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The Nevada Hydro Company Inc

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Condition No. 30—Special Status Species

The Licensee shall, beginning the first full calendar year after license issuance, in consultation with the Forest Service, annually review the current list of special status plant and wildlife species (species that are, Forest Service Sensitive, Cleveland National Forest Watch List, or U.S. Fish and Wildlife Service Federally listed) that might occur on National Forest System Lands in the project area directly affected by project operations. When a species is added to one or more of the lists, the Forest Service, in consultation with the Licensee, shall determine if the species or un-surveyed suitable habitat for the species is likely to occur on such National Forest System Lands. For such newly added species, if the Forest Service determines that the species is likely to occur on such National Forest System Lands, the Licensee shall develop and implement a study plan in consultation with the Forest Service to assess the effects of the Project on the species. The Licensee shall prepare a report on the study including objectives, methods, results, recommended resource measures where appropriate, and a schedule of implementation, and shall provide a draft of the final report to the Forest Service for review and approval. The Licensee shall file the report, including evidence of consultation, with the Commission and shall implement those resource management measures required by the Commission.

Condition No. 31—Ground Disturbing Activities

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

Condition No. 32 -- Vegetation and Invasive Weed Management Plans

Within one year of license issuance, or prior to any ground disturbing activities, the Licensee shall file with the Commission Vegetation and Invasive Weed Management Plan approved by the Forest Service. Invasive weeds will be those weeds identified in the California Department Food and Agriculture (CDFA) code, and other non-native species of concern identified by the Forest Service and other resource agencies. The plan will address both aquatic and terrestrial invasive weeds within the project boundary and adjacent to project features directly affecting National Forest lands including recreation facilities, roads, and distribution and transmission lines.

1) The Invasive Weed Plan will include and address the following elements:

- Inventory and mapping of new populations of invasive weeds using a Forest Service compatible database and GIS software. The Invasive weed GIS data layer will be updated annually and shared with other resource agencies.
- Weed risk assessment.
- Action and/or strategies to prevent and control spread of known populations or introductions of new populations, such as public education and signing.

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vehicle/equipment wash stations, certified weed-free hay or straw for all construction or restoration needs and use an approved mix of plant species native to the Cleveland National Forest for restoration or erosion control purposes. Formulate an Integrated Pest Management approach for invasive weed control (IPM evaluates alternatives for managing forest pest populations, based on consideration of pest-host relationships).

- Assure that project staff is aware of the current location of invasive weeds and how to identify the invasive weeds likely to occur in the project area.
- Development of a schedule for control of all known A, B, Q (CDFA) and selected other invasive weed species, designated by resource agencies.
- On-going monitoring of known populations of invasive weeds for the life of the license in locations tied to Project actions or effects, such as road maintenance, at project facilities, O&M activities, recreational areas, new construction sites, etc. to evaluate the effectiveness of re-vegetation and invasive weed control measures.
- Avoid use of gravel and fill from known weed infested borrow pits.

New infestations of invasive and noxious weeds shall be controlled within 1 month of detection. At specific sites where other resource objectives need to be met (e.g. recreational use) all classes of invasive weeds may be required to be treated.

Monitoring will be done in conjunction with other project maintenance and resource surveys, so as not to require separate travel and personnel. Monitoring information, in database and GIS formats, will be provided to the Forest Service as part of the annual consultation on affected National Forest resources (Condition No. 5). To assist with this monitoring requirement, training in invasive plant identification will be provided to Project employees and contractors by the Forest Service.

Licensee shall restore/revegetate areas where treatment has eliminated invasive weeds in an effort to eliminate the reintroduction of invasive weed species. Project-induced ground disturbing activities shall be monitored annually for the first 3 years after disturbance to detect and map new populations of Invasive weeds.

- 2) The Vegetation Management plan shall include and/or address the following elements:
- Hazard tree removal and trimming;
 - Powerline/transmission line clearing to comply with electrical safety and fire clearance requirements;
 - Vegetation management for native habitat and biodiversity improvement
 - Revegetation of disturbed sites (including plant palette, planting methods, plant densities, propagation materials, and plant maintenance);
 - Soil fertility and moisture analysis, soil grading, soil amendments, soil protection and erosion control, including use of certified weed free straw;
 - Use only clean, locally collected, weed free seed;
 - Irrigation amounts, methods, and schedule;
 - Pest treatment, monitoring, and prevention methods and schedule;

Upon Commission approval, the Licensee shall implement the plan.

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Condition No. 33—Wildlife Management

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

- All power lines, power stations, and other facilities on or affecting National Forest System lands shall be constructed to conform with the “Suggested Practices for Raptor Protection on Power Lines” by the Avian Powerline Interaction Committee (2006, or as updated), including marking the power lines themselves if they are adjacent to Lake Elsinore or in a flyway where bird strikes may occur.

Condition No. 34—Surface Water Resources Management Plan

The Licensee shall within 6 months after license issuance file with the Commission a Water Resources Management Plan that is approved by the Forest Service, for the purpose of controlling and monitoring the Project-related effects to water resources on National Forest System lands, which are related to the Licensee’s activities. The purpose of the plan is to protect ground water related surface water and other ground water dependent resources. At a minimum the plan shall:

1. Develop in consultation with and approved by Forest Service technical specialists and their consultants an inventory of springs and other water courses not less than ½ mile nor greater than 1 mile from the selected reservoir site and its related riparian areas, unless new information suggests that the project impacts may extend beyond 1 mile, then additional inventory and monitoring would be required to cover the impacted area. The inventory shall include water chemistry and physical analysis in addition to monthly and annual hydrographs. Riparian areas shall be delineated and inventoried. Inventories shall include flora and fauna specific to each water source and shall also include special indicator species (i.e. spring snails), as required by the Forest Service technical specialists, which describe the overall health of the system.
2. Develop and implement in consultation with and approved by Forest Service technical specialists and their consultants a riparian vegetation and surface water monitoring plan addressing springs and other surface water courses in the canyon selected for the storage portion of the Pumped Storage Project and their associated riparian areas. Baseline data prior to initiation of the project shall be obtained for both water quantity and quality because project activities could alter groundwater levels and quality, with subsequent alteration of surface water dynamics. The surface water monitoring should include intermittent as well as any perennial systems, and should be done no less frequently than monthly. Surface water monitoring stations shall be established at locations (e.g., at bedrock outcroppings) that would be unlikely to become unusable due to sedimentation or erosion. Riparian vegetation monitoring shall include quantifying extent of riparian vegetation associated with springs, streams, and other riparian areas. The monitoring plan shall be in effect upon approval for pre-construction so that baseline data can be established and shall continue for the entire duration of the project while in construction, and for the post construction period as long as project related impacts to groundwater and/or surface waters are documented by the Forest Service.

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Condition No. 35— Groundwater Management Plan

Within one year of license issuance the Licensee shall file with the Commission a plan approved by the Forest Service for the management of groundwater and the associated surface waters on or affecting National Forest System lands. The purpose of the plan shall be to reduce the potential for groundwater extraction or contamination and related effects to surface water resources. At a minimum, the Groundwater Management Plan shall:

1. Develop in consultation with and approved by the Forest Service technical specialists and their consultants a groundwater exploration and aquifer characterization plan which includes the use of existing data as well as installation of additional exploration boreholes and monitoring wells, aquifer testing (which includes water quality) and geophysics as deemed necessary to determine baseline data, construction monitoring data and post construction monitoring data for the area potentially impacted by the project.
2. Groundwater inflow criteria for tunneling will be established by the Forest Service in consultation with the co-applicants. Inflow criteria will be approved by the forest service prior to construction.
3. Develop and implement, in consultation with and approved by the Forest Service, a plan to monitor and control groundwater levels and tunnel inflows for the duration of the construction of the penstocks and tunnels and for a minimum of 10 years post construction unless it can be determined that construction related impacts no longer exist. This plan may include, but is not limited to, the development and use of a groundwater model as well as the installation and use of in-tunnel piezometers, monitoring wells, and seepage collars (or other means to control longitudinal flows along the tunnel).
4. Develop in consultation with and approved by the Forest Service technical specialists and their consultants a groundwater testing and monitoring program for the lined reservoir which will detect seepage from the reservoir into the groundwater and riparian areas. This monitoring program will remain in place for the life of the permit project.
5. Develop in consultation with and approved by the Forest Service technical specialists and their consultants a groundwater testing and monitoring program for the tunnel (unless a final impervious liner is installed prior to commissioning) which will detect seepage from the tunnel liner into the groundwater and riparian areas. This monitoring program will remain in place for the life of the permit project.

Condition No. 36 – Scenery Conservation Plan

Within one year after license issuance, or prior to any ground disturbing activities, the Licensee shall file with the Commission a Scenery Conservation Plan that is approved by the Forest Service. The purpose of this Scenery Conservation Plan is to identify actions that will minimize the project's disturbance to the naturally established scenery. While implementation of this plan is not expected to achieve the Scenic Integrity Objectives of the Cleveland National Forest LMP in many areas, it will enable achievement of the highest scenic integrity feasible.

The Forest's "High" Scenic Integrity Objective is applicable to almost the entire project area. This objective is to maintain a natural appearing condition, and to design landscape alterations so they remain visually unnoticed from sensitive public viewpoints. These

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viewpoints include the South Main Divide Road, Ortega Highway, Grand Avenue, Lake Elsinore and nearby communities, other nearby communities including La Cresta, Wildomar, Rancho Capistrano, Interstate 15, Morgan Trail, San Mateo Canyon Wilderness, and Wildomar Road viewpoints including the OHV recreation area, and road segments near Los Alamos Canyon and Tenaja Trailhead.

In order to achieve the greatest consistency with the Forest's High Scenic Integrity Objective, the project shall integrate the following design recommendations into the Scenery Conservation Plan:

- **Power line and Support Towers** - Transmission lines shall be nonspecular (nonreflective) and neutral in coloration. To appear as visually transparent as possible within the natural landscape pattern, power line support towers shall be custom-colored to harmonize with the natural vegetation and sky. Towers shall be designed to minimize their visual prominence and their contrast with the natural landscape patterns. They shall be surfaced with a flat, nonreflective finish. Towers beyond 3/4 mile shall visually recede into the natural appearing landscape. Support towers within the "foreground" (approximately 3/4 mile) of sensitive viewpoints shall typically be of monopole design offering a simple, clean and less industrial appearance. Support towers viewed beyond approximately 3/4 mile from sensitive viewpoints shall typically be of a more open, steel lattice design presenting less visual mass, allowing the natural scenery to be viewed through its more open structure. Selection of support tower design along the alignment shall consider both foreground and background sensitive views, as well as the tower's nearby landscape appearance. Vegetation and ground clearing at the foot of each tower, and between towers, will be limited to the clearing necessary to comply with electrical safety requirements. Mitigation, such as placement of a dark colored vegetation barrier/matting, shall be incorporated to reduce the visual contrast of vegetation clearing.
- **Reservoir** – Conceal the unnatural views into the upper storage reservoir that may be visible from South Main Divide and Ortega Highway, nearby recreation areas, trails and wilderness. Consistent with sound engineering practices, the reservoir shall be surrounded by an earth berm with irregular form and profile to reflect the local topography. This landform shall be planted with local species native to the area, to blend with the natural appearing landscape. Security fencing shall be colored to blend with, and be screened by, planted native vegetation.
- **Roads** - New temporary roads (maximum 15% ground slope) or roads needing reconstruction/expansion shall be configured to minimize the creation of cut/fill slopes, and where such slopes are created, they shall be immediately treated to minimize their level of scenery disturbance. These treatments may include construction of structural elements designed to blend with the adjacent natural scenery, or revegetation with native species.
- **Penstock** – Penstocks shall be located in underground tunnels and any associated ground disturbance shall be reshaped to natural appearing contours and revegetated with native species.

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- **Structures** – All structures and structural elements constructed as part of the Project shall be designed, located, shaped, textured, colored and/or screened as necessary to minimize their visual contrast. Structures must blend with and complement the adjacent natural landscape appearance.

The Licensee shall provide photorealistic visual simulations of the project features and scenery mitigation measures. These simulations shall demonstrate the effectiveness of the project in achieving LMP Scenic Integrity Objectives for the Elsinore Place as viewed from sensitive viewpoints. These simulations provide information necessary for the Forest Service to approve final project designs. Simulations shall support project refinement of location, design, color and other scenery considerations of the proposed power line and poles, upper reservoir, and powerhouse. Simulations shall use high quality photography to effectively portray potential scenery effects of the proposed facilities across the project's full geographic range, as seen from most of the sensitive views listed above. Appropriate lighting and atmospheric clarity within the photographs are needed to accurately simulate the potential effects.

Where project features create unavoidable scenery effects that are inconsistent with CNF Scenic Integrity Objectives, additional scenery enhancement activities approved by the Forest Service shall be performed in the nearest suitable areas to offset those effects.

Condition No. 37 -- Habitat Mitigation Plan

Within 1 year from license issuance or prior to any ground disturbing activities, 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 Commission habitat mitigation plan approved by the Forest Service. This plan must identify requirements for construction and mitigation measures to meet Forest Service habitat objectives and standards. Where project features create unavoidable effects that are inconsistent with Cleveland National Forest Land and Resource Management Plan Habitat Objectives, additional activities shall be performed to offset the direct effects of project construction.

The replacement in kind of lost habitat would be most appropriately located within the project area, but if opportunities are not fully available there, then alternatively and in order of priority, to be located elsewhere within the Elsinore "Place" (as identified by the LRMP), the Trabuco Ranger District, or the Cleveland NF, including private inholdings. Replacement habitat must be manageable by the Forest Service. The plan also must include dates for accomplishing these objectives and standards and must identify needs for and timing of any additional studies necessary. The plan must consist of the following minimum mitigation ratios for permanent loss of habitat:

- 3:1 for riparian oak woodland
- 2:1 for habitats that are sensitive or support listed species
- 2:1 for coastal sage scrub
- 2:1 for native grassland
- 1:1 for chaparral

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Comment Set B0018, cont.
The Nevada Hydro Company Inc

Enclosure II

Forest Service Response to Applicants' Submittal of Alternative Conditions for Certain Final § 4(e) conditions submitted by the Forest Service for the Lake Elsinore Advanced Pumped Storage Project (LEAPS) (FERC No. 11858)

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Co-Applicants The Nevada Hydro Company and Elsinore Valley Municipal Water District (Applicants) filed alternative conditions on December 15, 2005 for the LEAPS Project pursuant to the provisions of § 33 of the Federal Power Act (FPA), and 7 CFR § 1.604, and § 1.671 (the rule). The Forest Service has completed its analysis pursuant to 7 CFR § 1.673 as documented in this response.

The FPA and the rule provide that the Forest Service evaluate and accept proposed alternative conditions based on a two part assessment that considers: 1) cost and operational efficiency, and 2) adequate protection and utilization of the National Forest System lands (NFS lands) affected by the project. When making that determination the FPA and the rule requires that the Forest Service demonstrate that we gave equal consideration to the effects of the condition adopted and any alternative not adopted on: energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; and preservation of other aspects of environmental quality. The primary components of the LEAPS project on NFS lands are the storage reservoir, penstocks, and transmission line. The Forest Service did not require any conditions that would effect the project operation relative to water storage, generation, or transmission capacity. We have considered the effect of our final conditions on generation, transmission, flood control, navigation, water supply, and air quality, and conclude that the adopted final conditions will not affect those factors. The primary factors considered were cost and protection and utilization of the reservation.

For the purposes of this review, we assess whether the proposed alternative condition is adequate to protect and utilize the reservation first, using the sources of information specified by the rule (7 CFR § 1.673(a)). If a proposed alternative condition fails this assessment, the review is complete, and the alternative condition is not accepted. Alternative conditions that provide adequate protection are then evaluated on the basis of cost and operational efficiency. If a proposed alternative condition meets both conditions, it is accepted and will be filed by the Forest Service with the Federal Energy Regulatory Commission as a final condition. Since several proposed alternative conditions contained multiple components, the two part assessment was applied to each component to provide the maximum consideration of the alternative condition. The final conditions are filed in Enclosure I of this filing.

Section I of this review addresses alternative conditions proposed for conditions 1, 2, 3, 5, 6, 8, and 21. The Applicants provided rationale and supporting information for these alternative conditions in sufficient detail to allow a review under the rule. Section II of this review addresses the clarification language proposed to conditions 4, 7-15, 19-20, 26-29, and 31-35.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Section I, Proposed Alternative Conditions

B0018-40 cont.

Condition 1 – Requirement to Obtain a Forest Service Special Use Authorization

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

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

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

Alternative Condition - The proposed change would add text at the end of the first paragraph to specify that the condition applies to “lands that are permitted by the authorization”. The reason offered by the Applicant is that they expect to conduct additional studies that may involve ground disturbance prior to construction, and they expect to conduct these surveys under their existing investigation permit.

Analysis – The Applicants are authorized to conduct certain studies under their existing investigation permit. If a license is issued, the Forest Service will work with the Applicants to make the transition between the investigation permit and the permit issued for the hydropower project. There should be no delays or inefficiencies using this approach.

Conclusion – This is a standard Forest Service condition that is used in all licensed projects that require Special Use Authorizations. The existing wording accommodates the Applicants desire to conduct studies under their existing permit, and will be retained in the final condition.

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The Nevada Hydro Company Inc

Condition 2 – Modification of 4(e) Conditions After biological Opinion or Water Quality Certification

B0018-40 cont.

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

Alternative Condition - The Applicants proposed to provide notice, as well as adding wording to reference the rule (7 CFR § 1.604, and § 1.671) that provides an opportunity for hearings and alternative conditions.

Analysis - The proposed addition to provide notice and opportunity for comment is consistent with current Forest Service practice as evidenced by the standard wording of Condition 5.

The proposed reference to the regulations relates to a procedural requirement this is part of the Interim Final Rule adopted by the Department of Agriculture to implement the Energy Policy Act of 2005 amendments to the FPA. It is not related to the management of NFS lands nor does the change provide for increased project operational efficiency. As a general practice the Forest Service avoids referencing regulations in our Section 4(e) conditions, because the regulations may change over the life of the license. By the same token, no Section 4(e) condition may void a process provided by statute or regulation. Any action by the Forest Service to implement a “reserved authority” will be subject to the regulations in effect at the time of the action.

Conclusion - The proposed change to provide notice and comment is accepted and the proposed reference to the regulations is not accepted.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 3 – Forest Service Approval of Final Design

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

Alternative Condition - The Applicants proposed to modify several sections of Condition 3. The first modification is to require a timely response by the Forest Service. The second change seeks to create the opportunity for notice, comment and hearing on Forest Service approvals of submitted plans. The last change offers an additional outcome of the plan reviews to allow for additional mitigation.

Analysis - The Forest Service will work to respond in a timely manner, but since these conditions are between FERC and the Licensee, the requested change is not consistent with the structure of 4(e) conditions and is not enforceable by FERC. Approving a plan is not considered a use of reserved authority. Implementing an additional comment and hearing process for implementation of final conditions is not consistent with the rule and would considerably delay the implementation of the License. Since FERC ultimately approves all plans, the Licensee may address any issues through that process. The third change would continue to provide for the adequate protection and utilization of NFS lands, and provide additional options for the Licensee.

Conclusion – The first two proposed changes are not accepted. The third change is accepted because it will provide greater flexibility to protect and utilize NFS lands.

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The Nevada Hydro Company Inc

Condition 5 – Consultation

B0018-40 cont.

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

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

Alternative Condition - The Applicants proposed changes to the consultation date and timing, as well as proposing changes to the end of the condition to add the provision for comment and hearing.

Analysis - The proposed change to the consultation dates would tie the condition to the anniversary date of the license. It is unknown when the anniversary date of the license will occur. Since the objective of the meeting is to meet with the Licensee prior to the typical construction season, it is more efficient to hold the meeting early in the year.

The proposal to add a procedural requirement is not related to the management of NFS lands nor does the change provide for increased project operational efficiency. As a general practice the Forest Service avoids referencing regulations in our Section 4(e) conditions, because the regulations may change over the life of the license. By the same token, no Section 4(e) condition may void a process provided by statute or regulation. Any action by the Forest Service to implement a “reserved authority” will be subject to the regulations in effect at the time of the action.

Conclusion – We agree that a 60 day window provides more flexibility to meet the consultation requirement, and have modified the final condition to span a two month period. The Applicants’ proposal to add the notice and hearing requirement is similar to the change proposed for Condition 2, and is not accepted for the same reasons.

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The Nevada Hydro Company Inc

Condition 6 –Surrender of License or Transfer of Ownership

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

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

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

Alternative Condition - The Applicants proposed two changes to the condition. The first set of changes would change the restoration standard in the first paragraph. The second set of changes would remove paragraph two and replace it with a requirement that the licensee would notify the Forest Service of any transfer.

Analysis - The requirement to restore lands “to a condition satisfactory to the Forest Service” relies on FERC regulations. Limiting those standards to the condition that existed prior to the issuance of the license could create a situation that results in less protection of NFS lands. The second proposed change would not provide the assurance that the new Licensee is financially capable of restoring the License area if necessary. The Forest Service has concluded that assurances are necessary because of past cases where work was not completed by the Licensee, and no assurance was held by FERC or the Forest Service to guarantee the work. The Forest Service needs this level of assurance to ensure that the NFS lands will be restored in the event of surrender and bankruptcy of a new Licensee.

Conclusion – Neither change provides for the adequate protection of the NFS. We have revised the condition to provide some additional flexibility to the licensee while

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providing for the adequate protection of NFS lands. We have also added text to describe the type of actions that would be expected if the project were surrendered and decommissioned.

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Condition 8 – Use of Explosives

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

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

Alternative Condition - The Applicants proposed several changes to the condition. The suggested changes to paragraph 1 would clarify the extent of the blasting condition. The changes to Condition 2 would require the Forest Service to act without unreasonable delay. The proposed changes to paragraph 3 would provide clarification and additional options to the Licensee

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The Nevada Hydro Company Inc

Analysis – The change to paragraph 1 is consistent with the approach used in many other conditions and provides for adequate protection of NFS lands, while reducing overall cost and improving efficiency for the licensee.

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The Forest Service will work to respond to any requests by the licensee in a timely manner, but since these conditions are between FERC and the Licensee, the requested change is not consistent with the structure of 4(e) conditions and is not enforceable by FERC.

The proposed changes to paragraph three provide flexibility in the implementation of the blasting requirements, and provide for adequate protection of NFS lands, while potentially reducing overall cost and improving efficiency for the licensee.

Conclusion – The changes to paragraph 1 and three are accepted and incorporated into the final conditions. The change to paragraph two is not included because it would not be enforceable by FERC.

Condition 21 – Damage to Land, Property, and Interests of the United States

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

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

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

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

Alternative Condition - The Applicants proposed a change to cap strict liability to \$1,000,000.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Analysis - FPA section 10(c) provides that the Licensee shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works appurtenant or necessary thereto, constructed under the license, and in no event shall the United States be liable therefore. The proposed changes do not provide the level of protection specified by the Federal Power Act, and would not provide for adequate protection of the reservation.

Conclusion – The condition has been modified to conform to the statutory language in the FPA and FERC standard license articles.

Section II, Other Alternative Conditions

The Applicants have proposed numerous edits to the preliminary conditions to limit the Forest Service’s jurisdictional interest so that the Licensee is not exposed to regulatory burdens that exceed the limits of Forest Service jurisdiction.

At the time these alternative conditions were filed, there was an ongoing disagreement between FERC and the Forest Service over the extent of our Section 4(e) authority. While the Forest Service believes that our authority extends to the license, FERC held at the time that our authority is limited to NFS lands within the project boundary. The alternatives filed in 2005 reflected FERC’s view. This issue has been resolved by an August 22, 2006 ruling by the US Court of Appeals for the DC Circuit in “City of Tacoma versus FERC”, Case No. 05-1054, commonly referred to as the Cushman decision. The court held that Section 4(e) authority applies to the license as long as some of the license is located within a reservation. In our revised conditions, we have generally limited our jurisdictional interests to those parts of the project that are on or directly affect NFS lands.

There are several additional edits that were offered to clarify the intent of the conditions. Each proposed change is discussed in the following section.

B0018-40 cont.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 4 – Approval of Changes

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

The Applicants propose to limit the jurisdiction of the Forest Service to project works on National Forest System lands. As discussed above, we have modified the conditions to apply to project works “on or directly affecting NFS lands”. This modification will more clearly define our more limited interests and oversight in actions authorized by the license.

The Applicants have proposed a minor change to the condition to clarify that they would continue to be obligated to comply with the Commission’s requirements. That change is accepted.

Condition 7 – Hazardous Substances Plan

Within one year of license issuance, the Licensee shall file with the Commission a plan approved by the Forest Service for hazardous substances storage and spill prevention and cleanup for Project facilities on or affecting National Forest System Lands. In addition,

B0018-40 cont.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

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

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

The Applicants propose changes in jurisdiction that are not accepted for the same reasons described above in Condition 4. There are several other clarifying changes to the condition that would provide the same level of protection and increase project efficiency that are accepted.

B0018-40 cont.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 9 – Fire Investigation, Response, and Investigation

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

B0018-40 cont.

At a minimum the plan shall address the following categories:

1. Fuels Treatment/Vegetation Management

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

2. Prevention

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

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

3. Emergency response preparedness

Analyze fire prevention needs including equipment and personnel availability.

4. Reporting

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

5. Fire control/extinguishing

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

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

Investigation of Project Related Fires

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

Comment Set B0018, cont.
The Nevada Hydro Company Inc

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

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

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

The Applicants suggest several changes to the condition. The suggested changes would limit jurisdiction as discussed above in Condition 4. The changes would not provide the same level of protection to NFS lands. These changes are not accepted. Condition 9 has been revised to include what had been Condition 26, and we have clarified our jurisdiction to apply to project features on or affecting NFS lands.

Condition 10 – Road Use by Government

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

The Applicants suggest several changes to the condition. The suggested changes would limit jurisdiction as discussed above in Condition 4. The changes would not provide the same level of protection to NFS lands. These changes are not accepted.

The Applicants have also proposed some language that would clarify who other users of the roads might be. The Forest Service accepts the concepts and has included revised wording that maintains the same level of protection and utilization of NFS lands.

B0018-40 cont.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 11 – Road Use

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

The Applicants have proposed wording to include construction and staging areas in the areas where equipment is allowed. These changes have been accepted.

Condition 12 – Maintenance of Improvements

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

The Applicants have suggested wording to incorporate applicable Forest Service guidelines. These changes have been accepted and some additional clarifications have been incorporated to simplify the condition.

B0018-40 cont.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 13 – Safety During Project Construction

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

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

The Applicants have proposed several changes to the condition. The first change to strike the reference to Licensee fee property is accepted but is replaced with our revised jurisdiction language. This will clarify where inspections are required.

The Applicants propose to strike the standard of “immediately”, which they suggest is impossible to meet. Immediately is defined by most dictionaries as meaning “without delay”. In the area of safety or environmental protection, it is not unreasonable to require them to act immediately to correct any problems, and the original wording will remain.

The Applicants also propose to add text to the end of the condition to correct items to comply with the plan. Since the corrective actions are intended to comply with the license, we have changed the condition to reflect that intent.

Condition 14 – Pesticide Use Restrictions

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

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

B0018-40 cont.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

The Applicants propose to change the jurisdiction as discussed above in Condition 4. The changes would not provide the same level of protection to NFS lands, and these changes are not accepted. We have revised the condition to reflect our interest is limited to use of pesticide on or affecting NFS lands.

B0018-40 cont.

Condition 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.

The Applicants have proposed wording to apply the condition to erosion attributable to the project. That wording has been accepted.

Condition 19 – Indemnification

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

Comment Set B0018, cont.
The Nevada Hydro Company Inc

The Applicants have proposed several changes to this condition. Two of the changes would limit the jurisdiction of the condition and are not accepted for the reasons described in Condition 4. The proposed change to limit the condition to the actions of the Licensee has been accepted by incorporating the language from the FPA.

B0018-40 cont.

Condition 20 – Surveys, Land Corners

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

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

The Applicants proposed change to limit jurisdiction to NFS lands is modified to conform to our standard wording of "on or affecting NFS lands".

Condition 23 – Crossings

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

The Applicants proposed changes would clarify the condition to allow exceptions to the requirements for crossings. This change is accepted.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 26 – Hazardous Vegetative Fuel Treatment Plan

B0018-40 cont.

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

1. Analyze fuel loading on Cleveland National Forest lands that extend from the edge of each project facility area (excluding the area around reservoir shorelines) for a distance of 300 feet to determine the condition of the existing fuels.
2. Identify fuel treatment methods to mitigate hazard fuels. ~~Such~~ Except as otherwise provided in the Hazardous Vegetation Fuel Treatment Plan approved by the Forest Service, such treatment methods shall be limited to thinning of small trees, removing excess brush, and reducing fuel load and continuity of surface and ladder fuels.
3. Include a map and schedule of treatments proposed by the licensee.
4. Maintain fuel profiles within the project area commensurate with standards and guidelines set forth in the Cleveland Forest Land and Resource Management Plan, as amended (USDA 1991, ~~2004~~2005).
5. Be responsible for the initial fuels treatment (or the cost of mutually agreeable Forest Service treatment).
6. Be responsible for maintaining the treated areas by performing repeat treatments once every eight years.

The Applicants' proposed change to limit jurisdiction to NFS lands is not accepted for the reasons described in Condition 4. Item 2 was modified to expand the treatments available. Condition 26 was combined with Condition 9 in the final 4(e) conditions.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 27 – Road and Traffic Management Plan

B0018-40 cont.

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

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

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

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

Comment Set B0018, cont.
The Nevada Hydro Company Inc

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

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

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

The Applicants' proposed change to limit jurisdiction to NFS lands is not accepted for the reasons described in Condition 4. We have made other changes to the condition to ensure consistency with other projects. The Applicants' proposed changes to the maintenance requirement for Non-Forest Service roads have been accepted.

Condition 28 – Recreation Facilities and Administration

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

The Applicants' proposed changes to provide for alternative uses and locations are accepted because they continue to provide the same level of protection and utilization while providing for efficient project operation.

B0018-40 cont.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 29 – Heritage Resources Management Plan

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

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

The Applicants propose several changes. The first change would allow an exception for the filing requirement if a plan is approved prior to the license being issued. While the Forest Service supports the idea that a draft plan could be developed prior to the license being issued, we would not be able to approve the plan until the final Commission decision on the license. Although we do not accept the change for those reasons, we expect to continue to work with the Applicants to develop a draft plan prior to the license decision. The Applicants' proposed change to limit jurisdiction to NFS lands is not accepted for the reasons described in Condition 4.

B0018-40 cont.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 30 – Annual Employee Awareness Training

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

B0018-40 cont.

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

The Applicant proposed minor clarification to the text that has been accepted.

Condition 31 – Special Status Species

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

In addition, areas on National Forest System lands within the project boundary that have suitable habitat or known occurrences of selected special status wildlife or plant species shall be resurveyed every ten years in order to (a) determine if special status plant or wildlife species have changed in location (i.e. migrated into or moved within the project boundary), and (b) monitor for impacts caused by on-going project activities. The licensee shall consult with the Forest Service to determine which species need to be resurveyed. If the Forest Service, in consultation with U.S. Fish and Wildlife Service, determines there have been negative impacts, the licensee shall submit a proposal for actions to reduce or eliminate impacts to special status species. The licensee shall file the report, including evidence of consultation, with the Commission and shall implement those resource management measures approved by the Commission.

The Applicants have proposed changes that would limit the jurisdiction to NFS lands. Since this condition applies to Special Status Species, which are a Forest Service designation and only apply to NFS lands, this proposed change is acceptable and we have revised the condition accordingly.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 32 – Ground Disturbing Activities

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

B0018- 40 cont.

The Applicants' proposed change to limit jurisdiction to NFS lands is not accepted for the reasons described in Condition 4. We have modified the condition to use our standard jurisdictional wording.

Condition 33 – Environmental Monitoring

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

The final conditions outline the Forest Service approval necessary for the various monitoring activities specific to each condition that requires monitoring. This general condition is no longer necessary and was deleted.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Condition 34 – Noxious Weed Management Plan

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

B0018-40 cont.

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

Comment Set B0018, cont.
The Nevada Hydro Company Inc

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

B0018- 40 cont.

Establish responsibility for and priority of control efforts, i.e. which noxious weed populations are licensee responsibility, Forest Service responsibility or shared responsibility.
The Applicants proposed several minor changes to this condition. We have been reviewing this condition in conjunction with several other projects, and have made some additional changes that accommodate the Applicants' proposed changes.

Condition 35 – Wildlife Management

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

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

The Applicants' proposed change to limit jurisdiction to NFS lands is not accepted for the reasons described in Condition 4.

That concludes our review of the alternative conditions. In addition to the alternative conditions, the Forest Service had proposed several additional conditions based on information in the Draft EIS. These include conditions for water resource management, scenery conservation, and habitat mitigation. These conditions have been carried forward into the final conditions.

Comment Set B0018, cont.
The Nevada Hydro Company Inc

Enclosure III

Mitigation ratios

For projects such as LEAPS, which result in permanent loss of habitat, a replacement ratio of 2:1 for lost habitat is typical.

Examples include the Santiago Water District's Modjeska water tank. This water tank, located on the Cleveland National Forest, was replaced with a larger tank in 1998. The new water tank caused the loss of 0.9 acres of coastal sage scrub, which was mitigated by the purchase of 2 acres of coastal sage scrub on lands adjoining the Cleveland National Forest, a 2.2:1 replacement ratio. Detailed information is available in the project files.

The Cleveland NF has signed an MOU with US Fish and Wildlife Service and California Dept of Fish and Game stating that we will manage our coastal sage scrub in a manner consistent with NCCP and HCP efforts in southern California. These plans specify a replacement ratio of 2:1 or 3:1 for coastal sage scrub depending upon habitat quality.

The City of San Diego's Land Development Code (<http://www.sandiego.gov/planning/mscp/pdf/biolog.pdf>) sets forth the following mitigation ratios for loss of habitat (per San Diego area's MSCP):

- 3:1 for oak riparian habitat
- 2:1 for coastal sage scrub
- 1:1 for chaparral and grassland

The Miramar Marine Corps Air Station has a resource management plan, completed in 2000, which was developed in consultation with FWS.

(<http://www.miramar.usmc.mil/WebPages/Environmental/IntegratedNaturalResources.htm>) Their plan stipulates the following mitigation ratios for permanent loss of habitat:

- 1:1 for habitats that are not sensitive
- 2:1 for habitats that are sensitive or support listed species
- 2:1 to 4:1 – for wetland habitat
- 5:1 ratio for replacement of oak trees

Mitigation ratios are based on typical agency requirements, such as contained in the City of San Diego's Land Development Code Biology Guidelines (May 2001).

Coastal Wetlands: Mitigation ratio of 4:1

This category includes salt marsh, salt pan and mudflats, and estuarine habitat.

Vernal Pools: Mitigation ratio of 2:1—4:1

This category includes the habitat identified as "vernal pool complex", which includes surrounding vegetation (watershed) associated with the vernal pool basins.

Wetlands: Mitigation ratio of 2:1—3:1

This category includes freshwater marsh, southern willow scrub, mule fat and other riparian scrubs, alkali seep, riparian woodland and forest, freshwater, lakeshore fringe, and wet montane meadow.

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Marine: Mitigation ratio of 2:1

This category includes subtidal and shallow, intermediate and deep bay.

Rare Uplands: Mitigation ratio of 1:1—2:1

This category includes southern maritime chaparral, **valley needlegrass grassland, valley and foothill grassland**, foothill/mountain perennial grassland, beach, southern foredunes, southern coastal bluff scrub and coast live oak woodland. Most of these habitats are considered Tier 1 habitats under the various regional habitat conservation planning programs.

Uplands: Mitigation ratio of 1:1

This category includes non-native grassland, Diegan coastal sage scrub, coastal sage/chaparral scrub, southern mixed chaparral, Riversidean upland sage scrub and Riversidean sage scrub, and chamise chaparra

The final required mitigation ratios reflect the habitats present in the LEAPS project area.

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