Montana FPA Section 4(e) Conditions and BAAJA



In Montana, FERC had to adopt Forest Service measures its staff found the project **did not need**. Support Section 2232 of BAAJA, which limits 4(e) conditions to those **reasonably related to the effects of the project**.[1]

4(E) CONDITIONS IN EACH FINAL LICENSE[2]



Each bar counts the 4(e) conditions in the license as issued, by agency. All three state pages use the same scale.

Mystic Lake P-2301 12 MW · NorthWestern Energy · West Rosebud Creek

20 Forest Service conditions; staff rejected 2 of the 10 it reviewed. All 20 are in the license.[3,6]

NOT RECOMMENDED — **Fish monitoring where the project has no fish impact** (FS 16)
$7,900 a year. Staff: relicensing "would not affect fisheries or aquatic habitat."[3,4]

NOT RECOMMENDED — **A road plan for a public road outside the project** (FS 10)
Staff: the road "is not used exclusively for the project."[5]

NEVER REVIEWED — **Changes 17 days before the license** (FS 4, FS 20)
A wilderness plan and "the right to make changes to its 4(e) conditions in the future."[6]

Missouri-Madison P-2188 351 MW · NorthWestern Energy · 10,790 national forest acres

BEYOND THE PROJECT — **A fund that can pay to treat other sources' pollution** (FS 9)
An account for "treating appropriate point source discharges" river-wide,[9] though staff saw no harm to Hebgen water quality.[10]

AFTER THE EIS — **Final conditions filed after the final EIS**
After extensions, the Forest Service filed them Feb. 10, 2000, five months after the final EIS.[11]

Gibson Dam P-12478 15 MW · Lewis and Clark National Forest · Sun River · licensed 2012

22 Forest Service conditions on a plant that makes "no change in the existing flow regime."[13]

NOT RECOMMENDED — **Recreation measures no one has named yet** (FS 16)
Staff: "as-yet unidentified and uncertain future potential measures." In the license because it is "mandatory under section 4(e)."[14]

NOT RECOMMENDED — **Signs at locations no one has picked** (FS 17)
Staff did not recommend "additional interpretive displays at unspecified locations." In the license anyway.[14]

WHAT IT MEANS FOR THE WORK

60-day wait
No ground work at Mystic Lake until 60 days after the permit is filed; a 2021 rebuild needed a waiver.[7,8]

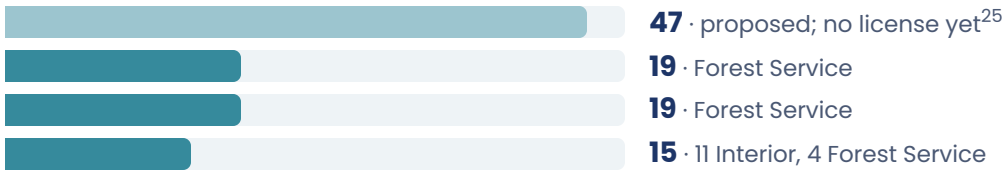
Appeals first
At Missouri-Madison, no Forest Service condition can be carried out until the agency's own appeals are done.[12]

Open clock
Forest Service review of Missouri-Madison plans can pause for "other reasons."[12]

Idaho FPA Section 4(e) Conditions and BAAJA

In Idaho, FERC found conditions had **no nexus to project effects**. Support Section 2232 of BAAJA, which limits 4(e) conditions to those **reasonably related to the effects of the project.**[1]

4(E) CONDITIONS IN EACH FINAL LICENSE[2]



Each bar counts the 4(e) conditions in the license as issued, by agency. Hells Canyon has no new license yet; its lighter bar counts the agencies' modified conditions.

Post Falls P-12606, now P-2545 14.75 MW · Avista · Coeur d'Alene Lake and Reservation

Of Interior's 5 environmental conditions, staff recommended none in full, 2 in part, and 3 not at all.[19]

FERC: NO NEXUS

Wetland mitigation sized as if the dam were never built (Interior 8)
FERC requires "a nexus to project effects," but "because this is a section 4(e) condition, we include it."[15] 2007 version: 3,488 acres, about $10.5 million.[16]

FERC: NO NEXUS

Lake-wide monitoring of things the dam does not affect (Interior 5)
About $199,100 a year. Staff: "no nexus to Project effects," for "informational purposes only."[17] In the license anyway.[18]

SET BY SETTLEMENT

$100 million over 50 years to fund Interior's 4(e) plans (Interior 2)
Set in a 2009 settlement; never evaluated in the final EIS.[20,21]

Big Creek P-10721 5 kW · Idaho Aviation Foundation · 0.43 acre of the Payette National Forest

19 Forest Service conditions on power worth $9,372 a year; FERC set 15 aside as administrative.[22,23]

AGENCY COST SHIFTED

Pay for Forest Service staff time (FS 9)
Fund "a reasonable portion of Forest Service staff time and expenses."[24]

BEYOND THE PROJECT

Open the project area to any use (FS 10)
"Unrestricted use of any part of the project area … for any purpose."[24]

Buffalo P-1413 0.25 MW · Fall River Rural Electric Co-op · 9.8 acres of Targhee National Forest

19 Forest Service conditions; staff set 15 aside as administrative.[26]

SPECIES NOT AFFECTED

A listed-species plan where staff found no harm (FS 18)
Staff found no harm to listed species, and FWS agreed.[26,27]

BEYOND THE PROJECT

Building code review of every facility (FS 7)
Staff had found "the dam and other project works are safe."[27]

WHAT IT MEANS FOR THE WORK

Approval first
Forest Service sign-off and 60 days' notice to change a Big Creek facility.[24]

Interior signs off
Interior must approve Post Falls plan changes before FERC sees them.[20]

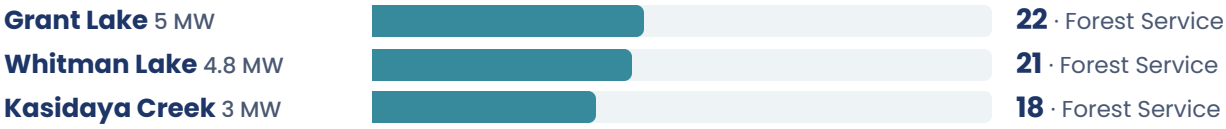
More to come
Interior can add Post Falls conditions during the license.[20]

Alaska FPA Section 4(e) Conditions and BAAJA



In Alaska, the Forest Service required plans for **effects that will not occur** and protections for **absent species**. Support Section 2232 of BAAJA, which limits 4(e) conditions to those **reasonably related to the effects of the project**.[1]

4(E) CONDITIONS IN EACH FINAL LICENSE[2]



Each bar counts the 4(e) conditions in the license as issued, by agency. All three state pages use the same scale.

Grant Lake P-13212 5 MW · Kenai Hydro · Kenai Peninsula, near Moose Pass · licensed 2019

22 Forest Service conditions; staff recommended 2 in full. All 22 are in the license.[32]

NOT RECOMMENDED

A flooding plan for flooding that will not happen (FS 19)
Staff: "unrelated to the proposed action,"[28] since the project "would not inundate any additional NFS lands beyond natural conditions." In the license anyway.[29]

SPECIES NOT PRESENT

Pesticide buffers for a toad that is not there (FS 14)
No pesticides within 500 feet of the western toad, which "does not occur on the Kenai Peninsula."[30]

NOT RECOMMENDED

Annual meetings with "no specific, project-related purpose" (FS 4)
Including yearly reviews of sensitive species lists. In the license anyway.[31]

Whitman Lake P-11841 4.8 MW · Ketchikan Public Utilities · Tongass National Forest · licensed 2009

FERC: NO CONNECTION

Buy trail easements for a Forest Service trail (FS 9)
Public access across private land for a planned trail the utility will not build or use.[33,34] FERC: "there is no connection between the Forest Service's condition 9 and the proposed Whitman Lake Project." In the license anyway.[33]

Kasidaya Creek P-11588 3 MW · Alaska Power & Telephone · near Skagway · 18 conditions[39]

AGENCY COST SHIFTED

Clean a Forest Service picnic area (FS 14)
Monthly litter and outhouse cleaning at Sturgill's Landing.[35] Staff found "no developed recreation facilities located on or near the proposed project area."[36]

STOP-WORK RISK

Stop work for sites no survey found (FS 13)
"No significant cultural resources" were found, yet any find halts land work until the Forest Service approves.[37] FERC said it could not change the condition.[38]

WHAT IT MEANS FOR THE WORK

Wait, then appeals
No ground work until 60 days after the permit and any Forest Service appeal.[39]

Agency on site
Forest Service staff on hand for powerhouse "clearing and blasting."[39]

Every 10 to 15 years
Kasidaya's facilities are reviewed again with each Forest Plan revision.[39]

References

Sources for the numbered claims on **pages 1 to 3**, with the document and page for each.

All FERC records were retrieved through the NHA eLibrary; FERC accession numbers are given for each. Page numbers are PDF pages, with printed page labels in parentheses where they differ. Capacities come from NHA eLibrary project records unless cited.

ALL PAGES

1. Bipartisan American Affordability and Jobs Act of 2026, Section-by-Section Summary (Sept. 30, 2026), Sec. 2232, p. 18.
2. Counted from each license order's 4(e) appendix: Mystic Lake (note 6), App. B, pp. 26–34; Missouri-Madison (note 9), App. B, pp. 80–90; Gibson Dam (note 13), App. B, pp. 33–37, and App. C, pp. 37–43; Post Falls (note 15), App. C and D, pp. 146–166; Big Creek (note 23), App. B, pp. 28–39; Buffalo (note 27), p. 4; Grant Lake (note 29), App. A, pp. 63–74; Whitman Lake (note 33), App. A, pp. 55–64; Kasidaya Creek (note 39). Hells Canyon: note 25.

MONTANA (PAGE 1)

3. Mystic Lake EA, filed Aug. 17, 2007, acc. 20070817-3016, p. 82, Table 19 (9 administrative conditions not analyzed).
4. Same EA, p. 81.
5. Same EA, p. 80.
6. Mystic Lake license order, Dec. 17, 2007, acc. 20071217-3000, p. 4.
7. Same order, Appendix B, p. 26 (FS Condition 1).
8. NorthWestern non-capacity amendment application, Feb. 10, 2021, acc. 20210210-5142, pp. 17–18.
9. Missouri-Madison license order, 92 FERC ¶ 61,261, Sept. 28, 2000, acc. 20000928-3055, p. 84, FS Condition 9; p. 28, Hebgen on 10,790 acres of Forest Service land.
10. Missouri-Madison final EIS, filed Sept. 14, 1999, acc. 19990915-0274, p. 215.
11. License order (note 9), pp. 9–10 and n. 22; final EIS date per note 10.
12. License order (note 9), pp. 80–81, FS Conditions 1 and 2.
13. Gibson Dam license order, 138 FERC ¶ 62,019, Jan. 12, 2012, acc. 20120112-3002, pp. 1, 3 and 6.
14. Same order, pp. 7–8, FS Conditions 16 and 17.

IDAHO (PAGE 2)

15. Spokane River and Post Falls license order, 127 FERC ¶ 61,265, June 18, 2009, acc. 20090618-4001, p. 28.
16. Spokane River and Post Falls final EIS, July 20, 2007, acc. 20070720-4000, chapter 5, p. 44 (5-44).
17. Same final EIS, pp. 22–23 (5-22, 5-23).
18. License order (note 15), p. 27.
19. Final EIS (note 16), pp. 87–88 (5-87, 5-88), Table 5.2-2.
20. License order (note 15), p. 26, Interior Conditions 1, 2 and 11.
21. License order (note 15), p. 1.
22. Big Creek EA, Oct. 22, 2020, acc. 20201022-3021, p. 38 (33), Table 3.
23. Big Creek license order, Apr. 1, 2021, acc. 20210401-3003, p. 4.
24. Same order, Appendix B, pp. 32–33, FS Conditions 9 and 10.
25. Hells Canyon final supplemental EIS, Sept. 4, 2026, acc. 20260904-3009, Appendix D, Table 5.3-1, pp. 481–485 (D-196 to D-200), NHA tally: 47 modified Forest Service and Interior conditions. No new license has been issued.
26. Buffalo River EA, July 2, 2004, acc. 20040702-3020, pp. 21 and 26.
27. Buffalo River license order, 109 FERC ¶ 62,077, Nov. 5, 2004, acc. 20041105-3043, pp. 2–4 and 20–22, FS Conditions 7 and 18.

ALASKA (PAGE 3)

28. Grant Lake final EIS, May 1, 2019, acc. 20190501-3004, p. 54 (2-11), n. 24.
29. Grant Lake license order, Aug. 28, 2019, acc. 20190828-3079, p. 10.
30. Final EIS (note 28), p. 195 (3-136) and n. 57, citing the Alaska Department of Fish and Game.
31. Final EIS (note 28), pp. 331–332 (5-27, 5-28).
32. Final EIS (note 28), pp. 346–347 (5-42, 5-43), Table 5-2, and p. 278 (4-3); license order (note 29), p. 9.
33. Whitman Lake license order, Mar. 17, 2009, acc. 20090317-3025, pp. 8–9, FS Condition 9.
34. Whitman Lake EA, June 19, 2007, acc. 20070619-4006, p. 58.
35. Otter Creek (Kasidaya Creek) license order, Oct. 15, 2002, acc. 20021015-3002, pp. 43–44, FS Condition 14.
36. Otter Creek final EA, May 21, 2002, acc. 20020521-2040, p. 44.
37. License order (note 35), pp. 42–43, FS Condition 13.
38. Final EA (note 36), p. 83.
39. License order (note 35), pp. 36–47, FS Conditions 1 to 19 with No. 9 deleted; Conditions 1, 6, 7 and 8 at pp. 36–40.

About This Sheet

Labels marked "Not recommended" and "FERC: no nexus" restate FERC findings in the cited documents. Other labels are NHA's characterization of the condition. The Post Falls conditions were revised in a 2009 settlement among Avista, the Coeur d'Alene Tribe and Interior; the staff findings quoted come from the 2007 final EIS and the 2009 order. Post Falls is now licensed with the Spokane River Project (P-2545), and Kasidaya Creek was licensed as the Otter Creek Project. Costs are staff estimates in the dollars of each document's year.