

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
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To: All FO Managers and DSD's

From: Deputy State Director, Resource Services

Subject: Waterpower and Reservoir Resource (WRR) Program and Federal Energy Regulatory Commission (FERC) Projects

This Instruction Memorandum (IM) is intended to clarify the overlapping classifications, reserves, withdrawals, and segregations, in the WRR Program and on FERC Power Projects. These Programs can be confusing because they are identified under various authorities and can be located on the same lands. Revocation or opening actions on overlapping classifications, reservations, or FERC Projects, must be addressed separately. This IM will address Power Site Classifications (PSC), Power Site Reserves (PSR), and FERC Power Projects and establish procedures for land actions and for requesting an opening or a revocation.

The Act of October 2, 1888, gave USGS the authority to locate, evaluate and preserve potential dam sites. The objectives, responsibilities, policies, and general procedures are to keep potential dam sites in Federal ownership. Evaluations are made by Hydraulic Engineers to determine whether the lands have value for waterpower (hydro) and/or reservoir use. When lands do contain these values they are withdrawn, classified, or reserved. The WRR Program designations are Reservoir Sites (RS), Reservoir Site Reserves (RSR), PSC's, and PSR's. These designated dam sites are necessary for the storage and utilization of water for irrigation, municipal, and hydro power uses, and have been evaluated and maintained by the U.S. since 1888.

The Federal Power Act (FPA) of 1920 established the Federal Power Commission; now the Federal

Energy Regulatory Commission (FERC), to regulate and license hydro power development by private entities. FERC is a licensing agency and was given authority over the hydro power values on public lands. Once a Power Project is licensed and constructed, it remains in place until Vacated by FERC. FERC Power Projects are frequently located on lands on which WRR values have been identified.

The Secretary of the Interior (Secretary) delegated the responsibility for the management and evaluation of the WRR Program to BLM from the Geological Survey in 1983. IM 89-145 further delegated the WRR Program responsibility to each State Director. This requires BLM to manage this resource which should be addressed in the BLM Resource Management Plans (RMP). When planning identifies WRR values that have not been identified, a designation should be requested.

Attachment 1 is the 1966 Interagency Agreement between FERC and BLM/DOI and sets out requirements to grant or issue rights-of-way, leases, material sites, and other land actions on WRR Program lands. Attachment 2 discusses PSC's and PSR's and the steps necessary to process a revocation or opening for a proposed land action. Attachment 3 explains FERC Projects and how to address them. If you have questions contact Doris Chelius at 303-239-3706.

Signed by  
Dave Strunk  
Acting Deputy State Director,  
Resource Services

Authenticated by  
Don Snow  
EMS Operator

#### Attachments

1. Interagency Agreement
2. PSC's & PSR's
3. FERC Projects

#### Attachment 1

## Memorandum of Understanding

A significant Memorandum of Understanding between the Federal Power Commission and the Secretary of the Interior was formalized July 20, 1966. The agreement related to the interagency procedures concerning applications or petitions affecting lands previously classified for reservoir or waterpower purposes by the Branch of Waterpower Classification (BWC) or withdrawn for power purposes by virtue of Section 24 of the Federal Power Act. The Memorandum of Understanding is included in its entirety.

# MEMORANDUM OF UNDERSTANDING (July 20, 1966)

Between

The Federal Power Commission and the Department of the Interior

WHEREAS, the Federal Power Commission (FPC) has jurisdiction over the power values in the public lands which are classified, withdrawn, or reserved for power purposes by virtue of Section 24 of the Federal Power Act of June 10, 1920; and

WHEREAS, the Geological Survey (GS) has authority to classify the public lands for power and certain other purposes by virtue of the Act of March 3, 1879 (43 U.S.C. 31), and delegation from the Secretary of the Interior; and

WHEREAS, the Bureau of Land Management (BLM) has certain management jurisdiction of the surface and subsurface resources, but not including the power values therein, in public lands classified, with drawn, or reserved for power purposes by delegation from the Secretary of the Interior; and

WHEREAS, the public interest will be served if these responsibilities are coordinated and efficiently executed;

NOW, THEREFORE, the Department of the Interior and the Federal Power Commission agree as follows:

I. PETITIONS FOR RESTORATION OR VACATION OF POWER  
WITHDRAWALS UNDER SECTION 24 OF THE FEDERAL POWER  
ACT.

A. After the effective date of this memorandum all petitions for restoration or vacation of power withdrawals under Section 24, shall be directed to the BLM. BLM will make a determination as to whether land disposal including exchanges and other transfers sought in petitions are consistent with proper land use. Where it is not consistent, the BLM will reject the petition (in accordance with Departmental procedures) without referral to other agencies. All other petitions, together with BLM findings, will be referred to the FPC, through the GS, for a determination pursuant to Section 24; the GS shall make such recommendations or comment as it deems appropriate.

B. Any petitions filed by Federal agencies and not acted upon by the FPC before the effective date of this memorandum may be referred to the BLM for processing as in paragraph A above.

C. The BLM shall incorporate into patents or other instruments of conveyance, such restrictions as shall be prescribed by the FPC under its determinations pursuant to Section 24 restoring withdrawn lands for location, entry or selection under the public land laws.

## II. CANCELLATION OF POWERSITE CLASSIFICATIONS, DESIGNATIONS OR WITHDRAWALS OF PUBLIC LANDS.

When the Director, Geological Survey (or his delegate) recommends the revocation of a powersite classification, designation or withdrawal, he will do so by a memorandum to the Director, Bureau of Land Management, requesting the promulgation of a public land order to effect it and stating the reasons for the revocation. Except where such requests are not acceptable to the Bureau of Land Management, BLM shall transmit all such requests which shall include the technical information and data on which the recommendations are based, to FPC. The FPC will comment on the proposed revocation within 90 days or advise BLM of the need for

additional time.

### III. TRANSFERS NOT REQUIRING SECTION 24 DETERMINATIONS.

The BLM will refer to the FPC any allowable applications for lease or sale of powersite lands under the Recreation & Public Purposes Act (43 U.S.C. 869;1-3) for its concurrence and recommendations for special stipulations, if any. All transfers under that Act shall include the applicant's agreement:

That the U.S., its permittees, leasees, and licensees, shall not be responsible or held liable or incur any liability for the damage, destruction or loss of any land, crops, facility installed or erected, income, or other property or investments resulting from the use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States.

### IV. LAND USE PERMITS NOT REQUIRING A DETERMINATION PURSUANT TO SECTION 24.

A. Grazing leases, licenses, and permits. Grazing privileges may be allowed by BLM without reference to FPC on lands within powersites which are not within a power project, in accordance with the Commission's determination of February 16, 1937.

B. Other nonmineral leases, licenses or permits. The BLM may issue, without reference to FPC, other nonmineral leases, licenses, or permits (but not rights-of-way) covering powersites which are not included within a power project, in accordance with the Commission's letter of September 29, 1950.

Any grazing privileges or any other leaser license, or permit covered by sub-paragraphs A and B above shall include the applicant's agreement as

set forth in Paragraph III .

## V. MINERAL LEASES, LICENSES AND PERMITS.

The Bureau of Land Management shall refer all mineral leases, licenses or permits to the FPC for its concurrence and recommendations for special stipulations, if any. All leases, licenses or permits shall contain the "powersite stipulation" in accordance with the FPC letter of April 3, 1957.

## VI. MATERIALS, INCLUDING MINERAL MATERIALS AND FOREST PRODUCTS.

The BLM may sell or make other disposal of any timber, other forest vegetation, minerals or other materials from powersite lands so long as the lands involved are not within a power project, and where the contracts include the purchaser's agreement set forth in Paragraph III above. No disposal contract shall be issued for a term exceeding five years, except with prior consent of the FPC.

## VII. RIGHTS-OF-WAY.

A. Transmission line powersite reserves. Pursuant to FPC determination of April 17, 1922 (43 CFR 2344.2) BLM may restore lands so classified subject to Section 24 without reference to FPC for determination.

B. Other rights-of-way. The Bureau of Land Management will transmit all right-of-way applications involving powersites to the FPC, through the GS, for recommendation concerning allowance, as well as for any special conditions or stipulations which FPC may deem necessary to protect the power values.

## VIII. OTHER TRANSACTIONS.

Proposed grants, including leases, licenses, permits, or other uses not falling in the preceding categories, shall be referred to FPC, through the GS, for its recommendations.

## IX. BLM CONSTRUCTION PROGRAM.

BLM will refer to the FPC, through the GS, its plans for construction of facilities (recreation, administrative, etc.) on powersite lands for advice and comment as to the consistency of the plans with the preservation of powersite values and reserves.

## X. IMPLEMENTATION OF PROCEDURES.

The parties to this Memorandum of Understanding shall take necessary steps to implement the procedures established herein.

### Attachment 2

#### Powersite Classifications and Reserves

PSC's and PSR's do not restrict land uses which do not encumber the land. They were established to prevent disposal and to provide information. PSC's and PSR's are only revoked when; 1) the land has no waterpower value and was identified and classified in error, 2) the land was classified for power line purposes only, 3) the waterpower value would be developed by diversion conduit. If none of these instances apply, the recommendation will be that the PSC or PSR remain in place.

Engineering Evaluations by a Hydraulic Engineer are a part of the PSC or PSR file. If an evaluation is required or needs to be updated, a request can be made to the National Applied Resource Sciences Center (NARSC) where a Hydraulic Engineer is on staff. NARSC is willing to do complete evaluations but they may require funding. The evaluation will determine

whether the lands should remain in the PSC or PSR. All requests and evaluations are then sent to FERC for a final Determination.

After a FERC Determination has been made that the PSC or PSR can be revoked, the Secretary has the authority to revoke the PSC or PSR under FLPMA. If FERC Determines that disposal of the land will not damage the hydro power values, the Secretary has the authority to open the PSC or PSR under Section 24 of the FPA. These revocations or openings can only be made when FERC has made a Determination on the WRR values.

PSC's and PSR's were originally closed to all mining but were opened to locatable mining by Public Law (PL) 359. A mining claim filed on land in a PSC or PSR, must be filed under PL 359. FERC is then notified and, if they determine that waterpower development is not imminent, the claim can be patented subject to Section 24 of the FPA. The land is patented but the waterpower value remains with the U.S. If a decision is made to develop waterpower, the land can be re-acquired by the U.S. by paying fair market value for the land and any improvements.

When a request is made and lands are opened subject to Section 24 of the FPA to allow for disposal, other than mining, FERC can restrict what use can be made of the land and whether the government will pay for improvements which may be placed on the land. This is an effort to control costs of hydro power development and the eventual cost to the consumer.

If the RMP identifies the present best use of the land is recreation, wildlife protection, or some other resource use, the waterpower withdrawal will not effect that use. A classification or withdrawal can be made to protect the identified resource which will overlap the PSC or PSR.

## Procedures

If, after considering all resource uses, including WRR values, the land management agency determines that the disposal of a parcel of land in a PSC or PSR is in the best interest of the Agency, the following steps will be followed:

- A written request to the Withdrawal Staff explaining the proposed use and requesting an evaluation.
- A request will be made to the Engineering Staff to review existing evaluations to determine whether the land in the disposal action has WRR value. If there is no current Evaluation on file, NARSC will be requested to do an Evaluation on the lands in question.
- The request and the Engineering Evaluation will be forwarded to FERC for their Determination.
- FERC will respond with a Determination stating that there will be no damage to WRR values by disposal subject to Section 24 of the FPA, that the PSC or PSR can be revoked insofar as the requested land, or deny the proposed action. If FERC determines that the land should not be disposed of, their Determination is final.
- If the Determination is favorable, the Withdrawal Staff will then prepare a Public Land Order and forward to the WO for approval by the Secretary. If the land is public land (not NFS land) the State will be given a 90-day preference right to apply for Material for Highway use or a Highway right-of-way.
- The entire process takes about 5 months so it is important to submit a request early in the disposal process.

### Attachment 3

#### FERC Projects.

When an application for a Hydro Project is made to FERC, a preliminary permit is issued to the applicant. This precludes disposal of the affected

land. If it is determined that the project is viable and is needed, FERC issues a license to build. Once a Project is approved and licensed, the land is segregated and the Project comes under the jurisdiction and management of FERC and the Project Licensee. A project can only be Vacated by FERC.

Lands within a FERC Project are not open to other uses. FERC may allow disposal of lands in a Project to the Project Licensee.

### Procedures

If the land management agency still wants to dispose of the land, to the Project Licensee, the following steps should be followed:

- 1 Submit a request to the Withdrawal Staff stating purpose of the disposal and a request to get a FERC Determination.
- 2 The request will be sent to FERC for their Determination.
- 3 If FERC does allow the disposal, the site will be subject to Section 24 of the FPA.
- 4 This process can take up to 5 months so it is necessary to submit a request early in the disposal process.