEQ. The refueling plan shall consider and address fueling actions and responsive spill prevention/containment measures for a variety of equipment and locations. Storage of lubricants and fuels within these same conditions is only allowed in proper storage facilities with secondary containment unless storage of lubricants and fuels plan has been developed and approved by DEQ.

II. General Conditions

1. Good Housekeeping

- a. Applicant and their subcontractors shall ensure that all workers involved are continuously aware of the water quality protection measures before the

start and during the construction period.

- b. Retain a copy of this §401 Certification onsite, during fish ladder construction.

2. Stormwater and BMPs

- a. Water quality standards in associated water resources could be violated unless appropriate Best Management Practices (BMPs) are incorporated to minimize the erosion-sediment and nutrient load to any adjacent waters during project construction. The applicant shall not use any fill material which may leach organic chemicals (e.g. discarded asphalt), noxious weeds/seeds or nutrients (e.g., phosphate rock) into waters of the State.
- b. Construction activities that disturb one acre or more, or are part of a common plan of development, are required to obtain coverage under the Utah Pollutant Discharge Elimination System (UPDES) Stormwater General Permit for Construction Activities, Permit No. UTR300000.⁵¹ The permit requires the development of a Storm Water Pollution Prevention Plan (SWPPP) to be implemented and updated from the commencement of any soil disturbing activities at the site, until final stabilization of the project. The SWPPP should include, but not limited to, final site maps and legible plans, location of stormwater outfalls/discharges, as well as information pertaining to any stormwater retention requirements.
- c. Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering, Permit No. UTG070000.⁵² The permit requires water quality monitoring every two weeks to ensure that the pumped water is meeting permit effluent limitations, unless water is contained onsite.
- d. A project within a Municipal Separate Storm Sewer System (MS4) jurisdiction, must comply with all the conditions required in that UPDES MS4 Permit and associated ordinances. No condition of this 401 Certification shall reduce or minimize any requirements provided in the MS4 Permit. In the case of conflicting requirements, the most stringent criteria shall apply.

⁵¹ Link: <https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2017-003485.pdf>

⁵² Link: <https://deq.utah.gov/legacy/permits/water-quality/utah-pollutant-discharge-elimination-system/docs/utg070000.pdf>

3. Spills

Utah Annotated Code 19-5-114 requires that any spill or discharge of oil or other substances which may cause pollution to waters of the State, including wetlands, must be immediately reported to the Utah DEQ Spill Hotline at (801) 536-4123, a 24-hour phone number.

Appendix B

United States Department of Agriculture, Forest Service
Revised Final Section 4(e) Conditions
Filed on September 25, 2020

INTRODUCTION

The United States Department of Agriculture Forest Service submits the following Final Section 4(e) Conditions for the Weber Hydroelectric Project, FERC No. 1744-039, in accordance with 18 CFR 4.34(b)(1)(i). Section 4(e) of the Federal Power Act (FPA), which states the Commission may issue a license for a project within a reservation only if it finds that the License will not interfere or be inconsistent with the purpose for which such reservation was created or acquired. This is an independent threshold determination made by the Commission, with the purpose of the reservation defined by the authorizing legislation or proclamation (see *Rainson v. FERC*, 106 F.3d 269 (9th Cir. 1977)). The Forest Service, for its protection and utilization determination under Section 4(e) of the FPA, may rely on broader purposes than those contained in the original authorizing statutes and proclamations in prescribing conditions (see *Southern California Edison v. FERC*, 116F.3d 507 (D.C. Cir. 1997)).

The following terms and conditions are based on those resource and management requirements enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), and any other law specifically establishing a unit of the National Forest System (NFS) or prescribing the management thereof (such as the Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved by Land and Resource Management Plans prepared in accordance with the National Forest Management Act. Specifically, the 4(e) conditions in this document are based on the Land and Resource Management Plan (as amended) for the Uinta-Wasatch-Cache National Forest, as approved by the Regional Forester of the Intermountain Region, Region 4.

Pursuant to Section 4(e) of the Federal Power Act, the Secretary of Agriculture, acting by and through Forest Service, considers the following conditions necessary for the adequate protection and utilization of the land and resources of the Uinta-Wasatch-Cache National Forest. License articles contained in the Federal Energy Regulatory Commission's (Commission's) Standard Form L-1 (revised October 1975) issued by Order No. 540, dated October 31, 1975, cover general requirements. Part I of this document includes standard administrative conditions deemed necessary for the administration of NFS lands.

Part II of this document includes standard resource conditions deemed necessary for protection and utilization of NFS lands. Part III of this document includes project specific resource requirements related to the Weber Hydroelectric Project, including all of the protection, mitigation, and enhancement (PM&E) measures from the Project memorandum of agreement, as conditions deemed necessary for protection and utilization of NFS lands.

PART I: STANDARD ADMINISTRATIVE CONDITIONS

Condition No. 1 - Revision of Forest Service Conditions

Forest Service reserves the right, after notice and opportunity for comment, to require changes in the Project and its operation through revision of the Section 4(e) conditions to accomplish protection and utilization of National Forest System (NFS) lands and resources. Forest Service also reserves the right to modify these conditions, if necessary, to respond to any significant changes that warrant a revision of these conditions, for example, a Final Biological Opinion issued for this Project by the National Marine Fisheries Service or United States Fish and Wildlife Service; or any Certification issued for this Project by Utah Department of Natural Resources, Division of Water Resources.

Condition No. 2 - Surrender of License or Transfer of Ownership

Prior to any surrender of this license, Licensee shall provide assurance acceptable to the Forest Service that Licensee shall restore any project area directly affecting NFS lands to a condition satisfactory to the Forest Service upon or after surrender of the license, as appropriate. To the extent restoration is required, Licensee shall prepare a restoration plan for Forest Service review and approval, which shall identify the measures to be taken to restore such NFS lands and shall include adequate financial mechanisms to ensure performance of the restoration measures.

In the event of any transfer of the license or sale of the project, Licensee shall assure that, in a manner satisfactory to Forest Service, Licensee or transferee will provide for the costs of surrender and restoration. If deemed necessary by the Forest Service to assist it in evaluating Licensee's proposal, Licensee shall conduct an analysis, using experts approved by the Forest Service, to estimate the potential costs associated with surrender and restoration of any project area directly affecting NFS lands to Forest Service specifications. In addition, the Forest Service may require Licensee to pay for an independent audit of the transferee to assist the Forest Service in determining whether the transferee has the financial ability to fund the surrender and restoration work specified in the analysis.

Condition No. 3 - Requirement to Obtain a Forest Service Special Use Authorization for Use of National Forest System Lands

Licensee shall apply for and obtain a new or amended special use authorization from Forest Service for the occupancy and use of lands previously covered by a special use authorization in any previous license. Licensee shall obtain the executed authorization within 6 months of license issuance and prior to beginning any ground disturbing activities on NFS lands to be covered by the special use authorization, and shall file that special use authorization with the Commission. Licensee shall be responsible for the costs of collecting any information Forest Service needs in order to make a decision concerning issuance of special use authorization.

During the term of the License, if the Commission determines that the project involves the use of any additional NFS lands, outside the current project boundary, Licensee shall obtain a special use authorization from Forest Service for the occupancy and use of such additional NFS lands. Licensee shall obtain the executed authorization before beginning any ground-disturbing activities on NFS lands outside the FERC boundary covered by the special use authorization, and shall file that authorization with the Commission if the activity is related to the Project. Licensee shall be responsible for the costs of collecting all information directly related to the evaluation of the effects of the proposed occupancy and use that Forest Service needs in order to make a decision concerning issuance of a special use authorization.

Condition No. 4 - Requirement to Obtain Temporary Forest Service Special Use Authorization

During the term of the License, if Licensee proposes to perform any project construction work, Licensee shall obtain a temporary special use authorization from Forest Service before beginning any ground disturbing activities on NFS lands outside the FERC Project boundary. The special use authorization will include appropriate vegetation management and erosion control measures as needed to protect NFS lands and resources. Licensee shall be responsible for the costs of collecting and analyzing all information directly related to the evaluation of the effects of the proposed construction that Forest Service needs in order to make a decision concerning issuance of a temporary special use authorization.

Licensee may commence ground disturbing activities authorized by the License and temporary special use authorization no sooner than 60 days following the date Licensee files the special use authorization with the Commission, if the special use authorization is related to Project activity, unless the Commission prescribes a different commencement schedule. In the event there is a conflict between any provisions of the License and

Forest Service special use authorization, the special use authorization shall prevail to the extent that Forest Service, in consultation with the Commission, deems necessary to protect and utilize NFS resources.

Condition No. 5 - Compliance with Regulations

Licensee shall comply with the regulations of the United States Department of Agriculture for activities on NFS lands, and all applicable Federal, State, county, and municipal laws, ordinances, or regulations in regards to the area or operations on or directly affecting NFS lands, to the extent those laws, ordinances or regulations are not preempted by federal law.

Condition No. 6 - Protection of United States Property

Licensee, including any agents or employees of Licensee acting within the scope of their employment, shall exercise diligence in protecting from damage the land, property, and interests of the United States from damage arising from Licensee's construction, maintenance, or operation of the project works or the works appurtenant or accessory thereto under the license. Licensee's liability for fire and other damages to NFS lands shall be determined in accordance with the Federal Power Act and standard Form L-1 Articles 22 and 24.

As part of the occupancy and use of the project area, Licensee has a continuing responsibility to reasonably identify and report all known or observed hazardous conditions on or directly affecting NFS lands that would affect the improvements, resources, or pose a risk of injury to individuals. Licensee will abate those conditions, except those caused by third parties or not related to the occupancy and use authorized by the License. Any non-emergency actions to abate such hazards on NFS lands shall be performed after consultation with Forest Service. In emergency situations, Licensee shall notify Forest Service of its actions as soon as possible, but not more than 48 hours, after such actions have been taken. Whether or not Forest Service is notified or provides consultation, Licensee shall remain solely responsible for all abatement measures performed. Other hazards should be reported to the appropriate agency as soon as possible.

Licensee shall maintain all its improvements and premises on NFS lands to standards of repair, orderliness, neatness, sanitation, and safety acceptable to Forest Service. Licensee shall comply with all applicable Federal, State, and local laws and regulations, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resources Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq., and other

relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment. Disposal of all materials will be at an approved existing location, except as otherwise agreed by Forest Service.

Condition No. 7- Existing Claims

License shall be subject to all valid claims and existing rights of third parties. The United States is not liable to Licensee for the exercise of any such right or claim.

Condition No. 8 - Indemnification

Licensee shall indemnify, defend, and hold the United States harmless for:

- any violations incurred under any laws and regulations applicable to, or
- judgments, claims, penalties, fees, or demands assessed against the United States caused by, or
- costs, damages, and expenses incurred by the United States caused by, or
- the releases or threatened release of any solid waste, hazardous substances, pollutant, contaminant, or oil in any form in the environment related to the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license.

Licensee's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property caused by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. Upon surrender, transfer, or termination of the license, Licensee's obligation to indemnify and hold harmless the United States shall survive for all valid claims for actions that occurred prior to such surrender, transfer or termination.

Condition No. 9 - Access within the License Area

The United States shall have unrestricted use of any part of the licensed area on NFS lands for any purpose, including permitting uses by third parties or members of the public, provided such use does not interfere with the rights and privileges authorized for the license. operation of the Project works or the works appurtenant or accessory thereto under the license.

Condition No. 10 - Use of National Forest System Roads

Licensee shall obtain suitable authorization for any NFS roads needed for Project access, if applicable. If needed, authorization shall specify road maintenance and management standards that provide for traffic safety, minimize erosion, and minimize damage to natural resources and that are acceptable to Forest Service, as appropriate.

The project specific conditions in Part III hereof include the PM&E Measure requiring Licensee to "Maintain/repave access road to Weber Recreation Site and existing asphalt path in picnic area" (REC-6). Any maintenance to be performed by Licensee shall be authorized by and shall be performed in accordance with applicable Best Management Practices (BMPs). In the event a road requires maintenance, restoration, or reconstruction work to accommodate Licensee's needs, Licensee shall perform such work at its own expense after securing Forest Service authorization.

Forest Service reserves the right to close any and all NFS routes where damage is occurring to the soil or vegetation or to require reconstruction/construction by Licensee to the extent needed to accommodate Licensee's use. Forest Service agrees to provide notice to Licensee prior to road closures, except in an emergency, in which case notice will be provided as soon as practicable. Licensee shall maintain suitable crossings as required by Forest Service for all roads and trails that intersect the right-of-way occupied by linear Project facilities (powerline, penstock, ditch, and pipeline).

Condition No. 11 – Hazardous Substances Plan

Licensee shall continue to maintain, update and implement the site-specific Oil Spill Prevention, Control and Countermeasure Plan (SPCC Plan). Licensee shall ensure the SPCC Plan conforms to all state, local and federal regulatory requirements, including but not limited to:

- Management of waste oil debris resulting from an oil spill cleanup;
- Above ground bulk storage;
- Hazardous materials reporting;
- Hazardous waste management; and
- Storm water management and discharge.

Condition No. 12 - Pesticide-Use Restrictions on National Forest System Lands

Licensee shall implement all site specific conditions included in Part III hereof, including but not limited to MOA PM&E Measures for Botanical Resources. Pesticides may not be used on NFS lands or in areas affecting NFS lands to control undesirable woody and

herbaceous vegetation, aquatic plants, insects, rodents, non-native fish, etc., without the prior written approval of Forest Service.

Any request by Licensee to use pesticides shall be accompanied by the following:

- A determination as to whether pesticide applications are essential for use on NFS lands;
- Specific locations of use;
- Specific pesticides proposed for use;
- Application rates;
- Dose and exposure rates; and
- Safety risk and timeframes for application.

Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the report was submitted. In such an instance, an emergency request and approval may be made.

On NFS lands, Licensee shall only use those materials registered by the U.S. Environmental Protection Agency and consistent with those applied by Forest Service and approved through Forest Service review for the specific purpose planned. Licensee must strictly follow label instructions in the preparation and application of pesticides and disposal of excess materials and containers. Licensee may also submit Pesticide Use Proposal(s) with accompanying risk assessment and other Forest Service required documents to use pesticides on a regular basis. Submission of this plan will not relieve Licensee of the responsibility of annual notification and review, if applicable.

Condition No. 13 - Consultation

Licensee shall annually consult with the Forest Service. The date of the consultation meeting will be mutually agreed to by the Licensee and Forest Service but in general should be held by April 15. At least 30 days in advance of the meeting, Licensee shall also notify interested stakeholders, confirming the meeting location, time and agenda, which shall include all MOA signatories and other parties listed below, including:

- Utah Department of Environmental Quality (DEQ)
- Utah Division of Wildlife Resources
- U.S. Fish and Wildlife Service
- U.S. Bureau of Reclamation
- American Whitewater
- Davis and Weber Counties Canal Company
- Trout Unlimited (Utah)

- Weber River Water Users Association
- Weber Basin Water Conservancy District

Licensee shall attempt to coordinate the meeting so interested agencies and other stakeholders may attend, as appropriate. Licensee shall provide any information pertinent to the meeting requested by Forest Service or other meeting participants at least 30 days prior to the meeting, if possible.

Consultation shall include, but not be limited to, the following:

- a. Status of implementation of license conditions, including the status of any ongoing Project MOA PM&E Measures in Part III hereof;
- b. Results of any monitoring or results over the previous year, including any results relating to Project MOA PM&E Measures, such as HYD-1, FISH- 2, and REC-9;
- c. Discussion and review of completed or planned maintenance at the site;
- d. Discussion of any foreseeable changes to Project facilities or feature;
- e. Discussion of any necessary revisions or modifications to implementation plans approved as part of this license;
- f. Discussion of any potential protection measures for species newly listed as threatened, endangered, or sensitive, or changes to existing management plans that may no longer be warranted due to delisting of species or, to incorporate new knowledge about a species requiring protection. Discussion of needed protection measures for newly discovered cultural resource sites; and
- g. Discussion of any planned weed control or pesticide use.

In addition to the topics listed above, the Licensee shall consult with Forest Service annually to determine whether employee site-awareness training is needed to address site-specific resource issues such as sensitive areas, safety, erosion, BMPs, vegetation management or other site issues. Licensee shall incorporate Forest Service consultation information and recommendations into employee training or notifications, as needed.

A record of the meeting shall be kept by Licensee and shall include any recommendations made by Forest Service for the protection of NFS lands and resources, including any specific training needs. Licensee shall file the meeting record with the Commission no later than 60 days following the meeting.

Additional Consultation Groups

The Licensee shall coordinate, consult, and communicate with other resource groups as required in the PM&E Measures in the Project MOA; attached in Part III, Project Specific Conditions. Licensee shall provide notification of license compliance deviations

to all interested stakeholders and consulting parties, as needed.

Fish Passage Consultation and Communication Plan

As agreed to in the Project MOA PM&E Measures for Fisheries and Aquatic Resources, Licensee shall develop and implement a Communication Plan including the Forest Service, Utah DWR, Trout Unlimited (TU), U.S. Fish and Wildlife Service (FWS), Utah Division of Water Quality (UDWQ), and PacifiCorp. The general purpose and need of the consultation plans described in the Project MOA, PM&E Measures include, but are not limited to; providing a forum for the Licensee to consult with resource agencies and other interested parties on fish ladder and passage, operations for passage, and fishway issues and outages.

Recreation Resources Coordination

Licensee shall coordinate with the Forest Service, Utah DWR, TU, UDWQ, FWS, America Whitewater, and Utah Department of Transportation (UDOT), as agreed in the Project MOA for Recreation Resources including conditions in PM&E Measures REC-2, REC-5, REC-8 and REC-9.

Condition No. 14 – Approval of Changes

Notwithstanding any license authorization to make changes to the Project, when such changes directly affect NFS lands, Licensee shall obtain written approval from Forest Service prior to making any changes in any constructed Project features or facilities, or in the uses of Project lands and waters or any departure from the requirements of any approved exhibits filed with the Commission. Following receipt of such approval from Forest Service, and a minimum of 60 days prior to initiating any such changes, Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of Forest Service for such changes. Licensee shall file an exact copy of this report with Forest Service at the same time it is filed with the Commission. This condition does not relieve Licensee from the amendment or requirements of this License.

Condition No. 15 - Surveys, Land Corners

Licensee shall avoid disturbance to all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments on NFS lands are destroyed by an act or omission of Licensee, in connection with the use and/or occupancy authorized by this license, depending on the type of monument destroyed, the Licensee shall reestablish or reference same in accordance with

(1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of Forest Service. Further, Licensee shall ensure that any such official survey records affected are amended as provided by law.

Condition No. 16 - Signs

Licensee shall consult with Forest Service prior to erecting signs related to safety issues on NFS lands covered by the license. Prior to Licensee erecting any other signs or advertising devices on NFS lands covered by the license, Licensee must obtain the approval of Forest Service as to location, design, size, color, and message. Licensee shall be responsible for maintaining all Licensee-erected signs to neat and presentable standards.

PART II: STANDARD RESOURCE CONDITIONS

Condition No. 17 – Invasive Species Management

Licensee is responsible for developing Best Management Practices (BMPs) for individual Project O&M activities, performed by Licensee and/or its contractors, when activities have the potential to introduce or proliferate aquatic or terrestrial invasive species into the Project reservoir or downstream. BMPs relating to pesticide use, vegetation management and weed control measures shall be consistent with Condition No. 12 hereof, and all Project MOA conditions included in Part III, PM&E Measures.

If invasive aquatic species are determined by a management agency to be an issue within the reservoir, Licensee shall consult with pertinent agencies and institute an appropriate plan of action. Similarly, the Licensee shall consult with the Forest Service and appropriate state agencies on any invasive or noxious weed concerns.

Condition No. 18 – Special Status Species and Sensitive Areas

Licensee shall consult on any issues relating to special status species and sensitive areas, consistent with the consultation groups described in Condition No. 13 hereof, pursuant to the Conditions agreed upon by all parties of the MOA attached in Part III, Project Specific Conditions in PM&E Measures.

Condition No. 19 – Erosion and Sediment Control and Management

Licensee is responsible for implementing erosion and sediment control BMPs for any Project O&M activities performed by Licensee and/or its contractors, as applicable, and consistent with the Project MOA conditions attached in Part III, PM&E Measures. If

requested by Forest Service, Licensee shall develop and submit site-specific temporary erosion control measures and BMPs for activities with potential to impact NFS land. These measures will prevent erosion, stream sedimentation, dust, and soil mass movement during the Project activities and until replaced by permanent measures or adequate vegetation re-growth.

Condition No. 20 – Fire Prevention and Response Plan

Within 1 year of license issuance, Licensee shall complete, in consultation with Forest Service and subject to the final approval by Forest Service, a Fire Prevention and Response Plan. The Plan shall set forth in detail Licensee's responsibility for the prevention (including fuels treatment, as needed), reporting, emergency response, and investigation of fires related to Project operations. Upon Commission approval, Licensee shall file the Fire Prevention and Response Plan with the Commission, and implement the Plan.

Minimum plan components include, but may not be limited to:

- Fuels Treatment/Vegetation Management: Identification of fire hazard reduction measures and reoccurring maintenance measures to prevent the escape of project-induced fires.
- Fire Prevention and Patrol: Address fire danger and public safety associated with project induced recreation, including fire danger associated with dispersed camping, existing and proposed developed recreation sites, trails, and vehicle access. Identify water drafting sites and other fire suppression resources.
- Emergency Response Preparedness: Analyze fire prevention needs including equipment and personnel availability.
- Reporting: Licensee shall report any project related fires immediately to Forest Service.
- Fire Control/Extinguishing: Provide Forest Service a list of the locations of available fire suppression equipment and the location and availability of fire suppression personnel.

PART III. PROJECT SPECIFIC CONDITIONS

Project specific conditions for the Weber Hydroelectric Project (Project) include the conditions identified in the signed Memorandum of Agreement (MOA), Regarding Protection, Mitigation and Enhancement (PM&E) Measures at PacifiCorp's Weber Hydroelectric Project. The Project PM&E Measures listed in Appendix A of the MOA were filed separately with the Commission by PacifiCorp in the Final License Application, Exhibit E, Appendix A on May 30, 2018 (FERC eLibrary Accession No.

20180530-5085). The Forest Service is a signatory to the Project MOA, and all of the PM&E Measures listed in Exhibit E, Appendix A of the Final License Application are included as final 4(e) License Conditions, as listed in the following table.

RESOURCE	WEBER PM&E MEASURES
Geology and Soils	None
Water Resources - Hydrology	HYD-1: Continue existing seasonally-adjusted minimum stream flows (34-50 cfs). Implement annual change, if needed, in required minimum streamflow within 10 days of the final Weber River runoff forecast from Natural Resources Conservation Service (NRCS), using the current formula.
Water Resources – Water Rights	None No PM&E measure is proposed because existing 1938 and 1965 agreements and existing water rights [35-8061-365 cfs flow right, 35-8062-100 af storage, 35- 8741-storage in Echo] will remain unchanged.
Water Resources – Water Quality	None No PM&E measure is proposed because adherence to existing O&M practices is protective of the resource (state water quality standards are being met).
Fisheries and Aquatic Resources	<p>FISH-1: Continue to provide minimum stream flow for the bypassed reach of the river affected by the Weber Project (identical to HYD-1, above).</p> <p>FISH-2: Construct, operate, and maintain a fish ladder suitable for upstream passage of both Bonneville Cutthroat Trout (BCT) and bluehead sucker, including a fish trap operated by Utah Division of Wildlife Resources (UDWR} and Trout Unlimited (TU} and maintained by PacifiCorp. PacifiCorp will consult annually with UDWR, TU, and U.S. Forest Service (USFS) related to fish ladder and trap operation and maintenance according to a Communication Plan developed between UDWR, TU, USFS, U.S. Fish and Wildlife Service (FWS) and PacifiCorp. The Communication Plan will also specify group contacts, alternates, and contact methods over the life of the license.</p> <p>FISH-3: Keep the low-level gate operational when forebay is dewatered subject to operational constraints and requirements such as extreme winter icing conditions (undertake periodic maintenance as required to ensure operation). If the forebay is dewatered and the low-level gate is inoperable for more than 10 days due to extreme temperature or flow conditions, PacifiCorp will consult with</p>

	<p>UDWR, TU, FWS}, Utah Division of Water Quality (UDWQ}, and USFS (per the Communication Plan methods) and open the low-level gate as soon as possible.</p> <p>FISH-4: In the event of a prolonged project outage keep forebay full if possible to ensure fish ladder operation; PacifiCorp will consult with UDWR, TU, FWS, UDWQ, and USFS (per the Communication Plan methods) to discuss fishway operation during any interim periods exceeding 10 days when neither the low-level gate nor the fishway are operable.</p>
Botanical Resources	<p>BOT-1: Continue existing annual USFS consultation.</p> <p>BOT-2: Conduct weed control per historic practice, adding the area abutting improved project river access point in riparian habitat (see REC-8, below), subject to landowner weed control requirements and constraints.</p>
Terrestrial Wildlife Resources	<p>WL-1: Continue existing annual USFS consultation.</p>
Cultural and Tribal Resources	<p>CULT-1: Finalize and implement the updated Historic Properties Management Plan (HPMP) (formerly approved as the Cultural Resources Management Plan [CRMP]).</p>
Recreation Resources	<p>REC-1: Continue to maintain the existing Weber Recreation Site, but with modifications outlined below.</p> <p>REC-2: Coordinate with USFS, UDWR, TU, UDWQ, FWS, and America Whitewater (AW) on improved interpretive signage; include potential for improved technology to include a code that is scan-able and that links to flow information (REC-3). Install signage instructing visitors on dog waste protocol and provide dog waste bags for disposal.</p> <p>REC-3: Create a webpage hosted and maintained by PacifiCorp (linked on both the Corporate website and the Project website) indicating approximate bypass reach flows (program subtracts generation flow from U.S. Geological Survey gage site flow and posts it to website)-when minimum streamflow only, the calculated number will be replaced by the phrase "minimum streamflow of approximately 50 cfs or inflow" to eliminate the risk of showing a calculated flow that could be less than the minimum for that period.</p> <p>REC-4: Install and maintain a year-round permanent vault Americans with Disabilities Act (ADA)/ Architectural Barriers Act (ABA)-compliant toilet facility (flush bathrooms are available at the Utah Department of Transportation (UDOT) rest stop upstream)</p> <p>REC-5: Consult with USFS to create a new ADA/ ABA compliant</p>

	<p>accessible picnic site on flat lawn area closest to parking lot (consisting of a concrete pad, a grill, and an accessible picnic table), or to modify the existing site per USFS standards.</p> <p>REC-6: Maintain/repave access road to Weber Recreation Site and existing asphalt path in picnic area.</p> <p>REC-7: Reconfigure former sandbox area fencing to remove south, east, and west portions (retain north portion to partition recreation site from 1-84)</p> <p>REC-8: Improve two existing user-created trails located in and outside the Weber FERC Project Boundary:</p> <ul style="list-style-type: none"> a. In the Project Boundary, improve (construct steps) the existing dirt river access trail at the west end of the recreation site; b. Outside the Project Boundary, provide \$30,000 through an off-license agreement with TU to fund cooperative effort to improve pedestrian river access (with concurrence from UDOT and the underlying land owner) at the under-freeway user-created trail extending west from the Weber recreation site-proposed improvements would involve breaking up the existing large-boulder surface or backfilling this surface to create a navigable path of smaller rock with minimal width (no paving). Funds provided through the off-license agreement may be used by TU to provide another habitat benefit in the watershed in the event that improving pedestrian river access in the indicated location is infeasible or requires less funding than provided through the agreement. <p>REC-9: Support whitewater boating use of bypass reach: PacifiCorp will annually provide boater flows to the bypass reach by curtailing generation (up to 320 cfs or inflow) for 4-hour segments on four Saturdays prior to July 15. Flow schedule and notice to be determined in conjunction with AW, and in coordination with other interested parties, with the provision that boater flows in the future may be subject to minimum boater use (fewer than a minimum threshold of boaters may result in suspension of boater flows). Specific use triggers and related release changes to be determined.</p>
Land Use	None
Aesthetic Resources	None

Socioeconomic Resources	None
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