

Comment Set B0018, cont.
The Nevada Hydro Company Inc

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from 1920 to 1980 (USFWS 1999). The loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, caused arroyo toads to disappear from a large portion of their previously occupied habitat in California (Jennings and Hayes 1994). Currently, the major threats to arroyo toad populations are from stream alteration, introduction of exotic species, urban and rural development, mining, recreation, grazing, drought, wildfire, and large flood events.

Several incidental take permits pursuant to Section 10(a)(1)(B) of the Act have been issued for the arroyo toad addressing the effects of urban development on this species. In 1996, the Service issued a permit for the Central and Coastal Subregion Natural Community Conservation Plan and Habitat Conservation Plan for Orange County. In 1997 and 1998, the Service issued permits to the city of San Diego and San Diego County, respectively, for Multiple Species Conservation Plans. In 2004, the Service issued a permit for the Western Riverside County Multiple Species Habitat Conservation Plan. In 2007, the Service issued a permit for the Southern Orange Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan. These plans are expected to provide long-term protection of core occurrences of this species in western Riverside, Orange, and San Diego counties.

ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR § 402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation, and the impacts of State and private actions that are contemporaneous with the consultation in progress. According to 50 CFR § 402.02 pursuant to section 7 of the Act, the "action area" means all areas to be affected directly or indirectly by the Federal action. Subsequent analyses of the environmental baseline, effects of the action, and levels of incidental take are based upon the action area.

For this project, we define the action area to be the area of the project facilities, access roads, areas subject to vegetation management activities, and downstream areas subject to indirect effects. The known arroyo toad occurrences near or within the project area occur within Los Alamos Creek (USFS 2003). In addition, arroyo toads occur downstream from the Decker Canyon Reservoir in San Juan Creek (USFWS 1999). In San Juan Creek, arroyo toads occur from I-5 near San Juan Capistrano up to the Upper San Juan Campground area (USFWS 1999), about 2 miles downstream from the project site.

EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species, together with the effects of other activities that are interrelated and interdependent with that action, that will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are

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those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action, are later in time, and still reasonably certain to occur.

Direct Effects

Potential effects to the arroyo toad include the crushing of arroyo toads inside and outside burrows due to ground disturbing activities and trampling associated with the construction, maintenance and vegetation management activities proximal to Los Alamos Creek. Most of the proposed towers and access roads occur greater than 500 feet from the streambed in Los Alamos Creek and outside the 80-foot contour from the streambed, where arroyo toads are most likely to occur in upland habitats (69 FR 23254). However, one tower and access road occurs within 200-300 feet of a tributary to Los Alamos Creek (MBA, pers. comm., 2007). The potential for crushing of arroyo toads during construction and maintenance activities should be limited by the distance from the stream bottom, the temporal nature of construction activities, and the intermittent nature of potential maintenance activities. Further, vegetation management activities have the potential to open more areas of upland habitat for toad use.

Indirect Effects

Sedimentation

There are some potential effects to the arroyo toad due to sedimentation from construction activities proximal to Los Alamos Creek and upstream of San Juan Creek in Decker Canyon. Sedimentation of habitat due to foot and road traffic associated with construction activities can lead to the filling of breeding pools, the restriction of water flow, and the consequent reduction of oxygen levels. Increased sedimentation can adversely affect arroyo toads by asphyxiation of egg masses or early stage larvae (USFWS 1999). Sedimentation can also lead to decreased cover and foraging habitat for amphibians by filling in interstitial spaces (Welsh and Ollivier 1998). However, the potential for sedimentation effects should be minimized by the temporal nature of construction activities, the distance of project activities from the streambed in Los Alamos Creek and downstream populations in San Juan Creek, and the implementation of practices to minimize erosion.

In addition to the potential negative effects of unseasonal sedimentation during construction activities, the construction of a reservoir in Decker Canyon could reduce some natural and beneficial sediment production into arroyo toad breeding areas in San Juan Creek. Fine sediments and gravel are important components of arroyo toad breeding habitat (USFWS 1999). However, effects to sediment production should be limited due to the nature of the streambed in the upper reaches of Decker Canyon, which includes boulders and exposed bedrock. Further, the reservoir will capture only 90-100 acres of the 112,640 acre San Juan Watershed area (Genterra Consultants, Inc. 2003).

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Unauthorized Vehicle Use

There is potential for access roads near Los Alamos Creek to provide access for unauthorized motor vehicle use. This could lead to the crushing of arroyo toad adults, eggs, and larvae and the destruction of habitat (USFWS 1999). The project proponent will block new and improved access roads to prevent access by unauthorized vehicles.

Non-Native Species

Construction, maintenance, and vegetation management activities have the potential to promote non-native weeds. An invasive weed management plan will be developed to control and contain the spread of non-native weeds. The invasive weed plan will provide for: A) inventory and mapping of new populations of invasive weeds using U.S. Forest Service-compatible database and software packages; B) weed risk assessment; C) an integrated pest management approach for invasive weed control; D) a schedule for control of known populations as designated by resource agencies; E) ongoing monitoring of known populations over the term of the license; and F) strategies to prevent and control the spread of invasive weeds.

In addition, potential effects to the arroyo toad in San Juan Creek could occur due to the introduction of non-native aquatic species and the introduction of Lake Elsinore water. However, the project proponent indicates that water will only be discharged into Lake Elsinore (MBA, pers. comm., 2007). Thus, impacts to arroyo toads within San Juan Creek are not expected from the release of Lake Elsinore water and non-native species. In order to verify that non-native species are not released, annual surveys will occur for 1,000 linear feet downstream of the reservoir. If non-native species are detected, they will be removed and surveys will occur monthly for at least six months.

Reduction in Water Quantities

Streamflow within Decker Canyon will not be impounded; however, streamflows could be reduced due to capture of precipitation in a reservoir in Decker Canyon. The potential for effects should be minimized since the reservoir will capture precipitation for only 90-100 acres of the 112,640 acre San Juan Watershed Area (Genterra Consultants, Inc. 2003). Streamflows should only be affected just below the dam in Decker Canyon due to the lack of impoundment of streamflows and the low amount of area that collects precipitation. Further, arroyo toads do not occur until two miles downstream, approximately at the Upper San Juan Campground area (USFWS 1999); thus, it is unlikely effects will occur to this species due to reduced water quantities.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

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We are unaware of any non-Federal actions affecting listed species that are reasonably certain to occur in the action area considered by this opinion.

CONCLUSION

After reviewing the current status of the arroyo toad, environmental baseline for the action area, effects of the proposed action, and the cumulative effects, it is our biological opinion that the proposed action is not likely to jeopardize the continued existence of the arroyo toad. Critical habitat for this species has been designated; however, this action does not affect that area and no destruction or adverse modification of that critical habitat is anticipated. Our conclusions are based on the following reasons:

- 1) This project affects a small area of arroyo toad habitat and most of the potential effects from construction should be temporary. Overall, project effects are only expected during the construction and maintenance activities near Los Alamos Creek. Finally, the area of permanent impact is located within upland habitat.
- 2) The project proponent will implement measures to minimize the potential for erosion and the spread of non-native weeds.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act prohibits the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Harm is further defined by us to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. We defined harass as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

AMOUNT OR EXTENT OF TAKE

Total incidental take of arroyo toads is difficult to detect or quantify, particularly in the non-breeding season, as their relatively small body size and burrowing behavior make the finding of a dead animal unlikely, and losses and numbers may be masked by seasonal or annual fluctuations in numbers or other causes. Therefore, quantifying the take of arroyo toads from the proposed action is not possible, although we anticipate that the number of individuals that might be taken is low. Because we cannot provide a reliable estimate of the numbers of arroyo toads that are likely to be taken, we have established a take threshold that, if exceeded, will trigger reinitiation of consultation. We anticipate that up to one arroyo toad may be taken annually.

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This take is expected in the form of mortality due to crushing during construction and maintenance activities near Los Alamos Canyon.

EFFECT OF THE TAKE

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

REASONABLE AND PRUDENT MEASURES

The following reasonable and prudent measure is necessary and appropriate to minimize incidental take:

FERC will conduct monitoring for the arroyo toad.

TERMS AND CONDITIONS

FERC will conduct periodic arroyo toad monitoring at the construction activities near Los Alamos Creek in accordance with a schedule and protocol approved by the Carlsbad Fish and Wildlife Office. Any effects will be recorded and provided to the Carlsbad Fish and Wildlife Office.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The recommendations provided here do not necessarily represent complete fulfillment of the FERC responsibility for these species, pursuant to section 7(a)(1) of the Act.

- 1) FERC should monitor the status of the arroyo toad and its habitat in Los Alamos and San Juan creeks.
- 2) FERC should aid the Forest Service in implementing non-native species removal efforts in Los Alamos and San Juan creeks.

REINITIATION NOTICE

This concludes formal consultation on the proposed project. As provided in 50 CFR § 402.16 reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may

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affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. Any questions or comments should be directed to Jesse Bennett of my staff or me at (760) 431-9440.

Sincerely,

Karen A. Goebel
Assistant Field Supervisor

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Appendix: Conservation Measures

1. Employ a qualified biologist or natural resource specialist to monitor construction activities and help prevent adverse effects on sensitive species or habitats.
2. Conduct wetlands delineations and habitat mitigation and management plans in consultation with the U.S. Army Corps. of Engineers, the California Department of Fish and Game (CDFG), and the U.S. Forest Service (USFS).
3. Develop and implement a plan to prevent and control noxious weeds and exotic plants of concern in project-affected areas.
4. Design and construct the transmission line to the standards outlined in 1996 by the Avian Power Line Interaction Committee (APLIC).
5. Consult with the USFS and Interior to identify appropriate parcels for mitigation of habitat losses including a 2:1 replacement ratio for about 20 acres of oak woodlands and 1:1 replacement of 31 acres of coastal sage scrub.
6. Provide compensation of \$500 per acre to Riverside County for project effects within the Stephens' Kangaroo Rat Fee Assessment Area.
7. Nevada Hydro and Elsinore Valley Metropolitan Water District (MWD) shall provide annual employee awareness training to familiarize maintenance and operations staff with local USFS issues, including special status species, noxious weeds, procedures for reporting to the USFS, and USFS orders that pertain to the Cleveland National Forest System lands in the vicinity of the project.
8. Nevada Hydro and Elsinore Valley MWD shall annually review the current list of special status plant and wildlife species (federally listed as threatened or endangered and USFS sensitive species), consult with the USFS on the need for new surveys, develop study plans, conduct surveys, and prepare reports as needed.
9. Nevada Hydro and Elsinore Valley MWD shall develop and implement a vegetation and invasive weed management plan for the purpose of controlling and containing the project-related spread of invasive weeds. The invasive weed plan shall provide for: A) inventory and mapping of new populations of invasive weeds using USFS-compatible database and software packages; B) weed risk assessment; C) an integrated pest management approach for invasive weed control; D) a schedule for control of known populations as designated by resource agencies; E) ongoing monitoring of known populations over the term of the license; and F) strategies to prevent and control the spread of invasive weeds. The vegetation management plan shall include or address hazard tree removal; transmission line clearing to comply with electrical safety and fire clearance requirements; management of native habitat and biodiversity improvement; revegetation of disturbed sites; soil fertility and moisture analysis; use of clean, weed-free seed and approved mixes of native plant species; irrigation plans; and pest treatment.

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10. Nevada Hydro and Elsinore Valley MWD shall develop and implement a water surface resources management plan for the purpose of controlling and monitoring project-related effects on water resources on National Forest System land. The licensees shall develop, in consultation with USFS staff: 1) an inventory of springs and other water courses within 1 mile of the upper reservoir location, and 2) a riparian vegetation and surface water monitoring plan addressing springs and other surface water courses in the canyon selected for the upper reservoir.

11. Nevada Hydro and Elsinore Valley MWD shall develop and implement a plan for the management of groundwater and the associated surface waters on or affecting National Forest System land for the purpose of reducing the potential for groundwater extraction or contamination to surface water resources. The licensees shall develop, in consultation with USFS staff: 1) a groundwater and aquifer characterization plan including the installation of additional exploration boreholes and monitoring wells, aquifer testing, and geophysics as deemed necessary to determine the baseline data, construction monitoring data, and post-construction monitoring data; 2) groundwater inflow criteria for tunneling; 3) a plan to monitor and control groundwater and tunnel inflow during construction of the penstocks and tunnels and for a minimum of 10 years post construction unless impacts no longer exist; 4) a groundwater testing and monitoring program for the lined reservoir to detect seepage; and 5) a groundwater testing and monitoring program for the tunnel, unless a final impervious liner is installed, to detect seepage.

12. Nevada Hydro and Elsinore Valley MWD shall develop and implement a habitat mitigation plan that would identify requirements for construction and mitigation measures necessary to meet USFS habitat objectives and standards and provide additional enhancement measures to offset unavoidable effects that are inconsistent with the Land Management Plan. The plan must include minimum mitigation ratios for permanent loss of habitat of 1:1 for habitats that are sensitive or support listed species, coastal sage scrub, and riparian oak woodlands.

13. Include specific provisions in the proposed erosion control plan that applies erosion control measures and best management practices to all construction locations, including the upper reservoir, drainage and flood control locations, penstock tunnels, powerhouse, tailrace, inlet/outlet structure, transmission lines, and all associated construction laydown areas and temporary on-site borrow areas for all subsequent ground disturbing activities over the term of any license issued for the project.

14. Develop and implement a revised lake operating plan for Lake Elsinore, addressing increased minimum lake levels, flood control implications, and water supply issues.

15. Develop and implement a surface water resources management plan to control and monitor project-related effects on water resources that support riparian vegetation on National Forest System lands.

16. Include specific remediation measures in the upper reservoir and water conduit monitoring program to allow immediate action to be taken if water or non-native aquatic species are released from the upper reservoir into the San Juan Creek drainage. In addition, annual surveys will

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occur for 1,000 linear feet downstream of the reservoir. If non-native species are detected, they will be removed and surveys will occur monthly for at least six months.

17. Include specific provisions in the upper reservoir and water conduit monitoring program to explore the groundwater and characterize the aquifer, to consult on groundwater inflow criteria, and to monitor groundwater levels during construction and operation of the water conduits including the tunnels and penstocks that convey water between the upper reservoir and the powerhouse for 10 years or longer if necessary, specifying remedial actions if monitoring reveals changes in groundwater levels or seepage into the tunnels.

18. Develop and implement a detailed plan specifying activities, locations, methods and schedules that the qualified environmental construction monitor will use to monitor construction in aquatic environments.

19. Conduct entrainment monitoring for one year and once every 5 years over the term of any license issued to the project to determine the extent of fish entrainment and mortality at the Lake Elsinore intake/outlet structures and provide the monitoring results to CDFG, the Carlsbad Fish and Wildlife Office, the State Water Board, and the Joint Watershed Authority, and, based on the results of entrainment monitoring, develop and implement a plan to mitigate for entrainment losses through measures, such as enhancing nearshore fish habitat or stocking fish, that would aid in establishment of naturally sustaining populations of desirable sport fish.

20. Develop and implement a detailed plan specifying the activities, locations, methods, and schedule that the qualified environmental construction monitor would use to monitor construction activities in terrestrial environments.

21. Develop and implement a vegetation and invasive weed management plan to prevent and control noxious weeds and exotic plants of concern in project-affected areas during construction and over the term of any license issued for the project.

22. Develop and implement a Lake Elsinore monitoring and remediation plan to address potential project-related effects on nesting shorebirds, waterfowl, and other birds.

23. Implement an avian protection plan consistent with APLIC and U.S. Fish and Wildlife Service (2005) guidelines and over the term of any license issued for the project.

24. Conduct additional pre-construction special status plant and animal surveys at transmission line tower sites and along transmission alignment access roads to ensure compliance with the Western Riverside County Multi-species Habitat Conservation Plan.

25. Prepare a habitat mitigation plan in consultation with the USFS, Department of Interior, CDFG, and Riverside County to identify appropriate mitigation of habitat losses including a 1:1 replacement ratio for about 5 acres of oak woodlands, about 32 acres of coastal sage scrub, and about 216 acres of chaparral and grasslands.

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26. Consult with the USFS annually to review the list of special status species and survey new areas as needed.

27. Develop and implement an annual employee awareness training program regarding special status plants and animals.

28. Consult with the Carlsbad Fish and Wildlife Office during the process of developing final design drawings on measures to protect fish and wildlife resources.

29. All new or improved access roads will be blocked prohibiting recreational activity.

30. The LEAPS project will be implemented consistent with the Habitat Conservation Plan for the Stephens' Kangaroo Rat (SKR) in Western Riverside County (RCHCA 1996). In compensation for direct and indirect impacts associated with applicant-initiated ground-disturbing activities undertaken within the SKR Core Reserve Area, the applicant shall acquire property containing suitable habitat and subject to the following criteria: (1) compensatory acreage, off-setting physically disturbed acreage in the Core Reserve Area, shall be on a minimum 1:1 basis with no net loss of occupied habitat, based on the actual area of disturbance to be determined prior to the initiation of construction; (2) to the extent feasible, the applicant will work with the Carlsbad Fish and Wildlife Office to find the off-setting property or properties in, contiguous with, or directly adjacent to the boundaries of the Lake Mathews-Estelle Mountain Core Reserve Area; (3) the off-setting property or properties shall be occupied by SKR or shall contain suitable habitat for that species; (4) the property shall be maintained for conservation purposes by the Riverside County Habitat Conservation Agency; and (5) the adequacy of the selected property to offset impacts to the SKR Core Reserve is subject to written concurrence of the U.S. Fish and Wildlife Service. If off-setting properties cannot be located in or adjacent to the Lake Matthews-Estelle Mountain Core Reserve Area, FERC will work with the U.S. Fish and Wildlife Service to identify other areas for mitigation. Implementation shall occur prior to commencement of project-related ground-disturbing activities within the Core Reserve Area.

31. For areas of temporary disturbance within the SKR Core Reserve Area, FERC will develop a restoration plan for review and approval by the Carlsbad Fish and Wildlife Office prior to ground-disturbing activities within the Core Reserve Area.

32. A restoration plan will be prepared to restore suitable habitat areas temporarily impacted by project installation for the arroyo toad, Quino checkerspot butterfly, coastal California gnatcatcher, and Stephens' kangaroo rat.

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Attachment D
Final 4(e) Terms and Conditions
United States Forest Service

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The Nevada Hydro Company Inc



United States
Department of
Agriculture

Forest
Service

Pacific
Southwest
Region

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File Code: 2770
Date: MAR 29 2007

Philis J. Posey
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Via Electronic Filing

RE: Forest Service Final 4(e) Conditions for the Lake Elsinore Advanced Pumped Storage Project, FERC Project No. 11858

Dear Secretary Posey:

The Federal Energy Regulatory Commission (FERC) Office of Energy Products staff, and the Forest Service as a cooperating agency, issued a Final Environmental Impact Statement (Final EIS) for the Lake Elsinore Advanced Pumped Storage Project, FERC Project No. 11858, in January of 2007. A portion of the proposed project is located on National Forest System lands administered by the Cleveland National Forest. The following comments and conditions comprise the report of the Secretary of Agriculture in accordance with section 4(e) of the Federal Power Act.

We have reviewed the record in the Final EIS to determine project consistency with the 2005 Cleveland National Forest Land Management Plan (LMP) and the purposes for which the Cleveland National Forest was reserved. Based on that review, we find project features that impact or would eliminate critical watershed components, such as riparian areas and springs, are not consistent with the LMP or purposes of the Cleveland National Forest reservation. The project would unavoidably conflict with the recreation setting, scenery, and wildlife habitat objectives of the LMP. The staff alternative, through mitigation and design factors, reduces impacts to unique riparian habitats and provides transmission line locations that could be made consistent with the LMP and purposes for the Cleveland National Forest reservation. This project does not appear to conflict with any known projects or projects previously constructed by the United States. We have no objection to a license being issued, subject to certain conditions necessary for the protection and utilization of National Forest System lands and resources affected by the project.

We filed preliminary 4(e) conditions on April 27, 2005, and revised preliminary conditions on June 22, 2006. Enclosure I contains the final 4(e) conditions to be included in the license that I find necessary for the protection and utilization of the affected National Forest System lands. The final conditions are based on the Forest Service review of the Final EIS, coordination with Federal, State and local agencies, public comment, and consultation with the co-applicants. We



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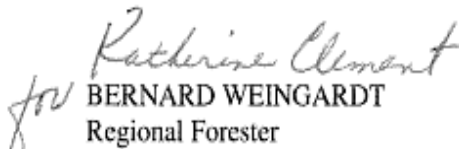
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have also reviewed the co-applicants alternative 4(e) terms and conditions, along with supporting rationale documentation and included those provisions where applicable. Our response to the alternative conditions is documented in Enclosure II. In addition to several edits for clarification and some combination and deletion of conditions, we have made changes to the revised preliminary Condition No. 37 "Scenery Conservation Plan" to more completely disclose the effects to the public the impacts of this project, and revised preliminary condition No. 38 "Habitat Mitigation Plan" to comply with existing MOU with US Fish and Wildlife Service and California Dept of Fish and Game. Enclosure III outlines the rationale for the revised mitigation ratios. Under authority delegated from the Secretary of Agriculture, I consider these final conditions necessary to avoid or mitigate resource and environmental impacts caused by the proposed project.

Please contact Virgil Mink at (951) 736 1811 ext. 3277 if you have any questions.

Sincerely,


BERNARD WEINGARDT
Regional Forester

Enclosures

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ENCLOSURE I
PACIFIC SOUTHWEST REGION
USDA FOREST SERVICE
FINAL 4(E) TERMS AND CONDITIONS

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Lake Elsinore Advance Pump Storage Hydroelectric Project
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FINAL 4(E) TERMS AND CONDITIONS

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I. Introduction

The Forest Service hereby submits its Final 4(e) Terms and Conditions (Conditions) for the Lake Elsinore Advanced Pumped Storage Hydroelectric Project (FERC Project No. 11858), in accordance with 18 CFR 4.34(b)(1)(i).

Section 4(e) of the Federal Power Act states the Commission may issue a license for a project within a reservation only if it finds that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired. This is an independent threshold determination made by FERC, with the purpose of the reservation defined by the authorizing legislation or proclamation (see *Rainsong v. FERC*, 106 F.3d 269 (9th Cir. 1977)). The Forest Service, for its protection and utilization determination under Section 4(e) of the FPA may rely on broader purposes than those contained in the original authorizing statutes and proclamations in prescribing conditions (see *Southern California Edison v. FERC*, 116F.3d 507 (D.C. Cir. 1997)). These terms and conditions are based on those resource and management requirements enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), and any other law specifically establishing a unit of the National Forest System or prescribing the management thereof (such as the Wilderness Act or the Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved Land and Resource Management Plans prepared in accordance with the National Forest Management Act. Specifically, the 4(e) conditions are based on the Land and Resource Management Plan (as amended) for the Cleveland National Forest, as approved by the Regional Forester of the Pacific Southwest Region.

Pursuant to Section 4(e) of the Federal Power Act, the Secretary of Agriculture, acting by and through the Forest Service, considers the following conditions necessary for the adequate protection and utilization of the land and resources of the Cleveland National Forest. License articles contained in the Federal Energy Regulatory Commission's (hereinafter referred to as the Commission) Standard Form L-2 (revised October 1975) issued by Order No. 540, and dated October 31, 1975, cover general requirements. Section II of this document includes standard conditions deemed necessary for the administration of National Forest System lands. Section III covers specific requirements for protection and utilization of National Forest System lands and shall also be included in any license issued.

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II. Standard Forest Service Conditions

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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.

Ground disturbing activities on or affecting National Forest Service Lands may proceed only after the Licensee has filed the required development plans, provided any additional documentation required for the Authorized Officer to complete a site specific environmental analysis, and obtained approval for the activity from the Authorized Officer. In no case shall ground-disturbing activities authorized by the license and special-use authorization begin 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 or permit issued for this Project by the State Water Resources Control Board or Army Corps of Engineers.

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. The Licensee shall follow the schedules and procedures for design review and approval specified in the conditions herein and in the Special Use Permit. As part of such written approval, the Forest Service may 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 upon compensation or mitigation measures to address compatibility issues. 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.

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Condition No. 4—Approval of Changes

Notwithstanding any Commission approval or license provisions to make changes to the Project when such changes directly affect National Forest System lands, the Licensee shall obtain written approval from the Forest Service prior to making any changes in 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, nor shall it affect the Licensee's obligation to comply with Commission requirements.

Condition No. 5—Consultation

Each year between February 15 and April 15, 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.

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 any project area directly affecting National Forest System lands to a condition satisfactory to the Forest Service upon or after surrender of the license, as appropriate. The restoration plan shall identify the measures to be taken to restore National Forest System lands and shall include adequate financial mechanisms to ensure performance of the restoration measures. Restoration measures typically include actions such as removing improvements, grading and contouring disturbed areas for drainage and appearance, planting disturbed areas with native species to restore native habitat, and other actions needed to comply with relevant laws, regulations, and management direction.

In the event of any transfer of the license or sale of the Project, the Licensee shall assure, in a manner satisfactory to the Forest Service, that the Licensee or transferee will provide for the costs of surrender and restoration. If deemed necessary by the Forest Service to assist 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 any Project area directly affecting National Forest System lands to Forest

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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.

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Condition No. 7—Hazardous Substances Plan

Within one year of license issuance, or prior to any ground disturbing activities, the Licensee shall file with the Commission a plan approved by the Forest Service for hazardous substances storage, spill prevention, and spill cleanup for Project facilities on or directly 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, 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 when 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 may 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. 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. If stored on National Forest System lands, 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", 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

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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 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.

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

A. Hazardous Vegetation Fuel Treatment Plan

Within one year of license issuance or prior to any ground disturbing activities, the Licensee shall file with the Commission a plan approved by the Forest Service for Hazardous Vegetative Fuel Treatment on or directly affecting National Forest System lands. The purpose of the plan shall be to reduce the potential for wildfires originating at Project facilities, and to protect Project facilities from adjacent wildfires. 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). Maintain fuel profiles within the project area consistent with plan standards set forth in the Cleveland Forest Land Management Plan, guidelines for development and maintenance of wildland urban interface defense and threat zones, and California Public Resource Code.
2. Identify fuel treatment methods to mitigate identified hazard fuels. Such treatment methods shall generally be limited to thinning of small trees, removing excess brush, and reducing fuel load and continuity of surface and ladder fuels. No fire break in association with transmission lines will be approved unless required to comply with applicable reliability standards or clearance around conductors.
3. Include a map and schedule of treatments.
4. 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.

The Licensee is responsible for implementing the approved plan.

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B. Fire Prevention and Suppression Response Plan

Within one year of license issuance or prior to any ground disturbing activities, the Licensee shall file with the Commission a Fire Prevention and Suppression 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 (excluding fuel treatment as described above), reporting, control, and extinguishing of fires in the vicinity of the Project resulting from Project operations.

At a minimum the plan shall address the following categories:

1. Prevention
 - Availability of fire access roads, community road escape routes, helispots to allow aerial firefighting assistance in steep canyon areas, 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.
2. Emergency Suppression Response Preparedness
 - Analyze fire prevention needs including equipment and personnel availability.
3. Reporting
 - Licensee shall report any project related fires to the Forest Service within 24 hours.
4. Fire Control/Extinguishing
 - Provide the Forest Service with a list of the locations 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 or its successor.

C. Investigation of Project Related Fires

The Licensee agrees to fully cooperate with the Forest Service on all fire investigations. The Licensee shall produce upon request all material and witnesses not subject to attorney client or attorney work product privilege, 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. The Forest Service shall provide the Licensee with

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reasonable access to the physical evidence and documents the Licensee requires in order to defend any and all claims, which may arise from a fire resulting from project operations, to the extent such access is not precluded by ongoing criminal or civil litigation.

Condition No. 10—Road Use by Government

The United States shall have unrestricted use of any road over which the licensee has control, within the project area for all purposes deemed necessary and desirable in connection with the protection, administration, management, and utilization of National Forest System lands or resources. When needed for the protection, administration, and management of Federal lands or resources, the United States shall have the right to extend rights and privileges for use of the right-of-way and road thereon, to States and local subdivisions thereof, as well as to other users. The United States 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 costs disproportionate to the Licensee's use in comparison to the use of the road by others.

Condition No. 11—Road Use

The Licensee shall confine all vehicles being used for project purposes, including but not limited to administrative and transportation vehicles and construction and inspection equipment, to roads or specifically designed access routes, and approved construction and staging areas, as identified in the Road and Traffic Management Plan (Condition No. 26). The Forest Service reserves the right to close any and all such routes where damage (impacts beyond the expected and approved disturbance) 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. The Forest Service agrees to provide notice to the Licensee and the Commission prior to road closures, except in an emergency, in which case, notice will be provided as soon as practicable.

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, architectural character, 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 and regulations, and applicable Forest Service guidelines. Disposal of siting, construction, and operation and maintenance waste material will be off the National Forest unless otherwise agreed to by the Forest Service.

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.

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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 or affecting National Forest System lands 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 to correct any items found to need correction to be in compliance with the license.

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 or in areas affecting 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. The request must cover annual planned use and be updated as required by the Forest Service. The Licensee shall provide information essential for review, including a forest-specific pesticide risk assessment, 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.

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.

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The Nevada Hydro Company Inc

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Upon Commission approval, the Licensee shall implement the plan.

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 for activities on National Forest System lands, and all applicable federal, state, county, and municipal laws, ordinances, or regulations in regards to the area or operations on or directly affecting National Forest System lands, 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 under any applicable laws and regulations or for judgments, claims, or demands assessed against the United States caused by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the 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 construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under 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. Upon surrender, transfer, or termination of the license, the Licensee's obligation to indemnify and hold harmless the United States shall survive all valid claims for actions that occurred prior to such surrender, transfer or termination.

Condition No. 20—Surveys, Land Corners

The Licensee shall avoid disturbance to all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments on or affecting National Forest System lands 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.

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

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The Licensee has an affirmative duty to protect the land, property and interests of the United States from damage arising from the Licensee's construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license.

The Licensee is liable for all damages, costs and expenses associated with damage to the land, property and interests of the United States occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license, including but not limited to damages, costs and expenses resulting from fire. Such damages, costs and expenses shall include, but not be limited to:

1. Fire suppression costs
2. Rehabilitation and restoration costs
3. Value of lost resources
4. Abatement costs
5. Investigative and administrative expenses
6. Attorneys' fees

The Licensee's liability under this condition shall not extend to acts or omissions of parties outside of the Licensee's control. Licensee's contractors or employees of contractors are not considered parties outside the Licensee's control. 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 have an opportunity to review the basis for the Forest Service's damages, costs and expenses, and to meet and confer with the Forest Service to resolve any questions or disputes regarding such damages, costs and expenses. After the opportunity for review, 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 project area, the Licensee has a continuing responsibility to reasonably identify and report all known or observed hazardous conditions on or directly affecting National Forest System lands 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 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

Except as otherwise authorized, 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

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The Nevada Hydro Company Inc

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Project facilities (powerline, penstock, ditch, and pipeline) on or affecting 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—Road and Traffic Management Plan

Within one year of license issuance or prior to any ground disturbing activities, the Licensee shall file with the Commission a plan approved by the Forest Service for management of all Forest Service and unclassified roads on National Forest System lands required by the licensee to access the project area. 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 essential for review 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. Land status of road segment including ownership and right of way or easement
 - i. Instrument of authorization for road use

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- j. Assessment of road condition and licensee reconstruction needs
 - k. Rehabilitation of temporary access disturbance
 - l. Temporary access locations will be gated to prevent unauthorized public vehicle access
4. 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, or roads authorized by the Forest Service.

The Licensee will be required to upgrade Forest Service roads if necessary to accommodate the proposed use.

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.

The Licensee shall use non-Forest Service roads on or affecting National Forest System lands in accordance with applicable state, county, city, and/or local authority standards. The Licensee will furnish documentation and evidence of their coordination with other road management entities. The Licensee is responsible for securing any necessary easements or right of way for roads on private land if Forest Service easements are not available or assignable.

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 the licensee in the future, subject to Forest Service standards in effect at the time, including related studies, analyses or reviews required by Forest Service.

Upon Commission approval, the Licensee shall implement the plan.

Condition No. 27—Recreation Facilities and Administration

Within one year of license issuance, the licensee shall file with the Commission a plan approved by the Forest Service for the development of recreation facilities to offset the loss of recreation opportunities on National Forest System lands associated with this project. The plan shall address the development, operation and maintenance of recreation facilities on National Forest System lands to include the project equipment and material laydown area as well as for other locations as approved by the Forest Service.

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Condition No. 28 – Heritage Resources Management Plan

The Licensee shall file with the Commission, within one year following license issuance, or prior to any ground disturbing activities, a Heritage Resources Management Plan (HRMP), approved by the Forest Service, for the purpose of protecting and interpreting heritage resources on or affecting National Forest System lands. The HRMP is tiered to a Programmatic Agreement, to which the Forest Service will be a signatory, as defined by 36 CFR 800, and implements regulations of the National Historic Preservation Act. 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, Native American traditional cultural values, and Project-induced recreational impacts to archaeological properties on or affecting National Forest System lands. 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.

If, prior to or during ground-disturbing activities or as a result of project operations, items of potential cultural, historical, archaeological, or paleontological value 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 the area affected. 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 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. 29—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, invasive 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 invasive weeds and their locations in the project area shall be provided to licensee's field personnel.