

**Environmental Impact Statement
Environmental Review Agreement Template
June 2021**

The following are terms and conditions typically used by Western Area Power Administration (WAPA) in an “Environmental Review Agreement” for an Environmental Impact Statement (EIS). These clauses will be used in addition to those required under WAPA’s Open Access Transmission Tariff (OATT), and specifically Attachment J to the OATT.

As indicated below, not all clauses are applicable to each project and other clauses may require a choice of the appropriate clause (e.g., A or B). WAPA has attempted to provide a comprehensive example of the provisions required in an Environmental Review Agreement. The following is a template and may be modified based on the unique needs of a specific project.

In addition, WAPA is required to comply with federal law, including the National Environmental Policy Act (NEPA), and, if WAPA determines additional specific steps and/or provisions are required that are not addressed in this template, WAPA may add those provisions necessary to enable WAPA to comply with federal law. Finally, additional costs and delay may occur if the Customer proposes changes to the project after the initiation of the environmental review.

1. WAPA, at the Customer’s sole expense, shall:

- 1.1 **A.** Provide a statement of work that the Customer shall use to issue a request for proposals for an environmental contractor for the preparation of the EIS and related studies. The Customer shall be responsible for all costs associated with procurement, and preparation of the EIS and Administrative Record in accordance with the scope of work and any subsequent change orders.¹

OR

- B.** Procure an environmental contractor for the preparation of the EIS and related studies in accordance with the scope of work and **any** subsequent change orders. The Customer shall be responsible for all costs associated with procurement, and preparation of the EIS and Administrative Record in accordance with the scope of work and any subsequent change orders
- 1.2 WAPA shall select the environmental contractor under 1.1.
- 1.3 Provide all technical direction to environmental contractor selected under 1.1, in accordance with 40 CFR 1506.5(c), including participation in the preparation

¹ While the Customer may have an existing relationship with an environmental contractor, an independent contractor must still be selected by WAPA for preparation of the EIS.

of the EIS and independent evaluation of the EIS prior to its approval and shall be responsible for the scope and content of the Draft and Final version of the EIS and all related documentation.

- 1.4 Follow the Department of Energy and Council on Environmental Quality regulations in 10 CFR 1021 and 40 CFR 1500-1508 and associated guidance to provide direction for completing the EIS under 1.1.
 - 1.5 Attend meetings with local, state and appropriate Federal agencies as required where matters of WAPA's policy and environmental review requirements are discussed.
 - 1.6 Consult in accordance with Section 106 of the National Historic Preservation Act and ensure compliance with appropriate cultural and historic preservation requirements.
 - 1.7 Consult in accordance with Section 7 of the Endangered Species Act and ensure compliance with appropriate endangered species requirements.
 - 1.8 Consult with affected American Indian Tribes to comply with applicable requirements to ensure that Federal trust responsibilities are met.
 - 1.9 Ensure that applicable provisions of the Clean Water Act, Wetlands Protection Act, Floodplains Management Act, and the DOE Floodplain/Wetland environmental review requirements (10 CFR 1022) are followed.
 - 1.10 Determine if mitigation measures committed to by the Customer are adequate to reduce significant adverse environmental impacts caused by the Customer's Project. As applicable, provide direction on preparing a mitigation action plan, including a schedule and associated costs for mitigation actions to be completed by WAPA at Customer's expense.
 - 1.11 Prepare a Record of Decision. Prepare a draft and final version of WAPA's Record of Decision (ROD). Provide the Customer an opportunity to review and comment on the draft and final ROD prior to WAPA's approval and publication in the Federal Register.
 - 1.12 Review and make additions or deletions to the Administrative Record or documents provided by Customer under 2.6. WAPA shall make a final determination as to the contents of the Administrative Record.
2. The Customer at its sole expense, shall:

2.1 Within 30 calendar days of signing this Environmental Review Agreement:

- 2.1.1 Advance the funds identified in Section ____.
- 2.1.2 Provide a Customer contact for the environmental review, including name, address and phone number.
- 2.1.3 Provide a proposed project timetable for submitting required environmental studies, documents and other information to WAPA.
- 2.1.4 Implement periodic coordination meetings or teleconferences with WAPA to discuss progress on the environmental review, identify issues, and ensure timely information exchanges.
- 2.1.5 Provide a proposed layout of the project on a map base of U.S. Geological Survey 7.5 minute quadrangle or equivalent; that includes but is not limited to: locations of generation facility, location of access roads for construction and maintenance; location of meteorological towers; support buildings, transmission lines, substations and other associated facilities.
- 2.1.6 Provide a detailed description of the project including, but not limited to: nameplate generation capacity, purpose and need for generation, generation technology employed, any alternative technology or alternative sites considered, transmission line voltages, lengths and structure type, square footage of buildings, substations and other associated structures, location of access roads and underlying landownership.
- 2.1.7 Provide a copy of all public notification and correspondence completed to date.

2.2 **A.** Under 1.1A, the Customer shall use WAPA's statement of work, to enter into a contract with an environmental contractor selected by WAPA to prepare the EIS. Name a single individual to serve as the Customer's designated representative for purposes of administering the environmental contract. Customer shall hire the environmental contractor no later than 120 days after execution of environmental agreement.

OR

B. Under 1.1B provide funding for WAPA to procure an environmental contractor.

- 2.3 Coordinate planning and design with WAPA for work related to WAPA's involvement in the Project.
- 2.4 Perform (under 1.1A) or fund (under 1.1B) all required surveys and studies required for the EIS and other environmental review and approval requirements (e.g., cultural resource surveys, biological monitoring, wetland delineation etc.).
- 2.5 Provide a description of the Customer's best management practices, standard operating procedures, standard construction practices, and any other proposed measures used to reduce impacts from the Customer's project.
- 2.6 Customer shall identify any additional measures Customer will commit to implement that may be identified by WAPA or the EIS contractor as part of the environmental impact analysis.
- 2.7 Fund the mitigation measures developed in the EIS and adopted in the ROD for WAPA's action.
- 2.8 As applicable, implement the measures listed in Section 2.5 and 2.6.
- 2.9 Notify WAPA at least 90 days prior to taking any action that may have a material adverse environmental impact (e.g. ground disturbing activities) or that may limit the choices of reasonable alternatives so that WAPA may consider the applicability of interim action approval as required by DOE regulations at 10 CFR 1021.211.
- 2.10 Acquire licenses, permits, clearances, and right(s)-of-way required for all parts of the Customer's Project.
- 2.11 Administrative Record.

A. Under 1.1A, provide WAPA with an Administrative Record that documents all correspondence related to the review, meetings and meeting summaries, copies of all information provided to stakeholders, copies of correspondence received, copies of reports, data and other information produced by the Customer to support the environmental reviews, oral and written comments received from stakeholders; results of coordination with local, state, and appropriate Federal agencies, landowners and other interested citizens or groups (e.g. environmental groups).

OR

- B.** Under 1.1B, give WAPA all documents ,correspondence related to the review, meeting notes and meeting summaries, copies of all information provided to stakeholders, copies of correspondence received, copies of reports, data and other information produced by the Customer to support the environmental reviews, oral and written comments received from stakeholders; results of coordination with local, state, and appropriate Federal agencies, landowners and other interested citizens or groups (e.g. environmental groups) so that WAPA may complete the Administrative Record, at the Customer's sole expense.
- 2.12 Provide WAPA with progress reports at least monthly that describe ongoing studies and work; completed studies and tasks; correspondence between the Customer and local, state and federal agencies with interest in or jurisdiction over the project; identified issues; project schedule changes; and other information relevant to accomplishing the environmental review.
- 2.13 Continually work toward accomplishing the environmental review or WAPA will delay its decision on the Customer's <Interconnection Request **OR** transmission service request>. By executing this agreement, the Customer is aware that Customer delays can result in delays to WAPA's environmental review process.
- 2.14 If WAPA notifies the Customer in writing (including e-mail) that specific information or action relevant to the environmental review is required from the Customer by a specific date and, in WAPA's judgment, that information is not received, or the action not completed, on the date required by WAPA, WAPA may elect to provide the Customer a "Notice of Suspension." The Notice of Suspension will notify the Customer in writing that, from that date forward, WAPA is suspending all activity on the environmental review until WAPA receives written notification from the Customer to re-commence environmental review (referred to as "Written Notice to Re-Commence"). Once WAPA receives the Written Notice to Re-Commence, WAPA then will have sixty days to prepare a revised schedule. The revised schedule will delay any prior schedule for the duration of the "on hold period" which is the date of WAPA's Notice of Suspension until the Written Notice to Re-Commence was received by WAPA plus sixty days. By executing this agreement, the Customer is aware that delay can result from the Customer's non-responsiveness during the environmental process and the Customer acknowledges that WAPA is under no obligation to expedite the environmental review once WAPA receives the Notice to Re-Commence.
- 2.15 If, at any time prior to the issuance of the ROD, the Customer fails to comply with the terms of this Agreement, WAPA may deem the Customer's Interconnection Request withdrawn. If, however, Customer fails to comply with

Section 2.16 after WAPA has issued the ROD, WAPA may deem the Customer's Interconnection Request withdrawn

- 2.16 Customer understands WAPA's environmental review and NEPA process and NEPA and other environmental decisions could be subject to litigation. As part of that litigation, a court could take an action including but not limited to, issuing an injunction enjoining WAPA's actions and enjoining any commitment of resources associated with WAPA's actions or ordering WAPA to conduct additional environmental review. Customer understands such court orders could be issued after WAPA executes its Record of Decision and that such court orders, including but not limited to injunctions, could result in delay. Customer agrees it is responsible for any and all monetary damages, including any and all costs and expenses, the Customer may incur as a result of any such court orders, including delay resulting from such court orders. Customer agrees it is responsible for all of WAPA's costs and expenses, including WAPA's attorneys' fees and costs, arising from such litigation.
- 2.17 Customer understands delays may require adequacy reviews of the previously completed environmental studies and such delays may require withdrawal or modification of the ROD and may require an amendment to this Agreement or a new agreement.