

VOLUME II

APPENDIX E

FERC MANDATED LICENSE RESPONSIBILITIES

***THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT
FERC PROJECT NO. 1417***

FERC MANDATED LICENSE RESPONSIBILITIES

Central's FERC License contains provisions regarding Central's responsibilities for management of Project lands and waters. Key license articles, or key portions of license articles, related to management of Project lands and waters are provided below.

Article 3 provides in pertinent part:

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 5 requires Central to:

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 or 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.

Article 18 addresses availability of Project lands and waters for public recreation with this language:

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 21 reinforces the jurisdiction of FERC and the Corps over certain activities within the Project Boundary:

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 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 421 is the license article requiring the Land and Shoreline Management Plan

Article 421. Within twenty-four months of license issuance, the Licensee shall file for Commission approval a plan to manage the lands and shorelines of the project. The LSMP shall identify project lands and shorelines that are and will be reserved for present and future wildlife, public recreation, residential, agricultural and other uses. Any proposed change in the use of project lands from uses in existence at the time of license issuance shall be identified. To the extent project lands may be included in the lands managed pursuant to Articles 417 through 420, their use and management shall not be governed by the LSMP. Nothing in this article shall be construed to limit the Licensee from leasing lands and shorelines subject to management under the plan, provided, however, that the lessee's use of the land is consistent with the plan.

The LSMP shall include a plan addressing use of project lands and shorelines designated for public recreational use under the LSMP, and the recreational use of project waters. The recreational component of the LSMP shall include designation of project

lands and/or waters for campgrounds, recreational vehicles, fishing, hunting, boating and canoeing. The plan shall be consistent with wildlife protection measures required by this license.

The plan shall also include, at a minimum, an evaluation of the need for, and measures as appropriate to address: (a) protection of least tern and piping plover nesting sites at Lake McConaughy similar to programs existing at the time of license issuance, which include limited fencing to exclude livestock from nesting areas and public education efforts; (b) suitable protection of bald eagle perch and roost sites on project lands that were in existence at license issuance; (c) measures for controlling aquatic vegetation and sedimentation in project reservoirs, as appropriate.

The Licensee shall prepare the LSMP after consultation with the USFWS and the NGPC. The Licensee shall allow a minimum of 30 days for the consulted agencies to comment and make recommendations on the plans before filing them with the Commission. The Licensee shall include with its filings documentation of such consultation including copies of the comments and recommendations on the proposed plans during consultation. Further, the Licensee shall identify in its filings how the comments or recommendations are accommodated by the proposed plans. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information. The Commission reserves the right to require reasonable changes in the plans. Upon Commission approval, the Licensee shall implement the plans as approved by the Commission.

The Licensee shall file updated reports on the Lands and Shoreline Plan every five years after plan approval. Any change in the use of project lands and shorelines must be highlighted and summarized at the beginning of the update report.

The Licensee shall periodically reevaluate the tern and plover nest protection and bald eagle perch and roost site protection components of its plan in consultation with the USFWS and the NGPC in the same manner as the initial consultation. A report on such reevaluation and consultation, and any resultant revisions shall be filed with the

Commission every three years after initial plan approval. Any comments received from the consulted entities shall be documented and included with the filing.

Article 422 is the Standard Land Use Article

Article 422. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the Licensee may grant permission without prior Commission approval are:

1. landscape plantings,
2. non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings,
3. embankments, bulkhead, retaining walls, or similar structures for erosion control to protect the existing shoreline, and
4. food plots and other wildlife enhancement.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements.

Before granting permission for construction of bulkheads or retaining walls, the Licensee shall:

1. inspect the site of the proposed construction,
2. consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and
3. determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for:

1. replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained,
2. storm drains and water mains,
3. sewers that do not discharge into project waters,
4. minor access roads,
5. telephone, gas, and electric utility distribution lines,
6. non-project overhead electric transmission lines that do not require erection of support structures within the project boundary,
7. submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less), and
8. water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir.

No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for:

1. construction of new bridges or roads for which all necessary state and federal approvals have been obtained,
2. sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained,
3. other pipelines that cross project lands or waters but do not discharge into project waters,
4. non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained,
5. private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina,
6. recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E, and
7. other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d) (7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the Licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

1. Before conveying the interest, the Licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the SHPO.
2. Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved exhibit R or approved report on recreational resources of an exhibit E; or, if the project does not have an approved exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.
3. The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.
4. The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised exhibit G or K drawings would be filed for approval for other purposes.