

## **APPENDIX C**

### **Co-applicants' Alternative 4(e) Conditions**

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December 15, 2005

*BY HAND DELIVERY*

Deputy Chief, National Forest Systems, Forest Service  
National Forest Service, Washington Office (WO) Lands Staff  
Mail Stop 1124  
1400 Independence Ave., SW  
Washington, DC 20250-0003

Re: Alternative Conditions Offered in Response to Forest Service 4(e) Conditions  
Submitted in FERC Project No. 11858

Pursuant to 7 C.F.R. Part 1, Subpart O – Conditions in FERC Hydropower Licenses, *70 Fed. Reg. 69,804 (November 17, 2005)* (the "Alternative Condition Procedures"), enclosed please find an original and four (4) copies of proposed alternative conditions and supporting rationale submitted on behalf of the Elsinore Valley Municipal Water District and The Nevada Hydro Company, Applicants in FERC Docket No. P-11858. These alternatives are submitted on a timely basis, prior to the deadline of December 19, 2005, prescribed in the Alternative Condition Procedures 7 C.F.R. § 1.604(c).

These proposed alternative conditions are submitted (i) in response to the "Preliminary Conditions" submitted by the Forest Service in P-11858 under letter dated April 27, 2005, and (ii) pursuant to the newly-available rights -- under the 2005 Energy Policy Act and the Alternative Condition Procedures.

This filing includes two attachments:

- Applicants' Proposed Alternative Conditions provided as a redline compared to the Forest Service's Preliminary Conditions of April 27, 2005 (Attachment I); and
- Applicants' Rationale for the Alternative Conditions (Attachment II).

Applicants are concurrently serving an original and fourteen (14) copies of these alternative conditions with FERC under Project No. P-11858 to "allow FERC to include the alternatives in its draft NEPA document." *70 Fed. Reg. at 69,808 (November 17, 2005)*. Applicants are

Deputy Chief, National Forest Systems

December 15, 2005

Page 2

submitting these alternative conditions as quickly as possible, following issuance of the Alternative Condition Procedures, so that these alternative conditions can be included in the draft EIS ("DEIS") with little if any disruption to the schedule for license processing. The Alternative Conditions Procedures contemplate Forest Service analysis of alternative conditions only after comments on the DEIS. *70 Fed. Reg. at 69,807 and 69,808 (November 17, 2005)*. Thus, it is most efficient to include these alternative conditions in the DEIS in the first instance, rather than having to prepare a second iteration of the DEIS (and potentially a second comment period) to accommodate the alternative conditions.

Since FERC is not asked to deliberate the merit of these alternative conditions, but rather only to "include the alternatives in its draft NEPA document," inclusion of these alternative conditions should not delay issuance of the DEIS. Issuance of the DEIS, with these alternative conditions included, will begin the 60-day DEIS comment period, after which the 60-day period for the Forest Service analysis of the alternative conditions will begin. The Forest Service's analysis period would then run concurrently with joint agency deliberations of the DEIS comments, and thereby avoid undue delay in issuance of the final EIS. In sum, the anticipated process is designed to work through the licensing procedures without undue delay – potentially bringing much-needed electricity reliability to Southern California as timely as possible.

In addition to serving the Secretary at FERC, Applicants are also serving copies to the Supervisory Civil Engineer for Project No. P-11858 at FERC, the Forest Supervisor for the Cleveland National Forest, the District Ranger for the Cleveland National Forest, and all parties on FERC's Service List for Project No. P-11858.

If you have any questions regarding this filing or you would like to discuss the proposed alternatives, please call me at (202) 828-5815.

Very truly yours,  
Bracewell & Giuliani LLP

George H. (Greg) Williams, Jr.

GHW:meu  
Attachments

cc: Ms. Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
Ref.: Project No. P-11858

Deputy Chief, National Forest Systems

December 15, 2005

Page 3

Mr. James Fargo  
Supervisory Civil Engineer  
Federal Energy Regulatory Commission  
Ref.: Project No. P-11858

Ms. Tina Terrell  
Forest Supervisor  
United States Forest Service – Cleveland National Forest  
10845 Rancho Bernardo Road, Suite 200 HRT, San Diego, CA 92127-2107

Mr. Keith Fletcher  
District Ranger  
United States Forest Service – Cleveland National Forest  
Trabuco Ranger District HRT, 1147 East 6<sup>th</sup> St., Corona, CA 92876-1616  
(c/o Virgil Mink, Recreational Special Use Administrator)

Parties on FERC's Service List for P-11858

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**Attachment I**  
**Applicants' Alternative Conditions**  
**Redlined Format**

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## PRELIMINARY 4(E) TERMS AND CONDITIONS

### Lake Elsinore Advanced ~~Pump~~Pumped Storage Hydroelectric Project FERC Project No. ~~41585~~11858

#### **I. Introduction**

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#### **II. Standard Forest Service Conditions**

##### **Condition No. 1— Requirement to Obtain a Forest Service Special-Use Authorization**

The Licensee shall secure a special-use authorization from the Forest Service for the occupancy and use of National Forest System lands. The licensee shall obtain the executed authorization before beginning ground-disturbing activities on National Forest System lands that are permitted by the authorization.

The licensee may commence ground-disturbing activities authorized by the license and special-use authorization no sooner than 60 days following the date the licensee files the Forest Service special-use authorization with the Commission, unless the Commission prescribes a different commencement schedule.

In the event there is a conflict between any provision of the license and Forest Service special-use authorization, the special-use authorization shall prevail to the extent that the Forest Service, in consultation with the Commission, deems necessary to protect and utilize National Forest System resources.

##### **Condition No. 2—Modification of 4(e) Conditions After Biological Opinion or Water Quality Certification**

The Forest Service reserves the right, after notice and opportunity for comment, to modify these conditions, if necessary, to respond to any Final Biological Opinion issued for this Project by the United States Fish and Wildlife Service; NOAA Fisheries, or any Certification issued for this Project by the State Water Resources Control Board; provided, however, that any modification to these conditions shall be subject to the rights of the Licensee to a hearing on disputed issues of fact and to propose alternative conditions in a manner similar to the process provided in 7 C.F.R. Part 1, Subpart O.

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

**Condition No. 3—Forest Service Approval of Final Design**

Before any new construction of the Project occurs on National Forest System lands, the Licensee shall obtain prior written approval of the Forest Service for all final design plans for Project components, which the Forest Service deems as affecting or potentially affecting National Forest System resources; provided, however, that (i) the Licensee and the Forest Service shall cooperate to review and provide timely comments to the concept design plans for the Project; (ii) the Licensee and the Forest Service shall agree upon specified design standards for the Project as early in the planning process as reasonably possible, provided that Forest Service's choice of standards shall be within its sole discretion; and (iii) the Forest Service shall provide timely approval of any final design plan that is consistent with the Forest Service's previous approvals. The Licensee shall follow the schedules and procedures for design review and approval specified in the conditions herein. As part of such written approval, the Forest Service may, after notice and opportunity for comment and hearing, require adjustments to the final plans and facility locations to preclude or mitigate impacts and to insure that the Project is either compatible with on-the-ground conditions or approved by the Forest Service based on agreed compensation or mitigation measures to address compatibility concerns. Should such necessary adjustments be deemed by the Forest Service, the Commission, or the Licensee to be a substantial change, the Licensee shall follow the procedures of Article 2 of the license. Any changes to the license made for any reason pursuant to Article 2 or Article 3 shall be made subject to any new terms and conditions of the Secretary of Agriculture made pursuant to Section 4(e) of the Federal Power Act.

**Condition No. 4—Approval of Changes**

Notwithstanding any Commission approval or license provisions to make changes to the Project, the Licensee shall get written approval from the Forest Service prior to making any changes in the location of any constructed Project features or facilities on National Forest System lands, or in the uses of Project lands and waters on National Forest System lands, or any departure from the requirements of any approved exhibits filed with the Commission for project works on National Forest System lands. Following receipt of such approval from the Forest Service, and at least 60 days prior to initiating any such changes or departure, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest Service for such changes. The Licensee shall file an exact copy of this report with the Forest Service at the same time it is filed with the Commission. This article does not relieve the Licensee from the amendment or other requirements of Article 2 or Article 3 of this license; nor shall it affect the Licensee's obligation to comply with Commission requirements.

**Condition No. 5—Consultation**

Each year ~~between March 15 and April 15,~~ during the 60 days preceding the anniversary date of the license, the Licensee shall consult with the Forest Service with regard to measures needed to ensure protection and utilization of the National Forest resources affected by the

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

Project. Within 60 days following such consultation, the Licensee shall file with the Commission evidence of the consultation with any recommendations made by the Forest Service. The Forest Service reserves the right, after notice and opportunity for comment, to require changes in the Project and its operation through revision of the 4(e) conditions that require measures necessary to accomplish protection and utilization of National Forest resources; provided, however, that any modification to these conditions shall be subject to the rights of the Licensee to a hearing on disputed issues of fact and to propose alternative conditions in a manner similar to the process provided in 7 C.F.R. Part 1, Subpart O.

When Forest Service section 4(e) conditions require the Licensee to file a plan with the Commission that is approved by the Forest Service, the Licensee shall provide the Forest Service a minimum of 60 days to review and approve the plan before filing with the Commission. Upon Commission approval, the Licensee shall implement Forest Service required and approved plans.

**Condition No. 6—Surrender of License or Transfer of Ownership**

Prior to any surrender of this license, the Licensee shall provide assurance acceptable to the Forest Service that Licensee shall restore National Forest System resources within the project boundary to a condition satisfactory to the Forest Service upon or after surrender of the license, as appropriate. In any event Licensee's obligation shall not exceed the obligation to restore such resources to their condition existing immediately prior to issuance of the license. The restoration plan shall identify the measures to be taken to restore National Forest System resources within the project boundary and shall include adequate financial assurances such as a bond or letter of credit, to ensure performance of the restoration measures.

~~In the event of any transfer of the license or sale of the Project, the Licensee shall guarantee or assure that, in a manner satisfactory to the Forest Service, the Licensee or transferee will provide for the costs of surrender and restoration. If deemed necessary by the Forest Service to assist it in evaluating the Licensee's proposal, the Licensee shall conduct an analysis, using experts approved by the Forest Service, to estimate the potential costs associated with surrender and restoration of the Project area to Forest Service specifications. In addition, the Forest Service may require the Licensee to pay for an independent audit of the transferee to assist the Forest Service in determining whether the transferee has the financial ability to fund the surrender and restoration work specified in the analysis.~~

In the event of any transfer of the license or sale of the Project, the Licensee shall obtain the written approval of the Commission and shall advise the Forest Service of the transfer. Any transferee or assign to the rights of the Licensee shall be subject to all the conditions of the license under which such rights are held by the Licensee and also subject to all of the provisions and conditions of the Federal Power Act to the same extent as though such successor or assign were the original licensee.

**Condition No. 7—Hazardous Substances Plan**

Within one year of license issuance, the Licensee shall file with the Commission a plan approved by the Forest Service for hazardous substances storage and spill prevention and

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

cleanup for Project facilities on or affecting National Forest System Lands. In addition, during planning and prior to any new construction or maintenance not addressed in an existing plan, the Licensee shall notify the Forest Service, and the Forest Service shall make a determination whether a plan approved by the Forest Service for oil and hazardous substances storage and spill prevention and cleanup is needed.

At a minimum, for project works located on National Forest System lands, the plan must require the Licensee to (1) maintain in the Project area, or at an alternative location approved by the Forest Service, a cache of spill cleanup equipment suitable to contain any spill from the Project; (2) to periodically inform the Forest Service of the location of the spill cleanup equipment on National Forest System lands and of the location, type, and quantity of oil and hazardous substances stored in the Project area; (3) to inform the Forest Service immediately of the nature, time, date, location, and action taken for any spill affecting National Forest System lands and Licensee adjoining property, where such spill could reasonably be expected to affect National Forest System lands, and (4) provide annually to the Forest Service a list of Licensee project contacts.

### **Condition No. 8—Use of Explosives**

Use of explosives shall be consistent with state and local requirements.

1. The Licensee shall use only electronic detonators for blasting on National Forest System lands and Licensee adjoining property, where such activities could reasonably be expected to affect National Forest System lands, except near high-voltage powerlines. The Forest Service may allow specific exceptions when in the public interest.
2. In the use of explosives, the Licensee shall exercise the utmost care not to endanger life or property and shall comply with the requirements of the Forest Service. The Licensee shall contact the Forest Service prior to blasting to obtain the requirements from the Forest Service, which shall be provided by the Forest Service without unreasonable delay. The Licensee shall be responsible for any and all damages resulting from the use of explosives and shall adopt precautions to prevent damage to surrounding objects. The Licensee shall furnish and erect special signs to warn the public of the Licensee's blasting operations. The Licensee shall place and maintain such signs so they are clearly evident to the public during all critical periods of the blasting operations, and shall ensure that they include a warning statement to have radio transmitters turned off.
3. ~~The~~If stored on National Forest System lands, the Licensee shall store all explosives on ~~National Forest System lands~~ in a secure manner, in compliance with State and local laws and ordinances, and shall mark all such storage places "DANGEROUS—EXPLOSIVES:" or in any alternative manner approved by the Forest Service. Where no local laws or ordinances apply, the Licensee shall provide storage that is satisfactory to the Forest Service and in general not closer than 1,000 feet from the road or from any building or camping area, unless otherwise approved by the Forest Service.
4. When using explosives on National Forest System lands, the Licensee shall adopt precautions to prevent damage to landscape features and other surrounding objects. When directed by the Forest Service, the Licensee shall leave trees within an area designated to

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

be cleared as a protective screen for surrounding vegetation during blasting operations. The Licensee shall remove and dispose of trees so left when blasting is complete. When necessary, and at any point of special danger, the Licensee shall use suitable mats or some other approved method to smother blasts.

**Condition No. 9—Fire Prevention, Response, and Investigation**

Within one year of license issuance the Licensee shall file with the Commission a Fire Management and Response Plan that is approved by the Forest Service, and developed in consultation with appropriate State and local fire agencies. The plan shall set forth in detail the Licensee's responsibility for the prevention, reporting, control, and extinguishing of fires ~~in the vicinity of the Project~~ on National Forest System lands within the project boundary.

At a minimum the plan shall address the following categories:

1. Fuels Treatment/Vegetation Management

Identification of fire hazard reduction measures to prevent the escape of project-induced fires (reference Condition 26).

2. Prevention

Availability of fire access roads, community road escape routes, helispots to allow aerial firefighting assistance in the steep canyon, water drafting sites and other fire suppression strategies.

Address fire danger and public safety associated with project-induced recreation, including fire danger associated with dispersed camping, existing and proposed developed recreation sites, trails, and vehicle access on National Forest System lands.

3. Emergency response preparedness

Analyze fire prevention needs including equipment and personnel availability.

4. Reporting

Licensee shall report any project related fires to the Interagency dispatch immediately.

5. Fire control/extinguishing

Provide the Forest Service a list of the location of available fire suppression equipment and the location and availability of fire suppression personnel.

Assure fire prevention measures will conform to water quality protection practices as enumerated in USDA, Forest Service, Pacific Southwest Region, Water Quality Management for National Forest System Lands in California-Best Management Practices.

**Investigation of Project Related Fires**

The Licensee agrees to fully cooperate with the Forest Service on all fire investigations. ~~The~~ With regard to fire investigations related to National Forest System lands within the project

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

boundary, the Licensee shall produce upon request all material and witnesses, over which the Licensee has control, related to the fire and its investigation including:

- All investigation reports
- All witness statements
- All photographs
- All drawings
- All analysis of cause and origin
- All other, similar materials and documents regardless of how collected or maintained

The Licensee shall preserve all physical evidence, and give custody to the Forest Service of all physical evidence requested.

**Condition No. 10—Road Use by Government**

The United States shall have unrestricted use of any road on National Forest System lands within the project ~~area~~boundary for all purposes deemed necessary and desirable in connection with the protection, administration, management, and utilization of National Forest System lands or resources and shall have the right to extend rights and privileges of use of such road to States and local subdivisions thereof; ~~as well as to other users, including members of the public, except contractors, agents, and employees of the Licensee;~~ provided that the agency having jurisdiction shall control such use so as not to unreasonably interfere with the use of the road by the Licensee, safety or security uses, or cause the Licensee to bear a share of the costs of maintenance greater than the Licensee's use bears to all use of the road.

**Condition No. 11—Road Use**

The Licensee shall confine all project vehicles, including but not limited to administrative and transportation vehicles and construction and inspection equipment, to roads or specifically designed access routes and construction and staging areas on National Forest System lands, as identified in the Road Management and Maintenance Plan (refer to Condition No. 28). The Forest Service reserves the right to close any and all such routes where damage that exceeds the reasonably anticipated and mitigated impacts associated with construction and operation of the Project is occurring to the soil or vegetation, or, if requested by Licensee, to require reconstruction/construction by the Licensee to the extent needed to accommodate the Licensee's use.

**Condition No. 12—Maintenance of Improvements**

The Licensee shall maintain all its improvements and premises on National Forest System lands to standards of repair, orderliness, neatness, sanitation, and safety consistent with applicable Forest Service guidelines and acceptable to the Forest Service. The Licensee shall comply with all applicable Federal, State, and local laws, regulations, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resources Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, maintenance of any facility, improvement, or equipment on National Forest System lands.

**Condition No. 13—Safety during Project Construction**

Sixty days prior to ground-disturbing activity related to new Project construction on or affecting National Forest System Lands, the Licensee shall file a Safety During Construction Plan with the Commission that is approved by the Forest Service that identifies potential hazard areas and measures necessary to protect public safety. Areas to consider include construction activities near public roads, trails and recreation area and facilities.

The Licensee shall perform daily (or on a schedule otherwise agreed to by the Forest Service in writing) inspections of Licensee's construction operations on National Forest System lands ~~and Licensee adjoining fee title property~~ while construction is in progress. The Licensee shall document these inspections (informal writing sufficient) and shall deliver such documentation to the Forest Service on a schedule agreed to by the Forest Service. The inspections must specifically include fire plan compliance, public safety, and environmental protection. The Licensee shall act ~~immediately~~ promptly and without delay to correct any items found to need correction to comply with the Safety During Construction Plan.

**Condition No. 14—Pesticide Use Restrictions**

Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, fish, insects, and rodents on National Forest System lands without the prior written approval of the Forest Service. The Licensee shall submit a request for approval of planned uses of pesticides on National Forest System lands. The request must cover annual planned use and be updated as required by the Forest Service. The Licensee shall provide information essential for review in the form specified. Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the request was submitted. In such an instance, an emergency request and approval may be made.

The Licensee shall use on National Forest System lands only those materials registered by the U. S. Environmental Protection Agency for the specific purpose planned. The Licensee must strictly follow label instructions in the preparation and application of pesticides and disposal of excess materials and containers.

**Condition No. 15—Erosion Control Plan**

During planning and before any new construction or non-routine maintenance projects with the potential for causing erosion and/or stream sedimentation on or affecting National Forest System Lands, the Licensee shall file with the Commission an Erosion Control Measures Plan that is approved by the Forest Service. The Plan shall include measures to control erosion, stream sedimentation, dust, and soil mass movement attributable to the Project.

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

The plan shall be based on actual-site geological, soil, and groundwater conditions and shall include:

1. A description of the actual site conditions;
2. Detailed descriptions, design drawings, and specific topographic locations of all control measures;
3. Measures to divert runoff away from disturbed land surfaces;
4. Measures to collect and filter runoff over disturbed land surfaces, including sediment ponds at the diversion and powerhouse sites;
5. Revegetating disturbed areas in accordance with current direction on use of native plants and locality of plant and seed sources;
6. Measures to dissipate energy and prevent erosion; and,
7. A monitoring and maintenance schedule.

**Condition No. 16—Valid Claims and Existing Rights**

This license is subject to all valid rights and claims of third parties. The United States is not liable to the Licensee for the exercise of any such right or claim.

**Condition No. 17—Compliance with Regulations**

The Licensee shall comply with the regulations of the Department of Agriculture and all federal, state, county, and municipal laws, ordinances, or regulations in regards to the area or operations covered by this license, to the extent those laws, ordinances, or regulations are not preempted by federal law.

**Condition No. 18—Protection of United States Property**

The Licensee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with the license.

**Condition No. 19—Indemnification**

The Licensee shall indemnify, defend, and hold the United States harmless for any violations incurred by the Licensee or its representative under any ~~such~~applicable laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the Licensee's use or occupancy of National Forest System lands authorized by this license. The licensee's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of National Forest System lands authorized by this license. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination of this license, regardless of cause.

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

**Condition No. 20—Surveys, Land Corners**

The Licensee shall avoid disturbance to all public land survey monuments, private property corners, and forest boundary markers located on National Forest System lands. In the event that any such land markers or monuments are destroyed by an act or omission of the Licensee, in connection with the use and/or occupancy authorized by this license, depending on the type of monument destroyed, the Licensee shall reestablish or reference same in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of the Forest Service.

Further, the Licensee shall ensure that any such official survey records affected are amended as provided by law.

**Condition No. 21—Damage to Land, Property, and Interests of the United States**

The Licensee has an affirmative duty to protect the land, property, and interests of the United States from damage arising from occupancy and use of the license.

In addition to the general requirements of Articles 22 and 24, the Licensee is ~~strictly~~ liable for and shall pay all damages, costs and expenses associated with damage to the land, property and interests of the United States ~~cause~~caused by or in connection with the occupancy or use authorized by the license, without regard to the Licensee's negligence, provided that Licensee's maximum liability shall not exceed \$1,000,000 for any one occurrence, and including but not limited to damages, costs, and expenses resulting from fire. Such damages, costs and expenses shall include, but not be limited to:

- Fire suppression costs
- Rehabilitation and restoration costs
- Value of lost resources
- Abatement costs
- Investigation and administrative expenses
- Attorneys' fees

Damages will be determined by the value of the resources lost or impaired, as determined by the Forest Service. The basis for damages will be provided to the Licensee. The licensee shall accept transaction registers certified by the appropriate Forest Service official as evidence of costs and expenses. The Licensee shall promptly pay to the United States such damages, costs and expenses upon written demand by the United States.

**Condition No. 22—Risks and Hazards**

As part of the occupancy and use of the license area, the Licensee has a continuing responsibility to identify and report all hazardous conditions within the project boundary that would affect the improvements, resources, or pose a risk of injury to individuals. Licensee will abate those conditions, except those caused by third parties not related to the occupancy

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

and use authorized by the License. Any non-emergency actions to abate such hazards on National Forest System lands shall be performed after consultation with the Forest Service. In emergency situations, the Licensee shall notify the Forest Service of its actions as soon as possible, but not more than 48 hours, after such actions have been taken. Whether or not the Forest Service is notified or provides consultation; the Licensee shall remain solely responsible for all abatement measures performed. Other hazards should be reported to the appropriate agency as soon as possible.

**Condition No. 23—Crossings**

~~The~~Except as otherwise authorized in the special use authorization for the Project, the Licensee shall maintain existing crossings as required by the Forest Service for all roads and trails that intersect the right-of-way occupied by linear Project facilities (powerline, penstock, ditch, and pipeline) on National Forest System lands.

**Condition No. 24—Access**

The Forest Service reserves the right to use or permit others to use any part of the licensed area on National Forest System lands for any purpose, provided such use does not interfere with the rights and privileges authorized by this license or the Federal Power Act.

**Condition No. 25—Signs**

The Licensee shall consult with the Forest Service prior to erecting signs related to safety issues on National Forest System lands covered by the license. Prior to the Licensee erecting any other signs or advertising devices on National Forest System lands covered by the license, the Licensee must obtain the approval of the Forest Service as to location, design, size, color, and message. The Licensee shall be responsible for maintaining all Licensee-erected signs to neat and presentable standards.

**III. Project Specific Forest Service Conditions**

**Condition No. 26— Hazardous Vegetative Fuel Treatment Plan**

Within one year of license issuance the licensee shall file with the Commission a plan approved by the Forest Service for Hazardous Vegetative fuel treatment on National Forest System lands within the project boundary. The purpose of the plan shall be to reduce the potential for wildfires originating at project facilities. At a minimum, the Hazardous Vegetative Fuel Treatment Plan shall:

1. Analyze fuel loading on Cleveland National Forest lands that extend from the edge of each project facility area (excluding the area around reservoir shorelines) for a distance of 300 feet to determine the condition of the existing fuels.
2. Identify fuel treatment methods to mitigate hazard fuels. ~~Such~~Except as otherwise provided in the Hazardous Vegetation Fuel Treatment Plan approved by the Forest

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

Service, such treatment methods shall be limited to thinning of small trees, removing excess brush, and reducing fuel load and continuity of surface and ladder fuels.

3. Include a map and schedule of treatments proposed by the licensee.
4. Maintain fuel profiles within the project area commensurate with standards and guidelines set forth in the Cleveland Forest Land and Resource Management Plan, as amended (USDA ~~1991, 2004~~2005).
5. Be responsible for the initial fuels treatment (or the cost of mutually agreeable Forest Service treatment).
6. Be responsible for maintaining the treated areas by performing repeat treatments once every eight years.

**Condition No. 27—Road and Traffic Management Plan**

Within one year of license issuance the licensee shall file with the Commission a plan approved by the Forest Service for management of all Forest Service and unclassified roads required by the licensee to access the project area on National Forest System lands. The Project Road and Traffic Management Plan shall include:

1. Identification of all Forest Service roads and unclassified roads on National Forest System Lands needed for project access, including road numbers.
2. A map of all Forest Service roads and unclassified roads on National Forest System land used for project access, including digital spatial data accurate to within 40 feet, identifying each road by Forest Service road number.
3. A description of each Forest Service road segment and unclassified roads on National Forest System land needed for project access including:
  - a. Termini
  - b. Length
  - c. Purpose and use
  - d. Party responsible for maintenance
  - e. Level of maintenance
  - f. Structures accessed
  - g. Location and status of gates and barricades, if any
  - h. Ownership of road segment and underlying property
  - i. Instrument of authorization for road use
  - j. Assessment of road condition

Provisions for the licensee to consult with the Forest Service in advance of performing any road construction, realignment, maintenance, or closure involving Forest Service roads.

The licensee shall cooperate with Forest Service on the preparation of a condition survey and a proposed maintenance plan subject to Forest Service approval annually; beginning the first full-year after the Road and Traffic Management Plan has been approved.

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

The licensee shall ~~maintain~~use non Forest Service ~~impacted~~ roads ~~to the appropriate~~in accordance with applicable state and/or county ~~standard~~standards.

The licensee shall obtain appropriate authorization (e.g. special use permit, road use permit, or maintenance agreement) in accordance with the Road and Traffic Management Plan for all project access roads that are under Forest Service jurisdiction outside the project boundary, including unclassified roads and Forest Service system roads needed for project access. The term of the authorization shall be the same as the term of the license. The licensee shall enter into the appropriate authorization mechanism with the Forest Service that will coincide with the Special Use Permit. The Road and Traffic Management Plan shall identify the licensee's responsibility for road maintenance and repair costs commensurate with the licensee's use and project-induced use. The Road and Traffic Management Plan shall specify road maintenance and management standards; that provide for traffic safety, minimize erosion and damage to natural resources, and that are acceptable to the Forest Service.

Licensee shall be responsible for any new construction, realignment, closure, or other road management actions proposed by licensee in the future, subject to Forest Service standards in effect at the time, including related studies, analyses or reviews required by Forest Service.

**Condition No. 28—Recreation Facilities and Administration**

Within one year of license issuance, the licensee shall file with the Commission a Recreation Facility Development Plan, approved by the Forest Service, for a day use recreation facility at the project equipment and material laydown area on National Forest System lands, or for an alternative use and/or location as may be approved by the Forest Service.

**Condition No. 29 – Heritage Resources Management Plan**

~~The~~Unless otherwise approved through the NEPA process, the licensee shall file with the Commission, within one year following license issuance, a Heritage Resources Management Plan (HRMP), approved by the Forest Service, for the purpose of protecting and interpreting heritage resources on National Forest System lands. The licensee shall consult with the State Historic Preservation Officer, Native American Tribes, Forest Service, and other applicable agencies and communities during the preparation of the Plan. The HRMP shall accurately define the area of potential effects, including effects of implementing section 4(e) conditions. The HRMP shall also provide measures to mitigate the identified impacts, including a monitoring program, a patrolling program, and management protocols for the ongoing protection of archaeological properties.

Potential cultural, historical, archaeological, or paleontological items of value exist in the project area. If, prior to or during ground-disturbing activities or as a result of project operations, these items are reported or discovered, or a known deposit of such items is disturbed on National Forest System lands, the licensee shall immediately cease work in that area. The licensee shall then: (1) consult with the California State Historic Preservation Officer (SHPO) and the Forest Service about the discovery; (2) prepare a site-specific plan, including a schedule, to evaluate the significance of the find and to avoid or mitigate any

[Applicants' Proposed Alternative Conditions](#)  
[Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

impacts to sites found eligible for inclusion in the National Register of Historic Places; (3) base the site-specific plan on recommendations of the SHPO, the Forest Service, and Secretary of the Interior's standards and guidelines for Archaeology and Historic Preservation; (4) file the site specific plan for Commission approval, together with the written comments of the SHPO and the Forest Service; and (5) take the necessary steps to protect the sites from further impact until informed by the Commission that the requirements have been fulfilled.

Upon Commission approval, the licensee shall implement the plan.

**Condition No. 30—Annual Employee Awareness Training**

The licensee shall, beginning the first full calendar year after license issuance, provide annual employee awareness training in coordination with the Forest Service. The goal of the training shall be to familiarize the licensee's maintenance and operations staff with local Forest Service issues. Topics to be covered in this training include local resource issues, special status species, noxious weeds, procedures for reporting to the Forest Service, and Forest Service orders that pertain to the Cleveland National Forest lands in the vicinity of the project.

Information on special status species and noxious weeds and their locations in the project area shall be provided to licensee's field personnel.

**Condition No. 31—Special Status Species**

The licensee shall, beginning the first full calendar year after license issuance annually review the current list of special status plant and wildlife species (species that are Federal Endangered or Threatened, Forest Service Sensitive) that might occur [on National Forest System lands](#) within the project boundary. When a species is added to one or more of the lists, the Forest Service will work with the licensee to determine if the species or un-surveyed suitable habitat is likely to occur. The licensee shall develop and implement a study plan in consultation with the Forest Service and U.S. Fish and Wildlife Service for such newly added species. The licensee will determine and assess the effects of the project on the species. The licensee shall prepare a report on the study including objectives, methods, results, recommended resource measures where appropriate, and a schedule of implementation. A draft of the final report shall be provided to the Forest Service for review and approval. The licensee shall file the report, including evidence of consultation, with the Commission and shall implement those resource management measures required by the Commission.

In addition, areas [on National Forest System lands](#) within the project boundary that have suitable habitat or known occurrences of selected special status wildlife or plant species shall be resurveyed every ten years in order to (a) determine if special status plant or wildlife species have changed in location (i.e. migrated into or moved within the project boundary), and (b) monitor for impacts caused by on-going project activities. The licensee shall consult with the Forest Service to determine which species need to be resurveyed. If the Forest Service, in consultation with U.S. Fish and Wildlife Service, determines there have been

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

negative impacts, the licensee shall submit a proposal for actions to reduce or eliminate impacts to special status species. The licensee shall file the report, including evidence of consultation, with the Commission and shall implement those resource management measures approved by the Commission.

**Condition No. 32—Ground Disturbing Activities**

Ground disturbing activities on National Forest System lands within the project boundary may proceed only after the appropriate NEPA analysis and documentation. If the licensee proposes new activities that were not previously addressed in the Commission's NEPA analysis processes, the licensee, in consultation with the Forest Service, shall determine the scope of work, and the potential project related effects and whether additional information is required to proceed with the planned ground disturbing activity. Upon Forest Service's request, the licensee shall enter into an agreement with the Forest Service under which the licensee shall fund a reasonable portion of Forest Service's staff time and expenses for staff activities related to the analysis and documentation of the proposed activities.

**Condition No. 33—Environmental Monitoring**

The licensee shall, within six months after license issuance, or as otherwise indicated, and in consultation with the Forest Service, State Water Resources Control Board (SWRCB), California Air Resources Board (ARB) and California Department of Fish and Game (CDFG), develop detailed monitoring plans for National Forest System lands within the project boundary consistent with the descriptions provided below. The licensee shall provide the final detailed plans, along with all agency comments received and an explanation for any such comments not adapted, to the Commission for final approval. The licensee shall perform the environmental monitoring as approved by the Commission. It is anticipated that certain details of the environmental monitoring (e.g., specific years of sampling and/or specific study sites) may need modification during development of detailed study plans or during subsequent implementation of the environmental monitoring. All such modifications shall be developed in consultation with the Forest Service, SWRCB, ARB, and CDFG, and approved by these agencies and provided to the Commission before implementation. Where years are specified, year one is the first full calendar year after issuance of the new license.

**Condition No. 34—Noxious Weed Management Plan**

The licensee shall within one year after license issuance file with the Commission a Noxious Weed Management Plan that is approved by the Forest Service, for the purpose of controlling and containing the project related spread of noxious weeds, which might be related to the licensee's activities. The purpose of the plan is also to establish (a) which populations of noxious weeds are within the project area and (b) which are a priority for control. At a minimum the plan shall:

1. List of current infestations of noxious weeds with priorities for treatment.
2. Methods to control existing populations of noxious weeds. Noxious weeds presently identified include populations of giant reed, tall whitetop, and perennial pepperweed.

[Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005](#)

3. Populations contiguous with populations outside the project boundary, or are downstream from those populations, the licensee shall make reasonable efforts to control the entire population unit.
4. Describe efforts to control the spread of noxious weeds. At a minimum efforts should include:
  - a) Assuring that project staff is aware of the current location of these weeds and how to identify the noxious weeds likely to occur in the project area.
  - b) Advise the Forest Service of observed new populations of noxious weeds and coordinate with the Forest Service the eradication of the population.
  - c) Thoroughly cleaning all construction equipment and other equipment, including licensee owned and rental equipment, that operates off the roads or moves soil before entering the project vicinity and using reasonable cleaning methods to reasonably ensure that seeds of noxious weeds are not introduced. Thoroughly cleaning all project vehicles and equipment that leave the project site to ensure that noxious from this site are not spread to additional sites.
  - d) Using certified weed-free straw for all construction or restoration needs. If certified weed-free straw is not available, rice straw may be substituted. The licensee shall use an approved mix of plant species native to the Cleveland National Forest for restoration or erosion control purposes.
  - e) Monitoring of known populations of noxious weeds to evaluate the effectiveness of re-vegetation and noxious weed control measures.
5. Conducting an inventory of noxious weeds at project facilities and other possible points of introduction every five years using the current list of noxious weeds of concern to the Cleveland National Forest. This frequency may be adjusted based on the results of these inventories. This inventory will be used to help prevent the spread of noxious weeds and will also serve as monitoring for the weed introduction prevention measures (c-d and g).

~~Avoiding~~Except to the extent necessary, avoid entering areas with existing populations of noxious weeds including established parking areas. If necessary to enter these areas, the licensee shall, where reasonably feasible, conduct work in clean areas first and then in the areas with weeds to avoid spreading weeds within the project area.

Establish responsibility for and priority of control efforts, i.e. which noxious weed populations are licensee responsibility, Forest Service responsibility or shared responsibility.

### **Condition No. 35—Wildlife Management**

The licensee shall, within one year after license issuance, implement the following raptor/avian safety measures on National Forest System lands within the project boundary to maintain and enhance existing native wildlife species potentially affected by the project:

**Applicants' Proposed Alternative Conditions  
Compared to Forest Service's Preliminary Conditions of April 27, 2005**

- All power lines, power stations, and other facilities on National Forest System lands within the project boundary shall be constructed to conform with the “Suggested Practices for Raptor Protection on Power Lines” by the Avian Powerline Interaction Committee (1996), including marking the power lines themselves if they are adjacent to Lake Elsinore or in a flyway where bird strikes may occur.

**-END-**

**Attachment II**  
**Applicants' Rationale for Alternative Conditions**

All citations herein refer to 7 C.F.R. Part 1, Subpart O (70 Fed. Reg. 69,804)

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## **ALTERNATIVE CONDITION NO. 1**

***§ 1.671(b)(1): a description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition.***

Following is the alternative condition, in redline against the Forest Service's preliminary condition:

### **Condition No. 1— Requirement to Obtain a Forest Service Special-Use Authorization**

The Licensee shall secure a special-use authorization from the Forest Service for the occupancy and use of National Forest System lands. The licensee shall obtain the executed authorization before beginning ground-disturbing activities on National Forest System lands that are permitted by the authorization.

The licensee may commence ground-disturbing activities authorized by the license and special-use authorization no sooner than 60 days following the date the licensee files the Forest Service special-use authorization with the Commission, unless the Commission prescribes a different commencement schedule.

In the event there is a conflict between any provision of the license and Forest Service special-use authorization, the special-use authorization shall prevail to the extent that the Forest Service, in consultation with the Commission, deems necessary to protect and utilize National Forest System resources.

***§ 1.671(b)(2): an explanation of how the alternative will provide for the adequate protection and utilization of the reservation.***

Prior to the commencement of activities authorized by the license and the associated special use authorization, the project proponent intends to conduct investigative technical studies, such as subsurface geotechnical investigations, in order to assist in the development of a final design. Forest Service's authorization of such activities is expected to be provided through the issuance of investigative use permits, not the special use authorization associated with the license. The proposed change clarifies that Licensee's commitment not to conduct ground-disturbing activities does not extend to project investigation activities that are otherwise authorized by the Forest Service pursuant to its permitting procedures, which are, according to the Forest Service, designed to ensure adequate protection of National Forest System lands.

***§ 1.671(b)(3) an explanation of how the alternative, as compared to the preliminary condition, will***

- (i) cost significantly less to implement, or***
- (ii) result in improved operation of the project works for electricity projection.***

Under the Forest Service's permitting scheme, certain investigative activities are able to proceed prior to a final determination on the license application. This approach allows engineering plans and design studies to be conducted during the licensing process, rather than delaying until after the license is issued. Also, by conducting certain investigative activities early in the licensing process, potential engineering and design concerns, if any, can be identified, which allows for dialogue between interested parties as to how the identified concerns should be addressed. Early resolution of any such concerns translates into substantial cost savings to the Licensee, the ability to address environmental concerns at the earliest possible time, and reduced resource allocation by regulatory agencies overseeing the project's development. Likewise, early resolution of any such concerns leads to improved facility operations and efficiency.

***§ 1.671(b)(4) an explanation of how the alternative will affect:***

- (i) Energy supply, distribution, cost, and use;***
- (ii) Flood control;***
- (iii) Navigation;***
- (iv) Water Supply;***
- (v) Air quality; and***
- (vi) Other aspects of environmental quality.***

As discussed above, the alternative licensing condition does not seek to substantively change the proposed condition, and so cannot adversely affect these concerns.

***§ 1.671(b)(5) specific citations to any scientific studies, literature, or other documented information to support the alternative proposal, including any assumptions made, (e.g., regarding the cost of energy or the rate of inflation)***

As discussed above, the alternative licensing condition does not seek to substantively change the proposed condition.

## ALTERNATIVE CONDITION NO. 2

***§ 1.671(b)(1): a description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition.***

Following is the alternative condition, in redline against the Forest Service's preliminary condition:

### **Condition No. 2—Modification of 4(e) Conditions After Biological Opinion or Water Quality Certification**

The Forest Service reserves the right, after notice and opportunity for comment, to modify these conditions, if necessary, to respond to any Final Biological Opinion issued for this Project by the United States Fish and Wildlife Service; NOAA Fisheries, or any Certification issued for this Project by the State Water Resources Control Board; provided, however, that any modification to these conditions shall be subject to the rights of the Licensee to a hearing on disputed issues of fact and to propose alternative conditions in a manner similar to the process provided in 7 C.F.R. Part 1, Subpart O.

***§ 1.671(b)(2): an explanation of how the alternative will provide for the adequate protection and utilization of the reservation.***

The alternative provision preserves three key due process rights for the Licensee – the right to notice and opportunity for comments on any proposed modification of the conditions, the right to a hearing on disputed issues of fact, and the right to propose alternative conditions.

None of these rights changes the substance of the modifications that the Forest Service can propose: they merely preserve for the Licensee due process rights with respect to subsequently proposed modifications to the conditions. The right to comment and the right to hearing regarding the proposed modification will provide the Forest Service with additional information and a more complete record, which can only lead to more appropriate conditions, and no less adequate protection and utilization of the reservation.

Similarly, the right to propose an alternative condition can lead to no less adequate protection of the reservation. The process that is suggested will parallel the process set forth in the alternative conditions procedures set forth in 7 C.F.R. Part 1, Subpart O. If the Forest Service proposes a modification and Licensee proposes an alternative modification, then by the standard of 7 C.F.R. 1.671, if the alternative does not provide for adequate protection of the reservation, it can be rejected. Because the question of whether the alternative is adequate will be addressed before the alternative is adopted, by definition, the right to propose such an alternative modification cannot lead to less than adequate protection and utilization of the reservation.

**§ 1.671(b)(3) an explanation of how the alternative, as compared to the preliminary condition, will**

- (i) cost significantly less to implement, or**
- (ii) result in improved operation of the project works for electricity projection.**

As noted above, the proposed additional process will lead to improved conditions, meaning either less costly implementation or improved operation of the project works.

**§ 1.671(b)(4) an explanation of how the alternative will affect:**

- (i) Energy supply, distribution, cost, and use;**
- (ii) Flood control;**
- (iii) Navigation;**
- (iv) Water Supply;**
- (v) Air quality; and**
- (vi) Other aspects of environmental quality.**

Forest Service conditions reflecting consideration of the Licensee's input can only affect these concerns positively.

**§ 1.671(b)(5) specific citations to any scientific studies, literature, or other documented information to support the alternative proposal, including any assumptions made, (e.g., regarding the cost of energy or the rate of inflation)**

Adoption of the alternative condition is generally supported by the Forest Service's Notice of Proposed Policy and Procedures, 60 Fed. Reg. 27,154, at 27,156 (May 12, 1995), where the Forest Service proposed to "limit the use of open ended [Forest Service] conditions in a [FERC] license." That portion of the alternative condition providing for notice and comment is supported by the Forest Service's practice in California and elsewhere. *See, e.g., Pacific Gas and Electric Company*, 110 FERC ¶ 62,189 (2005) (the Forest Service included in an open ended condition language similar to that proposed here, i.e., "after notice and comment"); *Southern California Edison Company*, 108 FERC ¶ 62,217 (2004) (to the same effect). See also, the Forest Service's proposed Condition No. 5 in this proceeding, where Forest Service proposes an open ended condition "after notice and comment."

That portion of the alternative condition providing for hearing and proposal of alternative conditions is supported by the 2005 Energy Policy Act, Section 241, and the Forest Service's implementing regulations.

### **ALTERNATIVE CONDITION NO. 3**

***§ 1.671(b)(1): a description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition.***

Following is the alternative condition, in redline against the Forest Service's preliminary condition:

#### ***Condition No. 3—Forest Service Approval of Final Design***

Before any new construction of the Project occurs on National Forest System lands, the Licensee shall obtain prior written approval of the Forest Service for all final design plans for Project components, which the Forest Service deems as affecting or potentially affecting National Forest System resources; provided, however, that (i) the Licensee and the Forest Service shall cooperate to review and provide timely comments to the concept design plans for the Project; (ii) the Licensee and the Forest Service shall agree upon specified design standards for the Project as early in the planning process as reasonably possible, provided that Forest Service's choice of standards shall be within its sole discretion; and (iii) the Forest Service shall provide timely approval of any final design plan that is consistent with the Forest Service's previous approvals. The Licensee shall follow the schedules and procedures for design review and approval specified in the conditions herein. As part of such written approval, the Forest Service may, after notice and opportunity for comment and hearing, require adjustments to the final plans and facility locations to preclude or mitigate impacts and to insure that the Project is either compatible with on-the-ground conditions or approved by the Forest Service based on agreed compensation or mitigation measures to address compatibility concerns. Should such necessary adjustments be deemed by the Forest Service, the Commission, or the Licensee to be a substantial change, the Licensee shall follow the procedures of Article 2 of the license. Any changes to the license made for any reason pursuant to Article 2 or Article 3 shall be made subject to any new terms and conditions of the Secretary of Agriculture made pursuant to Section 4(e) of the Federal Power Act.

***§ 1.671(b)(2): an explanation of how the alternative will provide for the adequate protection and utilization of the reservation.***

- A. The proviso added to the first sentence seeks to ensure that the Project better meets the Project's needs and better protects and utilizes the reservation by use of early and close communication between the Forest Service and the Licensee with regard to design plans. First, to reduce potential inconsistencies, contradictions, costs and project delays, Applicants seek active input from the Forest Service in developing the design plans, including review and comment on the concept design plans. Second, Applicants seek to work with the Forest Service to identify appropriate design standards early on, such as the standards contained in the National Electric Code, the State of California Seismic

Design Standards, or other industry adopted standards, such as those of the NEMA, IEEE, or ASTM. Selecting a design standard early in the process reduces the risk that design work (and the engineering efforts associated with that work) will need to be redone late in the process at substantial costs and delay.

Other 4(e) Conditions of the Forest Service recognize the need for certainty in design standards – for example, Condition No. 35 specifies a design standard for transmission lines as the “Suggested Practices for Raptor Protection on Power Lines” by the Avian Powerline Interaction Committee. Third, Applicants seek greater certainty that, by involving the Forest Service early in the design development process, changes imposed in the final design will not be inconsistent with the Forest Service's prior approvals (absent substantial justification).

Each of these proposed mechanisms will provide for adequate protection and utilization of the reservation because they are designed to ensure meaningful exchanges between the Applicants and the Forest Service early on, thereby reducing last minute changes that may not be as well considered and may delay the Project at substantial cost.

- B. The alternative provision preserves a key due process right for the Licensee – the right to notice and opportunity for comments on any proposed adjustments to the final plans and facility locations.

Preservation of this right does not change the substance of the adjustments that the Forest Service can require: it merely preserves for the Licensee due process rights with respect to any proposed changes. The right to comment will provide the Forest Service with additional information and a more complete record, which can only lead to more appropriate adjustments to the final plans, and no less adequate protection and utilization of the reservation.

- C. Adjustments to the final plans and facility locations imposed by the Forest Service are ordinarily to either ensure compatibility or provide for adequate mitigation or compensation measures that address compatibility concerns. The proposed alternative seeks to clarify that the Forest Service has such flexibility in how it chooses to address potential compatibility concerns.

***§ 1.671(b)(3) an explanation of how the alternative, as compared to the preliminary condition, will***

- (i) cost significantly less to implement, or***
- (ii) result in improved operation of the project works for electricity projection.***

As noted above, early dialogue in the design process and preservation of the right to notice and comment will each lead to improved adjustments to the final plans and facility locations, meaning either less costly implementation or improved operation of the project works.

Separately, the option included for Forest Service to require mitigation or compensation measures to address compatibility concerns, in part, so that impractical or overly expensive changes to the final design or its location can be addressed, subject to Forest Service review and approval, by offsetting measures that provide greater benefit to the reservation and its resources at a similar cost.

***§ 1.671(b)(4) an explanation of how the alternative will affect:***

- (i) Energy supply, distribution, cost, and use;***
- (ii) Flood control;***
- (iii) Navigation;***
- (iv) Water Supply;***
- (v) Air quality; and***
- (vi) Other aspects of environmental quality.***

Forest Service conditions reflecting early dialogue in the design development process, as well as consideration of the Licensee's input, can only affect these concerns positively. Also, as explained above, compensation and mitigation measures approved by the Forest Service may bring greater benefit to the reservation and its resources.

***§ 1.671(b)(5) specific citations to any scientific studies, literature, or other documented information to support the alternative proposal, including any assumptions made, (e.g., regarding the cost of energy or the rate of inflation)***

Notice and comment opportunities for the Licensee are supported by the Forest Service's practice in California and elsewhere. *See, e.g., Pacific Gas and Electric Company*, 110 FERC ¶ 62,189 (2005) (the Forest Service included in an open ended condition language similar to that proposed here, i.e., "after notice and comment"); *Southern California Edison Company*, 108 FERC ¶ 62,217 (2004) (to the same effect). See also, the Forest Service's proposed Condition No. 5 in this proceeding, where Forest Service proposes an open ended condition "after notice and comment."

## ALTERNATIVE CONDITION NO. 5

***§ 1.671(b)(1): a description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition.***

Following is the alternative condition, in redline against the Forest Service's preliminary condition:

### **Condition No. 5—Consultation**

Each year ~~between March 15 and April 15~~, during the 60 days preceding the anniversary date of the license, the Licensee shall consult with the Forest Service with regard to measures needed to ensure protection and utilization of the National Forest resources affected by the Project. Within 60 days following such consultation, the Licensee shall file with the Commission evidence of the consultation with any recommendations made by the Forest Service. The Forest Service reserves the right, after notice and opportunity for comment, to require changes in the Project and its operation through revision of the 4(e) conditions that require measures necessary to accomplish protection and utilization of National Forest resources; provided, however, that any modification to these conditions shall be subject to the rights of the Licensee to a hearing on disputed issues of fact and to propose alternative conditions in a manner similar to the process provided in 7 C.F.R. Part 1, Subpart O.

When Forest Service section 4(e) conditions require the Licensee to file a plan with the Commission that is approved by the Forest Service, the Licensee shall provide the Forest Service a minimum of 60 days to review and approve the plan before filing with the Commission. Upon Commission approval, the Licensee shall implement Forest Service required and approved plans.

***§ 1.671(b)(2): an explanation of how the alternative will provide for the adequate protection and utilization of the reservation.***

The alternative provision preserves two key due process rights for the Licensee – the right to a hearing on disputed issues of fact, and the right to propose alternative conditions.

None of these rights changes the substance of the modifications that the Forest Service can propose: they merely preserve for the Licensee due process rights with respect to subsequently proposed modifications to the conditions. The right to a hearing regarding the proposed modification will provide the Forest Service with additional information and a more complete record, which can only lead to more appropriate conditions, and no less adequate protection and utilization of the reservation.

Similarly, the right to propose an alternative condition can lead to no less adequate protection of the reservation. The process that is suggested will parallel the process set forth in the alternative

conditions procedures set forth in 7 C.F.R. Part 1, Subpart O. If the Forest Service proposes a modification and Licensee proposes an alternative modification, then by the standard of 7 C.F.R. 1.671, if the alternative does not provide for adequate protection of the reservation, it can be rejected. Because the question of whether the alternative is adequate will be addressed before the alternative is adopted, by definition, the right to propose such an alternative modification cannot lead to less than adequate protection and utilization of the reservation.

Separately, the alternative provides a 60-day window for consultation with the Forest Service during the period that precedes the anniversary date of the license, rather than the 30-day window contemplated by the proposed condition between March 15 and April 15. The timing and duration of the alternative are consistent with the Forest Services Handbook 2709.15, Section 55.3, Condition No. 3.

***§ 1.671(b)(3) an explanation of how the alternative, as compared to the preliminary condition, will***

- (i) cost significantly less to implement, or***
- (ii) result in improved operation of the project works for electricity projection.***

As noted above, the proposed additional processes will lead to improved conditions, meaning either less costly implementation or improved operation of the project works.

Likewise, the 60-day window for consultation with the Forest Service provides added time for dialogue regarding measures needed to ensure protection and utilization of National Forest resources affected by the Project. Holding the consultation on the anniversary of the license issuance is more cost effective and improves operation of the project works because a full year of experience will be gained before the dialogue begins and the two sides will not be required to potentially meet only a short time after construction of the project commences.

***§ 1.671(b)(4) an explanation of how the alternative will affect:***

- (i) Energy supply, distribution, cost, and use;***
- (ii) Flood control;***
- (iii) Navigation;***
- (iv) Water Supply;***
- (v) Air quality; and***
- (vi) Other aspects of environmental quality.***

Forest Service conditions reflecting consideration of the Licensee's input can only affect these concerns positively.

***§ 1.671(b)(5) specific citations to any scientific studies, literature, or other documented information to support the alternative proposal, including any assumptions made, (e.g., regarding the cost of energy or the rate of inflation)***

Adoption of the alternative condition is generally supported by the Forest Service's Notice of Proposed Policy and Procedures, 60 Fed. Reg. 27,154, at 27,156 (May 12, 1995), where the Forest Service proposed to "limit the use of open ended [Forest Service] conditions in a [FERC] license." That portion of the alternative condition providing for hearing and proposal of alternative conditions, is supported by the 2005 Energy Policy Act, Section 241, and the Forest Service's implementing regulations.

For the Forest Service's standard timing and duration for consulting with licensees with regard to measures needed to ensure protection and utilization of the National Forest resources affected by the Project, see Forest Service Handbook 2709.15, Section 55.3, Condition No. 3.

## ALTERNATIVE CONDITION NO. 6

**§ 1.671(b) (1): a description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition.**

Following is the alternative condition, in redline against the Forest Service preliminary condition:

### **Condition No. 6—Surrender of License or Transfer of Ownership**

Prior to any surrender of this license, the Licensee shall provide assurance acceptable to the Forest Service that Licensee shall restore National Forest System resources within the project boundary to a condition satisfactory to the Forest Service upon or after surrender of the license, as appropriate. In any event Licensee's obligation shall not exceed the obligation to restore such resources to their condition existing immediately prior to issuance of the license. The restoration plan shall identify the measures to be taken to restore National Forest System resources within the project boundary and shall include adequate financial assurances such as a bond or letter of credit, to ensure performance of the restoration measures.

~~In the event of any transfer of the license or sale of the Project, the Licensee shall guarantee or assure that, in a manner satisfactory to the Forest Service, the Licensee or transferee will provide for the costs of surrender and restoration. If deemed necessary by the Forest Service to assist it in evaluating the Licensee's proposal, the Licensee shall conduct an analysis, using experts approved by the Forest Service, to estimate the potential costs associated with surrender and restoration of the Project area to Forest Service specifications. In addition, the Forest Service may require the Licensee to pay for an independent audit of the transferee to assist the Forest Service in determining whether the transferee has the financial ability to fund the surrender and restoration work specified in the analysis.~~

In the event of any transfer of the license or sale of the Project, the Licensee shall obtain the written approval of the Commission and shall advise the Forest Service of the transfer. Any transferee or assign to the rights of the Licensee shall be subject to all the conditions of the license under which such rights are held by the Licensee and also subject to all of the provisions and conditions of the Federal Power Act to the same extent as though such successor or assign were the original licensee.

***§ 1.671(b)(2): an explanation of how the alternative will provide for the adequate protection and utilization of the reservation.***

The alternative tracks the requirements of Section 6 of the Federal Power Act, and so provides the same level of reservation protection and utilization as Congress deemed appropriate for the

transfer of FERC-issued licenses involving reservations. Under the Federal Power Act, Congress finds it sufficient to protect the reservations under license for FERC to oversee any license transfer, without the need for the former licensee to guarantee the performance of the licensee's successor.

Likewise, in the context of the Forest Special Use Authorization, no guarantee by the outgoing permittee on behalf of the successor is required for a transfer of ownership under the terms and conditions set forth in the Forest Service's Form FS-2700-4 (8/99), Clause III.F, which is used when authorizing hydroelectric projects – see Forest Service Handbook 2709.11, Chapter 10, Exhibit 3 (p. 70).

***§ 1.671(b)(3) an explanation of how the alternative, as compared to the preliminary condition, will***

- (i) cost significantly less to implement, or***
- (ii) result in improved operation of the project works for electricity projection.***

The alternative will cost less and result in improved operation of the project because the Licensee will not be subject to chilling open-ended performance guarantees for successors of the Licensee that are approved by FERC.

***§ 1.671(b)(4) an explanation of how the alternative will affect:***

- (i) Energy supply, distribution, cost, and use;***
- (ii) Flood control;***
- (iii) Navigation;***
- (iv) Water Supply;***
- (v) Air quality; and***
- (vi) Other aspects of environmental quality.***

FERC's approval of a license transfer, including the Forest Service's participation in the approval process, assures no negative effect on these concerns.

***§ 1.671(b)(5) specific citations to any scientific studies, literature, or other documented information to support the alternative proposal, including any assumptions made, (e.g., regarding the cost of energy or the rate of inflation)***

See Section 6 of the Federal Power Act, 16 U.S.C. § 799.

See also, the Forest Service's Form FS-2700-4 (8/99), Clause III.F, and Forest Service Handbook 2709.11, Chapter 10, Exhibit 3 (p. 70).

## **ALTERNATIVE CONDITION NO. 8**

***§ 1.671(b)(1): a description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition.***

Following is the alternative condition, in redline against the Forest Service preliminary condition:

### **Condition No. 8—Use of Explosives**

Use of explosives shall be consistent with state and local requirements.

6. The Licensee shall use only electronic detonators for blasting on National Forest System lands and Licensee adjoining property, where such activities could reasonably be expected to affect National Forest System lands, except near high-voltage powerlines. The Forest Service may allow specific exceptions when in the public interest.
7. In the use of explosives, the Licensee shall exercise the utmost care not to endanger life or property and shall comply with the requirements of the Forest Service. The Licensee shall contact the Forest Service prior to blasting to obtain the requirements from the Forest Service, which shall be provided by the Forest Service without unreasonable delay. The Licensee shall be responsible for any and all damages resulting from the use of explosives and shall adopt precautions to prevent damage to surrounding objects. The Licensee shall furnish and erect special signs to warn the public of the Licensee's blasting operations. The Licensee shall place and maintain such signs so they are clearly evident to the public during all critical periods of the blasting operations, and shall ensure that they include a warning statement to have radio transmitters turned off.
8. ~~The~~If stored on National Forest System lands, the Licensee shall store all explosives on ~~National Forest System lands~~ in a secure manner, in compliance with State and local laws and ordinances, and shall mark all such storage places "DANGEROUS—EXPLOSIVES:" or in any alternative manner approved by the Forest Service. Where no local laws or ordinances apply, the Licensee shall provide storage that is satisfactory to the Forest Service and in general not closer than 1,000 feet from the road or from any building or camping area, unless otherwise approved by the Forest Service.
9. When using explosives on National Forest System lands, the Licensee shall adopt precautions to prevent damage to landscape features and other surrounding objects. When directed by the Forest Service, the Licensee shall leave trees within an area designated to be cleared as a protective screen for surrounding vegetation during blasting operations. The Licensee shall remove and dispose of trees so left when blasting is complete. When necessary, and at any point of special danger, the Licensee shall use suitable mats or some other approved method to smother blasts.

***§ 1.671(b)(2): an explanation of how the alternative will provide for the adequate protection and utilization of the reservation.***

The alternative condition seeks to specify that, upon receipt of notification of the Licensee's intent to utilize explosive during construction, the Forest Service will not unreasonably delay providing its requirements to the Licensee. Although the added provision does not impose a specific time frame for action, it seeks to acknowledge that an unreasonable delay could disrupt construction activities, extend the construction period and thereby delay the generation and delivery of much-needed electricity for Southern California.

Separately, in light of national security considerations and changing federal requirements to combat terrorism concerns, the Licensee believes it prudent to leave open-ended the precise manner of noticing and posting that will be required for the on-site or near-site storage of explosive materials. In any event, all such noticing will be required to comply with requirements from the United States Department of Labor Occupational Safety and Health Administration (OSHA) and Office of Homeland Security.

Likewise, the requirement that storage activities occur not closer than 1,000 feet from any road could impede surveillance of such storage areas and increase, rather than decrease, risks for the unauthorized access. In a National Forest System lands setting, the 1,000 foot stipulation could also result in additional impacts upon sensitive resources by extending the project footprint beyond the confines of required construction. The proposed alternative seeks to address these concerns by providing that the Forest Service could review and approve storage within the 1,000-foot exclusion zone under appropriate circumstances.

***§ 1.671(b)(3) an explanation of how the alternative, as compared to the preliminary condition, will***

- (i) cost significantly less to implement, or***
- (ii) result in improved operation of the project works for electricity projection.***

The alternative condition seeks to reduce avoidable project delays that could translate into significant costs.

Other changes in the alternative condition are proposed for security purposes, and in recognition that requirements for the storage of explosive materials may be in flux as various agencies seek to combat terrorism concerns. Notably, under the alternative conditions, any deviation from the requirements of the Forest Service's preliminary condition would be approved by the Forest Service at that time.

***§ 1.671(b)(4) an explanation of how the alternative will affect:***

- (i) Energy supply, distribution, cost, and use;***
- (ii) Flood control;***
- (iii) Navigation;***
- (iv) Water Supply;***
- (v) Air quality; and***
- (vi) Other aspects of environmental quality.***

The proposed alternative seeks to reduce avoidable project delays, which potentially improves how quickly the Licensee is able to provide a much need energy supply to Southern California. Also, under appropriate circumstances approved by the Forest Service, the potential ability to store explosive within the 1000-foot exclusion area may reduce impacts upon sensitive resources by reducing the project footprint.

***§ 1.671(b)(5) specific citations to any scientific studies, literature, or other documented information to support the alternative proposal, including any assumptions made, (e.g., regarding the cost of energy or the rate of inflation)***

29 CFR Part 1926 contains OSHA standards regulating the storage of explosives and blasting agents (1926.904). Additional OSHA Technical Manual (Section V: Chapter 1, Part III, C) outlines safe blasting procedures and requirements for the storage of explosives.

## **ALTERNATIVE CONDITION NO. 21**

***§ 1.671(b)(1): a description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition.***

Following is the alternative condition, in redline against the Forest Service preliminary condition:

### **Condition No. 21—Damage to Land, Property, and Interests of the United States**

The Licensee has an affirmative duty to protect the land, property, and interests of the United States from damage arising from occupancy and use of the license.

In addition to the general requirements of Articles 22 and 24, the Licensee is ~~strictly~~ liable for and shall pay all damages, costs and expenses associated with damage to the land, property and interests of the United States ~~cause~~caused by or in connection with the occupancy or use authorized by the license, without regard to the Licensee's negligence, provided that Licensee's maximum liability shall not exceed \$1,000,000 for any one occurrence, and including but not limited to damages, costs, and expenses resulting from fire. Such damages, costs and expenses shall include, but not be limited to:

- Fire suppression costs
- Rehabilitation and restoration costs
- Value of lost resources
- Abatement costs
- Investigation and administrative expenses
- Attorneys' fees

Damages will be determined by the value of the resources lost or impaired, as determined by the Forest Service. The basis for damages will be provided to the Licensee. The licensee shall accept transaction registers certified by the appropriate Forest Service official as evidence of costs and expenses. The Licensee shall promptly pay to the United States such damages, costs and expenses upon written demand by the United States.

***§ 1.671(b)(2): an explanation of how the alternative will provide for the adequate protection and utilization of the reservation.***

The alternative follows the terms and conditions required to be used by the Forest Service under its own implementing regulations for Special Use Authorizations – see 36 C.F.R. 251.56(d)(2) – which do not employ the term "strict liability" and do contemplate the \$1 million dollar cap proposed here. Thus, the alternative will provide for the adequate protection and utilization of

the reservation because it will provide the level of protection that the Forest Service has determined, per its regulations, is "adequate."

***§ 1.671(b)(3) an explanation of how the alternative, as compared to the preliminary condition, will***

- (i) cost significantly less to implement, or***
- (ii) result in improved operation of the project works for electricity projection.***

The alternative provision will cost less to implement and will result in improved operation for electricity production. The alternative provision sets a \$1 million limit on the licensee's liability, whereas the Forest Service's preliminary condition creates unlimited liability that will jeopardize the ability to finance and develop the project and to obtain insurance. For both reasons, it would make the project cost prohibitive. Other 4(e) Conditions proposed by the Forest Service do not include explicit limitations with regard to the Licensee's liability, which may also jeopardize the ability to finance and develop the project and obtain insurance. Applicants intend to raise this concern with the Forest Service in discussing the proposed alternatives.

***§ 1.671(b)(4) an explanation of how the alternative will affect:***

- (i) Energy supply, distribution, cost, and use;***
- (ii) Flood control;***
- (iii) Navigation;***
- (iv) Water Supply;***
- (v) Air quality; and***
- (vi) Other aspects of environmental quality.***

The proposed alternative provides the protection for these concerns at a level that the Forest Service has deemed adequate in own implementing regulations. As explained above, a more onerous liability condition will undermine the project, and hence all positive contributions that it brings to energy concerns in Southern California, altogether.

***§ 1.671(b)(5) specific citations to any scientific studies, literature, or other documented information to support the alternative proposal, including any assumptions made, (e.g., regarding the cost of energy or the rate of inflation)***

The alternative follows the terms and conditions required to be used by the Forest Service under its own implementing regulations for Special Use Authorizations – see 36 C.F.R. 251.56(d)(2) – which do not employ the term "strict liability" and do contemplate the \$1 million dollar cap proposed here.

## **OTHER ALTERNATIVE CONDITIONS**

Many of the alternative conditions provide clarifying language, tying the reach of the respective Forest Service condition to the limit of the Forest Service's jurisdictional interest, including Alternative Condition Nos. 4, 7 – 15; 19 – 20; 26 – 29; and 31 – 35.

The purpose is strictly to ensure that the Licensee is not exposed to regulatory burdens that exceed the limits of Forest Service jurisdiction. The limiting language has no substantive effect on the Forest Service's proposed condition, and hence has no deleterious effect on the protection or utilization of the reservation.

A brief rationale for other minor changes proposed in the alternative conditions is provided below.

-- Alternative Condition No. 4 includes additional clarifying language intended to ensure there is no conflict between Forest Service requirements under this condition and the Licensee's obligations to comply with FERC requirements.

-- Alternative Condition No. 7 includes additional clarifying language intended to allow the Forest Service to approve the storage of spill cleanup equipment outside the Project area – for example, at a proximate site controlled by the Licensee that is not necessarily part of National Forest System lands.

-- Alternative Condition No. 10 includes additional clarifying language that Forest Service's use of the roads may not interfere unreasonably with use of the road by the Licensee. This is consistent with the Forest Service's Standard Conditions for Special Use Authorizations – see Forest Service Handbook 2709.15; Section 71.1; Condition K38.

-- Alternative Condition No. 11 includes additional clarifying language that Licensee's confinement of vehicles can include construction and staging areas. The clarifying language also acknowledges the Forest Service's right to close routes arises when damage to the route exceeds the reasonably anticipated and mitigated impacts associated with construction and operations of the Project.

-- Alternative Condition No. 13 also includes two clarifications: (i) the standard of "immediately," which is impossible to meet, is replaced with a standard of "promptly and without delay;" and (ii) the term "correction," which is otherwise undefined, is defined to mean "correction to comply with the Safety During Construction Plan."

-- Alternative Condition No. 23 includes clarifying language to acknowledge that the special use authorization issued by the Forest Service may provide different requirements for Licensee's maintenance of the crossings.

-- Alternative Condition No. 27 includes clarifying language to remove ambiguity as to what road maintenance outside National Forest System lands will be required. The applicant is committed to complying with state and/or county standards applicable to road use, which may

include an equitable share of road maintenance responsibility. The proposed change does not diminish the protection of Forest Service's resources, particularly because it affirms the Licensee's obligations to comply with such requirements, relates to non-National Forest System lands, and provides for compliance with requirements developed by the agencies that oversee those roads.

-- Alternative Condition No. 28 includes language intended to allow the Forest Service to approve a Recreation Facility Development Plan for a use and location other than a recreation facility at the project equipment and materials laydown area – for example, a recreation facility in the vicinity of the upper reservoir.

-- Alternative Condition No. 29 includes language intended to allow for the development of a Heritage Resource Management Plan during the NEPA process, not necessarily after issuance of the license.

-- Alternative Condition No. 34 inserts "also" to clarify that the purpose of the Noxious Weed Management Plan is controlling and containing the project related spread of noxious weeds, as stated in the first sentence of the Forest Service's preliminary condition. Separately, the proposed alternative inserts language to acknowledge that Licensee is only required to avoid entry into areas with noxious weeds unless necessary. The sentence that follows the proposed insert governs the conduct of the Licensee when entering such areas and, thus, already implies that such entry is contemplated.

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