

UNITED STATES OF AMERICA 107 FERC ¶ 62,136  
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Project No. 2290-056

ORDER AMENDING LICENSE TO INCLUDE  
U.S. FOREST SERVICE REVISED FINAL TERMS AND CONDITIONS  
PURSUANT TO SECTION 4(E) OF THE FEDERAL POWER ACT

(Issued May 12, 2004)

On December 30, 2003, the Pacific Southwest Regional Forester (Regional Forester) filed the U.S. Forest Service's (USFS) Revised Final Terms and Conditions (Terms and Conditions) for inclusion in the Kern River No. 3 Hydroelectric Project (project) license.<sup>1</sup> The project occupies lands of the United States within the Sequoia National Forest and is located on the North Fork of the Kern River, and on the Salmon and Corral Creeks, in Tulare and Kern Counties, California.

## BACKGROUND

The project was originally licensed in 1964,<sup>2</sup> and on December 10, 1991, the licensee filed an application with the Commission for a new license. On May 17, 1996, the Regional Forester submitted draft Section 4(e) conditions on behalf of the USFS for inclusion in the license. A new project license was issued by the Commission on December 24, 1996.

The Order Issuing New License stated that the project license was subject to the conditions submitted by the USFS, but reserved the right to amend them as appropriate in light of the USFS's ultimate disposition of the appeals of the conditions.

The Regional Forester filed the USFS Final Section 4(e) Conditions with the Commission on December 30, 2003. The Section 4(e) conditions have been revised from those in the 1996 filing to reflect the requested changes in the Settlement Agreement,<sup>3</sup>

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<sup>1</sup> 77 FERC ¶ 61,313 (1996)

<sup>2</sup> 32 FPC 553 (1964)

<sup>3</sup> Filed on December 24, 2002. Developed by Whitewater Interests and the licensee as a guide to the USFS' issuance of revised 4(e) conditions.

and changes in USFS policy and standards. The Commission staff has reviewed the proposed Section 4(e) conditions and does not believe them to be in direct conflict with the project license.

## CONSULTATION

The Regional Forester has incorporated changes in the Section 4(e) conditions pursuant to those points agreed upon by the licensee and Whitewater Interests<sup>4</sup> in the Settlement Agreement. Issues concerning the implementation of the Trust Fund Agreement<sup>5</sup> and whitewater recreational flows have also been addressed in the final 4(e) conditions.

## DISCUSSION AND CONCLUSION

The Regional Forester has made revisions concurrent with those requested by the licensee and various stakeholders in the Settlement Agreement. The Section 4(e) conditions should be approved and added to the project license.

### The Director orders:

(A) The Forest Service Final Section 4(e) Terms and Conditions, filed December 30, 2003, pursuant to the Federal Power Act, are approved and are incorporated into the Kern River No. 3 Hydroelectric Project license. The project is subject to the conditions submitted by the USFS under Section 4(e), as set forth in Appendix A of this order.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of this order, pursuant to 18 C.F.R. 385-713.

Hossein Ildari  
Division of Hydropower  
Administration and Compliance

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<sup>4</sup> The Whitewater Interests group consists of American Whitewater, Friends of the River, their council, and the Natural Heritage Institute.

<sup>5</sup> Filed on September 29, 1995. Upper Kern Basin Fishery Resource Enhancement Settlement Agreement.

**APPENDIX A  
PACIFIC SOUTHWEST REGION, USDA FOREST SERVICE  
REVISED FINAL 4(e) TERMS AND CONDITIONS  
NECESSARY FOR THE PROTECTION AND UTILIZATION OF THE  
SEQUOIA NATIONAL FOREST  
KERN RIVER NO. 3 HYDROELECTRIC PROJECT,  
FERC No. 2290**

As a cooperating agency, the Forest Service has provided the following conditions for the Kern River No. 3 Hydroelectric Project No. 2290.

To clarify modifications between the May 1996 Final 4(e) Conditions, and the Revised Final 4(e) Conditions, the Forest Service has included the crosswalk table starting on the following page.

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1996 #	1996 Final 4(e) Title	2003 #	2003 Revised Final 4(e) Title	Remarks
1	Forest Service Approval of Final Design	NA	Deleted	Per FS policy direction
2	Approval of Changes After Initial Construction	2	Approval of Changes After Initial Construction	No change
3	Consultation	3	Consultation	Modified language to clarify purpose of meeting and set time frame for meeting
4	Minimum Streamflow Requirements	4	Minimum Streamflow Requirements	Modified to add MIF's for Salmon and Corral Creek
5	Fish and Wildlife Plan	5	Fish and Wildlife Plan	Minor rewording and editing throughout. Reworded Transmission Line Section to reflect the December 2001 FERC Order
6	Project Recreation Plan	6	Project Recreation Plan	Minor rewording and editing throughout to reflect actual recreation management agreements reached by licensee and Forest Service since 1996. Modified language of Whitewater Recreation section to reflect Settlement Agreement language.
7	Erosion Control Plan	7	Erosion Control Plan	Modified language per FS policy
8	Solid Waste and Waste Water Plan	8	Solid Waste and Waste Water Plan	Minor rewording and editing
9	Hazardous Substances Plan	NA	Moved	Included in Condition 30
10	Spoil Disposal	10	Spoil Disposal	No change
11	Visual Resource Protection	11	Visual Resource Protection	Modified language per FS policy

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<b>1996 #</b>	<b>1996 Final 4(e) Title</b>	<b>2003 #</b>	<b>2003 Revised Final 4(e) Title</b>	<b>Remarks</b>
12	Protection of Sensitive and T&E Species	12	Protection of Forest Service Special Status Species	New Title, Modified language per FS policy
13	Development Plans	13	Development Plans	No change
14	Maintaining Improvements	14	Maintaining Improvements	No change
15	Existing Claims	15	Existing Claims	No change
16	Regulations Compliance	16	Regulations Compliance	No change
17	Protection of United States Property	17	Protection of United States Property	No change
18	Surrender of License	18	Surrender of License	Modified language per FS policy
19	Indemnification	19	Indemnification	No change
20	License is Not Exclusive	20	License is Not Exclusive	No change
21	Construction Approval	NA	DELETED	Redundant - Language is covered by Conditions #2 and #30
22	Project Safety	22	Project Safety	No change
23	Water Pollution	23	Water Pollution	No change
24	Damage – High hazard Clause	24	Damage– High hazard	No change
25	Risks and Hazards	25	Risks and Hazards	No change
26	Signs	26	Signs	No change
27	Pesticide-Use Restrictions	27	Pesticide-Use Restrictions	No change
28	Area Access	28	Area Access	Modified Language, added Road Use by licensee
29	Nondiscrimination in Employment and Services	NA	DELETED	Per FS policy direction
30	Construction Stipulations	30	Land Resource Plans	New Title - Modified to clarify intent and deleted redundant sections
NA		31	Heritage Resources Protection	Moved from condition 30 to “stand alone” condition
31	Inclusion of Trust Fund Agreement	32	Inclusion of Trust Fund Agreement	New number

STANDARD FOREST SERVICE PROVISIONSCondition No. 1 – Forest Service Approval of Final Design - DELETEDCondition No. 2 - Approval of Changes After Initial Construction

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, or in the uses of project lands and waters, or any departure from the requirements of any approved exhibits filed with the Commission. 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.

Condition No. 3 - Consultation

The Licensee shall consult with the Forest Service between January 10 and March 31 of each year in regard to measures needed to ensure protection and utilization of the National Forest System land and resources affected by the Project. Representatives from the U.S. Fish and Wildlife Service, California Department of Fish and Game, or other interested agency representatives concerned with operation of the project may request to attend the meeting. Consultation shall include, but not be limited to:

- A status report regarding implementation of license conditions;
- Results of any monitoring studies performed over the previous year in formats agreed to by the Forest Service and the Licensee during development of study plans;
- Review of any non-routine maintenance;
- Discussion of any foreseeable changes to project facilities or features;
- Discussion of any necessary revisions or modifications to plans approved as part of this license;
- Discussion of needed protection measures for species newly listed as threatened, endangered, or sensitive or, changes to existing management plans that may no longer be warranted due to delisting of species or, to incorporate new knowledge about a species requiring protection; and
- Discussion of elements of current year maintenance plans, e.g. road maintenance.

A record of the meeting shall be kept by the Licensee and shall include any recommendations made by the Forest Service for the protection of National Forest System lands (NFSL) and resources. The Licensee shall file the meeting record with the Commission no later than 60 days following the meeting. A copy of the certified record for the previous water year regarding instream flow records, monitoring reports, and other pertinent records shall be provided to the Forest Service at least 10 days prior to the meeting date, unless otherwise agreed.

Copies of other reports related to project safety and non-compliance shall be submitted to the Forest Service concurrently with submittal to the FERC. These include, but are not limited to: any non-compliance report filed by the licensee, geologic or seismic reports, and structural safety reports for facilities located on or affecting NFSL.

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 to accomplish protection and utilization of National Forest lands and resources.

#### A. FISH AND WILDLIFE RESOURCE MANAGEMENT

##### Condition No. 4 - Minimum Streamflow Requirements

During the operation of the facilities authorized by this license, the Licensee shall maintain each year, below the diversion in the Kern River, the following continuous, minimum flows or the natural flows, whichever are less, as measured at the existing gaging station:

Month	Flow in cfs
January	40
February	40
March	70
April	100
May	100
June	100
July	130
August	130
September	100
October	80
November	40
December	40

The licensee shall provide 35 cfs flow diverted at Fairview Dam, through the Powerhouse tailrace, to the California Department of Fish and Game (CDFG) Kern River Planting Base Hatchery. When the natural flow is not available to meet the CDFG hatchery needs, the 35 cfs being diverted through the powerhouse tailrace will have precedence over the minimum

streamflow requirements under this Condition and the flow regime in Condition 6. If operations at the planting base hatchery change, then CDFG may specify that the 35 cfs not be diverted at Fairview Dam.

The minimum instream flow for Salmon Creek shall be 4 cfs from February 1 through June 30th, and 1 cfs from July 1 through January 31.

The minimum instream flow for Corral Creek shall be 1 cfs from February 1 through June 30th, and 0.5 cfs from July 1 through January 31.

#### Condition No. 5 - Fish and Wildlife Plan

The licensee shall implement a sandbox flushing regime as stated in the Section 401 WQC certification.

The Licensee shall monitor fish populations in five locations along the Kern River. Two sites above the diversion, two sites between the diversion and Goldledge Campground and one site in the lower portion of the diverted reach. Monitoring should consist of standard techniques for assessing fish populations. The methods used should be similar to those used for preparation of the Exhibit E for this process. Monitoring shall be conducted at each station every five years during the term of the license. Sampling should be conducted during the fall. A plan for monitoring must be agreed to by the agencies and the Licensee.

The Licensee shall abide by the Sierra Nevada Forest Plan Amendment guidelines for California spotted owl management. The final plan for California spotted owl management must be developed by the licensee in consultation with the agencies and approved by the FS.

The Licensee shall apply to the Forest Service for a Land Use Authorization for the KR3-Vestral Transmission corridor, KR3-Borel Transmission corridor, and KR3-Kernville corridor as provided in the FERC Order issued December 20, 2001, ordering paragraph E.

The Licensee shall follow ramping criteria of a project induced change in instream flow of no greater than 50 cfs per half hour. At no time will the reduction in flow exceed 30% of the existing flow. These ramping criteria can be exceeded in emergencies to protect life or property.

The Licensee shall temporarily close the fish ladder facilities at the diversion for the protection of Kern River rainbow trout. This is consistent with the ongoing restoration of this species. A plan for the temporary decommissioning of the fish ladder facilities must be developed by the licensee in consultation with the agencies and approved by the FS.



**B. RECREATION RESOURCE MANAGEMENT****Condition No. 6 - Project Recreation Plan**

Within 1 year of license issuance, the Licensee shall file with the Commission a Recreation Plan that is approved by the Forest Service.

The following new construction and enhancements to existing facilities are needed for the protection and utilization of NFS lands. These improvements shall be designed and constructed to be accessible to people of all abilities.

**a.** The Thunderbird dispersed use area will be converted into two accessible group campgrounds. These two group campgrounds shall be integrated into the adjacent facilities of Camp 3, as outlined in the following paragraphs. Estimated cost is \$84,000.

The southern portion of Thunderbird will be converted into two group campsites joined to the existing Camp 3 facility with a paved road. The two improved group campsites will meet the U.S. Forest Service definition of a "group campsite." Therefore, the sites will be gated (with a sign indicating group site by reservation only), each holding a minimum of 20 people, with three or more tables, a BBQ grill, one large fire ring, and parking for one large bus or five vehicles. At least one parking stall shall accommodate a van with adequate space for side-mounted lifts. The campsites and parking areas will have a stable, firm, and slip resistant surface with a running slope of 5 percent or less, a cross slope of 2 percent or less, and enough room for wheelchair circulation.

The accessible facilities will include tables with tops that extend past the legs by at least 19 inches at both ends with 28 inches minimum clearance between the underside of the table and the ground, and a minimum 3 foot clearance radius around the table. The cooking surfaces of grills would be 30 to 36 inches high, within comfortable horizontal reach from a wheelchair (15 inches), and have 27 inches of knee clearance below base of grill.

Both group campsites will include parking for at least five vehicles, with one stall at each campsite built to accommodate a van with side-mounted lifts. A path with a stabilized tread will connect the group areas. Two sets of new accessible portable toilets (each set has one male and one female toilet) will be installed between the two group campsites. Drinking water will be brought into the sites by way of a 700-foot extension of the existing Camp 3 main water line.

**b.** Should the Forest Service acquire the land where the existing whitewater rafting take out and put in facilities within the Thunderbird dispersed use area are located, the parking lot grade will be improved and made accessible, the surface reinforced with gravel, and an identifying sign installed. Estimated cost is \$10,000.

**c.** The modification of several sites within the Hospital Flat campground to be made accessible is outlined in the following paragraphs. Estimated cost is \$12,800 (site 2 - \$2,600; sites 8, 9, and 10 - \$7,500; and site 35 - \$2,700).

Site 2 will be modified to be accessible. This will include the leveling and hardening of about 70 square feet in the general use area where the table is located. An accessible BBQ/fire pit will be constructed.

Three existing dispersed campsites, Sites 8, 9, and 10, will be combined into a single accessible group campsite. The construction actions will include the grading and hardening of about 36 square feet of a partially asphalt parking area and an adjoining path. Accessible tables, BBQ, and fire pit will be installed.

Site 35 will be modified so it is accessible. This will include the addition of 36 square feet of stabilized surface to the existing parking area and a stabilized tread to the general use area. Accessible picnic tables, fire pit, and BBQ will be installed.

**d.** Three sites within the Fairview Campground will be modified to be accessible, and an accessible trail will be constructed as described in the following paragraphs. Estimated cost is \$14,400 (sites 4 and 5 - \$9,700; site 19 - \$4,700).

Existing dispersed sites 4 and 5 will be combined into one group campsite. This will include widening and expansion of the roadway and parking area (four regular and two accessible stalls), the installation of an accessible group fire ring, two smaller fire rings, two group picnic tables (one must be accessible), and a BBQ. A path treated with stabilized material would be constructed from the parking area to the group area.

An accessible picnic table and BBQ will be installed at site 19, which is an existing accessible site. A 300-foot accessible trail from site 19 to the low water line of the river will be constructed. The trail will be constructed of concrete to the high water line, with a stabilized tread surface to the low water line.

**e.** The licensee shall design a simplified, low impact portage around Fairview Dam to permit whitewater rafters and kayakers to bypass the dam. The licensee shall submit the portage design to the Forest Service for approval. The Forest Service will make the plans available for public review prior to construction. The Licensee shall enter into a collection agreement with the Forest Service requiring the Licensee to pay the Forest Service \$250,000 to cover the construction costs and \$50,000 to cover the reasonable operation and maintenance costs for a simplified, low impact portage around Fairview Dam. Over the license term, the Forest Service will review the need for additional operation and maintenance funds for the portage. If, at any time, the Forest Service documents that insufficient funds exist in the collection agreement to cover the reasonable portage operation and maintenance costs over the remainder of the license term, the Licensee shall provide additional funds to cover those costs upon written request by the Forest Service.

**f.** Whitewater Recreation Flow Schedule

The Licensee shall provide the following whitewater recreation flows in the Kern River below Fairview Dam pursuant to the flow schedule set forth below beginning the date the

FERC license order is final. The flow schedule is designed to allow the Licensee to continuously divert 300 cubic feet per second (cfs) into the Project powerhouse. However, this 300 cfs does not take priority over the instream flow releases required by Condition 4 above.

This flow schedule shall be discontinued for each day the California Independent System Operator, or its successor, declares a Stage II or greater power emergency. The flow schedule may be temporarily modified if required by operating emergencies beyond the control of the Licensee. If the flow schedule is discontinued or modified, the Licensee shall notify the Forest Service and FERC as soon as possible, but no later than ten (10) days after each incident.

Beginning no later than 10 a.m. and ending no earlier than 5 p.m. of each day that whitewater flows are scheduled, the Licensee shall release the whitewater flows described below into the Project bypass reach.

Dates	Boating Days	River Flow at Fairview Dam (cfs)	Whitewater Release (cfs)
April 1 up to the weekend prior to Memorial Day Weekend	Fridays and Weekends	1,000 to 1,300	700
		More than 1,700	1,400
Weekend prior to Memorial Day until July 4	Daily	1,000 to 1,300	700
		More than 1,700	1,400
July 5 up to July 31	Weekends	1,000 to 1,300	700
		More than 1,700	1,400

**g.** The Licensee shall provide flow information to the public for the Upper Kern River in the mechanism selected to provide flow information to the public in compliance with Article 410 of the Kern River No. 1 license.

### C. SOIL CONSERVATION AND PROTECTION OF WATER QUALITY

#### Condition No. 7 - Erosion Control Plan

Within 1 year following the date of issuance of this license and at least 90 days prior to any ground disturbing activities on National Forest System land, the Licensee shall file with the Commission, an Erosion Control Measures Plan that is approved by the Forest Service. The Plan shall include measures for the control of erosion, stream sedimentation, dust, and soil mass movement. Upon Commission approval, the Licensee shall implement the plan.

The Licensee shall implement a road closure plan as proposed. The final road closure plan shall be agreed to by the Agencies and the Licensee.

The Licensee shall implement a plan to correct erosion problems associated with the overflow gully at the forebay. The final plan shall be agreed to by the Agencies and the Licensee.

The Licensee shall submit an erosion control plan for all existing facilities and all new construction for Forest Service approval.

Condition No. 8 - Solid Waste and Waste Water Plan

Within 1 year following the date of issuance of this license and before starting any activities the Forest Service determines to be of a land-disturbing nature on National Forest System land, the Licensee shall file with the FERC, a plan approved by the Forest Service, for the treatment and disposal of solid waste and waste water generated during construction and operation of the project. At a minimum, the plan must address the estimated quantity of solid waste and waste water generated each day; the location of disposal sites and methods of treatment; implementation schedule; areas available for disposal of wastes; design of facilities; comparisons between on and off site disposal; and maintenance programs.

Condition No. 9 - Hazardous Substances Plan – included in Condition 30

Condition No. 10 - Spoil Disposal

Within 1 year following the date of issuance of this license and before starting any activities the Forest Service determines to be of a land-disturbing nature on National Forest System land, the Licensee shall file with the FERC, a plan approved by the Forest Service for the storage and/or disposal of excess construction/tunnel spoils and slide material. At a minimum, the plan must address contouring of any storage piles to conform to adjacent land forms and slopes, stabilization and rehabilitation of all spoil sites and borrow pits, and prevention of water contamination by leachate and runoff. The plan also must include an implementation schedule and maintenance program.

E. AESTHETICSCondition No. 11 - Visual Resource Protection

Within 1 year of license issuance or 60-days prior to any ground-disturbing activity, the Licensee shall file with the Commission a Scenery Management Plan that is approved by the Forest Service. At a minimum, the Plan shall address operation and maintenance of project features, including:

- Clearings, spoil piles, and project facilities like diversion structures, penstocks, pipes, ditches, powerhouses, other buildings, transmission lines, corridors, and access roads,
- Facility configurations, alignments, building materials, colors, landscaping, and screening,
- Possible mitigation measures to bring project facilities into compliance with National Forest Land and Resource Management Plan direction.
- A detailed proposal for painting the siphon, forebay and penstock to reduce their visual contrast.

F. ENDANGERED SPECIESCondition No. 12 - Protection of Forest Service Special Status Species

Before taking actions to construct new project features on NFSL (including, but not limited to, proposed recreation developments) that may affect Forest Service special status species (i.e. Forest Service sensitive and management indicator species) or their critical habitat, the Licensee shall prepare a biological evaluation evaluating the potential impact of the action on the species or its habitat and submit it to the Forest Service for approval. In coordination with the Commission, the Forest Service may require mitigation measures for the protection of the affected species. Where required, the Licensee shall also provide a report to address impacts to management indicator species.

The biological evaluation shall

- Include procedures to minimize adverse effects to special status species.
- Ensure project-related activities shall meet restrictions included in site management plans for special status species.
- Develop implementation and effectiveness monitoring of measures taken or employed to reduce effects to special status species.

## G. OTHER CONDITIONS

### Condition No. 13 - Development Plans

Development plans; layout plans; construction, reconstruction, or alteration of improvements plans; or revision of layout or construction plans for this area must be approved in advance and in writing by the Forest Supervisor. Trees or shrubbery on the licensed area may be removed or destroyed only after the authorized officer has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the licensee as follows: merchantable timber at appraised value and young growth timber below merchantable size at current damage appraisal value; provided, that the Forest Service reserves the right to dispose of the merchantable timber to others than the Licensee at no stumpage cost to the Licensee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the authorized officer. Removal of hazards shall be done after securing approval from the authorized officer.

### Condition No. 14 - Maintaining Improvements

The Licensee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. For example, trash, debris, unusable machinery, and so forth, will be disposed of separately; other materials will be stacked, stored neatly, or within buildings. Disposal will be at an approved existing location, except as otherwise agreed to by the authorized officer.

### Condition No. 15 - Existing Claims

This license is subject to all valid claims and existing rights.

### Condition No. 16 - Regulation Compliance

The Licensee, in exercising the privileges granted by this license, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations that are applicable to the area or operations covered by this license.

### Condition No. 17 - 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 this license.

Condition No. 18 - Surrender of License

As a condition of any transfer of the license or sale of the project, the Licensee shall guarantee or assure, in a manner satisfactory to the Forest Service, that the costs of surrender and restoration will be provided for by the Licensee or transferee. 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.

Condition No. 19 - Indemnification

The Licensee shall indemnify, defend, and hold the United States harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Licensee in connection with the use and/or occupancy authorized by this license. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the Licensee or the Licensee's heirs, assigns, agents, employees, contractors, or lessees in connection with the use and or occupancy authorized by this license which result in: (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to environmental laws; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous substances, pollutant, contaminant, or oil in any form in the environment.

Condition No. 20 - License is Not Exclusive

This license is not exclusive. The Forest Service reserves the right to use or permit others to use any part of the licensed area for any purpose, provided such use does not interfere with the rights and privileges hereby authorized, or authorized under the Federal Power Act. The Licensee shall allow officers of the United States free and unrestricted access to the project lands and project works in the performance of their official duties.

Condition No. 21 - Construction Approval -DELETED

Condition No. 22 - Project Safety

The Licensee shall carry out all operations in a skillful manner, having due regard for the safety of employees and the public and shall safeguard unsafe areas. The Licensee shall regularly inspect its facilities and provide further effective safety measures as needed for safety protection.

Condition No. 23 - Water Pollution

The Licensee shall discharge no waste or by-product if it contains any substances in concentrations that would result in violation of water quality standards set forth by the State; would impair present or future beneficial uses of water; would cause pollution, nuisance, or contamination; or would unreasonably degrade the quality of any waters. During the construction and operation of the project, the Licensee shall protect project water quality by using the existing Best Management Practices mutually agreed to by the Forest Service and the State.

Condition No. 24 - Damage - High Hazard Clause

The Licensee is hereby made liable for all injury, loss, or damage to the United States land and property, including but not limited to, fire suppression costs, directly or indirectly resulting from or caused by the licensee's powerlines covered by this license, or other high risk use and occupancy of the area covered by the license, regardless of whether the Licensee is negligent or otherwise at fault, provided that the maximum liability without fault shall not exceed \$1,000,000 for any one occurrence, and provided further that the Licensee shall not be liable when such injury, loss, or damage results wholly, or in part, from a negligent act of the United States, or from an act of a third party not involving the facilities of the Licensee. Determination of liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum, shall be according to the laws governing ordinary negligence.

Condition No. 25 - Risk and Hazards

The Licensee is responsible for inspecting National Forest System lands covered by this license for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing permission from the Forest Service, is responsible for removing such hazards.



Condition No. 26 - Signs

The Licensee shall consult with the Forest Service prior to erecting signs related to safety issues on the area covered by this license. Prior to erecting any other signs or advertising devices on the area covered by this license, the Licensee must obtain approval of the Forest Service as to location, design, size, color, and message.

Condition No. 27 - Pesticide-Use Restrictions

Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, trash fish, and so forth, without the prior written approval of the Forest Service. The Licensee shall submit a request for approval of planned uses of pesticides. The report 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 report was submitted. In such an instance, an emergency request and approval may be made.

On National Forest System lands, the Licensee shall use only 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. 28 - Area Access

The United States shall have unrestricted use of any road constructed within the project area for all purposes deemed necessary or desirable in connection with the protection, administration, management, and utilization of Federal lands or resources and alone shall have the right to extend rights and privileges for use of the 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 unreasonably to interfere with use of the road by the Licensee, particularly as to 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.

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. The Forest Service reserves the right to close any and all such routes where damage 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. 29 - deleted

Condition No. 30 – Land Resource Plans

The Licensee shall prepare the following plans in consultation with Forest Service and other appropriate agencies:

- A. Revegetation/rehabilitation
- B. Fire
- C. Spill Prevention
- D. Construction

The Licensee shall submit these plans for Forest Service approval within 90 days from the date of issuance of the license. Said plans shall be attached hereto and marked as Exhibits A through D, respectively.

A. The Vegetation Management plan shall include and/or address the following elements:

- Hazard tree removal and trimming;
- Powerline/transmission line clearing;
- Revegetation of disturbed sites;
- Soil protection and erosion control, including use of certified weed free straw; and
- Establishment of and/or revegetation with culturally important plant populations.
- Use clean, weed free seed with a preference for locally collected seed.
- Noxious weed treatment (aquatic and terrestrial) within the project boundary and adjacent to project features including recreation facilities, roads, and distribution and transmission lines.

B. Fire Prevention Plan

The Licensee is responsible for fire prevention measures and for fire suppression costs, directly and indirectly resulting from or caused by any high-risk use and occupancy within the project area. The Licensee is not liable when injury, loss or damage results wholly or in part from a negligent act of United States or from an act of a third party not involving the Licensee's facilities or operations.

Within 1 year of license issuance or 60-days prior to any ground-disturbing activity, the Licensee shall file with Commission a Fire Prevention Plan that is approved by the Forest Service in consultation with appropriate State and local fire agencies. At a minimum, the Licensee shall:

- Analyze fire prevention needs to ensure that prevention equipment and personnel are available,

- Identify fire hazard reduction measure (e.g., eliminating ladder fuels, reducing fuel loading), and
- Provide the Forest Service a list of the location of available fire-prevention equipment and the location and availability of fire-prevention personnel.

### C. Spill Prevention Plan

During planning for and prior to any new construction or maintenance, the Licensee shall file with Commission, a Hazardous Substances Plan approved by the Forest Service for oil and hazardous substances storage and spill prevention and cleanup.

At a minimum, the Licensee shall:

- Outline the Licensee's procedures for reporting and responding to releases of hazardous substances, including names and phone numbers of all emergency response personnel and their assigned responsibilities,
- Maintain in the project area, a cache of spill cleanup equipment suitable to contain any spill from the project,
- Semi-annually 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; and,
- 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 fee title property.

### D. Construction Management

Designation of Construction Manager - The Licensee shall designate a construction manager for the project construction. This individual shall be qualified to represent the Licensee and shall be present or have a qualified acting representative present at all times while project construction activities are taking place. This individual shall be the person who receives the on-the-ground approvals and directions from the designated Forest Service representative(s).

The Licensee shall perform daily (or on a schedule otherwise agreed to by the Forest Service in writing) inspections of the Licensee's construction operations while they are proceeding. The Licensee shall document these inspections (informal writing sufficient) and shall deliver such documentation to the Forest Service on a weekly basis. The inspections must specifically include fire plan compliance, public safety, and environmental protection. The Licensee shall act immediately to correct any items found to need correction.

Site Development Schedule - As a part of this authorization, the Licensee shall, in consultation with the Forest Service, prepare a schedule for the progressive development of the licensed site and installation of facilities. Such a schedule shall be prepared within 90 days from the date of issuance of the license, and shall set forth an itemized priority list of planned improvements and the planned date for completion. This schedule shall be made a part of this authorization. The Licensee may accelerate the scheduled date for installation of any improvement authorized, provided the Licensee has met other scheduled priorities; and

provided further, that the Licensee has completed all priority installations authorized to the satisfaction of the Forest Service prior to the scheduled due date.

The Licensee shall submit all construction plans to the Forest Service for approval a minimum of 45 days before the anticipated start of construction. All plans for construction of facilities must have the approval with signature of a registered professional engineer of the appropriate specialty, and must have the approval of the Forest Service prior to the use of these plans in constructing this project. These plans shall then become part of this authorization as Exhibit D, to be attached hereto.

When asked by the Forest Service, the Licensee shall provide for an on-the-ground review with the Forest Service of the plans for any area of concern to the Forest Service at least 7 days prior to beginning construction on that area.

Unattended Construction Equipment - The Licensee shall not place construction equipment on National Forest land prior to actual use or allow it to remain on National Forest land subsequent to actual use. The Licensee shall remove equipment from National Forest System land unless a permit is issued for equipment storage.

Traffic Safety - When construction is in progress adjacent to or on Forest Service controlled roads open to public travel, the Licensee shall furnish, install, and maintain temporary traffic controls to provide the public with adequate warning and protection from hazardous or potentially hazardous conditions associated with the Licensee's operations. Devices must be appropriate to current conditions and must be covered or removed when not needed. Except as otherwise agreed, flagmen and devices must be as specified in the "Manual for Uniform Traffic Control Devices for Streets and Highways" (MUTCD).

Surveys, Land Corners - The Licensee shall protect, in place, all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges authorized by this authorization, 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 Survey, or (3) the specifications of the Forest Service.

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

Use of Explosives

1. The Licensee shall use only electronic detonators for blasting, 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 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 Licensee shall store all explosives in a secure manner, in compliance with State and local laws and ordinances, and shall mark all such storage places "DANGEROUS - EXPLOSIVES." Where no local laws or ordinances apply, the Licensee shall provide storage that is satisfactory to the authorized officer and in general not closer than 1,000 feet from the road or from any building or camping area.
4. When using explosives, the Licensee shall adopt precautions to prevent damage to landscape features and other surrounding objects. When directed by the authorized officer, 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.

Condition No. 31 - Heritage Resources Protection

If, prior to or during ground-disturbing activities or as a result of project operations, items of potential cultural, historical, archeological, or paleontological value are reported or discovered, or a known deposit of such items is disturbed on National Forest System lands and Licensee adjoining fee title property, the Licensee shall immediately cease work in the area so affected. The Licensee shall then notify the Forest Service and shall not resume work on ground-disturbing activity until it receives written approval from the Forest Service.

If it deems it necessary, the Forest Service may require the Licensee to perform recovery, excavation, and preservation of the site and its artifacts at the Licensee's expense through provisions of an Archaeological Resources Protection Act permit issued by the Forest Service.

AGREEMENTSCondition No. 32 - Inclusion of Trust Fund Agreement

The terms and conditions of the Trust Fund Agreement between Southern California Edison, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the USDA Forest Service Pacific Southwest Region, dated September 27, 1995, are hereby incorporated into this license, shall be deemed a term and condition of the Secretary of Agriculture pursuant to section 4(e) of the Federal Power Act, and the Licensee shall abide by the terms of said agreements. Incorporation of the Trust Fund Agreement into the license shall not be construed to limit, replace, or otherwise diminish the authority of the Secretary of Agriculture, acting through the Forest Service, for making additional terms and conditions pursuant to said section 4(e). Notwithstanding any language in the Trust Fund Agreement to the contrary, should there be a conflict between any other provision of this license and said agreement, the provisions of the agreement shall prevail on matters which the Forest Service deems as affecting National Forest System resources.