

Kerr Project License Introduction & Explanation

The license for the Kerr Hydroelectric Project is an iterative product that is created from the sum of the Orders issued by the Federal Energy Regulatory Commission for the Project. It is not possible to look at any one document as the “license”. The most recent license period started in 1985. The FERC has issued nine orders since 1985 that have created new text for the “license”. Those nine orders are summarized below, with references to: document title, date of issuance, and reference citations. Each of these documents is publicly available in the FERC eLibrary by using the following URL link: <http://www.ferc.gov/docs-filing/elibrary.asp>.

07/17/1985	Order Approving Settlement and Issuing License Articles 45, 46; Issuance of Renewed License	32 FERC ¶ 61,070 19850730-0082
06/25/1997	Order Approving Mitigation and Management Plan Articles 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79; Initial 4e Environmental Mitigation Order	79 FERC ¶ 61,376 19970626-3115 19970627-0898
02/03/1998	Order Approving Settlement Articles 68, 69 , 70, 71, 72, 78 ; Settlement re: North Shore Environmental Mitigation	82 FERC ¶ 61,101 19980203-3068
10/30/1998	Order on Rehearing and Lifting Stay Articles 60, 77 , 80, 81; Denial of Appeals re: Environmental Mitigation	85 FERC ¶ 61,164 19981103-0226
12/14/2000	Order Approving Amendment to Ordering Paragraph (C)(2) and License Articles 59, 64, 65, 66, and 67 and Measures Related to Endangered Species Articles 59, 64, 65, 66, and 67; Settlement of MPC-PPLM-CSKT Disputes re: Environmental Mitigation	93 FERC ¶ 62,198 20001215-0144
02/12/2001	Order on Rehearing Article 82, Appendix C; Order on PPLM-CSKT Dispute re: Environmental Mitigation	94 FERC ¶ 61,129 200102013-0065
04/12/2001	Order Denying Rehearing Order Denying PPLM Appeal re: Co-Licenseeship	95 FERC ¶ 61,053 200104016-0157
02/01/2002	Order on Rehearing Order clarifying PPLM duties as Co-licensee	98 FERC ¶ 61,098 20020204-0695

02/04/2003

Order Amending License
Ordering Paragraph (C)(1), Article 82, Appendix B;
Order Clarifying CSKT-PPLM Co-Licenseeship

102 FERC ¶ 61,122
20030204-3083

The Ordering Paragraphs and License Articles that were included in the nine orders shown above are compiled into one comprehensive document shown below:

Kerr Project License **Ordering Paragraphs & Articles** (as amended through August 11, 2006)

Ordering Paragraphs

(A) This joint license is issued to the Montana Power Company of Butte, Montana (MPC), and to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana (the Tribes), under Section 15 of the Federal Power Act (the Act) and such other statutes as may apply. Subject to satisfaction of the conditions stated in Section 8.1 of the Stipulation and Agreement pursuant to which this license is issued, the license becomes effective on a date (the Effective Date) 50 days after the date of its issuance and continues for a term of 50 years from the Effective Date. It is for the continued operation and maintenance of the Kerr Project, Project No. 5, located on, and using waters of, the Flathead River, a navigable waterway of the United States, in Lake and Flathead Counties, Montana, and occupying lands of the Flathead Indian Reservation held by the United States in trust for the Tribes and 114.6 acres of lands of the United States (non-tribal lands). This license is subject to the terms and conditions of the Act, which is incorporated herein by reference as part hereof and subject to such rules and regulations as the Commission has issued or may issue or prescribe under the provisions of the Act, provided that in case of any conflict between paragraph (C) of Article 39 of this license and any present or future rules and regulations of the Commission, the provisions of this license shall control.

(B) The Kerr Project, Project No. 5, consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area, enclosed by the project boundary, and used and useful in the project operations. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

<u>Exhibit</u>	<u>FERC No. 5-</u>	<u>Showing</u>
J-1	122	General Map of Project Area
J-2	123	General Map of Project Area
K-1	124	Detail Map of Project Area
K-2	125	Detail Map of Project Area

K-3	126	Detail Map of Project Area
K-4	127	Detail Map of Project Area
K-5	128	Detail Map of Project Area
K-6	129	Detail Map of Project Area
K-7	130	Detail Map of Project Area
K-8	131	Detail Map of Project Area
K-9	132	Detail Map of Project Area
K-10	133	Detail Map of Project Area
K-11	134	Detail Map of Project Area
K-12	135	Detail Map of Project Area
K-13	136	Detail Map of Project Area
K-14	137	Detail Map of Project Area
K-15	138	Detail Map of Project Area

(2) Project works consisting of: (a) a reservoir with a surface area of approximately 126,000 acres and a storage capacity of 1,219,000 acre feet at power pool elevation of 2,893 feet m.s.l.; (b) a 200-foot-high, 381-foot long concrete arch dam with 14 spillway sections, each 21-feet-wide and 27-feet-high and a 30-foot-high, 185-foot-long gravity section extending from the right abutment of the arch dam; (c) three concrete lined pressure tunnels (penstocks) which are 23.33 feet in diameter, and 765, 785 and 865 feet long, respectively; (d) a steel frame power house, with reinforced concrete walls and roof, containing two turbine units rated at 57,750 kW each and two generator units rated at 70,560 kW each; and one turbine unit rated at 72,750 kW and one generator rated at 86,554 kW; for a total project authorized capacity of 188,250 kW; (e) transmission facilities, which consist of the generator leads, three 13. 2/100 kV transformer banks, and three 1,500-foot-long, 115 kV transmission lines which extend from the powerhouse to the Kerr switchyard; and (f) appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibits above and more specifically shown and described in certain other exhibits that also form a part of the applications for license and that are designated and described as:

<u>Exhibit</u>	<u>FERC No. 5-</u>	<u>Showing</u>
L-1	139	General Plan
L-2	140	Dam--Plan & Elevation
L-3	141	Dam--Arch Rings & Sections
L-4	142	Dam--Thrust Blocks, Gravity & Dike Sections
L-5	143	Dam--Apron & Protective Works
L-6	144	Dam--Spillway, Plan Elevation & Sections
L-7	145	Dam--Intake & Penstock Tunnels
L-8	146	Powerhouse--Operation Floor Plan
L-9	147	Powerhouse--Sections
L-10	148	Switchyard

Exhibit M consists of two typewritten pages entitled "General Description of Equipment," filed June 1, 1976.

<u>Exhibit</u>	<u>FERC No. 5-</u>	<u>Showing</u>
R-1	149	Recreation Use Plan Map
R-2	150	Recreation Use Plan Map

Exhibit R, filed on June 1, 1976, and supplemented on May 1, 1979, and March 11, 1980, consisting of 15 pages of text, entitled "Recreational Use Plan."

(3) All of the structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all water, riparian, or other rights that are necessary or appropriate in the maintenance or operation of the project.

(C) (1) Except as otherwise provided in this paragraph (C)(1), from the Effective Date until the Conveyance Date (as hereafter defined), MPC shall control, operate, maintain and have exclusive right to, and interest in, the project. During that period MPC shall have all of the rights and obligations of the licensee under this license. At any time between the 29th and 39th anniversaries of the Effective Date the Tribes may, in their sole discretion, on at least one year's written notice to MPC, the Secretary of the Interior (the Secretary), the Flathead, Mission, and Jocko Valley Irrigation Districts, (the Districts), and the Commission, designate a date for the conveyance of the project to the Tribes (the Conveyance Date), which date shall be no earlier than the 30th anniversary of the Effective Date and no later than the 40th anniversary of the Effective Date. On the Conveyance Date, upon receipt by MPC from the Tribes of the Estimated Conveyance Price (as hereafter defined) in effect on such date, all of MPC's interest in the project, free of any mortgages, liens, or encumbrances, shall, without any further action on the part of MPC, the Commission, or any other entity, vest in the Tribes. Thereafter, and for the remainder of the term of this license, and any immediately following annual licenses, the Tribes will control, operate, maintain and have exclusive right to, and interest in, the project, and will have all of the rights and obligations of the licensee under this license, including right to any payment by any successor licensee or by the United States on takeover of the project. Upon the failure of the Tribes either (a) to designate a Conveyance Date within the time specified above, or (b) having timely designated a Conveyance Date, to pay the Estimated Conveyance Price on or before such date, the Tribes' right to have the project conveyed to them under this license shall terminate, and except as otherwise provided in this paragraph (C)(1), MPC shall continue to control, operate, maintain, and have exclusive right to, and interest in, the project for the remainder of the term of this license and any immediately following annual licenses. Unless the context connotes otherwise, the term "Licensee" shall, as used in this license, refer to MPC with respect to the license term prior to conveyance of the project, and, with respect to the remainder

of the license term, refer to the Tribes. Prior to the conveyance pursuant to this paragraph (C)(1), references to the Tribes by name in Articles 63, 64, 65, 67, and 82 and in the terms and conditions incorporated by Article 82, shall be construed to give the Tribes the status of a licensee responsible for performing the obligations allocated to the Tribes therein, and references to "licensees" in the terms and conditions incorporated by Article 82 shall be construed to include the Tribes as a co-licensee with joint responsibility for performing the obligations allocated to the licensees therein, and the Tribes shall be subject to the powers of the Commission for enforcing the performance of their obligations under the foregoing Articles and terms and conditions.

(2) The term "Conveyance Price" shall mean the sum of: **(a)** the actual original cost of the project (including any additions and improvements thereto) less accumulated depreciation, as reflected in MPC's FERC accounts (as those accounts are maintained in accordance with routine Commission audit and compliance procedures), as of the conveyance Date; **(b)** the original cost less accumulated depreciation as of the Conveyance Date, of any automatic control equipment located at MPC's dispatch center and not included in (a) that is being used as of the time of conveyance to control the operation of the project and for which MPC has no other comparable need after the conveyance; **(c)**(i) the cost to MPC of replacing any communications facilities that are among the project works conveyed to the Tribes, but that are, in addition, used and useful in the operation of MPC's integrated system, minus (ii) the original cost, less accumulated depreciation, of such equipment to the extent included in (a) above; and **(e)** the original cost of any flooding rights or other interests in realty outside the project boundary which interests, at the Conveyance Date, are used and useful in the operation of the project, remain effective at least until the termination of this joint license, and are assignable to the Tribes; provided, however, that the term "Conveyance Price" shall not include environmental costs incurred by MPC (regardless of the fact that it has not continued to be a co-licensee) that the Montana Public Service Commission has authorized MPC (regardless of the fact that it has not continued to be a co-licensee) to recover from its customers.

(3)(a) No later than the 25th anniversary of the Effective Date, MPC shall provide the Tribes, the Secretary, and the Commission with a written estimate of the Conveyance Price as of the 30th anniversary of the Effective Date, together with an explanation of how that estimate was derived. MPC shall provide an updated estimate and explanation on or before the 27th anniversary of the Effective Date. Within 60 days after receipt of that updated estimate the Tribes shall, if they wish to dispute such estimate, so notify MPC, the Commission, and the Secretary in writing. If the Tribes do not give such notice, then such estimate shall, upon expiration of the notice period and until the establishment of a succeeding Estimated Conveyance Price under subparagraph (b), constitute the Estimated Conveyance Price.

If the Tribes do timely give such notice, and if the parties cannot resolve the dispute by negotiation within 60 days from such notice, then a board of arbitration, constituted as hereafter described, shall promptly be convened. The board shall estimate the Conveyance Price, as of the 30th anniversary of the Effective Date, which estimate shall, until the establishing of a succeeding Estimated Conveyance Price under subparagraph (b), constitute the Estimated

Conveyance Price. The decision will explain in reasonable detail the basis for the estimate. The board will issue its decision no later than six months after the 28th anniversary of the Effective Date.

(b) If the designation of the Conveyance Date has not occurred by the 31st anniversary of the Effective Date, the MPC, within 30 days after such anniversary, will issue an updated estimate of the Conveyance Price as of one year and eleven months thereafter, i.e., as of the 33rd anniversary of the Effective Date. Such updated estimate shall be based on the same principles as those underlying the original Estimated Conveyance Price. Such updated estimate shall become the effective Estimated Conveyance Price if, within 60 days after receipt thereof, the Tribes do not give written notice that they dispute such updated estimate. If the Tribes do timely issue such notice, then the procedures for arbitration as provided in subparagraph (a) above shall apply, but the board's estimate shall be based upon the same principles as those underlying the original Estimated Conveyance Price and shall be issued within one year after such notice. Until the updated estimate has been fixed, whether by the failure of the Tribes to give notice, or by the board's decision, the previous Estimated Conveyance Price shall remain in effect. If the Conveyance Date has not been designated by the 34th or 37th anniversary of the Effective Date, the Estimated Conveyance Price shall, in each case, thereupon be updated in the manner provided in this subparagraph (b).

(c) Within 30 days after the conveyance of the project to the Tribes, MPC shall provide the Tribes, the Secretary, and the Commission with a written statement of the actual Conveyance Price as MPC calculates it, together with an explanation of how that figure was derived. The actual Conveyance Price shall differ from the Estimated Conveyance Price established pursuant to subparagraphs(a) and (b) above only to reflect events, circumstances, and the passage of time after establishment of the Estimated Conveyance Price. If the Tribes wish to dispute the Conveyance Price as calculated by MPC, they shall, within 60 days of receipt of MPC's statement, so notify MPC, the Secretary, and the Commission in writing. If the two parties cannot resolve the dispute by negotiation within 60 days from such notice, the matter shall then be submitted to a board of arbitration, which shall fix the actual Conveyance Price, taking into account only the Estimated Conveyance price and events, circumstances, and the passage of time between the time at which such Estimated Conveyance Price was fixed and the Conveyance Date.

(d) Within 90 days after the decision of the board of arbitration as to the actual Conveyance Price, or, if the Tribes have not disputed MPC's calculation of such price, within 90 days after the time for giving notice of such dispute has expired, any difference between the Estimated Conveyance Price and the actual Conveyance Price shall be paid by the party owing such difference to the other party. In addition, such party will pay the other party interest on such difference for the period between the Conveyance Date and the date of payment. Such interest shall be at the rate of three percentage points (300 basis points) above the most recent (as of the time of payment) auction rate for U.S. Treasury bills having maturities of 180 days.

(e) Any arbitration proceedings pursuant to this paragraph (C) shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association (the AAA), subject to any additional rules or provisions existing under Federal law. The board of arbitration shall consist of one member selected by the Tribes, one member selected by MPC, and a third member selected by the other two members. If the latter cannot agree upon a third member, then such member shall be selected by the AAA. The decision of the board shall be final and binding upon the parties. Any court proceeding arising out of the arbitration proceedings shall, to the extent possible, be brought in Federal court.

(4) Payment of the Estimated Conveyance Price and of any difference between that amount and the actual Conveyance Price shall be by cash, by check drawn on the United States Treasury, or by treasurer's check of a bank incorporated or chartered in the United States and having assets in excess of three billion dollars. MPC shall, on the Conveyance Date, provide such documents or other evidence of the conveyance of its interest in the project as the Tribes may reasonably request.

(5) Payment in accordance with this paragraph (C) shall fully discharge any obligation by the Tribes for payments to MPC under Section 15(a) of the Act, and under any comparable future provision of federal law, arising out of conveyance of MPC's interest in the project as provided in paragraph (C).

(D) In the event that any amount required to be paid under paragraph C(3)(d) or under Article 39 of this joint license, or under Section VI of the Stipulation and Agreement pursuant to which it is issued, shall not be timely paid, the Commission may, upon petition by the party to whom such payment is to be made and after opportunity for hearing, enter such order as may be reasonable and appropriate to make the party to which such payment is due whole, including, in the case of a payment due from MPC, an order accelerating the Conveyance Date and related procedures, and, in the case of a payment due from the Tribes, an order directing reconveyance of the Licensee's interest in the project to MPC. Nothing in this paragraph (D) shall limit any powers that the Commission or the courts could otherwise exercise.

(E) This license is also subject to the terms and conditions set forth in Form L-5 (Revised October 1975) entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States," which terms and conditions designated as Articles 1 through 37 are attached hereto (reported at 54 FPC 1832) and made a part hereof, except as follows:

(1) Except to the extent that emergency shall require for the protection of navigation, life, health or property, Articles 3, 5, 13, 15, 16, 17, 18, 21, 22, and 28, as applied to that portion of Flathead Lake within the boundaries of the Flathead Indian Reservation or to land and water rights owned or regulated by the Tribes, shall not be deemed to diminish or interfere with any ownership or other rights that the Tribes may have, or jurisdiction the Tribes may exercise, pursuant to, by reason of, or deriving directly or indirectly from, the Treaty of Hell Gate of July 16, 1855, 12 Stat. 975, or the Tribes' status as an Indian tribe, and in the event of

any conflict between any such article and said rights or jurisdiction, the latter shall be deemed controlling.

(2) Nothing in Articles 6 or 36 shall be deemed to require the Tribes to relinquish at the end of the license term any land or water rights other than rights the Tribes acquired by reason of becoming a project licensee.

(3) The term "lands of the United States", as used in Articles 26, 28, 29, 30, 31, 33, 34, and 36, shall not be deemed to include lands held by the United States in trust for the Tribes or for individual Indians.

(4) Nothing in Article 13 shall be deemed to confer, enlarge, or diminish any right that may otherwise be claimed by the Tribes to compensation for any benefits that are conferred on the FIP, the Districts, or others pursuant to Article 40.

(5) The authority exercised by the Secretary under Articles 45 and 46 shall not be deemed to affect, or be affected by, any authority the Secretary may exercise under Articles 1-37.

(F) This license is also subject to the following conditions, which are set forth herein as additional articles:

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such

minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alternations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its

successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact

between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 27. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 28. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 29. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 30. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of

the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 31. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 32. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 33. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 34. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided, further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 35. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such

other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 36. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 37. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Article 38. Pursuant to Section 10(d) of the Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year under the license (or if for the period covered by the initial Project No. 5 license, and the annual licenses issued for the project thereafter, there is a deficiency of project earnings below the rate specified in Article 34 of such initial license), the amount of such deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts thus established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted cost components of long-term debt of the Licensee, preferred stock of the Licensee (if any), and the cost of common equity of the Licensee (if any), as defined below. The annual weighted cost component for each element of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity

series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Upon conveyance of the project to the Tribes, the Tribes will establish an amortization reserve account containing an amount equal to the amount in MPC's amortization reserve account as of that time. The account will thereafter be maintained by the Tribes from year to year, in accordance with annual project earnings and the Tribes' annual specified rate of return calculated as provided above, and MPC will have no further obligation to maintain such an account with respect to the project. Neither the Conveyance Price payable under paragraph (C) above, nor any of the costs used to derive said price, shall be reduced or otherwise affected by the amount contained in MPC's amortization reserve account at any time.

Article 39. (a) MPC shall pay, pursuant to Section 10(e) of the Act, an annual charge for the use and occupancy of the Tribes' lands by the project prior to conveyance of the project to the Tribes. For the initial license year (i.e., the twelve months beginning with the Effective Date) the annual charge shall be \$9,000,000. The annual charge for each succeeding license year, until the conveyance of the project to the Tribes, shall be \$9,000,000 times "CPI(S)" divided by "CPI(I)", where "CPI(I)" equals the Consumer Price Index (as hereafter defined) for that month (the "Base Month") in which the day 90 days before the Effective Date falls, and "CPI(S)" equals the Consumer Price Index for the same month (as the Base Month) in such succeeding license year.

(b)(i) In the event that, after the Effective Date, the Commission authorizes an addition or additions (A) to the three generating units installed as of the Effective Date, which addition or additions, in the aggregate, are in excess of 32 megawatts, or (B) of one or more new generating units (regardless of capacity), then the Commission shall, upon petition and after opportunity for hearing, fix a reasonable annual charge with respect to, and effective as of the initial commercial operation of, such excess generating capacity or new generating unit (but not with respect to the generating capacity of the first three units installed as of the Effective Date or the first 32 megawatts of capacity added thereto). Such added annual charge may thereafter be readjusted as provided by Section 10(e) of the Act. Nothing in this paragraph shall be deemed to constitute consent by MPC or the Tribes to any such addition of units or capacity.

(b)(ii) Upon the termination of the Tribes' right under paragraph (C) of this joint license to acquire MPC's interest in the project, whether because they have failed to give the requisite notice, or because, having given such notice, they have failed to make the requisite payment, or upon any reconveyance of the project to MPC pursuant to paragraph (D) of this license, the Commission may, upon petition filed no earlier than the date on which the Tribes cease to have such right, or on which such reconveyance occurs, and after opportunity for hearing, readjust the annual charge specified in (a) above, as provided by Section 10(e) of the Act, provided that no such readjustment will be effective as of a date prior to the filing of the petition.

(c) The annual charge for each license year prior to the Conveyance Date shall be paid in equal quarterly installments due, respectively, on the first day of each license year, on the date three months after such date, the date six months after such date, and the date nine months

after such date. Payment for the quarter in which the project is to be conveyed to the Tribes shall be prorated in accordance with the number of days preceding such conveyance. Each payment shall be made so as to be received by the Tribes on the date due at an address or bank depository designated by the Tribes in writing to MPC.

(d) Payment in accordance with (a), (b) and (c) above shall fully discharge MPC's obligations under Section 10(e) of the Act during the term of this license. By their acceptance of this license, the Tribes and MPC expressly waive any right, other than as provided in (a) and (b), to readjustment or modification of the annual charges at any time during said term, and, by his approval of this license, the Secretary expressly agrees to be bound thereby.

(e) "Consumer Price Index" for a month shall mean the "U.S. Consumer Price Index, All Items, All Urban Consumers (CPI-U)," for that month published by the Bureau of Labor Statistics of the United States Department of Labor. (By way of illustration, for August 1984, that index was 313.0 on a 1967 base of 100.0). If the Consumer Price Index ceases to be publicly available, or the method of calculation of such index changes so that it is no longer substantially comparable to the CPI as of the Effective Date, the GNP Deflator published monthly by the U.S. Department of Commerce will be employed in its stead for purposes of this license. If both the Consumer Price Index and the GNP Deflator cease to be available, or, if the method of calculating both has changed substantially since the Effective Date, the Commission shall, upon petition by any interested person, and after opportunity for reply, select a comparable index to measure monthly changes in consumer prices for purposes of adjusting the annual charge in accordance with (a) above.

Article 40. (a) From the Effective Date until such time as MPC conveys the project to the Tribes, under this license or any amendment thereto, it will make available to the United States, for and on behalf of the FIP or the Districts comprising the same, capacity and energy at the Kerr Project 100 kV bus in the following amounts:

(i) During all months of the year, up to 7.466 megawatts of capacity at up to 100 percent load factor;

(ii) During the months of April through October, additional capacity of up to 3.734 megawatts at up to 100 percent load factor.

The rate payable to MPC for energy taken by the United States during the first license year (i.e., from the Effective Date until the date one year after the Effective Date) will be 12 mills per kWh. The rate per kWh in each succeeding license year will be the sum of (a) 3.5 mills and (b) 8.5 mills times "CPI(S)" divided by "CPI(I)", where "CPI(I)" and "CPI(S)" are as defined in Article 39. No demand charge shall be payable with respect to the sale under this Article 40(a).

(b) The United States reserves to itself or the FIP management for the period prior to conveyance of the project to the Tribes the exclusive right to sell power within the boundaries

of the Flathead Indian Reservation to the extent of 7.466 megawatts to be delivered for use and/or sale as provided in Article 40(a) above.

(c) This joint license does not cover or resolve the questions of whether, from the time the project is conveyed by MPC to the Tribes until the expiration of the joint license, (i) the Tribes must make any part of the output from the project available to the United States, for and on behalf of FIP or the Districts, or if so on what terms or conditions, or (ii) the United States may reserve for itself the exclusive right to sell power within the boundaries of the Reservation. Such matters are expressly reserved for resolution hereafter by agreement of the parties, with the approval of the Commission, for insertion in this joint license as a term hereof, or, failing such agreement, by the Commission, as provided below, subject to the authority of the Secretary to the extent provided by applicable law. Upon request of (i) the Tribes, the Secretary, or the Districts, made any time after the fifteenth anniversary of the Effective Date, or (ii) the Secretary or the Districts made after the ninth but before the tenth anniversary of the Effective Date (or upon any earlier request concurred in by the Tribes, the Secretary, and the Districts), the Commission shall set such matters for hearing within twelve months of the date of the request; provided, that if neither the Secretary nor the Districts make any such request to the Commission prior to such tenth anniversary date, the Secretary and the Districts shall forever be barred from claiming, with respect to the period of this license following the conveyance of the project to the Tribes, for or on behalf of the United States, FIP, the Districts, or anyone else, a portion of the project's output greater than that which is required to be made available under Article 40(a) of this license.

Article 41. The Licensee hereby recognizes the right of the United States to pump water from Flathead Lake or from Flathead River above Licensee's dam for all purposes of irrigation on the Flathead Irrigation Project or on lands of the Flathead Reservation whether included in the Irrigation Project or not, but not more than 50,000 acre-feet of water shall be pumped therefrom after July 15 within any one calendar year.

Article 42. The Licensee agrees that all rights acquired in connection with the project covered by this license and the use of water for the development of power shall be held subject to the water rights which may be reasonably necessary for the complete development of the irrigable land and the domestic water supply requirements on the Flathead Reservation in the watershed above the project works. The Licensee further agrees to waive objections to the subtractions of such water, up to a maximum flow of 200 cubic feet per second, as may be authorized under Federal or State law for diversion out of the watershed above the project works for use on the Reservation.

Article 43. Article 12 above notwithstanding, it is specifically understood that, during the term of this license, the Licensee may regulate Flathead Lake between elevations 2883 and 2893 in such manner as will make not less than 1,219,000 acre feet of storage capacity available to the Licensee. Unless otherwise ordered by the Commission after notice and opportunity for hearing, and subject to Article 44 below, such regulation shall be in accordance with the Memorandum of Understanding between MPC and the Corps of Engineers dated May 31, 1962, as amended on October 15, 1965, and approved by the Federal Power Commission in Montana Power Co., 35

FPC 250 (1966). It is expressly understood that if and when water is pumped from Flathead Lake or from Flathead River above Licensee's dam after July 15th in any year for purposes of irrigation as provided in Article 41 hereof, the Licensee shall be permitted, in the months of January, February and March of the next succeeding year, to regulate Flathead Lake below the minimum elevation which may be fixed as foresaid, to the extent necessary to enable it to recover the amount of water so pumped for irrigation purposes. Said elevations are in feet above mean sea level as determined by reference to a certain U.S. Geological Survey bench mark, elevation 2910.882 feet, stamped "2900 N", as now located and established at Somers, Flathead County, or to such other bench marks as may be established by the U.S. Geological Survey having the same datum. The Licensee also agrees to perform such channel excavation and other work as may reasonably be required by the Commission after notice and opportunity for hearing for the purpose of flood control to the end that the normal flood levels of Flathead Lake shall not be increased by reason of the installation of the project works, and for the purpose of full utilization of storage and navigation.

Article 44. (a) Pending implementation of the plan described in Article 45, Licensee shall maintain a continuous minimum outflow of 3,200 cubic feet per second (cfs), as measured immediately downstream from the project powerhouse, provided that at times during the period between July 1 and September 15 when the elevation of Flathead Lake is below 2,892.7 feet, the outflow may be reduced below 3,200 cfs to a rate equal to the greater of (i) the average of the past 15 days' deduced inflow into the Lake, or (ii) 2,200 cfs.

(b) The flows provided in paragraph (a) may be temporarily modified for periods of up to two hours if, because of operating emergencies (other than emergencies based on recreational needs) such modification is, in the sole judgment of the Licensee, required. The flows provided in paragraph (a) may also be modified for short periods upon mutual agreement of MPC, the Secretary, and the Tribes.

Article 45. (a) MPC shall file, after consultation with the Tribes, the Montana Department of Fish, Wildlife, and Parks, and the Department of the Interior, and by October 1, 1989, a fish resource mitigative and management plan that shall include among other things: (1) the results of (a) fishery studies sponsored by the Bonneville Power Administration and (b) other studies to determine the effects of project operation on the fish resources of Flathead Lake and the lower Flathead River; and (2) for Commission approval, specific measures to protect and enhance the fish resources associated with the Kerr Project on Flathead Lake and the Lower Flathead River, including an implementation schedule and cost estimates. Agency comments on the plan shall be included in the filing. The Commission reserves the right, after notice and opportunity for hearing, either to require appropriate changes in the plan or adopt such plan as filed.

(b) Notwithstanding the adoption of conservation measures pursuant to the preceding provisions of this article, and without resolving the question of whether Section 4(e) of the Act applies to this proceeding, the Secretary shall be allowed, within a reasonable time upon completion of the studies described in Articles 45(a), 46(a), and 47, to impose such reasonable license conditions with respect to fish and related environmental concerns as the Secretary would be empowered under Section 4(e) to require with respect to an initial license. Such conditions

will be imposed in accordance with the procedures developed for the formulation of Section 4(e) conditions, and, in any event, for the formulation of these license conditions, such procedures will include notice and opportunity for hearing. Upon receipt of the Secretary's conditions, the Commission by order shall adopt and include the conditions in their entirety in this license. MPC, the Tribes, and the Districts agree to waive, and do hereby waive, any claim that they might have that imposition of terms and conditions at that time, rather than during the course of the relicensing proceedings, is untimely.

Article 46. (a) MPC shall file, after consultation with the Tribes, the Montana Department of Fish, Wildlife, and Parks, and the Department of the Interior, and by October 1, 1989, a wildlife mitigative and management plan that shall include among other things: (1) the results of (a) studies sponsored by the Bonneville Power Administration being conducted to determine the effect of project operations on the wildlife resources of Flathead Lake and the lower Flathead River, and (b) other studies to determine the effect of project operation on the wildlife resources of Flathead Lake and the lower Flathead River; and (2) for Commission approval, specific measures to protect and enhance the wildlife resources associated with the Kerr Project on Flathead Lake and the Lower Flathead River, including an implementation schedule and cost estimates. Agency comments on the plan shall be included in the filing. The Commission reserves the right, after notice and opportunity for hearing, either to require appropriate changes in the plan or adopt such plan as filed.

(b) Notwithstanding the adoption of conservation measures pursuant to the preceding provisions of this article, and without resolving the question of whether Section 4(e) of the Act applies to this proceeding, the Secretary shall be allowed, within a reasonable time upon completion of the studies described in Articles 45(a), 46(a), and 47, to impose such reasonable license conditions with respect to wildlife and related environmental concerns as the Secretary would be empowered under Section 4(e) to require with respect to an initial license. Such conditions will be imposed in accordance with the procedures developed for the formulation of Section 4(e) conditions, and, in any event, for the formulation of these license conditions, such procedures will include notice and opportunity for hearing. Upon receipt of the Secretary's conditions, the Commission by order shall adopt and include the conditions in their entirety in this license. MPC, the Tribes, and the Districts agree to waive, and do hereby waive, any claim that they might have that imposition of terms and conditions at that time, rather than during the course of the relicensing proceedings, is untimely.

Article 47. MPC shall, after consultation with the Tribes, the Montana Department of Fish, Wildlife, and Parks, the Department of the Interior, and the Commission staff develop a study plan to determine what measures, if any, are necessary and appropriate to mitigate loss, if any, of wildlife habitat on the delta and nearby islands at the head of Flathead Lake due to project operations. The plan shall address, but not be limited to, a determination of: (a) the environmental value of, and need for, the types of habitat being lost, if any, including whether adequate nearby replacement habitat already exists; (b) any project factors contributing to habitat losses, if any; (c) the feasibility of preventing habitat losses and the types and costs of any measures or changes in project operation that would be necessary to prevent such losses; and (d)

the availability of nearby lands that could be developed as replacement habitat, the cost of acquiring those lands, and the types of costs of any measures that would be necessary to develop replacement habitat on those lands. The results of the study shall be submitted to the Commission by October 1, 1989, along with the comments from the consulted agencies relating to the results of the study. MPC shall, at the same time, file with the Commission for approval, with copies to the agencies consulted, its recommendation for changes, if any, in project operation or other measures, including development of replacement habitat, that are necessary to mitigate for loss, if any, of wildlife habitat on the delta and nearby islands at the head of Flathead Lake. Documentation of agency consultation on the recommendation shall be included in the filing. Such recommendations may thereafter be modified or adopted by the Commission after notice and opportunity for hearing.

Article 48. Within one year from the date of issuance of this license Licensee shall, after consultation with the appropriate Federal, state and local agencies, prepare and file with the Commission for approval a report that describes provisions for development of recreational facilities below the dam, including consideration of facilities for the handicapped. Further, the filing shall include a drawing showing the type and location of the facilities to be provided at the project, a construction schedule, and documentation of consultation with the appropriate agencies. Such recommendation may thereafter be modified or adopted by the Commission after notice and opportunity for hearing.

Article 49. Payments made by the Licensee under Section 13 of the Pacific Northwest Coordination Agreement, dated September 15, 1964, as amended, or under any successor agreement approved by the Commission, shall be deemed fully to discharge Licensee's obligations under Article 11 above, and under Section 10(f) of the Federal Power Act with respect to the Kerr Project.

Article 50. (a) During the time that the Tribes own and operate the Kerr Project under this license MPC will transmit for the Tribes the output of the project from the Kerr switchyard to any point of interconnection between MPC's system and the Bonneville Power Administration, or to such other points as the Tribes and MPC may hereafter agree upon. After expiration of this license, and of any annual licenses issued immediately thereafter, MPC shall be obligated to perform such transmission service for the Tribes for so long as the Tribes continue to own and operate the project (but in no event after February 1, 2095) if and to the extent that MPC has sufficient transmission capacity beyond capacity that it reasonably deems to be required for its own system operations.

(b) Transmission under (a) shall be at rates that are not unduly discriminatory and are otherwise in accordance with law. MPC will be free unilaterally to change such rates from time to time, and the Tribes will be free to oppose such changes in proceedings before any agency having jurisdiction over such rates. The Tribes shall be entitled to refund, with interest in the amount then provided by law, of the portion of any such rates held to be excessive for the entire period such rates were in effect.

Article 51. (a) Subject to the other terms and conditions of this license, MPC will undertake at its cost to train individual tribal members to assume the operation and maintenance of the Kerr Project beginning 30 years after the Effective Date. Such training will begin 25 years after the Effective Date. Personnel for a total of eleven positions will be trained, such positions to be selected by the Tribes from among the following job titles:

- 1 - Accounting Department Personnel
- 1 - Plant Superintendent/Engineer
- 1 - Operating Supervisor
- 1 - Maintenance Supervisor
- 1 - Scheduler/Dispatcher
- 5 - Dispatchers/Operators
- 2 - Mechanics
- 2 - Maintenance Electricians

provided, that if the Tribes' proposed method of operating the project requires fewer than eleven positions, MPC's obligation to train will be reduced to such lesser number. The individuals to be trained will be selected and paid during training solely by the Tribes. The training provided will be sufficient to enable the trainees to operate and maintain the project in substantially the same manner, and within the substantially same standards, as MPC's employees. In the event that, in MPC's view, an individual selected by the Tribes is unwilling or unable satisfactorily to complete the training program, MPC will notify the Tribes, who may (but shall not be required to) remove and replace the trainee with another trainee, provided that in no event will MPC be required to provide training to more than two individuals for the same position.

(b) In the event that, after commencement of the training program, a vacancy occurs in any position at MPC which primarily involves the operation of the Kerr Project and is comparable to a position for which MPC is providing training to tribal members hereunder, MPC shall offer the position to a tribal member who has received sufficient training from MPC to qualify for the position. Any such individuals shall be employed by MPC subject to the same terms and conditions, and shall be entitled to the same rights and benefits, as are other MPC employees filling comparable positions, but MPC shall not be required to retain any such individuals as employees of MPC beyond the Conveyance Date.

Article 52. Licensee shall, in consultation with the Montana State Historic Preservation Officer (SHPO), the Salish Cultural Committee, and the Kootenai Cultural Committee, (the latter two bodies having been created by resolution of the Tribes' Tribal Council) develop a cultural resources management plan to periodically monitor known archeological and historical sites affected by the project operation as reflected in Exhibit V to MPC's license application. The cultural resources management plan should contain procedures that would be implemented in the event any site is affected by project operation. The plan shall be filed with the Commission within one year of the issuance of this license, and contain a copy of a letter from the SHPO accepting the plan. If any known sites should become affected by project operation, the Licensee

shall implement reasonable measures to protect such sites. The Licensee shall make available funds in a reasonable amount for any such work as required.

If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works by or on the behalf of the Licensee, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites in light of the criteria set forth in 36 C.F.R. s 60.4 (1984), and the Licensee shall consult with the SHPO, the Salish Cultural Committee, and the Kootenai Cultural Committee to develop a mitigation plan for the protection of significant archeological or historical resources as determined by such criteria. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right after notice and opportunity for hearing to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 53. The Licensee shall pay the United States the following annual charge, effective the first day of the month in which this license is issued:

For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 114.6 acres of its lands, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 54. The Licensee shall, within one year from the date of issuance of the license, prepare and file with the Commission a feasibility analysis of installing additional generating capacity, taking into account, to the extent reasonable, all benefits including any contribution to the conservation of nonrenewable energy resources. If the study shows additional capacity to be economically feasible, the Licensee shall simultaneously file a plan and schedule for filing an application to amend its license to install that capacity.

Article 55. The licensee shall operate the Kerr Project as a base-load facility, which precludes the load-following or peak power generation (releases and power generation are not changed within a day).

Article 56. The licensee shall maintain releases at or above the following instantaneous minimum flow, in cubic feet per second (cfs) on a continuous basis as measured at the U.S. Geological Survey Polson gage, provided that the passage of minimum flows from Flathead Lake downstream is not limited by the natural channel capacity immediately upstream of the Kerr Dam. The licensee shall manage the project in a manner that limits the occurrence of such channel capacity limitations.

Minimum flow requirements

Dates = Minimum flows

August 1 to April 15	=	Continuous at 3,200 cfs
April 16 to April 30	=	Increased from 3,200 cfs to 5,000 cfs at 120 cfs per day
May 1 to May 15	=	Increased from 5,000 cfs to 12,700 cfs at 510 cfs per day
May 16 to June 30	=	Continuous at 12,700 cfs
July 1 to July 15	=	Reduced from 12,700 cfs to 6,400 cfs at 420 cfs per day
July 16 to July 31	=	Reduced from 6,400 cfs to 3,200 cfs at 200 cfs per day

The minimum instream flows may be temporarily modified by operating emergencies beyond the control of the licensee, or for short periods upon prior written approval from the Secretary of the Interior.

Article 57. The licensee shall operate the Kerr Project in accordance with the following between-day restrictions on flow variations as measured at the U.S. Geological Survey Polson gage, except as necessary to meet flood control requirements imposed by the U.S. Army Corps of Engineers under the Memorandum of Understanding with Montana Power Company (as amended in 1965), or as may be further amended by the U.S. Corps of Engineers subsequent to approval of the Secretary of the Interior.

Maximum between-day flow changes

Mean Flow (cfs, 24-hour average)	=	Maximum Change in Flow (cfs)
Less than 5,000	=	500
Between 5,000 and 10,000	=	1,000
Between 10,000 and 20,000	=	2,500
Between 20,000 and 40,000	=	5,000
Between 40,000 and 60,000	=	10,000

The between-day restrictions on flow variations may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods upon prior written approval from the Secretary of the Interior.

Article 58. The licensee shall operate the Kerr Project in accordance with the following hourly maximum allowable ramping rates, except as necessary to meet flood control requirements imposed by the U.S. Army Corps of Engineers under the Memorandum of Understanding with Montana Power Company (as amended in 1965), or as may be further amended by the U.S. Corps of Engineers subsequent to approval of the Secretary of the Interior.

Maximum allowable ramping rates

Mean Flow (cfs, 24-hour average)	=	Ramping Rate
Between 3,200 and 7,500	=	250 cfs/hour
7,500 or greater	=	1,000 cfs/hour

The hourly ramping rates may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods upon prior written approval from the Secretary of the Interior.

Article 59. The Montana Power Company and the Confederated Salish and Kootenai Tribes (licensees) shall cooperatively develop and initiate a site-specific ramping rate study as part of the adaptive management planning process. The study shall include a two-year phase assessing effectiveness of improving physical habitat and the establishment of a biological baseline. Within six (6) months of following completion of the first two years of the study, the licensees shall submit to the Secretary of Interior (Secretary) a report and recommendations, based on the results of the first two-year phase of the study, on proposed revisions to the existing ramping rates. To the extent the Secretary approves revisions to the existing ramping rates, the licensee shall operate under the revised ramping rates upon issuance of an order by the Commission amending the license as provided by the Secretary. The second phase of the study shall focus on the biological response to the existing or revised ramping rates. At the end of the ten years following the initiation of the ramping rate study, the licensees shall submit to the Secretary a report and recommendations, based on the results of the study, on proposed revisions to the existing ramping rates. To the extent the Secretary approves the proposed revisions to the existing ramping rates, the licensees shall operate under the revised ramping rates upon issuance of an order by the Commission amending the license as provided by the Secretary.

Upon request of the licensees, made within 30 days after submittal of any report and recommendations provided for under this article, the Secretary or his or her designee shall meet with the licensees to discuss the report and recommendations. This meeting is intended only to improve the coordination process and is not intended to create any enforceable right, benefit, or responsibility against the Department of the Interior.

Article 60. The licensees, in consultation with the U.S. Army Corps of Engineers, the Bureau of Reclamation, the Bureau of Indian Affairs, and the Montana Department of Environmental Quality, shall develop and implement a drought management plan for Flathead Lake, which shall be filed with the Secretary. The drought management plan shall include, but not be limited to, provision for re-evaluation and adjustment of Flathead Lake flood control requirements and other provisions necessary to facilitate compliance with lower Flathead River minimum instream flow requirements designated by the Secretary. The Secretary reserves the right to reject, modify, or otherwise alter the drought management plan, in whole or in part.

Article 61. The licensees shall consult with the U.S. Bureau of Reclamation on a weekly basis from April 20 to August 31 and on a biweekly basis the remainder of the year regarding the anticipated releases from Hungry Horse Reservoir. On the first Monday (workday) of each week or biweekly period, the licensees shall request notification from the Bureau of Reclamation of the Hungry Horse projected release(s) for the period of time commencing on that day and extending for the subsequent 21 days.

The licensees shall, in a timely manner and within the maximum allowable changes in flow discharge rates set for the Kerr Project, coordinate operations with Hungry Horse Project releases. To facilitate the coordinated operations on Kerr and Hungry Horse, the licensees may participate in the Technical Management Team process pursuant to the National Marine Fisheries Service Biological Opinion(s) on operation of the Federal Columbia River Power System (or successor process) to the extent allowed by federal law.

Article 62. The licensees shall provide to the Secretary of the Interior annually on or about May 1, but no later than May 10, an annual operational schedule to be supplemented on a monthly basis. The annual schedule shall include month-end estimates of water surface elevation at Flathead Lake and estimates of monthly discharge from Kerr Dam. The monthly supplement shall include a report of actual operations over the previous month and shall include daily water surface elevation at Flathead Lake and spill and releases at Kerr Dam. The annual schedule and monthly supplements can be based on hydrologic and operational information compiled by other cooperating agencies. The operational schedule shall take into account forecasted inflows to Flathead Lake, flood control and recreational requirements in Flathead Lake as well as minimum flow requirements at Kerr Dam.

Article 63. The Confederated Salish and Kootenai Tribes (Tribes), in consultation with the Montana Power Company (MPC), Montana Department of Fish, Wildlife, and Parks (FWP), and the U.S. Fish and Wildlife Service (FWS), shall develop, and subsequently implement a scientifically documented Fish and Wildlife Implementation Strategy (FWIS). The FWIS shall identify an integrated process that provides for adequate protection and utilization of fish and wildlife resources and attendant habitat of the Flathead Indian Reservation. The FWIS shall include:

- (1) a monitoring program to assess Kerr Project compliance with required project operations;
- (2) specifically quantified program goals;
- (3) identification of species and habitat to be treated;
- (4) criteria by which to measure progress towards program goals;
- (5) schedules and guidelines for implementation of program activities;
- (6) a monitoring program to assess FWIS progress and compliance;
- (7) a monitoring program to assess the ongoing effects of the Kerr Project on fish, wildlife and aquatic resources;
- (8) procedures for redirecting the FWIS as necessary to achieve the specified goals (adaptive management);
- (9) a fish stocking, supplementation and reintroduction plan;
- (10) a detailed habitat acquisition and development plan, including quantification of habitat values and acreages;
- (11) a program to evaluate the regeneration of deciduous riparian vegetation communities and to address potential conditions of little or no willow or cottonwood regeneration; and
- (12) a program to monitor the vegetative and habitat recovery rate of land that was in the varial zone under previous operations, but is not affected by base load operations.

The FWIS shall be developed and submitted to the Secretary of the Interior (Secretary) within one (1) year from the date of this order. Within 60 days of such submittal, the Tribes, in consultation with MPC (until the conveyance date), FWP, and the FWS, shall submit a workplan detailing the coming year's expected activities under the FWIS to the Secretary. Thereafter, the Tribes, in consultation with MPC (until the conveyance date), FWP, and the FWS, shall submit to the Secretary, as a single document, an annual workplan and report no later than 60 days prior to the anniversary of the date the Tribes submitted the first workplan to the Secretary that details the Kerr Project's record of compliance with operational conditions, activities the Tribes have taken to implement the FWIS in the previous year, the coming year's expected activities under the FWIS, the progress made towards meeting program goals and a description detailing proposed modifications in the program necessary to meet those goals.

The Secretary reserves the right to reject, modify or otherwise alter the FWIS, in whole or in part, or any annual workplan and report, to ensure the adequate protection and utilization of the Flathead Indian Reservation. In the alternative, at the option of the Secretary and with the concurrence of the Tribes, the FWIS and annual workplan and report may be evaluated in conjunction with the annual trust evaluation conducted by the Secretary or the Secretary's designee pursuant to the Tribal Self-Governance Act of 1994, as that Act may be amended, and any regulations promulgated thereunder, to the extent the Tribes continue to participate in the program. At the discretion of the Secretary, notwithstanding any of the aforementioned, the MPC (until the conveyance date) shall assume all obligations with respect to development and implementation of the FWIS and annual workplans and reports under this article.

The development and implementation of the FWIS for the Kerr Project shall be closely coordinated with the implementation of existing or future fish and wildlife mitigation plans for Hungry Horse Dam. The licensee shall arrange an annual meeting among the Tribes, the Bureau of Reclamation, FWP, the Bureau of Indian Affairs, and the FWS to ensure coordination of the Secretary's section 4(e) conditions for the Kerr Project. Costs of attending the annual meeting shall be borne by the participants.

Article 64. The Confederated Salish and Kootenai Tribes (Tribes), in consultation with the Montana Department of Fish, Wildlife, and Parks and the U.S. Fish and Wildlife Service, shall develop, implement and evaluate as a component of the Fish and Wildlife Implementation Strategy (FWIS), a revised fish stocking, supplementation and reintroduction plan for selected fish species in Flathead Lake and the lower Flathead River. The revised fish stocking, supplementation and reintroduction plan shall be developed and evaluated with Fish and Wildlife Implementation Strategy Fund (FWIS Fund) monies as part of the adaptive management process contained within the FWIS and shall be implemented with Fish Stocking, Supplementation, and Reintroduction Fund (FSSR Fund) monies. The Tribes shall establish and manage the FSSR Fund as a separate interest-bearing account to be used exclusively for implementation of the fish stocking, supplementation and reintroduction plan for Flathead Lake and the lower Flathead River and its tributaries, or following consultation with and approval of the Secretary of the Interior, for the benefit of Flathead Reservation fishery resources. The Tribes shall place funds paid by the Montana Power Company (MPC) (regardless of the fact that it has not continued to

be a co- licensee) for fish supplementation, in the amount of \$4,040,408, plus any accrued interest on that amount, into the FSSR Fund. PPL Montana, LLC (PPLM) shall pay to the Tribes, for deposit into the FSSR Fund, in full satisfaction of PPLM's obligations under this article, \$750,000 on each of June 1, 2000, June 1, 2001, June 1, 2002, and June 1, 2003. The Tribes may, however, use other payments made by MPC (regardless of the fact that it has not continued to be a co-licensee) through December 16, 1999 and by PPLM, into the FWIS Fund pursuant to article 66 of this license and made by MPC (regardless of the fact that it has not continued to be a co-licensee) into the Fish and Wildlife Habitat Restoration Fund pursuant to Article 65 of this license to fund fish stocking, supplementation and reintroduction activities as provided for in the FWIS. All interest accrued in the FSSR Fund shall be applied toward fish stocking, supplementation and reintroduction purposes under the revised fish stocking, supplementation and reintroduction plan.

The revised fish stocking, supplementation and reintroduction plan shall provide for the avoiding, minimizing, restoring, and/or replacing the loss of approximately: 131,000 pounds of salmonids or other target management species per year to Flathead Lake; and (b) 26,640 pounds of salmonids or other target management species per year to the lower Flathead River and its tributaries. Methods for achieving avoidance, minimization, restoration, and/or replacement should be designed to protect, enhance and restore native fish stocks, including fish species listed pursuant to the Endangered Species Act, through appropriate fishery management actions, which should address control of non-native species and/or supplementation of desired species populations, and which may include, but are not limited to, restoration of native fish specie's spawning habitat and enhancement of native fish species' rearing habitat in Flathead Lake, and the lower Flathead River and its tributaries. Unless otherwise determined by the Secretary, the revised fish stocking, supplementation and reintroduction plan shall be submitted within 120 days, and initiated, upon Secretarial approval, within 180 days from the date upon which this amended article takes effect and shall continue through the term of the license until the avoidance, minimization, restoration, and/or replacement of the above identified losses is achieved. Upon achieving avoidance, minimization, restoration, and/or replacement of the above identified losses, other fish stocking, supplementation and reintroduction activities for the Flathead Reservation fishery shall be implemented by the Tribes with FSSR Fund monies through application of adaptive management principles as provided by the FWIS.

Article 65. The Confederated Salish and Kootenai Tribes (Tribes) shall develop and implement as a component of the Fish and Wildlife Implementation Strategy (FWIS), a fish and wildlife habitat acquisition and restoration plan. The fish and wildlife habitat acquisition and restoration shall be developed and evaluated with Fish and Wildlife Implementation Strategy Fund (FWIS Fund) monies as part of the adaptive management process contained within the FWIS. Any and all habitat acquired as a result of the adaptive management process shall be acquired in the same manner as provided for in the habitat acquisition condition for the Flathead Indian Reservation (Article 67).

The Tribes shall establish and manage a Fish and Wildlife Habitat Restoration Fund (FWHR Fund) as a separate interest-bearing account to be used exclusively for restoration, creation,

and/or enhancement of Flathead Indian Reservation fish and wildlife habitat on lands acquired under article 67 or on other Reservation lands as provided in the fish and wildlife habitat acquisition and restoration plan. The Tribes shall place funds by the Montana Power Company (regardless of the fact that it has not continued to be a co-licensee) for habitat restoration, in the amount of \$10,750,000, plus any accrued interest on that amount, into the FWHR Fund; provided, however, that if necessary to accomplish fish stocking, supplementation and reintroduction activities under the revised fish stocking, supplementation and reintroduction plan established pursuant to article 64, the Tribes, following consultation with and the approval of the Secretary of the Interior, may transfer funds from the FWHR Fund to the FSSR Fund to further provide for avoiding, minimizing, restoring, and/or replacing the loss of salmonids or other target management species to Flathead Lake, and to the lower Flathead River and its tributaries. All interest accrued in the FWHR Fund shall be applied toward restoration, creation, and/or enhancement of Flathead Indian Reservation fish and wildlife habitat as provided in the fish and wildlife habitat acquisition and restoration plan, or, as provided above, for fish stocking, supplementation, and reintroduction purposes.

The fish and wildlife habitat acquisition and restoration plan shall include preliminary engineering designs, proposed habitat site locations, and estimated costs and shall be initiated no later than 60 days of its submission to the Secretary. The fish and wildlife habitat restoration measures may include but are not limited to:

(a) protection and development of aquatic and riparian habitat for the south half of Flathead Lake through the construction of habitat structures (log cribs, brush reefs, pallets, and spawning structures) and habitat protection along the shoreline, the improvement of public access and information on harvest and fish ecology, and habitat acquisition and restoration; and

(b) protection and development of aquatic and riparian fish and wildlife resources in and along the lower Flathead River through the construction of screens for irrigation diversions of major tributary streams to prevent tributary and mainstem fishes from being lost in irrigation diversions and reservoirs, the improvement of fish passage in tributaries by screening and building fish ladders at primary irrigation diversions and reservoirs, the fencing of important riparian habitat to control or limit livestock use in the lower Flathead River and tributary system, the improvement of livestock watering at riparian fence enclosures, the creation of backwater (slough) habitat by developing natural artesian springs and water control structures, and habitat acquisition and restoration.

Article 66. The licensee shall provide funding annually on the anniversary of license issuance through the license term to accomplish the objectives of the Fish and Wildlife Implementation Strategy (FWIS). The funds shall be placed in a separate interest-bearing account, jointly held (until the conveyance date) by the licensees and managed by a fiduciary of their choosing pursuant to an escrow agreement that provides for exclusive use of such monies for the benefit of Flathead Reservation fish and wildlife. The escrow agreement may be reviewed by the Secretary of the Interior at his option. Funds deposited into the Kerr Project Fish and Wildlife Implementation Strategy Fund (FWIS Fund) that are not expended in the year deposited shall be

carried forward with the accrued interest for subsequent expenditure, in accordance with the FWIS. Annual installments shall consist of \$1,268,112 in annual operating costs for fish and wildlife measures. This amount is stated in 1994 dollars, and shall be adjusted at time of payment to current dollars using current Consumer Price Index- Urban (CPI-U). Amounts paid by the Montana Power Company (regardless of the fact that it has not continued to be a co-licensee) through December 16, 1999 under this article, including \$8.24 million in start-up payments and annual payments, are also included in the FWIS Fund.

The FWIS Fund, including accrued interest, shall be expended to provide adequate protection and utilization of fish and wildlife by the end of the license term. Costs associated with monitoring Kerr Project operational compliance shall be borne by the licensee and shall not be borne by the FWIS Fund, including accrued interest. Any and all lands purchased on the Flathead Indian Reservation (Reservation) through the expenditure of monies from the FWIS Fund for the purpose of providing for the protection and utilization of the Reservation shall become the property of the Tribes, shall be managed for the benefit of the Reservation fish and wildlife resources and shall otherwise be free of all liens, clouds on the title and other encumbrances and shall not be considered part of the project works.

Article 67. The Confederated Salish and Kootenai Tribes (Tribes) shall acquire the following acreage on the Flathead Indian Reservation (Reservation), which shall be managed for the benefit of the Reservation fish and wildlife resources and shall otherwise be free of all liens, clouds on the title and other encumbrances and shall not be considered part of the project works:

- (a) 985 acres of in-kind varial zone habitat along or closely associated with the lower Flathead River;
- (b) 312 acres of in-kind riparian habitat along or closely associated with the lower Flathead River; and
- (c) 1,792 acres of in-kind varial zone habitat along or closely associated with the southern half of Flathead Lake.

If such parcels are not available, the Tribes shall acquire parcels capable of being restored and/or developed for fish and wildlife benefits, and the extent to which acreage other than in-kind habitat is deemed to be equivalent to in-kind habitat shall be determined in accordance with the U.S. Fish and Wildlife Service's Region 6 Wetland Mitigation Policy Guidance (October 1996).

Acquisitions shall be completed within five years of issuance of this amended article. Methods of purchase, parcel selection, and real estate transaction matters shall be kept confidential. Acquisitions shall be paid for with Fish and Wildlife Habitat Acquisition Fund (FWHA Fund) monies. The Tribes shall establish and manage the FWHA Fund as a separate interest-bearing account to be used exclusively for acquisition of Flathead Reservation fish and wildlife habitat on lands identified in the fish and wildlife habitat acquisition and restoration plan or following consultation with and the approval of the Secretary of the Interior, for other habitat restoration, creation, and/or enhancement activities. The Tribes shall place funds paid by the Montana Power Company (regardless of the fact that it has not continued to be a co-licensee) for habitat acquisition, in the amount of \$9,512,771, plus any accrued interest on that amount, into

the FWHA Fund. PPL Montana, LLC (PPLM) shall pay the Tribes, for deposit into the FWHA Fund, in full satisfaction of PPLM's obligations under this article, \$1,550,000 on each of June 1, 2000, June 1, 2001, June 1, 2002, June 1, 2003, and June 1, 2004. All interest accrued in the FWHA Fund shall be applied towards Flathead Reservation fish and wildlife habitat acquisition activities under the fish and wildlife habitat acquisition and restoration plan, or, as provided for above, for other habitat restoration, creation, and/or enhancement activities.

In fulfilling the habitat acquisition requirements of this article: (a) within 120 days of the date upon which this amended article takes effect, the Tribes shall submit to the Secretary for review and approval a fish and wildlife habitat acquisition and restoration plan which includes the elements required by the Secretary in the Memorandum of Agreement, executed April 20, 2000, including procedures by which the FWHA Fund shall be established and used for acquisition of the above identified habitat acreage within the funding and time limitations of the article; and (b) the Tribes will not be required to incur costs which exceed the balance of the funds deposited in the FWHA Fund, including interest earned, provided the fish and wildlife habitat acquisition and restoration plan is approved by the Secretary as meeting the requirements under this article, and the Secretary determines that the Tribes have exercised due diligence in attempting to acquire the required acreage. The Tribes may include in the fish and wildlife habitat acquisition and restoration plan a provision for crediting acreage of in-kind habitat which the Tribes already own and dedicate for highest and best use as Kerr Project fish and wildlife habitat against the corresponding habitat acreage acquisition requirement established by this article. If the Tribes meet the acreage requirement without first expending all funds in the FWHA Fund, following consultation with and approval of the Secretary, the remaining balance of FWHA funds may be transferred from the FWHA Fund to the FWHR Fund for habitat restoration, creation, and/or enhancement activities on acquired lands and other Reservation lands, as provided in the fish and wildlife habitat acquisition and restoration plan.

Article 68. The licensee, in consultation with the Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes, shall construct a shore aligned north shore erosion control project and associated habitat development features, as provided in section 3 of the Stipulation and Agreement. The erosion control project shall be located on the Flathead Waterfowl Production Area and consist of two revetments on the north shore of Flathead Lake, one on either side of the Flathead River confluence, and a third revetment along the west river bank of the Flathead River. For the two segments on the north shore of Flathead Lake the erosion control project shall consist of a buried rock revetment with a gravel/cobble equilibrium beach face, unless otherwise agreed to by the parties to the Stipulation and Agreement. On the east side of the Flathead River the revetment shall consist of a shore aligned structure extending from the river mouth eastward for a length of approximately 4,400 feet tapering to the Flathead Waterfowl Production Area boundary on shore. On the west side of the Flathead River the revetment shall consist of a shore aligned structure extending from the river mouth to the northwest lake shore for a length of approximately 4,300 feet. Habitat development on the Flathead Waterfowl Production Area during the construction of the shore aligned structures shall consist of 37 acres of wetland habitat as provided in section 3 of the Stipulation and Agreement. Construction and habitat development

costs shall be borne by the Montana Power Company and shall not be borne by the Fund. The cost of such habitat development shall not exceed \$6,600 per acre.

The licensee, in consultation with the Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes, shall provide for river bank protection on the Flathead Waterfowl Production Area's west bank of the Flathead River extending north from the river mouth to the Flathead Waterfowl Production Area boundary. All shore-aligned structures shall be appropriately engineered and tied to the shoreline to withstand conditions in Flathead Lake and the upper Flathead River. Final design, construction methods and timing of construction activities shall be approved by the Fish and Wildlife Service prior to the start of each construction activity. Construction of the north shore erosion control project, including west river bank stabilization measures, shall, unless otherwise agreed to by the parties to the Stipulation and Agreement, begin within one year of incorporation of this article in the license and shall be completed within three years after commencement of construction. The licensee shall acquire special use permits from the Fish and Wildlife Service, which will be issued at no charge to the licensee, prior to any activities on Fish and Wildlife Service lands. The structures, while located pursuant to a special use permit on Fish and Wildlife Service lands, shall be considered "project works" owned by the licensee and shall be maintained by the licensee, at its cost. The licensee, in cooperation with the Confederated Salish and Kootenai Tribes and the Service, shall conduct annual inspections of all the structures to determine and implement appropriate maintenance requirements in a timely manner and will monitor the east Flathead River shoreline of the Waterfowl Production Area for erosion. The licensee shall include in all planning and permitting activities, appropriate representatives of the Flathead County Commissioners and the U.S. Army Corps of Engineers and any other pertinent permitting agencies.

Article 69. *Deleted by terms of Order Approving Settlement, dated February 3, 1998.*

Article 70. The licensee shall acquire, in fee simple, for the benefit of the Fish and Wildlife Service 2,366 acres of nearby habitat as replacement habitat for the Flathead Waterfowl Production Area lands that are precluded from waterfowl and wildlife management or utilization because of Kerr Dam operations. The acreage shall be transferred to the United States to be managed by the Fish and Wildlife Service and shall otherwise be free of all liens, clouds on the title and other encumbrances. Acquisition and conveyance shall be completed within one year of issuance of this order or as otherwise agreed to by the Fish and Wildlife Service. Parcel selection and documents providing flood easements and release of liability on lands not conveyed to the Service, provided pursuant to section 2 of the Stipulation and Agreement, shall be approved by the Fish and Wildlife Service prior to any transaction. Parcels shall be acquired and conveyed to the Service as provided by Sections 1 and 2 of the Stipulation and Agreement. Such acquisition, approvals and conveyance shall be in full satisfaction of the licensee's obligations under this Article. Habitat acquisition and conveyance costs shall be borne by the Montana Power Company and shall not be borne by the Fish and Wildlife Implementation Strategy Fund.

Article 71. The licensee shall contract for the design, procurement, permitting, and construction of habitat development measures as provided by section 5 of the Stipulation and Agreement, on

the Flathead Waterfowl Production Area and on the fee lands conveyed by the licensee to the Service. MPC will fund a total amount of \$750,000 in 1996 dollars appropriately adjusted by reference to the Consumer Price Index at the time of expenditure to current dollars, for such habitat development measures. These measures shall be implemented in accordance with a habitat development plan developed by the Fish and Wildlife Service, in consultation with the MPC and the Tribes. The habitat development measures may include, but are not limited to, construction of goose/osprey nesting structures, open water channels through cattail barriers, duck pair ponds and preparation of bald eagle nest site management plans, or other measures. The licensee shall file the habitat development plan, and any modifications or amendments thereto, with the Commission for its records. The licensee shall acquire special use permits, which shall be issued at no charge by the Fish and Wildlife Service, prior to any activities on Fish and Wildlife Service lands. Costs of habitat development provided in this Article shall be borne by the MPC to the extent provided in this Article 71, above, and shall not be borne by the Fish and Wildlife Implementation Strategy Fund.

Article 72. The licensee shall, on behalf of the U.S. Fish and Wildlife Service (FWS), acquire in fee simple title and develop 1,545 acres of nearby habitat as replacement wildlife production areas to mitigate for the loss of wildlife due to Kerr Project operations as provided in Sections 1 and 2 of the Stipulation and Agreement. The acreage shall be transferred to the United States to be managed by the Fish and Wildlife Service and shall otherwise be free of liens, clouds on the title and other encumbrances. Acquisition and conveyance shall be completed within one year of issuance of this order or as otherwise agreed to by the Fish and Wildlife Service. Parcel selection and documents providing flood easements and release of liability, on lands not conveyed to the Service, provided pursuant to section 2 of the Stipulation and Agreement shall be approved by the Service prior to any transaction. Parcels shall be acquired and conveyed to the Service as provided in Sections 1 and 2 of the Stipulation and Agreement. Such acquisition, approvals and conveyance shall be in full satisfaction of the licensee's obligation under this Article. Habitat acquisition and conveyance costs shall be borne by the Montana Power Company and shall not be borne by the Fish and Wildlife Implementation Strategy Fund.

Article 73. The licensee, in consultation with the U.S. Fish and Wildlife Service (FWS), shall, in addition to the erosion control measures required under article 68, construct a shore-aligned erosion protection segment on the north shore, east of the offshore structure located east of the river mouth of Flathead River, as provided for in Montana Power's Mitigation and Management Plan.

The final design, construction methods and timing of construction activities, including final design drawings and specifications, for the north shore erosion control plan, including all offshore and onshore revetments, shall be filed within six months of the date of issuance of this order. The filing shall include any comments from FWS. Construction of east shore stabilization measures, shall begin within one year of issuance of this order and the licensee shall acquire special use permits from the FWS prior to any activities on FWS lands. The structures, while located pursuant to a special use permit on FWS lands, shall be considered "project works" owned by the licensee and shall be maintained by the licensee, at its cost, at the discretion of

FWS. The licensee shall include in all planning and permitting activities, appropriate representatives of the FWS, Flathead County Commissioner, the U.S. Army Corps of Engineers, and any other pertinent permitting agencies.

Article 74. Before starting construction of the north shore erosion control project and associated habitat development features, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations and shall make sure construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of the cofferdam, the licensee shall submit one copy to the Commission's Regional Director and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, Division of Dam Safety and Inspections), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 75. The licensee shall file, for Commission approval, a detailed plan to mitigate adverse environmental impacts resulting from implementation of the north shore erosion control project, at least 60 days prior to start of any construction activity with respect to the north shore erosion control project. The plan should be developed after consultation with the FWS, FWP, and Tribes, and include, at a minimum: types of equipment and materials to be used, construction scheduling, specifically with respect to critical times of year to minimize impacts to fish and wildlife; and measures to minimize impacts to water quality and aquatic resources. The Commission reserves the right to require changes and/or additions to the plan.

Article 76. The licensee shall file a plan outlining habitat development activities to be undertaken on the Flathead Waterfowl Production Area under article 71. The plan shall be filed at least 60 days prior to the start of any construction activity under article 71 and include the final design, construction methods, and timing of construction activities. The plan shall also include evidence of consultation with the U.S. Fish and Wildlife Service. The Commission reserves the right to require changes in the plan, to the extent that such changes are not inconsistent with FWS' requirements.

Article 77. *Deleted by terms of Order on Rehearing and Lifting Stay, dated October 30, 1998*

Article 78. *Deleted by terms of Order Approving Settlement, dated February 3, 1998*

Article 79. The licensee shall file, within six months of the date of issuance of this order, a schedule for filing a plan, for Commission approval, that includes the provisions required in articles 63, 64 and 65. The schedule shall also provide for filing the annual work plans required by article 63. The Commission reserves the right to require changes to the schedule and plans, to the extent that such changes are not inconsistent with the Fish and Wildlife Implementation Strategy, as approved by the parties listed in Articles 63, 64 and 65.

Article 80. The Commission reserves the authority to require the licensee to take whatever action the Commission deems necessary as a result of the ongoing review of the impacts of the Kerr Project No. 5 on the bull trout.

Article 81. The licensee shall implement, upon order by the Commission, any measures as may be identified by the Secretary, as necessary, to ensure adequate protection and utilization of the Flathead Indian Reservation or the Flathead Waterfowl Production Area.

Article 82. Within one year of the effective date of the December 14, 2000 order issued in this proceeding by the Director, Division of Hydropower Administration and Compliance, and on or before April 1 of each year, the licensee shall file, for Commission approval, a Threatened and Endangered Species Plan and Annual Report. The plan shall address the licensee's compliance with the terms and conditions of the incidental take statement filed by the U.S. Fish and Wildlife Service on November 2, 2000, as modified by the Commission in its order on rehearing of the Director's order and attached as licensee conditions in an appendix to the Commission's order. The plan and report shall include, at a minimum, any modifications to project facilities or operations proposed to minimize take of bull trout.

APPENDIX

Terms and conditions from the U.S. Fish and Wildlife Service (Service) Biological Opinion, dated October 24, 2000, as modified

Terms and Conditions

In accordance with Section 7(b)(4) of the Endangered Species Act, the U.S. Department of the Interior, Fish and Wildlife Service, submitted an incidental take statement containing 5 reasonable and prudent measures, which are listed in the Discussion and Conclusions section of the Director's December 14, 2000 license amendment order, and 14 terms and conditions it believes necessary to implement the measures, which have been modified as follows.

1. The following terms and conditions are established to implement reasonable and prudent measures #1, 2, 3, and 5:

a. The Confederated Salish and Kootenai Tribes (Tribes), in consultation with PPL Montana, LLC (PPLM), the Montana Department of Fish, Wildlife and Parks (FWP), and the U.S. Fish and Wildlife Service (Service), shall fully develop and implement all aspects of the revised Fish and Wildlife Implementation Strategy (September 25, 2000) in a timely fashion, and as committed to in specific proposals and annual work plans.

b. The licensee shall comply with the function and purpose of the Kerr Project Fish and Wildlife Advisory Committee as outlined in the Adaptive Management section of the Fish and Wildlife Implementation Strategy (September 25, 2000) within 180 days of the effective date of this biological opinion. In addition, the Tribes shall develop a detailed adaptive management plan with measurable biological criteria (i.e., performance metrics) and scientificallybased triggers for management responses for each mitigation action pursuant to Step 2 of the adaptive management process under the Fish and Wildlife Implementation Strategy (September 25, 2000).

c. The Tribes shall complete the Fish Stocking, Supplementation and Reintroduction Plan by April 1, 2001, and shall complete and submit to FERC and the Service detailed implementation plans for review and approval by June 15, 2001. The Tribes shall consult with the Service (under

section 7 of the Act) regarding potential impacts to bull trout, prior to implementation of any Fish Stocking, Supplementation and Reintroduction Plan for waters inhabited by bull trout.

d. The licensees shall promptly notify the Service of any emergency or unanticipated situations arising that may be detrimental for bull trout relative to implementation activities under the Fish and Wildlife Implementation Strategy (September 25, 2000) or Kerr Dam operations.

e. In annual yearly work reports, the Tribes will provide documentation to the Service indicating the actual number of bull trout taken, if any, as well as any relevant biological/habitat data or other pertinent information on bull trout that was collected pursuant to activities conducted under the Fish and Wildlife Implementation Strategy (September 25, 2000).

f. The licensees shall ensure that section 7 consultation or section 10 permitting on bull trout for future activities under the Fish and Wildlife Implementation Strategy (September 25, 2000) is conducted with the Service in a timely fashion. The Tribes shall prepare a biological assessment(s) or permit application(s) describing potential effects on bull trout and other listed species (under the Act) of actions proposed for implementation in the coming year. The biological assessment(s) or permit application(s), per the Act's interagency/permit regulations governing section 7 consultation procedures (50 CFR s 402) or section 10 permit application procedures (50 CFR s 13 and 50 CFR s 17) will be submitted by the licensees to the Service as part of the annual work plan. Biological assessments and permit applications should contain, as appropriate, detailed information from results and accomplishments of past activities from the Fish Community Analysis, or other pertinent Fish and Wildlife Implementation Strategy project/studies.

Informal consultation may commence prior to and in advance of submission of annual work plans each year. Formal consultation, if required, will be identified in BAs submitted by the licensees in annual work plans and subsequently requested by the FERC.

2. The following terms and conditions are established to implement reasonable and prudent measure #1.

a. The Tribes will ensure that during the October 2000 to June 2001 gill net fish sampling activity conducted on Flathead Lake pursuant to the Fish Community Analysis under the Fish and Wildlife Implementation Strategy, bull trout that are captured and are alive and in good condition will be released immediately. Every effort will be made to prevent mortality and minimize injury of bull trout during capture, handling, measuring, weighing, holding, and release. These efforts will be done as quickly, efficiently, and carefully as possible. Bull trout collected during this activity will be reported in the subsequent annual report.

b. In consultation with FWP and using the best available information, the Tribes shall annually prepare and submit to the FERC and the Service, by March 1 of each year, an assessment of the Flathead Lake bull trout population trend (tributary redd counts, juvenile tributary population estimates, etc.) and lake trout population and harvest trends.

3. The following terms and conditions are established to implement reasonable and prudent measure #4.

a. The licensees shall finalize the results of the ramping rate study per Article 59 and submit a report with ramping rate recommendations, or recommendations for additional study if deemed appropriate. Recommendations shall include an assessment of the effects on bull trout.

b. The licensees shall ensure, through adaptive management and monitoring, that the existing minimum instream flows and between day flow restrictions in the lower Flathead River are beneficial to bull trout by examining aquatic resource information as it becomes available during the license period to determine if further operational refinement of Kerr Dam is needed, or if additional study is warranted.

4. The following terms and conditions are established to implement reasonable and prudent measure #3.

a. The Tribes, in consultation with PPLM (until conveyance), FWP, and the Service, shall submit to the FERC and the Service completed annual work reports and annual work plans pursuant to compliance associated with activities conducted under the Fish and Wildlife Implementation Strategy (September 25, 2000). The annual work reports shall provide detailed information of results or progress on those activities. Monitoring and evaluation of performance metrics and explanation for triggering any management or study adjustments will be reported for activities conducted under the adaptive management process.

b. The licensees shall ensure that the Kerr Project Fish and Wildlife Advisory Committees, as outlined in the Adaptive Management section of the Fish and Wildlife Implementation Strategy (September 25, 2000) review annual work reports; establish and refer issues to technical working groups, as appropriate; conduct, coordinate, and chair, at a minimum, semiannual meetings; and provide meeting minutes and summaries, technical reviews, annual reports, and other appropriate materials and information as required by the Mitigation and Management Program. Annual reports will contain results of adaptive management implementation/effectiveness monitoring and document recommendations and rationale that trigger a management response and support "midcourse" corrections.

c. Upon locating dead, injured, or sick bull trout, or upon observing destruction of redds, the licensees shall make notification of such within 24 hours to the Service's Division of Law Enforcement Special Agent. Instructions for proper handling and disposition of specimens shall be issued by the Division of Law Enforcement. Care shall be taken in handling sick or injured fish to ensure effective treatment and care, and in handling dead specimens to preserve biological materials in the best possible state. In conjunction with the care of sick or injured bull trout, or the preservation of biological materials from a dead trout, the licensee has the responsibility to ensure that information relative to the date, time and location of the fish when found, and possible cause of injury or death of each fish be recorded and provided to the Service. Dead, injured, or sick bull trout should also be reported to the Service's Helena Field Office.

5. The following terms and conditions are established to implement reasonable and prudent measure #2.

a. The licensees shall complete a drought water management plan per license Article 60 to be submitted to the FERC by December 31, 2000. If this date cannot be met, the Service should be notified as soon as practicable, and advised of the new completion date. The licensee shall coordinate with the Bureau of Reclamation and other interested stakeholders during the development of this plan. This plan shall consider the needs of protecting bull trout during drought.