

COVER SHEET

FEDERAL ENERGY REGULATORY COMMISSION

FINAL ENVIRONMENTAL IMPACT STATEMENT
FOR HYDROPOWER LICENSE

Lake Elsinore Advanced Pumped Storage Project

Docket No. P-11858-002

Appendix C

Revised U.S. Forest Service Preliminary Section 4(e) Conditions

Pages C-1 to C-24

FEIS

APPENDIX C

**Revised U.S. Forest Service
Preliminary Section 4(e) Conditions**

This page intentionally left blank.

File Code: 2770-2
Date: June 22, 2006

Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Via Electronic Filing

RE: Revised Forest Service Preliminary Section 4(e) Conditions, FERC No. 11858

Dear Secretary Salas:

Enclosed for filing are the Forest Service Revised Preliminary Terms and Conditions for inclusion in the Final EIS. This filing is in response to your notice of Draft EIS Publication, and is consistent with the schedule we filed with our preliminary conditions. We plan to file Final 4(e) conditions within 60 days of publication of the Final EIS.

It is important that the record support our Final Conditions. We have added several additional conditions that were not included in the Draft EIS, so filing revised preliminary conditions will allow us to work with Commission staff to include those conditions in the analysis developed for the Final EIS. We also expect to work closely with staff to respond to the many comments filed on the Draft EIS, and we expect the analysis that results from that work will further support our Final Conditions. Specifically, we have added conditions to address surface and groundwater management, scenery conservation, and habitat mitigation.

Enclosure 1 contains the Revised Preliminary 4(e) Terms and Conditions found to be necessary for the adequate protection and utilization of the Cleveland National Forest. Applicable comprehensive plans include the Cleveland National Forest Land and Resource Management Plan (2006).

Several key components of the proposed project are on reserved lands that are part of the Cleveland National Forest. If the Commission chooses to license this project, they must make an independent determination that the proposed project or the selected alternative is consistent with the purposes of the reservation. The Forest Service offers the following background for the Commission's consideration.

The increased urbanization, ranching, mining, agricultural, and timber production within California in the late 1800's often resulted in significant flooding of downstream areas, affecting commerce as well as communities in Southern California. There also was a public realization of the need for reliable water sources to maintain viability of the developing industries and municipalities. Following the enactment of the Desert Lands Act of 1877 and the Wright Act of 1887, large land parcels with water rights were acquired, first by timber and cattle interests and later by farmers and communities. Under the Wright Act, water districts were formed to divert and deliver water to developing cities, particularly in Southern California. The Forest Reserve

Lake Elsinore Advanced Pump Storage Project
FERC Project No. 11858

Act, passed in 1891, authorized the establishment of forest reserves from forest and range lands in public domain.

In 1893, President Harrison withdrew 109,920 acres of public domain lands in the Santa Ana Mountains (The Trabuco Canyon Forest Reserve). These lands were specifically withdrawn for watershed protection. After the establishment of the Trabuco Canyon Reserve and The San Jacinto Forest Reserve in 1897, these areas were designated as a National Forest in 1908 and named in honor of President Grover Cleveland.

The Organic Act of June 4, 1897, stated that ‘no national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows’, and established the National Forests to initially halt wasteful exploitation of the public lands and forests. Though opposition by vested interests slowed progress, policies dealing with timber management, mining, watershed protection, wildlife management, grazing, and recreation emerged and evolved into the multiple-use concept practiced now. However, the Cleveland National Forest, located in Southern California, was atypical. Created with public support, it was from the beginning a watershed forest; all of its problems and policies centered on protection of the watersheds which provide water to the surrounding agricultural areas and towns, especially the city of San Diego. It was to protect their watersheds that Californians immediately began demanding Forest Reserves. The Cleveland National Forest became one of the first in the new system and had its basis in the 50,000 acre Trabuco Canyon Forest Reserve, created by President Harrison in February 1893 ([The Journal of San Diego History](#) , Fall 1975, Volume 21, Number 4).

Based on our review, we would conclude that project features that would eliminate critical watershed components such as riparian areas and springs would not be consistent with the purposes of the reservation. The staff alternative, which avoids impacts to unique riparian habitat, and provides transmission line locations that would not hinder fire suppression actions necessary to protect watershed values, would be consistent with the reservation.

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

Sincerely,

/S/ BETH G.
PENDLETON
(FOR)

BERNARD WEINGARDT
Regional Forester

Enclosure

Enclosure 1

**PACIFIC SOUTHWEST REGION
USDA FOREST SERVICE
Revised preliminary 4(e) TERMS AND CONDITIONS AND 10(a)
Recommendations**

Lake Elsinore Advance Pump Storage Hydroelectric Project
FERC Project No. 11858

Index

I. Introduction 5

II. Standard Forest Service Conditions 6

 Condition No. 1— Requirement to Obtain a Forest Service Special-Use Authorization 6

 Condition No. 2—Modification of 4(e) Conditions After Biological Opinion or Water
 Quality Certification 6

 Condition No. 3—Forest Service Approval of Final Design 6

 Condition No. 4—Approval of Changes 7

 Condition No. 5—Consultation 7

 Condition No. 6—Surrender of License or Transfer of Ownership 7

 Condition No. 7—Hazardous Substances Plan 8

 Condition No. 8—Use of Explosives 8

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

 Condition No. 10—Road Use by Government 11

 Condition No. 11—Road Use 11

 Condition No. 12—Maintenance of Improvements 11

 Condition No. 13—Safety during Project Construction 11

 Condition No. 14—Pesticide Use Restrictions 12

 Condition No. 15—Erosion Control Plan 12

 Condition No. 16—Valid Claims and Existing Rights 13

 Condition No. 17—Compliance with Regulations 13

 Condition No. 18—Protection of United States Property 13

 Condition No. 19—Indemnification 13

 Condition No. 20—Surveys, Land Corners 13

 Condition No. 21—Damage to Land, Property, and Interests of the United States 14

 Condition No. 22—Risks and Hazards 14

 Condition No. 23—Crossings 15

 Condition No. 24—Access 15

 Condition No. 25—Signs 15

III. Project Specific Forest Service Conditions..... 15

 Condition No. 26—Road and Traffic Management Plan 15

 Condition No. 27—Recreation Facilities and Administration 16

 Condition No. 28 – Heritage Resources Management Plan 17

 Condition No. 29—Annual Employee Awareness Training 17

Lake Elsinore Advanced Pump Storage Project
FERC Project No. 11858

Condition No. 30—Special Status Species	18
Condition No. 31—Ground Disturbing Activities	18
Condition No. 32—Environmental Monitoring	18
Condition No. 33—Vegetation and Invasive Weed Management Plan	19
Condition No. 34—Wildlife Management	20
Condition No. 35—Surface Water Resources Management Plan	18
Condition No. 36—Ground Water Management Plan	18
Condition No. 37—Scenery Conservation Plan	19
Condition No. 38—Habitat Mitigation Plan	19

REVISED PRELIMINARY 4(e) Terms and Conditions

Lake Elsinore Advanced Pumped Storage Hydroelectric Project
FERC Project No. 11858

I. Introduction

The Forest Service hereby submits its Revised Preliminary 4(e) Terms and Conditions (Conditions) and Section 10(a) recommendations, as applicable, for the Lake Elsinore Advanced Pumped Storage Hydroelectric Project (FERC Project No. 11585), in accordance with 18 CFR 4.34(b)(1)(i). Wording in [brackets] in these conditions indicates that the Forest Service determined that this portion of the condition was not within its jurisdiction; however the Forest Service recommends it be included in the license under Section 10(a) of the Federal Power Act.

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.

II. Standard Forest Service Conditions

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

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

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

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

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

The Forest Service reserves the right, after notice and opportunity for comment, to modify these conditions, if necessary, to respond to any Final Biological Opinion issued for this Project by the United States Fish and Wildlife Service, NOAA Fisheries, or any Certification 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.

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.

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 Service specifications. In addition, the Forest Service may require the Licensee to pay for an independent audit of the transferee to assist the Forest Service in determining whether the transferee has the financial ability to fund the surrender and restoration work specified in the analysis.

Condition No. 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, 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 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.

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 [and other project 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.
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.

B. Fire Prevention and 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 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 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.

2. Emergency Response Preparedness

- Analyze fire prevention needs including equipment and personnel availability.

4. Reporting

- Licensee shall report any project related fires to the Forest Service within 24 hours.

5. 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 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. Disposal will be at an approved existing location, except as otherwise agreed 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.

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 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 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, 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.

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 NFS lands, and all applicable federal, state, county, and municipal laws, ordinances, or regulations in regards to the area or operations on or directly affecting NFS 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 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.

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

The Licensee has an affirmative duty to protect the land, property and interests of the United States from damage arising from 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 NFS 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 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 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:

- Termini
- Length
- Purpose and use
- Party responsible for maintenance
- Level of maintenance
- Structures accessed
- Location and status of gates and barricades, if any
- Ownership of road segment and underlying property
- Instrument of authorization for road use
- Assessment of road condition and licensee reconstruction needs
- Rehabilitation of temporary access disturbance
- Temporary access locations will be gated to prevent unauthorized public vehicle access

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.

[The licensee shall use non-Forest Service roads in accordance with applicable state, county, city, and/or local authority standards.]

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 Recreation Facility Development Plan, approved by the Forest Service, for a recreation facility at the project equipment and material laydown area [on National Forest System lands or for an alternative use and/or location as may be approved by the Forest Service.](#)

Condition No. 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. 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.

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 and documentation of the proposed activities.

Condition No. 32—Environmental Monitoring and Adaptive Management

The licensee shall, within six months after license issuance, or as otherwise indicated, and in consultation with the Forest Service and appropriate governmental agencies, develop detailed monitoring and adaptive management plans consistent with the applicable conditions provided herein. The licensee shall provide the final detailed plans, along with all agency comments received and an explanation for any such comments not incorporated, to the Commission for final approval. The licensee shall perform the environmental monitoring and adaptive management 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) and management 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 and appropriate governmental agencies, and approved by these

agencies and provided to the Commission before implementation. Where years are specified, year one is the first full calendar year after issuance of the new license.

Condition No. 33 -- 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 a Vegetation and Invasive Weed Management Plan developed in consultation with the Forest Service and the appropriate government agencies. 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 System lands including 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.
- An Integrated Pest Management approach for invasive weed control (IPM evaluates alternatives for managing forest pest populations, based on consideration of pest-host relationships).
- 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, new construction sites, etc. to evaluate the effectiveness of re-vegetation and invasive weed control measures.
- Action and/or strategies to prevent and control spread of known populations or introductions of new populations, such as: 1) public education and signing, 2) vehicle/equipment wash stations, 3) use of certified weed-free hay or straw for all construction or restoration needs, and 4) avoidance of use of gravel and fill from known weed infested borrow pits.

New infestations of A & B rated weeds shall be controlled within 12 months of detection or as soon as is practical and feasible. At specific sites where other resource objectives need to be met, 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 to 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.

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 of clean, weed free seed with a preference for locally collected seed,;
 - Use of approved mixes of plant species native to the Cleveland National Forest for restoration or erosion control purposes;
 - Irrigation amounts, methods, and schedule;
 - Pest treatment, monitoring, and prevention methods and schedule;

Upon Commission approval, the Licensee shall implement the plan.

Condition No. 34—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 (1996), including marking the power lines themselves if they are adjacent to Lake Elsinore or in a flyway where bird strikes may occur.

Condition No. 35—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 within 1 mile of Morrell and Decker canyon and their related riparian areas. 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 anticipated by the Forest Service technical specialists and their consultants.

Condition No. 36— 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. 37 – 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 the Plan is to identify actions that will minimize the project's visible disturbance to the naturally established landscape. Implementation of the Plan will achieve the greatest degree of compatibility possible with the Cleveland National Forest Land and Resource Management Plan Scenic Integrity Objectives.

In order to achieve the greatest consistency with the "High" Scenic Integrity Objective (natural appearing conditions), the project shall integrate the following design recommendations into the Scenery Conservation Plan:

- **Powerline** - Transmission lines shall be nonspecular (nonreflective) and dark as possible. The towers shall be custom-colored with a flat, nonreflective finish, to visually blend with the native vegetation colors and be as visually transparent as possible within the natural landscape pattern. Towers shall be designed to minimize their visual prominence and contrast to the natural landscape. 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 and fire clearance requirements. Mitigation will be incorporated to reduce the visual impact of vegetation clearing.
- **Reservoir** – The upper storage reservoir shall be surrounded by a berm with irregular form and profile to reflect the local topography, which shall also be revegetated with adjacent native species. Screen views into the reservoir that may otherwise be visible along the adjacent sensitive roadways (South Main Divide and Ortega Highway), recreation areas, trails and wilderness. Security fencing shall be colored to blend with the planted/restored 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 Pipes** – Penstocks shall be located in underground tunnels and any associated ground disturbance shall be reshaped to natural appearing contours and revegetated with native species.

- **Structures** – All structures and structural elements, that may be constructed as part of the Project shall be designed, located, shaped, textured, colored and/or screened as necessary to minimize their visual contrast, blend, and complement the adjacent forest and community architectural character.

The Licensee may be required to provide photorealistic visual simulations of proposed designs and mitigation measures to demonstrate their effectiveness in achieving Land and Resource Management Plan Scenic Integrity Objectives for the Elsinore Place as viewed from sensitive viewsheds. Where project features create unavoidable scenery effects that are inconsistent with those Scenic Integrity Objectives, additional scenery enhancement activities approved by the Forest Service shall be performed in the nearest suitable areas to offset the direct effects of those project features.

Condition No. 38 -- 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 or affecting National Forest System land, the Licensee shall file with the Commission a 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 enhancement activities shall be performed to offset the direct effects of project construction.

The enhancements 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”, the Trabuco Ranger District, or the Cleveland NF. 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:

- 1:1 for habitats that are sensitive or support listed species
- 1:1 for coastal sage scrub
- 1:1 ratio for riparian oak woodland

-END-

This page intentionally left blank.