

Reclamation Manual

Directives and Standards

Subject:	Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges
Purpose:	Establish the process requirements and charges associated with development of hydropower at a Bureau of Reclamation (Reclamation) project facility where Reclamation LOPP authorities apply. The benefits of this Directive and Standard (D&S) are improved internal and external communication, efficiency, and transparency of LOPP requirements.
Authority:	Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388); the Town Sites and Power Development Act of 1906 (Act of April 16, 1906, ch. 1631, 34 Stat. 116); the Reclamation Project Act of 1939 (Act of August 4, 1939, ch. 418, 53 Stat. 1187); the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2013 (Act of August 9, 2013, 127 Stat. 498); the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Act of December 19, 2014, 128 Stat. 3292); the Infrastructure Investment and Jobs Act (Act of November 15, 2021, 135 Stat. 429); and other applicable laws, Executive Orders, judicial decisions, policies, regulations, and acts relating to individual dams or projects.
Approving Official:	Senior Advisor, Hydropower
Contact:	Power Resources Office (86-61100)

1. **Introduction.** A LOPP is a contractual right given to a non-Federal entity to use a Reclamation project facility site for hydropower generation consistent with Reclamation project purposes. A LOPP project must not impair the efficiency of Reclamation generated power or water deliveries, impact the structural integrity of the Reclamation project, jeopardize public safety, or negatively affect any other Reclamation project purpose. The terms and conditions for the use of any Reclamation project site, including lands related to the LOPP project, are to be addressed in the LOPP.¹
 - A. A LOPP is a discretionary use of Reclamation project sites. Reclamation is not obligated to initiate the LOPP process and may withdraw a previously issued LOPP authorization for any legitimate reason as determined by Reclamation.
 - B. Reclamation’s authority to issue a LOPP is limited to those Reclamation project sites where explicit LOPP authorities exist and/or where Federal Energy Regulatory

¹ Terms and conditions that may otherwise be addressed in a Reclamation Use Authorization are to be incorporated into the applicable preliminary lease and/or LOPP contract. Additional authorizations (external to the preliminary lease and/or LOPP contract) may be required, dependent upon site-specific conditions and LOPP project design.

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Commission (FERC) jurisdiction has been resolved. See Paragraph 4 of this D&S for information regarding Reclamation and FERC jurisdiction.

- C. Reclamation LOPP authorities are derived from the Town Sites and Power Development Act of 1906, the Reclamation Project Act of 1939, and project-specific statutes. The Town Sites and Power Development Act of 1906 authorizes the Secretary of the Department of the Interior to lease surplus power or power privileges. The Reclamation Project Act of 1939, Section 9(c), as amended, authorizes the following:
- (1) A maximum LOPP term of 40 years.
 - (2) Preference be given to “preference entities” in the LOPP process.
 - (3) Reclamation collection of LOPP charges.
 - (4) A first right of development for operating partners or beneficiaries of Reclamation project conduits for small conduit hydropower development.
 - (5) Additional LOPP process requirements limited exclusively to qualifying non-Federal pumped storage LOPP projects.²
2. **Applicability.** This D&S applies to all Reclamation employees that work on LOPP activities, and is applicable to any LOPP project where a solicitation for a LOPP project is issued or a formal request for development is received after the release of this D&S. This D&S does not apply to activities necessary for Federal (i.e., Reclamation) hydropower development or non-Federal development of non-hydropower renewable energy at a Reclamation project. If the regional director, in coordination with associated stakeholders, determine that it is in the best interest of Reclamation to pursue Federal development of the site, this D&S does not apply.
3. **Project-Specific Authorities Control.** The LOPP process may involve projects or facilities that are subject to project-specific statutes, regulations, judicial decisions, existing contracts, or other authorities. These specific authorities will control if there is a conflict with this D&S.
4. **Jurisdiction for Non-Federal Hydropower Development.** Both Reclamation and FERC are authorized to permit the use of Reclamation project sites to non-Federal entities for the purposes of hydropower development. Unless otherwise specified in law, agency jurisdictional boundaries, roles, and responsibilities are defined in Memorandum of

² The Infrastructure Investment and Jobs Act (Pub. L. 117-58), Section 40336 establishes additional LOPP process requirements for proposed pumped storage projects, that (1) utilize multiple Reclamation Project reservoirs; and (2) were subject to a FERC preliminary permit as of June 1, 2017. Additional LOPP process requirements as established in Pub. L. 117-58 are limited exclusively to the Banks Lake Pumped Storage Project, FERC No. 14329.

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Understanding (MOU). Each Reclamation project site is subject to one (and only one) agency jurisdiction.³

- A. **Exclusive LOPP Jurisdiction.** As specified by Reclamation law, the following non-Federal project types are within the exclusive jurisdiction of Reclamation and would be developed via the LOPP process:
- (1) Small conduit hydropower development on Reclamation projects.
 - (2) Pumped storage hydropower development exclusively utilizing Reclamation project reservoirs.
 - (3) Hydropower development on Federal projects constructed pursuant to the Water Conservation and Utilization Act.
- B. **MOU Jurisdiction Determination Process.** Unless authorized otherwise, agency jurisdiction for projects that do not conform with project types described in Paragraph 4.A. of this D&S are evaluated per the 1992 MOU between Reclamation and FERC (Appendix A of this D&S). Jurisdiction determination process timelines are defined in the 1992 MOU.
- (1) The general premise of the 1992 MOU is that unless otherwise specified in law, Reclamation project sites authorized for Federal hydropower development are within the exclusive jurisdiction of Reclamation and would be developed via the LOPP process. Reclamation project sites not authorized for Federal hydropower development are within the exclusive jurisdiction of FERC and would be developed via the FERC licensing process.
 - (2) Per the 1992 MOU, both agencies are able to provide a preliminary jurisdiction determination however the final jurisdiction determination is made by FERC.
 - (3) Should Reclamation and FERC alter the 1992 MOU or otherwise alter procedures for determining agency jurisdictional boundaries, roles, and responsibilities, the MOU or procedures in place at the time when the formal request for development is received will govern.
 - (4) The MOU jurisdictional determination process may be initiated by Reclamation (independently or in response to a formal request for development) or by FERC.

³ Non-Federal *projects utilizing multiple sites* may be subject to both Reclamation and FERC jurisdictions (“dual jurisdiction non-Federal projects”), if the non-Federal project utilizes a Reclamation Project site, within Reclamation jurisdiction and a second non-Reclamation Project site, within FERC jurisdiction. Unless otherwise specified in law, all D&S requirements apply for applicable, dual jurisdiction non-Federal projects. See Paragraph 9.C. of this D&S for environmental compliance roles and responsibilities for dual jurisdiction non-Federal projects.

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In cases where Reclamation receives a formal request for development, the Reclamation recipient is to notify the regional director, Power Resources Office, and Dam Safety Office.

- (5) The Senior Advisor, Hydropower is responsible for coordinating with FERC on the MOU jurisdictional determination process.

5. LOPP Program Administration.

- A. The Senior Advisor, Hydropower is responsible for LOPP program administration – consisting of developing, overseeing, reviewing, and revising LOPP process requirements defined in this D&S. In this role, the Senior Advisor, Hydropower is to ensure coordination between regional directors, the Power Resources Office, the Dam Safety Office, and the Technical Service Center on LOPP process implementation and associated workloads.
- B. If funding is available, the Senior Advisor, Hydropower will establish and make available a work breakdown structure for costs incurred by Reclamation in administering the LOPP process before issuance of the preliminary lease and execution of the contributed funds agreement.

6. LOPP Process Implementation.

- A. Regional directors are responsible for LOPP process implementation within their region. In this implementation role, regional directors are responsible for:
 - (1) Ensuring compliance with LOPP process requirements defined within this D&S, including determining whether to initiate the LOPP process, extending LOPP process timeframes, and approving and withdrawing LOPP authorizations.⁴
 - (2) Ensuring compliance with National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and other applicable statutory and regulatory requirements as well as ensuring coordination with the appropriate Tribal Historic Preservation Officer and Tribal consultation, as applicable for LOPP projects.
- B. Regional directors may deny issuance of a preliminary lease or LOPP contract or withdraw an issued preliminary lease or LOPP contract at any time based on inadequate design information, unsatisfactory environmental impacts, safety concerns, physical security or cybersecurity concerns, detrimental impacts to the Reclamation project, or any other legitimate reason as determined by the regional director.

⁴ See Reclamation Manual Delegations of Authority, Paragraph 4.O.(1)(d).

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- C. Once it is determined that the site is within the exclusive jurisdiction of Reclamation:
- (1) For sites showing a potential capacity greater than one megawatt, regional directors will coordinate with associated power and water contractors and the appropriate Power Marketing Administration (PMA) to investigate interest in funding Federal development of the site. This requirement does not apply to sites showing a potential capacity less than one megawatt.
 - (2) Should the regional director, in coordination with associated stakeholders, determine that it is in the best interest of Reclamation to pursue Federal development of the site, the LOPP process and this D&S do not apply.
 - (3) If the regional director, in coordination with associated stakeholders waive the opportunity to pursue Federal development of the site – or if the requirement described in Paragraph 6.C.(1) of this D&S does not apply, the LOPP process may be implemented by the regional director, in accordance with this D&S.
- D. The LOPP process is to be implemented in three phases. Each phase and associated requirements, responsibilities, and timelines are defined in Paragraphs 7 through 10 of this D&S.
- E. All phases of the LOPP process are to be implemented in accordance with Section 9(c) of the Reclamation Project Act of 1939, as amended. LOPP projects must not impair the efficiency of Reclamation generated power or water deliveries, impact the structural integrity of the Reclamation project, jeopardize public safety, or negatively affect any other Reclamation project purpose.
- F. For each LOPP project, regional directors are to assign a LOPP lead. LOPP leads are responsible for administering the competitive solicitation process (as applicable), preliminary lease, and LOPP contract and submitting the following LOPP documents to the Senior Advisor, Hydropower within 15 calendar days of execution:
- (1) The competitive solicitation (if applicable, per Paragraph 7.D. of this D&S).
 - (2) The preliminary lease.
 - (3) The contributed funds agreement.
 - (4) NEPA documentation.
 - (5) The LOPP contract.
7. **Solicitation Through Selection of the Lessee.** The solicitation through selection of the lessee phase varies by Reclamation project site type. In all cases, as designated by the regional director, the regional power manager or area office manager will create a selection

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team qualified to review LOPP proposals and make a recommendation to the regional director for award of the preliminary lease. The recommendation may be to deny award of the preliminary lease.

A. Conduit Hydropower Development – Transferred Work.

- (1) Upon receiving a formal request for conduit hydropower development from the irrigation district or water users association operating the applicable transferred work conduit (i.e., the transferred work conduit “operating entity”), Reclamation will allow the operating entity up to 150 calendar days after receipt of the formal request for development to submit a LOPP proposal that includes the information required in Appendix E of this D&S.
 - (a) During the 150-calendar day timeframe, Reclamation will not solicit proposals from other parties and no other party is eligible to receive the LOPP.
 - (b) No later than 30 calendar days after close of the 150-calendar day proposal window, the selection team will provide a recommendation to the regional director for award of the preliminary lease.
- (2) Upon receiving a formal request for conduit hydropower development from a party other than the operating entity of the applicable transferred work conduit, within 14 calendar days, the regional director will first offer the LOPP opportunity to the operating entity. Following the offer, Reclamation will allow up to 60 calendar days for the operating entity to either accept or reject, in writing, the LOPP opportunity. Reclamation will consider a no response within the 60-calendar day timeframe a rejection.
 - (a) If the operating entity accepts the LOPP opportunity, Reclamation will allow the operating entity up to 150 calendar days after receipt of the acceptance to submit a LOPP proposal that includes the information required in Appendix E of this D&S. During the 150-calendar day timeframe, Reclamation will not solicit proposals from other parties and no other party is eligible to receive the LOPP.
 - (b) No later than 30 calendar days after close of the 150-calendar day proposal window, the selection team will provide a recommendation to the regional director for award of the preliminary lease.
 - (c) If the operating entity rejects the LOPP opportunity or fails to submit an acceptable proposal within the 150-calendar day timeframe, the regional director will ensure a competitive solicitation is prepared and published within 120 calendar days following the 150-calendar day timeframe

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described above. The competitive solicitation is to adhere to requirements defined in Paragraph 7.D. of this D&S.

B. Conduit Hydropower Development – Reserved Work.

- (1) Upon receiving a formal request for conduit hydropower development for a reserved work conduit, Reclamation will first offer the LOPP opportunity to all irrigation district(s) and/or water users association(s) receiving water from the applicable reserved work conduit (collectively, the reserved work conduit “beneficiaries”). Following the offer, Reclamation will allow up to 60 calendar days for the beneficiaries to either accept or reject, in writing, the LOPP opportunity. Reclamation will consider a no response within the 60-calendar day timeframe a rejection.
- (2) If only one beneficiary accepts the LOPP opportunity, Reclamation will allow the beneficiary up to 150 calendar days after receipt of the acceptance to submit a LOPP proposal that includes the information required in Appendix E of this D&S. During the 150-calendar day timeframe, Reclamation will not solicit proposals from other parties and no other party is eligible to receive the LOPP. No later than 30 calendar days after close of the 150-calendar day proposal window, the selection team will provide a recommendation to the regional director for award of the preliminary lease.
- (3) If multiple beneficiaries accept the LOPP opportunity, Reclamation will allow the beneficiaries up to 150 calendar days following the end of the 60-calendar day timeframe defined in Paragraph 7.B.(1) of this D&S to submit a LOPP proposal that includes the information required in Appendix E of this D&S. During the 150-calendar day timeframe, Reclamation will not solicit proposals from other parties and no other party is eligible to receive the LOPP. No later than 30 calendar days after close of the 150-calendar day proposal window, the selection team will provide a recommendation to the regional director for award of the preliminary lease.
- (4) If beneficiaries reject the LOPP opportunity or fail to submit an acceptable proposal within the 150-calendar day timeframe, the regional director will ensure a competitive solicitation is prepared and published within 120 calendar days following the 150-calendar day timeframe described above. The competitive solicitation is to adhere to requirements defined in Paragraph 7.D. of this D&S.

C. Non-Conduit Hydropower Development (e.g., Development on Dams and Reservoirs).

- (1) Reclamation will solicit LOPP proposals through a competitive, public process (“competitive solicitation process”), defined in Paragraph 7.D. of this D&S. The competitive solicitation process may be independently initiated by Reclamation or

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in response to a formal request for development (following the jurisdictional determination and the opportunity to pursue Federal development is waived, as applicable).

- (2) As designated by the regional director, the regional power manager or area office manager will ensure the LOPP solicitation is prepared and published within 120 calendar days following the jurisdictional determination.

D. Competitive Solicitation Process.

- (1) The competitive solicitation process ensures fair and open competition for LOPP opportunities. The solicitation is to be advertised via a public announcement (e.g., via Federal Register Notice or local news publication, as determined by the regional director). Before publishing the solicitation:
 - (a) As designated by the regional director, the regional power manager or area office manager will notify the Power Resources Office, Dam Safety Office, Tribes, the appropriate PMA, and any water or power contractors and stakeholders associated with the Reclamation project site of Reclamation's intent to issue the LOPP solicitation.
 - (b) The LOPP lead will coordinate with Reclamation offices that may be involved in the LOPP project (e.g., the Power Resources Office, Dam Safety Office, Environmental Compliance Division, Technical Service Center, Regional and Area Offices, etc.) to discuss LOPP project scope, timelines, resources, public and dam safety issues, environmental compliance, and any other issues.
 - (c) The Chief, Dam Safety Office is responsible for advising the regional director on known dam safety issues, the work required to correct those issues, and the timeline and estimated cost for that work on any Reclamation project site(s) associated with the LOPP solicitation.
- (2) Minimum LOPP solicitation and proposal requirements are identified in Appendix E.
- (3) The solicitation will allow applicants to submit proposals for up to 150 calendar days from the date of publication.
- (4) No later than 30 calendar days after close of the 150-calendar day proposal window, the selection team will provide a recommendation to the regional director for award of the preliminary lease. The recommendation may be to deny award of the preliminary lease.

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- (5) Reclamation will give preference to proposals submitted by preference entities, provided that the preference entity is well qualified to develop and provide for long-term operations and maintenance of the LOPP project.
 - (a) If a proposal submitted by a preference entity is not as well qualified as a proposal submitted by a non-preference entity, Reclamation will inform the preference entity of the specific reasons why its proposal is not as well qualified and allow up to 30 calendar days for the preference entity to revise the proposal and resubmit. All other applicants will be informed of this action.
 - (b) If the proposal resubmitted by the preference entity is rendered as well qualified as the proposal submitted by the non-preference entity, Reclamation will favor the preference entity proposal. If the proposal resubmitted by the preference entity is not rendered as well qualified as the proposal submitted by the non-preference entity, Reclamation will favor the non-preference entity proposal.
- (6) No later than 30 calendar days after receiving the selection team recommendation, the regional director is to determine which applicant (if any) is to be awarded the preliminary lease and send an official notification to the entity to be awarded the preliminary lease, if applicable. The regional director is not bound by the selection team recommendation and may decline awarding the preliminary lease.
- (7) Competitive solicitation process timeframes will only be extended for just cause, as determined solely by the regional director.

8. Preliminary Lease Through Issuance of the LOPP Contract.

- A. **Contributed Funds Agreement.** Once a lessee is selected – unless otherwise authorized, all subsequent costs incurred by Reclamation in support of the LOPP project are to be funded by the lessee pursuant to a contributed funds agreement. The contributed funds agreement is to provide Reclamation advance funding for all costs incurred by Reclamation in support of the LOPP project.
 - (1) The LOPP lead is responsible for developing and administering the contributed funds agreement.
 - (2) Timely execution of the contributed funds agreement allows for timely LOPP administration. The contributed funds agreement may be executed before or concurrent with the preliminary lease but no later than 30 calendar days following execution of the preliminary lease.
 - (3) As determined by the LOPP lead, the contributed funds agreement may be phased.

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- (4) The LOPP lead shall provide the lessee an itemized estimate of expected costs based on Reclamation's understanding of the LOPP project. Any increase in funding requirements beyond the originally agreed upon amount will be coordinated with the lessee before Reclamation incurs those costs. Any unused funds will be returned to the lessee without interest. Reclamation will establish a structure to track all Reclamation costs related to the LOPP project.
- (5) Noting the contributed funds agreement may be phased, the agreement is to cover all Reclamation costs in support of the LOPP project during the preliminary lease and beyond, including all costs related to NEPA, NHPA, ESA, and any other applicable statutory and regulatory compliance requirement; project development; construction; operations and maintenance; inspections; security of LOPP facilities; review of all other necessary studies, analyses, designs, plans, specifications, and related material associated with proposed LOPP facilities; and any other related administrative costs.

B. Preliminary Lease. The preliminary lease defines Reclamation and lessee roles and responsibilities during the negotiation of the LOPP contract. The preliminary lease recognizes the lessee's priority for a LOPP contract, while the lessee develops studies to determine the feasibility of the proposed LOPP project. A preliminary lease is non-transferrable and does not guarantee a LOPP contract will be awarded.

- (1) As designated by the regional director, the regional power manager or area office manager will notify the Power Resources Office and Dam Safety Office, and the appropriate PMA when the preliminary lease has been executed.
- (2) Within 30 calendar days after execution of the preliminary lease, the LOPP lead will schedule a briefing with transferred works operating entities and power contractors associated with the Reclamation project that are not a participant in the LOPP project to cover the LOPP process, and preliminary lease terms, roles, and responsibilities. Briefing notes are to be documented in a manner agreeable to parties involved. No briefing is necessary if there are no transferred works operating entities or power contractors associated with the Reclamation project that are not a participant in the LOPP project.
- (3) At minimum, the preliminary lease will direct the lessee to complete and provide the LOPP lead all studies specified by Reclamation to inform Reclamation's evaluation of LOPP project impacts to the Reclamation project and public safety and ensure compliance with NEPA, ESA, NHPA, and any other applicable statutory and regulatory compliance requirements.
 - (a) A list of studies to consider is included in Appendix B. A value engineering study is not required.

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- (b) The LOPP lead is responsible for coordinating and ensuring the collection and review of all studies from the lessee within timeframes defined by the preliminary lease.
- (4) All findings from preliminary lease activities – including all studies and environmental compliance activities will be incorporated into the LOPP contract as terms and conditions. Compliance with all LOPP contract terms and conditions will be the financial responsibility of the lessee.
- (5) The regional director is responsible for resolving any study needs and/or recommendations concerning LOPP project impacts to the Reclamation project and public safety (e.g., dam safety, physical security, cybersecurity, and operations and maintenance).
- (6) Reclamation will share its plans with the lessee to correct any public safety related issues at the Reclamation project known at the time. Public safety issues which emerge at a later date (or post preliminary lease) may require amendments to preliminary lease or LOPP contract terms and conditions (e.g., adjustments to the location, design, construction, and/or operations of the LOPP project). Costs associated with such adjustments will be the responsibility of the lessee.
- (7) The LOPP lead is to coordinate a meeting with the lessee to define Reclamation’s involvement in the public safety aspects of the LOPP project.
- (8) For all non-small conduit hydropower development LOPP projects sited on Reclamation projects where revenues derived through a PMA are used for repayment of a portion of the underlying Reclamation project or is otherwise provided that first right of refusal by law, that PMA will be given the first opportunity to purchase LOPP project energy, and if applicable, renewable energy certificates (REC) generated by the LOPP project – at rates set by the lessee. The PMA is not obligated to purchase the generation or REC and the lessee is not obligated to accept the PMA offer to purchase the generation or REC. At the time the preliminary lease is issued, the LOPP lead is to ensure the lessee coordinates with the appropriate PMA to offer LOPP project energy and REC (as applicable) generated by the LOPP project. If the PMA does not accept the lessee’s offer within 60 calendar days, the lessee has the right to market LOPP project energy and/or REC to others.

C. Environmental Compliance.

- (1) The regional director is responsible for ensuring NEPA, ESA, NHPA and other applicable environmental compliance activities are completed during the preliminary lease phase. Environmental compliance findings will be incorporated into the LOPP contract as terms and conditions. All costs associated with environmental compliance activities incurred during the LOPP process are the

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financial responsibility of the lessee (including compliance with LOPP contract terms and conditions).⁵

- (2) The regional director is responsible for notifying the Senior Advisor, Hydropower regarding the LOPP project NEPA approach.
- (3) Reclamation categorical exclusion (CE) 516 Department Manual 14.5C (3) is appropriate to use for LOPP projects if the scope of the project is consistent with the terms of the CE, and there are no extraordinary circumstances. Key considerations in determining if the project is consistent with the terms of the CE are:
 - (a) The project is a small conduit hydropower development project; or
 - (b) The project has the following characteristics:
 - (c) Would utilize an existing dam or conduit;
 - (d) Points of diversion and discharge of the LOPP powerplant would be in close proximity to the existing infrastructure and would not significantly affect the flow patterns of the water source;
 - (e) There would be no increase or change in timing of diversions and discharges; and
 - (f) The primary purpose of the infrastructure would remain (e.g., most commonly irrigation).
- (4) Consideration for a CE does not guarantee that a CE will be appropriate. The extraordinary circumstances considered are contained in 43 Code of Federal Regulations 46.215 and are provided in Appendix C. In cases where the LOPP project does not meet the above criteria or where any extraordinary circumstances exist, a higher level of NEPA evaluation will be required.

9. **LOPP Contract Administration (Including Project Construction, Start-Up, and Operations).** The LOPP contract authorizes the use of a Reclamation project site for non-Federal hydropower generation, consistent with authorized, Reclamation project purposes.

⁵ For non-Federal projects subject to both Reclamation and FERC jurisdictions, FERC, to the extent permitted by law, is to be the lead agency for the purposes of compliance with NEPA and other applicable regulatory statutes. At the request of Reclamation, FERC will grant Reclamation cooperating agency status in the preparation of environmental impact statutes pursuant to NEPA. See 1992 MOU, Article 5 (Appendix A).

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- A. Regional directors are responsible for approving LOPP contracts within their respective region. Before approving a LOPP contract, regional directors are to ensure all preliminary lease requirements are complete and the LOPP contract meets all statutory requirements, as determined by the Senior Advisor, Hydropower.
- B. The LOPP lead is responsible for developing and negotiating the LOPP contract. At minimum, the following conditions are to be addressed in the LOPP contract:
 - (1) LOPP project construction, operations, maintenance, and removal cannot:
 - (a) Impair the structural and operational integrity of any existing Reclamation project facilities or associated Federal projects.
 - (b) Interfere with existing or future Reclamation or Federal project operations.
 - (c) Jeopardize existing water rights.
 - (d) Alter compliance with any environmental requirements or commitments.
 - (e) Impair the efficiency of the Reclamation project for irrigation purposes.
 - (f) Impair the operations of, or entitlements to, Reclamation project hydroelectric power facilities.
 - (g) Impair Reclamation or Federal project physical security or cybersecurity.
 - (h) Create any public safety deficiency.
 - (i) Impede the correction of any public safety deficiencies, recreation hazards, or other safety problems.
 - (2) Title to all Federal facilities (as modified by the LOPP project or otherwise) are to remain with the United States. Title to proposed LOPP project works and associated revenue streams are held by the lessee unless legislated or contracted otherwise.
 - (3) Access to and operation of existing Reclamation project facilities must be sustained during the construction, operation, maintenance, and removal of the LOPP project.
 - (4) Reclamation will inspect LOPP project works to the extent necessary to ensure compliance with LOPP contract terms and conditions. Inspections will also ensure the LOPP project complies with NEPA, ESA, NHPA, and other statutory commitments. Reclamation's inspections will be in addition to inspections performed by the lessee. The LOPP lead is responsible for coordinating all on-site facility inspections.

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- (5) The LOPP contract will contain provisions requiring the lessee to address any recommendations issued by Reclamation within timeframes set by the regional director. Costs associated with corrective actions for recommendations will be the responsibility of the lessee. Reclamation reserves the right to shut down LOPP project operations or remedy problems at the expense of the lessee if the recommendations are not addressed or if an emergency situation exists.
- (6) Physical security of existing Reclamation project facilities shall be maintained by Reclamation, or its designee, during LOPP project construction, operation, maintenance, and removal activities. The lessee shall not interfere with Reclamation security activities and will be subject to inspection, background investigations, etc., as deemed necessary by Reclamation to protect the physical security and cybersecurity of Reclamation project facilities. The lessee will be responsible for any incremental security costs incurred by Reclamation that result from the construction, operations, maintenance, and removal of the LOPP project. The lessee will be required to have physical security and cybersecurity procedures and practices commensurate with security requirements, as determined by Reclamation.
- (7) The lessee must provide the LOPP lead evidence of a comprehensive and sufficient performance bond or irrevocable letter of credit (ILC), as determined by the LOPP lead, for the construction of the project, and a comprehensive and sufficient commercial surety bond or ILC, as determined by the LOPP lead, to cover any costs for the removal of the LOPP project and the clean-up or restoration of the site due to the installation or operation of the LOPP project. The amount of the bonds or ILC will be determined on a project-by-project basis, as determined by the LOPP lead.
- (8) Reclamation will not be responsible for the economic and technical feasibility of the LOPP project, and the lessee must agree to indemnify the United States for any loss or damage resulting from actions under the LOPP project and any act of neglect or omission of the lessee in connection with its performance under the LOPP project. The lessee shall have no claim against the United States for loss of generation caused by the normal or extraordinary operations and maintenance of the Reclamation project including, but not limited to, the quantity, quality, or timing of water or power delivered by the Reclamation project. The lessee will be required to modify operations required by any future legal constraints associated with the operation of the Reclamation project.
- (9) The lessee will be required to compensate Reclamation for lost generation and other interruptions to Reclamation project operations due to construction, operations, maintenance, removal or any other extraordinary event at or caused by the LOPP project.

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- (10) The lessee will be required to make annual lease payments to the United States for the use of leased premises, in accordance with Paragraph 11 of this D&S.
 - (11) Reclamation will have the first right to purchase the LOPP project should the lessee need to sell or dispose of the facilities in which it has title. LOPP project facilities shall not be transferred, or facilities sold without written approval of the regional director. The regional director is responsible for coordinating a meeting with associated power and water contractors and the appropriate PMA to investigate interest in funding Federal purchase of the LOPP project.
- C. In cases where the Reclamation project site is a transferred work and the transferred work operating partner is not a participant in the LOPP project, the LOPP contract will involve the operating partner, as appropriate. The lessee shall share in the cost of operations and maintenance of the existing Federal facilities that benefit the proposed LOPP project. If there is a possibility that these costs may apply, the LOPP solicitation will indicate it as such.
 - D. Reclamation reserves the right to conduct or direct the completion of analyses, designs, and data collection which directly affect public safety aspects of the facilities into which the lessee's LOPP project facilities are to be integrated. Reclamation will review all analyses, designs, plans, specifications, and related material associated with all other features of the proposed LOPP powerplant and appurtenant facilities (i.e., those features which do not directly affect public safety). Work shall not proceed with various aspects of the project until Reclamation's written approval has been obtained. Reclamation will oversee the construction effort, including on-site inspections, focusing primarily on the work which directly affects public safety.

10. LOPP Development Timeframes.

- A. **LOPP Projects on Conduit Sites.** For all LOPP projects sited on Reclamation project conduits, the lessee will have a maximum of 15 months from the date of selection of the lessee to sign the preliminary lease, complete the requirements set forth in the preliminary lease and to sign the LOPP contract. The lessee will be provided a maximum of 9 months from the date of the execution of the LOPP contract to complete final designs, specifications, etc., and an additional 1 year to begin construction. A maximum of 3 years is allowed, from the date of preliminary lease agreement to the beginning of construction. The regional director is responsible for establishing maximum timeframes for construction.
- B. **LOPP Projects on Non-Conduit Sites (e.g., Dams and Reservoirs).** For all LOPP projects sited on Reclamation project non-conduit sites, the lessee will be provided a maximum of 24 months from the date of selection of the lessee to sign the preliminary lease, complete the requirements set forth in the preliminary lease and to sign the LOPP contract. The lessee will have a maximum of 1 year from the date of the execution of the LOPP contract to complete final designs, specifications, etc., and an additional 1

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year to begin construction. A maximum of 4 years is allowed, from the date of the preliminary lease to the beginning of construction. The regional director is responsible for establishing maximum timeframes for construction.

- C. **Timeframe Adjustments.** LOPP development timeframes may be adjusted by the regional director for just cause. Just cause and timeframe adjustments will be determined solely by the regional director.⁶

11. LOPP Charges.

A. Annual LOPP Charge.

- (1) The Reclamation Act of 1939, Section 9(c), states: “Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper.”
- (2) Calculation of LOPP payments will begin after the initial successful startup and testing of the generating equipment, or within 20 calendar days of the commencement of initial startup and testing of the generating equipment, whichever comes first.
- (3) The Senior Advisor, Hydropower is responsible for reviewing the LOPP rate every 10 years to ensure consistency with the parameters of the Reclamation Project Act of 1939. This charge will not apply to existing LOPP agreements where a rate has been negotiated prior to the issuance of this D&S.
 - (a) **Standard LOPP Charge.** The annual LOPP charge is set at 3 mills per kilowatt-hour (kWh) of gross energy produced by the facility, measured at the generator, to the United States for the use of the Reclamation facility.
 - (b) **Discounted LOPP Charge.** For entities that are already responsible for Reclamation project operations and maintenance repayment for the site of the LOPP project, recognition of that contribution to operations and maintenance will be made through a reduction of the LOPP charge. The

⁶ As determined by the regional director, the following conditions may constitute just cause for adjusting timeframes for development: actions and/or circumstances that are beyond the control of Reclamation or the lessee; complexities presented by regulatory compliance requirements, electrical interconnection agreements, or pumped storage projects. Examples provided are not exhaustive and are provided solely for guidance.

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reduced annual LOPP charge is set at 2 mills per kWh of gross energy produced by the facility, measured at the generator, to the United States for the use of the Reclamation facility.

- (c) Standard and discounted LOPP charge rates will increase each year commensurate with inflation based on the average of the previous five years of the GDP Price Deflator.⁷ If the 5-year GDP Price Deflator average shows no change or deflation, the LOPP rate will remain the same as the previous year's rate. The rate of increase of the 5-year GDP Price Deflator average will be capped at 5 percent.
- (d) Standard and discounted LOPP charge rate methodologies are included in Appendix D.

B. Disposition of Annual LOPP Charges. Unless otherwise directed by specific project authorizations, in accordance with Section 5 of the Town Sites and Power Development Act of 1906, the LOPP charge paid by the lessee to Reclamation shall be deposited in the Reclamation fund as a credit to the Reclamation project and are applied against the total outstanding reimbursable repayment obligation for reimbursable project construction costs of the Federal project on which the LOPP is issued pursuant to the existing construction cost allocation (not applied only against power construction costs). If the outstanding reimbursable repayment obligation for project construction costs is satisfied, then the LOPP payments will be held as a statutory credit for the project or program until an eligible reimbursable project expense is incurred against which the credit can be applied. While LOPP payments are not considered incidental revenues, Paragraphs 4.A., 4.A.(1), 4.A.(2), and 5 of Reclamation Manual D&S, *Crediting Requirements for Incidental Revenues* (PEC 03-01), describe how Reclamation will apply LOPP credits to the project.

12. **No Rights Created by D&S.** This D&S is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

13. **Definitions.**

- A. **Conduit.** Any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity or conveyance of water over or through a dam, its abutments, or foundation via existing or proposed conveyance features.

⁷ See: <https://www.bea.gov/data/prices-inflation/gdp-price-deflator>.

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- B. **Federal Energy Regulatory Commission (FERC) License.** A legal authorization issued by FERC to an entity authorizing the construction and operation of a hydroelectric project for a specified term, typically 30-50 years.
- C. **Formal Request for Development.** An official letter to the regional director from a potential non-Federal developer requesting that the LOPP process be initiated at a site or sites.
- D. **Irrigation District.** The term irrigation district means any irrigation, water conservation or conservancy, multicounty water conservation or conservancy district, or any separate public entity composed of two or more such districts and jointly exercising powers of its member districts.
- E. **Lessee.** Any entity issued a preliminary lease or LOPP.
- F. **LOPP.** A contractual authorization issued by Reclamation to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes.
- G. **LOPP Lead.** The Reclamation employee responsible for managing the competitive solicitation process (as applicable), preliminary lease, and LOPP as determined by the regional director.
- H. **Preference Entity.** Municipalities and other public corporations or agencies including Tribes,⁸ and also cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof.
- I. **Preliminary Lease.** An agreement between Reclamation and the lessee that outlines the responsibilities of Reclamation and the lessee during the negotiation of the LOPP and directs that the potential lessee must enter into a contributed funds agreement to provide advance funding to Reclamation before Reclamation incurs any costs for work related to the preliminary lease or LOPP (the contributed funds agreement may be executed concurrently with the preliminary lease). A preliminary lease is non-transferrable and does not guarantee that a LOPP will ultimately be awarded.
- J. **Pumped Storage.** A pumped storage project includes an upper and lower reservoir. Power is generated as water is released from the upper to lower reservoir through a turbine. Water can be pumped from the lower to the upper reservoir.
- K. **Renewable Energy Certificate (REC).** A verifiable certificate laying claim to and accounting for the associated attributes of generation from units that qualify as

⁸ Tribes functioning as local governments qualify for preference under Section 9(c) of the Reclamation Project Act of 1939, as amended. See Solicitor's Opinion Barry P, Frank, M-36771 (July 25, 1967).

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renewable generation under state regulatory requirements (such as Renewable Portfolio Standards) and in voluntary market programs.

- L. **Reserved Work.** Those facilities owned by Reclamation where Reclamation has retained responsibility for carrying out operation and maintenance activities.
 - M. **Small Conduit Hydropower.** A hydropower plant constructed at a Reclamation Project conduit with the capability of producing 5 megawatts or less of electric capacity.
 - N. **Transferred Work.** A Reclamation project facility where the operations and maintenance of that facility is carried out by a non-Federal entity under the provisions of a formal operations and maintenance transfer contract.
 - O. **Water Users Association.** An organization that has a contract with Reclamation for the use or delivery of Reclamation project water.
14. **Review Period.** The originating office will review this release every 4 years.