

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**UNITED STATES ARMY CORPS OF ENGINEERS**  
**And**  
**THE FEDERAL ENERGY REGULATORY COMMISSION**  
**On**  
**NON-FEDERAL HYDROPOWER PROJECTS**

The United States Army Corps of Engineers (Corps) and the Federal Energy Regulatory Commission (Commission), as parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

**I. Introduction**

In the interest of mutual cooperation for facilitating non-Federal hydropower development, the Commission and the Corps developed this Memorandum of Understanding to coordinate the respective regulatory processes associated with the authorizations required to construct and operate non-Federal hydropower projects.

**II. Purpose**

The purpose of this MOU is to establish a framework for early coordination and participation among the signatories to this agreement to ensure the timely review of and action on proposed non-Federal hydropower development applications. Cooperation among the MOU signatories will ensure each agency's review and responsibilities under the National Environmental Policy Act (NEPA) and other related statutes are met in connection with the authorizations required to construct and operate hydropower facilities licensed by the Commission. The MOU signatories anticipate that the Corps will act as a cooperating agency in most circumstances. However, there may be some circumstances where both agencies will be better served by a different form of coordination. This MOU does not preclude such arrangements.

**III. Statutory Background**

- A. **National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.)** requires all agencies of the Federal Government to use a

systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences in planning and decision-making which may have an impact on the environment. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.

- B. **Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403)** requires authorization from the Secretary of the Army, acting through the Corps, for the construction of any structure in or over any navigable water of the United States. Structures or work outside the limits defined for navigable waters of the United States require a Section 10 permit if the structure or work affects the course, location, or condition of the water body. The law applies to any dredging or disposal of dredged materials, excavation, filling, re-channelization, or any other modification of a navigable water of the United States, and applies to all structures, from the smallest floating dock to the largest commercial undertaking. It further includes, without limitation, any wharf, dolphin, weir, boom breakwater, jetty, groin, bank protection (e.g. riprap, revetment, bulkhead), mooring structures such as pilings, aerial or sub-aqueous power transmission lines, intake or outfall pipes, permanently moored floating vessel, tunnel, artificial canal, boat ramp, aids to navigation, and any other permanent, or semi-permanent obstacle or obstruction. The Corps' Section 10 requirements for non-Federal hydropower development are met through the Commission's licensing process.
- C. **Section 14 of the Rivers and Harbors Act (33 U.S.C. § 408)** authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant approval for the temporary occupation or use of any public works when the Secretary determines that such occupation or use will not be injurious to the public interest. Provided further, the Secretary may, on the recommendation of the Chief of Engineers, grant approval for the alteration or permanent occupation or use of any public works when, in the judgment of the Secretary, such operation or use will not be injurious to the public interest and will not impair the usefulness of the public work. The authority to approve projects has been delegated from the Secretary of the Army to the Chief of Engineers.
- D. **Section 404 of the Clean Water Act (33 U.S.C. § 1344)** requires authorization from the Secretary of the Army, acting through the Corps, for the discharge of dredged or fill material into all waters of the United States, including wetlands. Discharges of fill material generally include, without limitation: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other

material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for intake and outfall pipes and sub-aqueous utility lines; fill associated with the creation of ponds; and any other work involving the discharge of fill or dredged material. A Corps permit is required whether the work is permanent or temporary. Examples of temporary discharges include dewatering of dredged material prior to final disposal, and temporary fills for access roadways, cofferdams, storage and work areas.

- E. **Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1413)**, as amended, requires authorization from the Secretary of the Army, acting through the Corps, for the transportation of dredged material for the purpose of dumping it in ocean waters. Discharges of dredged or fill materials into territorial seas also requires authorization under Section 404 of the Clean Water Act (CWA).
  
- F. **Federal Power Act (16 U.S.C. § 791, et seq.)** authorizes the Commission to issue preliminary permits and licenses under Part I for non-Federal hydropower projects, including those utilizing Corps facilities. The Commission considers applications from potential project developers for preliminary permits, which, upon issuance, give the permittee the right to priority of application for a license while the permittee obtains data and performs feasibility studies. In addition, before applicants can apply for a license, the Commission requires the applicant to participate in a rigorous pre-filing process. Prior to issuing a decision on a license application, the Commission conducts environmental, dam safety, public safety, and security reviews of hydropower projects and related facilities, including primary transmission lines, and as the lead federal agency prepares the overall NEPA documentation (18 C.F.R. Part 380). In conjunction with the NEPA review, the Commission performs a detailed review of the environmental effects and reasonable alternatives to the proposed project, including appropriate mitigation and enhancement measures. A summary of that review, including conclusions and recommendations, is included in the NEPA document. The Commission can impose requirements in any license issued to ensure the safety and security of, and protect navigation affected by, projects within its jurisdiction. During construction of the hydropower facilities, the Commission conducts periodic inspections to ensure compliance with conditions attached to the license and to ensure the constructed water retaining features of the project meet the Commission's Division Dam Safety and Inspections Engineering Guidelines. Once the project is in operation, the Commission conducts

inspections of the project, which focuses on equipment, operation, dam safety, public safety and compliance with license requirements, including environmental measures.

#### **IV. Roles and Responsibilities**

- A. **The Federal Energy Regulatory Commission:** The Commission issues preliminary permits and licenses to non-Federal entities for the development of hydropower projects under its jurisdiction, including projects utilizing Federal dams or other Federal facilities where Congress has not authorized power development as a project purpose.
  
- B. **U.S. Army Corps of Engineers:** The Corps has constructed water resources projects throughout the Nation where a potential exists for the development of hydropower energy. The Corps is agreeable to the development of hydropower by non-Federal entities at suitable projects, provided that any license issued by the Commission is found to be compatible with the purposes for which Congress authorized the project, and provided that there is no Federal interest in developing hydropower at the facility.
  - 1. The Corps evaluates requests for the temporary or permanent modifications of its projects under Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 408) through information provided by the developer to the Corps District responsible for the project at which hydropower development is under consideration. Final approval of the request rests with the Director of Civil Works. To the maximum extent practicable, the Corps will use the design and environmental information the developer has provided to the Commission for its license process.
  
  - 2. The Corps administers a regulatory program to protect the Nation's aquatic resources, including wetlands, under Sections 10 and 14 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Proposed non-Federal hydropower plants may require one or more permits and/or approvals from the Corps under these statutes.

- V. **NEPA Lead Federal Agency.** NEPA is the overarching environmental statute requiring the identification of impacts to the quality of the human environment, consideration of alternatives, and public involvement in the process. A primary objective of NEPA is to ensure that environmental information is available to public officials and citizens before irretrievable commitments of resources are

made. This agreement supports these principles, and the signatory Federal agencies acknowledge their respective responsibilities for complying with the requirements of NEPA. To prevent the duplication of efforts by Federal agencies and encourage information sharing and integration of agency processes, NEPA allows for the designation of a lead Federal agency for environmental documentation. Other agencies that have authorities related to the same project may serve as cooperating agencies on the environmental document.<sup>1</sup>

As the agency with the approval/disapproval authority for the licensing of hydropower projects, the Commission shall serve as the lead Federal agency for the preparation of the environmental document. This MOU encourages early involvement between the Commission and the Corps, and among public and other government agencies during the pre-filing stage of licensing and the NEPA evaluation process. The Corps understands that it is the Commission's policy that an agency that has served as a cooperating agency in a proceeding may not thereafter intervene and become a party in the proceeding.

This MOU acknowledges that it is critically important that the Commission receive comments from the Corps on all project-specific information regarding the proposed non-Federal hydropower development. This includes project specifications and plans and any impacts the project would have on Federally authorized Corps projects, project lands and/or on waters of the United States, including wetlands, at key stages of project development. These comments are necessary to foster an efficient procedure to develop documentation to meet both agencies' disclosure and decision-making requirements. This MOU establishes a process to facilitate the timely licensing and permitting of hydropower projects, whereby both agencies will:

- Work together and with applicants and other stakeholders, as appropriate, including during the pre-filing scoping and study determination phase and before complete applications for the necessary authorizations are filed;
- Identify and resolve issues as quickly as possible;
- Attempt to build a consensus among governmental agencies and their stakeholders;
- Provide for the effective and efficient pre-filing and post-filing environmental review for non-Federal hydropower development.

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<sup>1</sup> 40 C.F.R. § 1501.5 – NEPA and Agency Planning – Lead Agencies; 40 C.F.R. § 1501.6 – NEPA and Agency Planning – Cooperating Agencies

## **VI. Project Purpose and Need and Alternatives Analysis Coordination.**

### **A. Coordinate**

1. As the lead agency under NEPA responsible for the preparation of the analysis and decisions for the review of new hydropower projects and projects undergoing relicensing, the Commission is responsible for determining the purpose and need of the energy project for purposes of the Commission's NEPA document and the Commission's licensing process.<sup>2</sup> The Commission shall coordinate early on the scope of the NEPA analysis for all activities under Federal purview and strive to ensure that the purpose and need, the suite of alternatives, and evaluation presented in the NEPA document are useable by the Corps in carrying out the Corps' legal responsibilities under binding statutes and regulations (e.g. conducting the Corps' public interest review, determining the "least environmentally damaging practicable alternative" under the CWA Section 404(b)(1) guidelines, and fulfilling other applicable legal requirements). Although the Corps must exercise its independent judgment while carrying out its regulatory responsibilities, the Corps will give deference, to the maximum extent that the Corps determines to be practicable, to the Commission in defining the project purpose, project need, and project alternatives. If the Corps cannot concur or conditionally concur with the Commission's determination as to the project purpose and need, and the suite of alternatives to be addressed in the NEPA document, every effort shall be made to resolve such disputes at the lowest level possible and in accordance with the dispute resolution process identified in Section VIII A of this MOU, if necessary.
2. The Corps will complete an independent permit decision in carrying out its regulatory responsibilities. The signatory agencies will develop more specific guidance to ensure that the Corps' review is undertaken concurrently with the Commission's licensing and NEPA processes to the maximum extent practicable. When the Commission provides to the Corps its preliminary draft NEPA documents, the Corps shall review and provide written comments on the relevant portions of those documents, as appropriate in accordance with the timelines established by the Commission regulations or for individual projects. Preliminary draft Commission NEPA documents will include advance copies of the purpose, need, and alternatives sections of the NEPA documents, as well as advance copies of the draft and final NEPA documents. As appropriate, and as resources allow, the Corps will

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<sup>2</sup> 10 C.F.R. § 51 Subpart A - National Environmental Policy Act--Regulations Implementing § 102(2).

assist the Commission in the preparation of relevant Regulatory sections of the environmental document to the extent that the information is necessary for the Corps to adopt the document to support its independent permit decision.

3. Corps review of Commission NEPA documents will be completed and coordinated with the Commission as stated in the Commission's process schedule for that project. The Commission will coordinate the relevant sections of the environmental documentation schedule with the Corps to ensure timely reviews.
4. The Corps and the Commission hereby agree to work with each other and with other participating agencies or entities, as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. Specifically, subject to the availability of resources and in accordance with applicable laws, regulations, Army policies, and Commission policies, each agency agrees to:

**a. Commit to Early Involvement**

- i. Conduct an early initial review. Each agency will fully participate during the pre-filing scoping and study determination phase of licensing in order that issues identified by the respective agencies and stakeholders may be fully disclosed and discussed as early as possible.
- ii. Identify agency contacts for the proposed project. If a prospective applicant or agency needs assistance in determining regional, local or project specific contacts, then the identified contacts will assist in identifying additional contacts. The initial agency contacts are:

Chief, Operations and Regulatory Division  
Directorate of Civil Works  
Headquarters, U.S. Army Corps of Engineers  
441 G Street, N.W.  
Washington, D.C. 20314

Director, Division of Hydropower Licensing  
Federal Energy Regulatory Commission  
Office of Energy Projects  
888 First Street  
Washington, D.C. 20426

- iii. As appropriate, each agency will meet with prospective applicants and other agencies when requested by the prospective applicant, the lead agency, or at its own initiative, to identify areas of potential concern to other agencies and to assess the need for and availability of agency resources to address issues related to the proposed project.
- iv. Consult in establishing a schedule. For projects utilizing the Commission's Integrated Licensing Process (ILP), the Commission has established specific and expeditious timeframes for licensing. The Commission will notify the Corps as early as possible of these timeframes for upcoming applications for the relicensing of existing projects and the licensing of new hydropower projects. Although the Commission will take into consideration the relative priorities of other projects subject to this agreement, it will, absent extraordinary circumstances, proceed according to the ILP timeframes. In establishing this schedule, the Commission and the Corps will strive to ensure that all applicable review and approval activities occur on a concurrent, rather than sequential, basis with the objective of avoiding unnecessary delays and redundancy in the process and the schedule established by the Commission. If at any point during the consultation process, the Corps or the Commission anticipates an inability to comply with the agreed-upon schedule, it will communicate the reason for this inability as soon as possible. The agencies will then work together to help avoid the anticipated delay when appropriate. The Commission will give public notice of the pre-filing and post-filing processing schedule for each project, including the timeframes for completing environmental documentation.

**b. Participate Proactively.** After the Commission notifies the Corps and gives public notice that an applicant has filed a Notice of Intent to file a license or relicense application and during the pre-filing stage of licensing under the ILP, the Corps will:

- i. Identify the applicable statutory, regulatory, and policy responsibilities for the application.

- ii. Identify the issues and concerns related to the proposed project that need to be addressed in order for the Corps to meet its obligations.
  - iii. Provide the applicant, and/or other agencies, relevant studies, data, (such as maps showing features over which the agency may have jurisdiction), and any other information concerning the status of matters the agency considers relevant (including matters that may be under consideration, such as the results of threatened and endangered species consultation, essential fish habitat consultation, or cultural resources investigations). Corps project data requested by the applicant will be released, or otherwise made available, to the applicant pursuant to appropriate security measures for each phase of the licensing process (i.e. Notice of Intent; pre-filing; approval).
  - iv. Identify issues and concerns, and attempt to resolve same during the scoping and study determination phases of pre-licensing.
  - v. Attempt to resolve outstanding environmental issues raised in the draft environmental document prior to issuance of the final environmental document.
- c. Share data.** The agencies will share the information gathered, considered, and relied upon with all other relevant agencies. Specifically, the Commission and Corps agree to:
- i. Cooperate in the preparation of requests for additional studies or data, to avoid duplicative requests and strive to compile a consistent set of information on which all of the agencies will rely. The Commission will be responsible for requesting additional information to the extent that the Commission believes the analysis is needed and would normally be required by the Commission if the Corps were not involved. If the Corps believes that additional analysis is needed, but the Commission does not agree that such analysis would be required under the regulatory procedures of the Commission, such analysis will be the responsibility of the Corps.
  - ii. Cooperate in identifying and developing information at the level of detail required to complete environmental and cultural resources project review.

- d. Communicate informally.** The signatory agencies agree to informally communicate with each other and other relevant agencies throughout the process to ensure that issues are raised as soon as possible and shared among all agencies. The lead agency will coordinate and share information with all relevant participating agencies consistent with the Commission's ex parte regulations.
- e. Attend Public Meetings/Hearings.** Upon request and as appropriate, the agencies will participate jointly in any public meetings, scoping meetings, and/or hearings held by the other agency as a normal part of the agency review process. The agencies' participation in the meetings or hearings will be consistent with all relevant laws and regulations and coordinated with appropriate Commission staff and Corps Division and District Commanders or their representatives.
- f. Coordinate Feasibility Study of Hydropower Potential.** The Commission will require, in its preliminary permits granting priority of application for a license at a Corps dam, that the permittee coordinate any studies for a proposed project with the appropriate Corps District Engineer. This is to ensure that the studies carried out during the preliminary permit term will result in a plan of development consistent with the authorized purposes including operations of the Federal project.

## **VII. Process**

### **A. Design, Construction and Operation.**

1. The licensed hydropower facilities that will be an integral part of or that could affect the structural integrity or operation of the Corps' project shall be designed and constructed in consultation with and subject to the review and approval of the Chief of Engineers, on recommendation of the appropriate Division Commander, pursuant to Section 14, Rivers and Harbors Act, 33 U.S.C. 408.
2. The Corps' approval of the final design with regard to impact on navigation will be exercised under Section 4(e) of the Federal Power Act for all proposed non-Federal hydropower facilities.
3. Section 10 of the Federal Power Act requires licensees to reimburse

the United States, through annual charges imposed by the Commission, the costs associated with the Corps' review and approval of the design and construction, plans and specifications, and the inspection of construction, cited in paragraph A(1) and A(2) above, for power development at Corps projects, provided that charges shall not be assessed for information, services, or relationships that would normally be provided to the public. Funds collected from the licensee for such reimbursement purposes cannot be made available to the Corps for expenditure. Section 17 of the Federal Power Act, as amended by Public Utilities Act of 1935 directs the disposition of all charges collected from licensees shall be paid into the Treasury of the United States. Therefore, within its Hydropower Program annual budget development, the Corps will request, without obligation, the funds it deems sufficient to cover administration costs related to the Commission licensing activities.

4. Copies of all correspondence between the licensee and the Corps regarding the schedule and progress of the design review and approval will be provided to the Commission's appropriate Division Dam Safety and Inspections (D2SI) Regional Engineer. The D2SI-Regional Engineer will not authorize construction of the facility to start until the Corps District Engineer's written approval of the construction plans and specifications has been received by the D2SI-Regional Engineer.
5. The Commission's D2SI-Regional Engineer will be responsible for surveillance of the construction activities within the licensed project boundary. The licensee's proposed Quality Control and Inspection Program (QCIP) will be furnished to the Corps for review and comment, for those features that could affect the Corps facility, prior to approval by the D2SI-Regional Engineer. The construction of the facilities will be inspected by the D2SI-Regional Engineer's staff during construction of the project, generally at monthly intervals. Copies of the reports of these inspections will be furnished to the Corps. The Corps shall perform periodic or continuous inspections at critical stages of the construction of those portions of the licensed project works that, in the judgment of the Corps, may affect the integrity or operation of existing project structures. A schedule of Corps proposed inspections will be furnished to the D2SI-Regional Engineer. The D2SI-Regional Engineer and the Corps shall take all necessary steps in coordination to avoid duplication of inspections. Copies of the Corps' inspection reports will be furnished to the D2SI-Regional Engineer within 30 days of the date of inspection for routine inspections and Periodic Inspections within 150 days. Any conditions discovered during the Corps inspections that could affect the safety of the structures will be

immediately reported to the appropriate D2SI-Regional Engineer. However, the Corps reserves the right to enter the construction site at any time to perform an inspection. Any construction deficiencies or difficulties detected by the Corps' inspections will be immediately reported to the D2SI-Regional Engineer. Upon review, the D2SI-Regional Engineer will refer the matter to the licensee for appropriate action. The Corps' inspector will report to the D2SI-Regional Engineer or his representative regarding the need to stop construction while awaiting resolution of construction deficiencies or difficulties if such deficiency or difficulty would affect the integrity of existing project structures. In cases when construction practice or deficiency may result in an imminent danger to the integrity and safety of the existing project, the Corps inspector has the authority to stop construction while awaiting the resolution of the problems. If construction is stopped permanently, the D2SI-Regional Engineer and Commission will ensure actions are taken to restore the Corps project to its preconstruction condition.

6. The completed licensed facilities will be inspected periodically by the D2SI-Regional Engineer's staff to determine that the facility is being properly operated, maintained, administered in conformance with license conditions, and that it continues to meet the Commission's Division Dam Safety and Inspections Engineering Guidelines. Copies of the reports of these inspections will be furnished to the Corps within 30 days of the date of inspection.
7. Portions of the licensed project works that may affect the integrity and operation of the Corps' project will be inspected and evaluated by the Corps District Engineer as a separate item under the Corps' Periodic Inspection and Continuing Evaluation of Completed Civil Works Structures Program. Copies of the reports of these inspections will be furnished to the D2SI-Regional Engineer within 30 days of the date of inspection. The Corps and the Commission will take all necessary steps in coordination to avoid duplication of inspections.
8. The Commission will require that the licensee assist the Corps District office by integrating the operation of the licensed hydropower facility into the Corps' emergency action plan. Additionally, the Commission will require the licensee to participate at its own cost in any emergency action plan exercises that the Corps deems necessary.
9. In the interest of hydropower operation compatible with other authorized functions of the Federal project, the Commission, upon recommendation by the Corps, will require the licensee to enter into a

Memorandum of Agreement with the Corps describing the mode of hydropower operation acceptable to the Corps. The D2SI-Regional Engineer shall be a party to these decisions. This Memorandum of Agreement shall be subject to revision by mutual consent of the Corps and licensee as experience is gained by actual project operation. Should the Corps fail to reach an agreement with the licensee, the matter will be referred to the Director, Office of Energy Projects (OEP) or successor office, for resolution. Copies of the signed memorandum between the Corps and the licensee and any revision thereof shall be furnished to the OEP and the D2SI-Regional Engineer.

- B. **Access to the Project.** The Commission will require the permittee or licensee to coordinate the development of its plans for access to the site during site investigation, construction, and operation with the Corps.
- C. **Annual Charge for the Use of Government Facilities.** Pursuant to Section 10(e) of the Federal Power Act, the Commission is required to assess a reasonable annual charge for the use of the Corps' facilities.
- D. **Coordination with the Commission on Corps Regulatory Requirements under Section 10 of the River and Harbor Act of 1899.** The Corps' Section 10 requirements for power-related activities are met through the Commission's licensing procedure including insertion of terms and conditions in the license, which are in the interest of navigation. Section 4(e) of the Federal Power Act requires approval of plans by the Secretary of the Army regarding navigation interests. This authority was delegated by the Chief of Engineers to respective Corps Division Engineers on September 5, 1980.

### **VIII. Administration of the MOU**

- A. **Dispute Resolution.** While retaining ultimate responsibility for making determinations and exercising individual responsibilities in accordance with existing statutory responsibilities, the Commission and the Corps will consult with one another to resolve disputes using existing dispute resolution methods in accordance with this agreement. If no agreement can be reached, either agency may refer the matter to a higher management level within its respective agency. The Commission and the Corps reserve the right to make a final decision on any matter within their respective regulatory authorities.
- B. **Modification and Termination.** This MOU may be modified or amended at any time upon written request of either party hereto and the

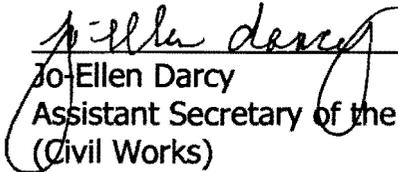
subsequent written concurrence of the other. This MOU may be terminated by either party upon providing sixty (60) days advance written notice.

C. **Acknowledgement that the authority and responsibilities of the parties under their respective jurisdictions are not altered by the MOU.**

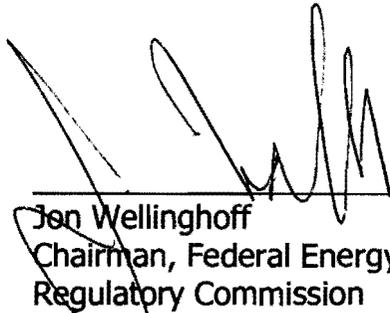
1. The policy and procedures contained within this MOU are intended solely as guidance to improve the working relationships of the signatory agencies in connection with expeditious decisions with regard to non-Federal hydropower project authorizations. This MOU does not, and is not intended to, impose any legally binding requirements on Federal agencies, States, or the regulated public, and does not restrict the authority of the employees of the signatory agencies to exercise their discretion in each case to make regulatory decisions based on their judgment about the specific facts and application of relevant statutes and regulations.
2. This MOU is not a final agency action by any of the signatory agencies, and does not, and is not intended to, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person.
3. This MOU is to be construed in a manner consistent with all existing laws and regulations.
4. This MOU neither expands nor is in derogation of those powers and authorities vested in the participating agencies by applicable laws, statutes, or regulations.
5. This MOU does not alter or modify compliance with any Federal law, regulation or guidance.
6. This MOU does not direct or apply to any party outside of the signatory agencies. The terms of this MOU are not intended to be enforceable by any party other than the signatories hereto.
7. The participating agencies intend to fully carry out the terms of this MOU.
8. This MOU does not limit the ability of any of the participating agencies to review and respond to final applications.

9. This MOU is neither a fiscal nor funds obligation document. It does not obligate, commit or authorize the expenditure of funds and cannot be used as the basis for the transfer of funds. Any endeavor involving the reimbursement or contribution of funds between the parties to the MOU will be in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority.
10. Nothing in this MOU, in and of itself, requires any signatory agency to enter into any contract, grant, or interagency agreement.
11. All provisions in this MOU are subject to the availability of funds.

ACCORDINGLY, the Parties have signed this Memorandum of Understanding on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

  
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Jo-Ellen Darcy  
Assistant Secretary of the Army  
(Civil Works)

March 25, 2011  
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Date

  
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Jen Wellinghoff  
Chairman, Federal Energy  
Regulatory Commission

3/30/11  
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Date