

FERC PROJECTS - SURFACE AND MINERAL SEGREGATION

The segregative effects created by the filing of a hydroelectric application with FERC can be a very complex subject. What follows is a brief explanation of the hydroelectric licensing process, and its relationship to surface and mining segregation on Federal lands.

Applications for new hydroelectric projects are usually filed in the form of a **preliminary permit application** with the FERC. Upon **filing of the application** (i.e., received in the FERC office and docketed with a FERC number), all Federal lands within the project boundary identified in the application by a map (Exhibit 4) are automatically **withdrawn from surface entry**.

Usually within a few months following receipt of the application, FERC **issues a preliminary permit** to the applicant that can be in effect for up to three years. The preliminary permit gives the permittee priority rights to pursue development of the project, allows the applicant to study the potential project and, among other things, determine if it's economically feasible to develop. **Upon issuance of the preliminary permit, the lands also become closed to the mining laws.**

Occasionally, during the course of studying the project, the applicant may amend its preliminary permit by filing an adjusted project boundary map. Any additional Federal lands are then automatically segregated from surface entry upon filing of the amended project boundary map. It has also been interpreted by FERC that, for a project with a preliminary permit in effect, the additional lands are also closed to mining at the time of filing the amended project boundary map, because these parcels are "under examination and survey" by a prospective licensee.

Prior to **expiration** of the preliminary permit, several things can happen. If the permittee does not diligently pursue studying the potential project, and provided FERC with progress reports and findings, FERC can **cancel** the preliminary permit. The permittee may also choose to **surrender** the preliminary permit voluntarily, if it is determined that the project is not feasible. Any of these events (i.e., the preliminary permit expires, is canceled or surrendered) result in the automatic opening of the land once again to the mining laws. However, the surface segregation remains in effect until FERC formally **vacates** (i.e., terminates or partially revokes) the land withdrawal.

FERC typically vacates non-essential project power site withdrawals effectuated by the filing of hydropower applications in the form of a letter to the BLM Director listing, by individual state, all the "essential" projects affecting Federal lands. The surface segregation for any project NOT on the list ends as of the date of the letter. The surface segregation also ends for any lands outside the boundary limits of the most recent project boundary maps filed with FERC for each project on the respective state lists.

Prior to expiration of the preliminary permit, the permittee may decide to file a **license application**. (Note: Although a preliminary permit is not required prior to filing a license application, the typical process is to first obtain a preliminary permit for new unconstructed projects.) The license application is a request to FERC to allow construction of the hydroelectric project. The license application also continues both the surface and mining segregative effects

on all Federal lands within the project boundary defined in the accompanying maps (typically Exhibit G, but formerly Exhibit K for older licensed projects) included in the license application. The project boundary in the license application is usually somewhat different from that in the preliminary permit, so mining segregation ends on those Federal lands no longer within the most currently defined project boundary. However, surface segregation continues until FERC formally vacates the withdrawal, as explained earlier. In addition, surface segregation would begin for any new parcels that may have been added to the license application. Thus, you now have a surface withdrawal for the one FERC project, but portions may have different effective dates, depending on the time of filing of project boundary maps.

It usually takes about two years, and often longer, for FERC to decide on whether to issue the license. After the license is issued, and the project constructed (which can take several more years), FERC requires the licensee to file “**As Built**” exhibit maps for approval, which includes project boundary maps. FERC issues a formal order accepting these exhibits, and adds them to the license, typically in the form of a license amendment order. Often, the project boundary is again modified by the filing of these revised project boundary maps. To complicate matters further, most license applications define a project boundary by metes and bounds description, rather than by legal subdivisions.

In summary, FERC project applications create complex segregative effects on the Federal lands affected. To fully understand the segregative effect on a particular parcel of land requires looking at the actual case file whenever a FERC project withdrawal may impact an area, rather than trying to interpret surface/mining status from an MTP or from the LR 2000 database.