

29 FERC P 62310 (F.E.R.C.), 1984 WL 59176

**1 Office Director Orders

Sonoma County Water Agency

Project No. **3351**-002
Order Issuing **License** (Major)
(Issued December 18, 1984)

***63483** Quentin A. Edson, Director, Office of Hydropower **Licensing**.

Sonoma County Water Agency (Applicant) filed on July 27, 1983, an application for a major **license** under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Warm Springs Hydroelectric Project No. **3351**.¹ The proposed project would be located at, and develop the water power potential of, the United States Army Corps of Engineers' (Corps) Warm Springs Dam² located on Dry Creek, tributary of the Russian River, in Sonoma County, California. The project would affect lands of the United States under the Corps' administration.

Notice of the application has been published and comments have been received from interested Federal, State, and local agencies. No protests or petitions to intervene have been received, and none of the agencies objected to the issuance of the **license**.³ The significant concerns of the commenting agencies are discussed under appropriate headings.

Project Description

The proposed project would consist of the existing outlet structure of the Warm Springs Dam, a powerhouse with an installed capacity of 3.0 MW, and appurtenant facilities. The project is more fully described in Ordering Paragraph (B) of this **license**.

Safety of Structure

The existing dam's safety is the responsibility of the U.S. Army Corps of Engineers. The proposed project structures would be safe if constructed in accordance with sound engineering practices and the requirements of this **license**.

***63484** *Economic Analysis*

Economic analysis of the Warm Springs Dam Project shows the project to be feasible based on the sale of the project power at avoided cost in the State of California, allowing for escalation.

The proposed project, with its average annual generation of 18,210,000 kWh, will utilize a renewable resource that will save the equivalent of approximately 30,000 barrels of oil or 8,500 tons of coal per year.

Water Quality and Quantity

Installation and operation of the proposed project within the existing outlet structure of Warm Springs Dam will result in changes in the pattern of flow releases from the presently-proposed mode of operation without hydropower generation. The addition of hydropower generation will result in higher flow releases during the summer months than with the presently-proposed releases for water supply and low-flow augmentation.

The California Department of Fish and Game (DFG) recommends that the following minimum continuous flow releases be made a condition of the **license** for protection of aquatic resources downstream of the project: (1) for the period beginning on May 1 and ending on October 31, a minimum flow of 80 cubic-feet-per-second (cfs); (2) for the period beginning November 1 and ending December 31, a minimum flow of 105 cfs; and, (3) for the period beginning January 1 and ending April 30, a minimum flow of 75 cfs. This regime is recommended for years with normal water supply conditions. In dry or critical water supply conditions, DFG recommends that minimum flows be provided according to a 1970 agreement between DFG and the

Applicant. This agreement provides for a minimum flow release of 25 cfs from April 1 through November 30, and releases ranging from 50 to 75 cfs from December 1 through March 31, depending on the reservoir elevation the previous spring.

****2** The Applicant states that the flow releases recommended by DFG are the same as those contained in the “Criteria for the Coordinated Operation of the Russian River Project” (Criteria for Operation) approved by the Applicant’s Board of Directors on July 12, 1983. The Applicant, however, questions the need to also require such a regime as a condition of the **license**.

The flow regime recommended by DFG and contained in the Criteria for Operation should be included as a **license** condition for the protection and enhancement of fishery and other aquatic resources downstream of the project. This condition, however, will not include all the terms of the 1970 agreement between the Applicant and DFG, nor include all the specifics of the Criteria for Operation. The condition will, however, utilize these documents for definition of normal, dry, and critical water years, and the determination of minimum flows therein. Thus, Article 33 requires the flow regime described above.

Fish and Wildlife Resources

Operation of the proposed project will result in some fluctuation of the level of Lake Sonoma as reservoir storage is withdrawn for power generation and water supply purposes. DFG recommends that this fluctuation be minimized during the spawning period for warmwater fishes in Lake Sonoma (April 1—June 15), and that this fluctuation be limited to no more than 2 feet per month.

The Applicant states that such a limitation has already been included in the Criteria for Operation, in response to the DFG concern.

Limitation on reservoir fluctuations is appropriate during power generation, so that warmwater fish species are allowed to successfully spawn in the relatively new Lake Sonoma, and contribute to the recreational fishery that has been proposed for the lake. Article 34 requires a reservoir fluctuation restriction as proposed by DFG and agreed to by the Applicant.

Cultural Resources

The California State Historic Preservation Officer (SHPO) has stated that the project will have no adverse effect on any properties that have been listed in or determined eligible for the National Register of Historic Places.

Three archeological sites (CA-Son-611,-612, and-625) are located immediately adjacent to Dry Creek. The level of significance of these sites is not known, due to lack of intensive testing. Article 35 requires the Licensee to consult with SHPO to determine the methods, as necessary, to assess the significance of these three sites and to develop a mitigative plan to ensure their protection during project construction and operation, in addition to developing a plan to protect any significant cultural resources that may be discovered during proposed construction and operation of the project.

Recreational Resources

The Corps of Engineers has prepared a master plan for major recreational facilities development at Lake Sonoma in order to accommodate estimated visitation in excess of 1.5 million recreation days per year. Ultimate development will provide overnight and day- ***63485** use facilities for camping, picnicking, fishing, water activities, hiking, horseback riding, sightseeing, nature study, and interpretive activities. Article 17 requires the Licensee to provide any recreational facilities as may be prescribed by the Commission during the term of the **license**, and Article 18 requires the Licensee to permit the public reasonable access to project lands and waters for recreational purposes.

Other Environmental Concerns

****3** Water quality certification, as required by Section 401 of the Clean Water Act, was waived for the proposed project by the State of California Regional Water Quality Control Board on February 8, 1983. The project will not affect any Federally listed threatened or endangered species.

Finding of No Significant Impact

Construction of the proposed project will occur within the existing control tower of the outlet works for the Warm Springs Dam. Since there will be no ground-disturbing activities within the immediate vicinity of Dry Creek, construction will not result in any increased levels of turbidity in the Creek. Construction will require the closure of the control tower for a 1 to 2-week period, and result in the disruption of the water supply to the Warm Springs Dam salmon and steelhead hatchery, located immediately below the Dam. An alternative water supply, using the low-level outlet of the Dam, will be utilized, although this alternative may result in water of lower quality being provided to the hatchery. The existing hatchery water treatment system, however, will likely accommodate the lower quality water, and not result in any adverse impacts on hatchery operations.

Project operation will increase the volume of flow releases from Warm Springs Dam during the summer months, which will enhance aquatic habitat in Dry Creek and protect anadromous fish populations downstream of the dam. Changes in the amount of hydropower generation will result in some fluctuation of downstream water levels, creating a likelihood of minimal erosion of three archeological sites, although implementation of minimum flows recommended by DFG and agreed to by the Applicant will minimize these fluctuations. Thus, on the basis of the record and Staff's independent environmental analysis, issuance of a **license** for the project, as conditioned herein, will not constitute a major Federal action significantly affecting the quality of the human environment.

Other Aspects of Comprehensive Development

The existing Warm Springs Dam is part of the Russian River flood control and water conservation system. The Applicant proposes to augment the flow required for irrigation releases with additional flows from water supply storage to generate power during those years when water supply storage is surplus to downstream irrigation needs. When reservoir storage is required for water supply releases the project would be operated in a run-of-river mode.

The powerplant would operate at a 69% plant factor generating an estimated annual 18.21 GWh. The project would not conflict with any proposed or existing developments in the Russian River basin and would be best adapted to the comprehensive development of the basin upon compliance with the terms and conditions of the **license**.

The Corps of Engineers in their comments stated that their studies showed the addition of a small second unit would extend the generating range resulting in an increase in annual power generation. Article 46 requires the Licensee to study the economic feasibility of the smaller unit and submit the results before start of construction. If the study shows the installation of the smaller unit to be economically feasible, the Licensee shall simultaneously file a plan and schedule and an application to amend its **license** to install that unit.

It is ordered that:

****4** (A) This **license** is issued to the Sonoma County Water Agency, California (Licensee), under Part I of the Federal Power Act (Act) for a period of 50 years, effective the first day of the month in which this **license** is issued, for the construction, operation, and maintenance of the Warm Springs Hydroelectric Project No. **3351**, located in Sonoma County, California, on Dry Creek, a tributary of the Russian River and using the Warm Springs Dam of the United States and appurtenant lands administered by the U. S. Army Corps of Engineers. This **license** is subject to the terms and conditions of the Act, which is incorporated by reference as part of this **license** and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Warm Springs Hydroelectric Project No. **3351** consists of: (1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the ***63486** application for **license** and that are designated and described as:

exhibit	FERC No.	titled
G-1	3351 -5	Project Map

(2) Project works consisting of: (1) the existing outlet control structure of the Warm Springs Dam; (2) a powerhouse with a single generating unit rated at 3.0 MW; (3) a switchyard, integral with the powerhouse; (4) a 200-foot-long, 5-kV generator lead; (5) a 4.16/12-kV main step-up transformer; (6) a 0.75-mile-long, 12-kV transmission line; and (7) appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibit cited above and more specifically shown and described by certain other exhibits that also form a part of the application for **license** and that are designated and described as:

exhibit	FERC No.	title
F-1	3351 -1	Profile/Section of Dam Structure
F-2	3351 -2	Sections of Control Structure
F-3	3351 -3	Generator & Equipment Layout
F-4	3351 -4	Section View of Turbine Generator

(3) All of the structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits G-1 and F-1 through F-4 designated in Ordering Paragraph (B) above, are approved and made a part of the **license** only to the extent that they show the general location, description, and layout of the project works.

(D) This **license** is also subject to the terms and conditions set forth in Form L-2 (revised October 1975) entitled “Terms and Conditions of **License** for Unconstructed Major Project Affecting Lands of the United States”, designated as Articles 1 through 32, attached to (reported at 54 FPC 1808) and made a part of this **license**. The **license** is also subject to the following additional articles:

Article 33. Licensee shall discharge from the Warm Springs Project, in normal or above normal water supply conditions, minimum flows according to the following schedule:

****5** May 1 through October 31—80 cubic feet per second (cfs)

November 1 through December 31—105 cfs;

January 1 through April 30—75 cfs;

or inflow to Lake Sonoma, whichever is less, for the protection and enhancement of fish and wildlife resources in Dry Creek. During dry or critical water supply conditions, the Licensee shall release minimum flows according to the following

schedule:

April 1 through November 30—25 cfs

December 1 through March 31—

75 cfs if previous spring reservoir elevation \geq 441.0 feet MSL

70 cfs if previous spring reservoir elevation = 431.0-440.9 ft MSL

60 cfs if previous spring reservoir elevation = 421.0-430.9 ft MSL

50 cfs if previous spring reservoir elevation < 421.0 ft MSL.

A dry or critical water supply condition is defined according to the cumulative inflow (in acre feet) to Lake Pillsbury (an upstream reservoir operated by Pacific Gas & Electric Company), beginning on October 1, and reaching the following amounts on the dates indicated.

date	critical year	dry year
February 1	20,000	39,200
March 1	45,000	65,700
April 1	50,000	114,500
May 1	70,000	145,600
June 1	75,000	160,000

The water supply condition for the months of July through December shall be the same as that occurring on June 1. The water supply condition is never critical or dry in January.

These flows may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between the Licensee and the California Department of Fish and Game.

Article 34. Licensee shall for the protection of fish spawning in Lake Sonoma, operate the Warm Springs Project such that the water surface elevation of Lake Sonoma fluctuates no more than 2 vertical feet between April 1 and June 15 of each year.

Article 35. Licensee shall, prior to the commencement of project construction or any activities which would raise the level of Dry Creek, consult with the California State Historic Preservation Officer (SHPO) to: (1) determine the methodology to be employed to determine the significance of archeological sites CA-Son-611, CA-Son-612, and CA-Son-625 for the *National Register of Historic Places*; and, (2) develop a management plan for their *63487 protection, if it is determined that erosion will adversely affect any significant characteristics of the sites. Evidence of this consultation with the SHPO, and any resultant management plan, shall be filed with the Commission's Director, Office of Hydropower **Licensing**, for approval at least 60 days prior to the commencement of project construction or ground disturbing activities within the project area. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist

shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop mitigative plans for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

****6 Article 36.** The Licensee shall commence construction of project works within two years from the effective date of the **license** and shall complete construction of the project within four years from the effective date of the **license**.

Article 37. The Licensee shall provide the Commission's Regional Engineer (one copy) and the Director, Division of Inspections (two copies) of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures, at least 60 days prior to start of construction. The Director, Division of Inspections may require changes in the plans and specifications to assure a safe and adequate project.

Article 38. The Licensee shall within 90 days of completion of construction file with the Commission for approval by the Director, Division of Project Management, revised Exhibits A, F, and G to describe and show the project as-built.

Article 39. The design and construction of those permanent and temporary facilities, including reservoir impounding cofferdams and deep excavations, that would be an integral part of, or that could affect the structural integrity or operation of the Government project shall be done in consultation with and subject to the review and approval of the Corps' District Engineer. Within 90 days from the issuance date of the **license**, the licensee shall furnish the Corps and the Commission's Regional Engineer for their information, a schedule for submission of design documents and the plans and specifications for the project. If the schedule does not afford sufficient review and approval time, the licensee, upon request of the Corps, shall meet with the Corps and FERC staffs to revise the schedule accordingly.

Article 40. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations other than those approved according to Article 39 prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall file with the Director, Division of Inspections with a copy to the Commission's Regional Engineer, and the Corps of Engineers one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 41. The Licensee shall within 90 days from the issuance date of the **license**, enter into an agreement with the Corps of Engineers to coordinate its plans for access to and site activities on lands and property administered by the Corps so that the authorized purposes, including operation of the Federal facilities, are protected. In general, the agreement shall not be redundant with the Commission's requirements contained in this license, shall identify the facility, and the study and construction activities, as applicable, and terms and conditions under which studies and construction will be conducted. The agreement shall be mainly composed of the following items: (1) reasonable arrangements for access to the Corps site to conduct studies and construction activities, such access rights to be conditioned by the Corps as may be necessary to protect the federally authorized project purposes and operations; (2) charges to be paid by Licensee to the Corps (a) for technical studies by the Corps that relate solely to the structural integrity or operation of the Corps facility associated with power plant development, (b) for review of design including plans and specifications, and for construction inspections based on personnel costs, where such review and inspections are directly related to the structural integrity or operation of the Corps project, and (c) for construction costs that may be incurred by the Corps for the specific and sole purpose of accommodating the installation of power facilities at the existing Corps project; and (3) charges to be paid by Licensee to the Corps for copies of reports, drawings and similar data based on printing and mailing costs, provided that charges shall not be assessed for information, services, or ***63488** relationships that would normally be provided to the public. Should Licensee and the Corps fail to reach an access agreement, the Licensee shall refer the matter to the Commission for resolution.

****7 Article 42.** The construction, operation and maintenance of the project works that, in the judgment of the Corps of Engineers, may affect the structural integrity or operation of the Corps project shall be subject to periodic or continuous inspections by the Corps. Any construction, operation and maintenance deficiencies or difficulties detected by the Corps inspection shall be immediately reported to the Regional Engineer. Upon review, the Regional Engineer shall refer the matter to the Licensee for appropriate action. In cases when construction, operation or maintenance practices or deficiencies may create a situation posing imminent danger to the structural integrity and safety of the Corps project, the Corps inspector has

the authority to stop construction or maintenance while awaiting the resolution of the problem.

Article 43. The Licensee shall, at least 60 days prior to start of construction, submit for approval a regulating plan to the U. S. Army Corps of Engineers, describing (a) the design mode of hydropower operation, and (b) reservoir flow diversion and regulation requirements for operation of the Corps project during construction as established by the Corps. In addition, the Licensee, prior to start of power plant operation, shall enter into an operating Memorandum of Agreement (MOA) with the Corps describing the detailed operation of the powerhouse acceptable to the Corps. The MOA shall specify any restrictions needed to protect the primary purposes of the Corps project for navigation, recreation, water quality, and flood control. The Regional Engineer shall be invited to attend meetings regarding the agreement. The MOA shall be subject to revision by mutual consent of the Corps and Licensee as experience is gained by actual project operation. Should the Licensee and the Corps fail to reach an agreement, the matter will be referred to the Director, Office of Hydropower **Licensing** for resolution. Copies of the regulating plan and signed MOA between the Corps and the Licensee and any revision thereof shall be furnished to the Director, Office of Hydropower **Licensing** and the Regional Engineer.

Article 44. The Licensee shall have no claim under this **license** against the United States arising from the effect of any changes made in the operation or reservoir levels of the Corps of Engineers' Project.

Article 45. The Licensee shall provide the Regional Engineer two copies of all correspondence between the Licensee and the U.S. Army Corps of Engineers. The Regional Engineer shall not authorize construction of any project works until the Corps of Engineers' written approval of construction plans and specifications has been received by the Regional Engineer.

Article 46. The Licensee shall, prior to start of construction, prepare and file with the Commission a feasibility analysis of installing an additional smaller unit so as to increase the operating range of the powerplant. If the study shows the installation of an additional smaller unit to be economically feasible, the Licensee shall simultaneously file a plan and schedule and an application to amend its **license** to install that unit. If the addition of a smaller unit does not increase the capacity then an amendment need not be filed.

****8 Article 47.** The Licensee, a municipality under the laws of the State of California, shall pay to the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 4,000 horsepower.

(b) For the purpose of recompensing the United States for utilization of surplus water or water power from the Warm Springs Dam, an amount to be determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 48. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any ***63489** other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve

single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

****9** (c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Hydropower **Licensing**, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the ***63490** Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

****10** (e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the Licensee shall consult with Federal and State fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the

lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(E) Failure of the Licensee to file a petition appealing the order to the Commission shall constitute acceptance of this **license**. In acknowledgment of acceptance of this **license**, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Footnotes

- ¹ Authority to act on this matter is delegated to the Director, Office of Hydropower **Licensing**, under §375.314 of the Commission's regulations, 49 Fed. Reg. 29,369 (1984)(Errata issued July 27, 1984)(to be codified at 18 C.F.R. § 375.314). This order may be appealed to the Commission by any party within 30 days of the issuance date of this order pursuant to Rule 1902, 18 C.F.R. § 385.1902 (1983). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission
- ² The Warm Springs Dam, constructed by the Corps in 1984 is an earth embankment structure 319 feet high and 3,000 feet long. The dam was built to provide flood control, water supply and recreational facilities. The dam impounds a reservoir with a maximum storage capacity of 381,000 acre-feet and a surface area of 3,554 acres.
- ³ On December 5, 1983, the City of Ukiah, California filed a motion to intervene and notice of intent to file a competing application for a **license**. Ukiah had appealed the Commission's "Order Issuing Preliminary Permit and Denying Competing Application", issued February 10, 1982 [18 FERC P 61,108], in this docket, to the United States Court of Appeals for the District of Columbia Circuit. That order was affirmed. *City of Ukiah v. FERC*, 729 F.2d 793 (D.C. Cir. 1984). Ukiah subsequently withdrew its motion to intervene and notice of intent to file a competing application.

29 FERC P 62310 (F.E.R.C.), 1984 WL 59176