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Subject: Clarification Regarding Forest Service Hydropower Program

To: Regional Foresters

This letter is to clarify Forest Service direction and regulations regarding cost recovery for Federal Energy Regulatory Commission (FERC) hydropower licenses and special use permits for FERC hydropower projects. Costs associated with FERC licenses are not recoverable under the Forest Service's cost recovery regulations at 36 CFR 251.58. Forest Service cost recovery applies only to processing special use applications and monitoring compliance with those authorizations (36CFR251.58 (b)(1)-(b)(3) and (c)); (b)(4) and (d)).

Sections 10(e)(1) of the Federal Power Act (FPA) provides that FERC will fix annual charges to reimburse the United States for the costs of administering Part I of the FPA, including costs incurred by other federal agencies. Section 17 of the FPA specifically provides that "the proceeds of charges made by [FERC] for the purpose of reimbursing the United States for the costs of administration of this Part shall be paid into the Treasury of the United States and credited to miscellaneous receipts." Like other federal agencies, the Forest Service submits its costs for participating in FERC administered hydropower license proceedings to FERC on an annual basis. FERC combines all federal agency costs with charges for the use of government lands, pro-rates and apportions these among all licensees based upon annual power production, and pays the proceeds into the Treasury (16USC791a-825r; 42USC7101-7352).

Forest Service special use permits for FERC licensed hydropower projects should be administrative in nature and compliment the FERC license (see FSH 2709.15 Chapter 60, Section 61.23 – Licensed Project Special-Use Permit Terms and Conditions). Forest Service special use permits should not duplicate the substantive, environmental terms and conditions in the FERC license that the Forest Service and other federal agencies submitted to FERC for inclusion in its license (see FSH 2709.15 Chapter 50, Section 52.23 – Conditions for a Federal Power Act hydropower license, and FSM 2700, Chapter 2770, Section 2771.2 – Special Use Authorization Contents). During its licensing process and through its NEPA documents, FERC analyzes the effects of and costs of the Forest Service's - and other federal agencies – substantive terms, conditions and recommendations. The special-use authorization for projects exempted from licensing should contain the basic conditions that normally would have been in a FERC license. Since the special use authorization is the principal authorization for projects exempted from licensing and includes both administrative and mitigation measures, cost recovery applies to all aspects of the processing, preparation and administration of the special use authorization (see FSH 2709.15 Chapter 60, Section 61.33 – Exempted Project Special-Use Authorization).

For special use permits, the Forest Service should collect cost recovery from FERC licensees only for actual time spent:


- advising the applicant of the need for a special use authorization,



- reviewing the special use application, and
- incorporating by reference (“tiering to”) and/or supplementing FERC's NEPA as a basis for the special use permit.

With the above clarification, it is important for Forest Service staff to charge to the appropriate job codes in order to separate costs funded under cost recovery and those the agency reports to FERC in the annual reporting.

The Forest Service has general, standardized administrative clauses to be inserted into special use permits, as well as standardized administrative clauses specifically for FERC hydropower project special use permits. In other words, for most cases, there is little or no time needed to draft individual hydropower special use permits. Therefore, the permit processing for FERC hydropower projects should only take a few weeks, early in the FERC licensing process, and for a limited period of time following the finalization of FERC's NEPA document.



LESLIE A. C. WELDON
Deputy Chief, National Forest System