31 FERC P 62347 (F.E.R.C.), 1985 WL 65226
**1 Office Director Orders

Al Forward

Project No. 8357-000
Order Issuing License (Minor)
(Issued June 14, 1985)

*63517 Quentin A. Edson, Director, Office of Hydropower Licensing.

*63518 Al Forward (Applicant) filed on June 11, 1984, an application for a license under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Ponderosa/Bailey Project No. 8357.[1] The project would be located on Bailey Creek, a tributary of Battle Creek, near the town of Manton, in Shasta County, California, and would partly occupy lands of the United States administered by the Bureau of Land Management.

Notice of the application has been published and comments have been received from interested Federal, State, and local agencies. None of the agencies objected to the issuance of the license and no protests or motions to intervene have been received. The significant concerns of the commenting agencies are discussed below.

Project Description

The proposed run-of-the-river project would consist of a 7-foot-high by 100-foot-long diversion dam, a 42-inch-diameter, 5,000-foot-long penstock, a powerhouse with a rated capacity of 1.1 MW, and a 6,400-foot-long, 12-kV transmission line. A more detailed project description is contained in Ordering Paragraph (B).

Safety and Adequacy

If constructed in accordance with sound engineering practices, the proposed project structures, under the conditions of this license, would be safe and adequate.

Environmental Considerations

Minimum Flows

To maintain the existing habitat utilized by the naturally reproducing populations of rainbow and brown trout that inhabit the project's 5,000-foot-long bypassed reach of Bailey Creek, the California Department of Fish and Game (DFG) recommends that the Applicant provide a continuous minimum flow of 20 cubic feet per second (cfs) or the full natural flow of the stream, whichever is less. The Applicant objects to DFG's recommended flow and proposes to provide a continuous minimum flow of 15 cfs. The Applicant contends that habitat that would be provided by 20 cfs is not significantly greater than that which would be provided by 15 cfs.

The FERC staff has analyzed an instream flow study conducted by the Applicant, and has determined that for a range of flows between 15 cfs and 20 cfs, the habitat is most limited for rainbow trout adults and most abundant for brown trout fry. Staff's analysis of flows within this range shows that rainbow trout adult habitat is greatest at 20 cfs, and that flows less than 20 cfs cause decreases in the habitat. Comparison of the habitat available at flows ranging from 15 to 19 cfs shows that releases of 15, 16, 17, 18, and 19 cfs cause decreases in the available rainbow trout adult habitat of 9.1 percent, 4.9 percent, 1.9 percent, 0.3 percent, and 0.23 percent, respectively.

Reduction in rainbow trout adult habitat would reduce the number of trout adults in the stream. This, in turn, would reduce the level of reproduction and the ability of the rainbow trout population to maintain itself. The Applicant should provide flow releases that would protect fish resources and preserve the economic feasibility of the project. It is of paramount importance

that the Applicant maintain the existing habitat to the greatest extent possible, because project-induced reductions in streamflow would further reduce the already limited habitat available for adult rainbow trout.

****2** Staff's assessment of flows between 15 and 20 cfs indicates that a minimum release of 17 cfs will both preserve the economic feasibility of the project and will adequately protect the fish resources in the bypassed reach. A minimum flow release of 17 cfs would reduce the amount of rainbow trout adult habitat by 2 percent, and will maintain or will slightly increase the habitat available for rainbow trout juvenile and fry and for all life history stages of brown trout. There will be a slight decrease in the spawning habitat available for both salmonids, but this reduction should not adversely affect the populations because sufficient habitat will remain to support a high rate of spawning success.

A continuous minimum flow release of 17 cfs will protect the fish resources inhabiting the bypassed reach and will preserve the economic feasibility of the project. Article 27 requires the Licensee to provide a continuous minimum bypass flow of 17 cfs, or the full natural inflow to the diversion pond, whichever is less.

Monitoring Equipment

The DFG recommends that the Applicant should install a continuously recording streamflow gage immediately downstream of the diversion structure, and that the Applicant provide the DFG with an annual record of streamflows. The Applicant agrees to do so.

The maintenance of accurate minimum flow releases is critical to the protection and enhancement of trout populations inhabiting the 5,000-foot-long bypassed reach, and the volume of the releases must not be less than specified. Article 28 requires the Licensee to ***63519** install continuously recording streamflow equipment to ensure that flows necessary to protect and enhance trout populations are accurately measured and maintained.

Fish Screens

The DFG requests that, before beginning construction, the Applicant submit plans for fish screens to DFG for approval. The Applicant agrees to do so.

Flow velocities in excess of 50 feet per second typically occur in reaches of Bailey Creek above the proposed project. Consequently, fish fry and juveniles inhabiting these reaches are carried downstream into the project diversion pond. Increased numbers of fish in the diversion pond near the intake will increase the probability of turbine-related impacts. The Applicant should install fish screens to protect fish resources from impingement and entrainment. Article 29 requires the Licensee to consult with DFG and the U.S. Fish and Wildlife Service on the design of fish screens at the intake structure and to file functional design drawings with the Commission.

Fish Passage

Presently, no impediments to fish passage exist on Bailey Creek. To maintain this condition, the Applicant proposes to install a fish ladder at the diversion structure. The DFG commends the Applicant on this proposal and requests that the Applicant submit a plan for the proposed fish ladder to DFG to ensure that the ladder is properly designed. Article 30 requires the Licensee to file, for Commission approval, plans for the construction of fish ladder facilities.

Shut-off Valve

****3** The DFG recommends that the Applicant should design the diversion structure to include a mechanism that would automatically and immediately stop the flow of water to the powerhouse. This measure would reduce any erosion that may occur should the pipeline rupture.

The Applicant agrees to install a shut-off mechanism to prevent the adverse impacts that would result from rupturing of the pipeline. Designing the project to include a shut-off mechanism would enable the Applicant to stop flows through the damaged pipeline and thus prevent the degradation of terrestrial and aquatic resources. Article 31 requires the Licensee to design and construct a diversion structure that incorporates an automatic shut-off valve.

Flow Diversion Rate

The DFG recommends that the Applicant divert water at a rate not to exceed 30 percent of the existing streamflow per hour to avoid adverse impacts to the fish resources that inhabit Bailey Creek downstream of the diversion structure. The Applicant agrees to implement this recommendation.

Rapidly varying streamflows could strand fish resources downstream of the diversion; therefore, the rate at which the streamflow (ramping rate) is varied by project operation should be controlled. Article 32 requires the Licensee to limit the ramping rate in order to protect fish and wildlife resources within the bypassed reach.

Sediment Control

The dense riparian forest community along Bailey Creek stabilizes the soil in the project area, prevents excessive erosion, and limits the amount of sediment entering the creek. Building the project would disrupt the stability of the surrounding lands and would cause an increase in the quantity of sediment entering the waterway. Also, reductions in water velocity resulting from the presence of the diversion structure would decrease the capacity of Bailey Creek to transport sediment. Sediment accumulations would, therefore, occur behind the diversion structure and excessive releases of sediment would adversely affect water quality and fish resources downstream of the diversion structure.

The DFG recommends that the Applicant conduct a sediment transport study to determine the minimum flow necessary to prevent the redeposition of accumulated sediments that may be released from the diversion structure.

The Applicant should develop plans to control erosion and sedimentation resulting from project construction and operation. This plan should include a flow periodically needed to transport sediment loads downstream, thereby protecting water quality and aquatic habitat. Article 33 requires the Licensee to consult with the DFG in preparing a plan to control the erosion and sedimentation that would result from the construction and operation of the project.

Deer Migration

The DFG states that the Bailey Creek drainage is a major deer migration route and that the 1,200 feet of elevated, 36-inch-diameter penstock may be a barrier to deer movement. Article 34 requires that the ***63520** Licensee consult with the resource agencies, survey the penstock route for evidence of deer usage, determine the need for any underpasses, and file the results of the survey and a design plan with the Commission, before construction.

Other Environmental Concerns

****4** 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 June 27, 1984.

Article 35 requires the Licensee to consult with the DFG, FWS, and the Bureau of Land Management on the selection of plant species and techniques for revegetation.

Article 36 requires the Licensee to incorporate a transmission line design that would protect raptors from electrocution.

No Federally listed threatened or endangered species or critical habitat and no sites listed on the *National Register of Historic Places* or eligible for listing on the *National Register* will be affected by the project. Article 37 provides for the protection of cultural resources in the event that any previously unrecorded cultural materials are discovered at the site.

Finding of No Significant Impact

Project operation will reduce flows for approximately 1 mile of Bailey Creek. A minimum flow of 17 cubic feet per second will protect the fish resources of the bypassed reach. Turbine-related fish mortality will occur but will be minimized by the installation of fish screens. Because the diversion structure will create a barrier to fish passage, a fish ladder will be installed.

The 1,200-foot-long elevated penstock will contain underpasses, where necessary, to prevent a barrier to deer movement. Transmission facilities will be designed to prevent electrocution to raptors. Areas disturbed by construction will be revegetated. Construction will result in minor short-term increases in stream turbidity and in sedimentation, noise, dust, and exhaust emissions.

In accordance with the National Environmental Policy Act of 1969, an Environmental Assessment was prepared for the Ponderosa/Bailey Hydroelectric Project (FERC Project No. **8357**-000).[2] On the basis of the record and Staff's independent environmental analysis, the 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 and Economic Feasibility

The estimated annual cost of the project is $406,000. The project will operate with a total installed capacity of 1.1 MW and a hydraulic capacity of 60 cfs. An estimated 4.03 GWh of electricity will be generated annually at a plant factor of 42 percent.[3] From the time the project goes on line until needed to serve load directly, the proposed project will be available to off-load existing fueled steam electric plants thereby conserving nonrenewable resources and reducing the emission of noxious by-products of combustion to the atmosphere.

The proposed project would produce power at a cost of approximately 71.0 mills/kWh and would be economically feasible based on the levelized cost of purchasing power from Pacific Gas and Electric Company.

The proposed project is not in conflict with any existing or planned development of Bailey Creek nor Battle Creek. The project would make good use of the available head and of the flow of the Bailey Creek and would be best adapted to the comprehensive development of the waterway for beneficial public purposes.

It is ordered that:

****5** (A) This **license** is issued to Al Forward (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 order is issued, for the construction, operation, and maintenance of the Ponderosa/Bailey Project No. **8357**, located near the town of Manton, in Shasta County, California, and partly occupying United States lands administered by the Bureau of Land Management. 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 Ponderosa/Bailey Project No. **8357** 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 is shown and described by an exhibit that forms part of the application for **license** and that is designed and described as:

Exhibit	FERC Number	Title
G-2	**8357**-8	Project Area

(2) Project works consisting of: (a) a 7-foot-high, 100-foot-long concrete diversion dam located across Bailey Creek at elevation 2,720 feet m.s.l.; (b) a 42-inch-diameter, 5,000-foot-long buried steel pipeline; (c) a 36-inch-diameter, 1,200-foot-long elevated steel penstock; (d) a 46-foot by 34-foot powerhouse ***63521** located adjacent to Bailey Creek at elevation 2,420 feet m.s.l. containing a single impulse turbine-generator unit with a rated capacity of 1.1 MW; (e) a 6,400-foot-long, 12-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company line; and (f) appurtenant facilities.

The location, nature, and character of these project works are shown and described by the exhibit cited above and by certain

other exhibits that also form a part of the application for **license** and that are designated and described as:

Exhibit A

Sections 1(i) through 1(ix)—Project Description

Exhibit F	FERC Number	Title
F-1	**8357**-2	Diversion and Intake Plan
F-2	**8357**-3	Diversion and Intake Sections
F-3	**8357**-4	Penstock Support Details
F-4	**8357**-5	Powerhouse Plan
F-5	**8357**-6	Powerhouse Section

(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) Exhibit G, designated in Ordering Paragraph (B) above, is approved and made a part of the **license**.

(D) Exhibits A and F, designated in Ordering Paragraph (B) above, are approved and made part of the **license** only to the extent that they generally show and describe the project works.

(E) Pursuant to Section 10(i) of the Act, it is in the public interest to waive the following Sections of Part I of the Act, and they are excluded from the **license**:

Section 4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the **license** of terms and conditions of the Act that are waived here; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

****6** (F) This **license** is also subject to Articles 1 through 26 set forth in Form L-17 (revised October, 1975), entitled "Terms and Conditions of **License** for Unconstructed Minor Project Affecting Lands of the United States" attached to [reported at 54 FPC 1896] and made a part of this **license**. The **license** is also subject to the following additional articles:

Article 27. Licensee shall maintain, in the reach of Bailey Creek between the base of the diversion structure and the tailrace, a continuous minimum flow of 17 cubic feet per second or the full natural inflow to the diversion pond, whichever is less, for the protection of fish and wildlife resources in Bailey Creek. This flow may be temporarily modified if required by operating emergencies beyond the control of Licensee and for short periods upon mutual agreement between Licensee and the California Department of Fish and Game.

Article 28. Licensee shall construct and operate a streamflow gage, as required by standard **license** Article 6, immediately downstream of the diversion structure to allow continuous monitoring of the flows of the Ponderosa/Bailey Hydroelectric Project. Further, Licensee shall make available each year to the California Department of Fish and Game and the San Francisco Regional Engineer the record of flows obtained from this gage.

Article 29. Licensee shall consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service on the final design of the fish screening structure and within 9 months from the date of issuance of this **license**, shall file for Commission approval, functional design drawings of the fish screening structure at the intake of the Ponderosa/Bailey Hydroelectric Project. Licensee shall file as-built drawings with the Commission within 3 months after completion of construction.

Article 30. Licensee shall consult with the California Department of Fish and Game on the final design of a fish ladder, and within 9 months from the date of issuance of this **license**, shall file for Commission approval, functional design drawings of the fish ladder facilities at the intake of the Ponderosa/Bailey Hydroelectric Project. Licensee shall file as-built drawings with the Commission within 3 months after completion of construction.

Article 31. Licensee shall design and construct the diversion structure to incorporate an automatic shut-off valve at the project and shall file with the Commission as-built drawings, showing the location and features of the diversion structure within 3 months after completion of construction.

Article 32. Licensee shall, for the protection of fish and wildlife resources within the bypassed reach, divert water at a rate not ***63522** to exceed 30 percent of the existing streamflow per hour, except in any emergency.

Article 33. Licensee, after consultation with the California Regional Water Quality Control Board and the California Department of Fish and Game, shall prepare and shall file with the Commission, within 1 year from the date of issuance of this **license**, a plan to control erosion, dust, and slope stability, and to minimize the quantity of sediment or other potential water pollutants resulting from construction and operation of the project. The plan shall also include: provisions for identifying and mapping any errosive soils and potentially unstable slopes; a flow from periodically flushing accumulated sediments downstream; an implementation schedule; monitoring and maintenance programs for project construction and operation; provisions for periodic review of the plan and for making any necessary revisions to the plan; documentation of consultation with the agencies listed above during preparation of the plan; and a summary of agency comments and recommendations. In the event that Licensee does not concur with any agency recommendations, Licensee shall provide a discussion of the reasons for not concurring based on actual site geological, soil, and groundwater conditions. The Commission reserves the right to direct changes to the plan. Unless the Director of the Office of Hydropower **Licensing** instructs otherwise within 45 days from the filing date, the Licensee may commence ground-disturbing or spoil-disposal activities at the project at the end of that period.

****7** *Article 34.* Licensee, after consultation with the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Bureau of Land Management, shall conduct a survey of the elevated-penstock alignment to determine: the degree of deer usage of the penstock corridor, the need for underpasses to prevent a barrier to deer migration, and the number and location of any underpasses required. Licensee, within 1 year from the date of issuance of the **license**, shall file the results of the survey, along with a design plan for deer passage. Licensee shall include in the filing, agency comments on the adequacy of the survey and design plan. Unless the Director, Office of Hydropower **Licensing**, within 60 days following the filing, instructs otherwise, Licensee may commence penstock construction at the end of the 60-day period.

Article 35. Licensee, after consultation with the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the Bureau of Land Management, shall develop a revegetation plan for the project, which includes a list of recommended plant species and a recommended planting density of riparian tree species. The list of plant species shall include an indication of each species' wildlife food and habitat value. A copy of the plan and species list shall be filed with the Commission at the time of construction.

Article 36. Licensee shall design and construct the transmission line in accordance with guidelines set forth in Suggested Practices for Raptor Protection on Power Lines—the State of the Art in 1981, by Raptor Research Foundation, Inc. Further, Licensee, after consultation with the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the

Bureau of Land Management, and within 1 year from the date of issuance of the **license**, shall file a transmission line design plan that will consider adequate separation of energized conductors, groundwires, and other metal hardware, adequate insulation, and any other measures necessary to protect raptors from electrocution hazards. Agency comments on the adequacy of the design plan shall be included in the filing. Unless the Director of the Office of Hydropower **Licensing** instructs otherwise within 60 days after the filing, Licensee may begin transmission line construction at the end of the 60-day period.

Article 37. Licensee, prior to any future construction at the project, shall consult with the California State Historic Preservation Officer (SHPO) about the need for cultural resource survey and salvage work. Documentation of the nature and extent of consultation, including a cultural resources management plan, a schedule to conduct any necessary investigation before such construction, and a copy of a letter from the SHPO accepting the plan, shall be filed with the Commission 6 months before any construction activity. Licensee shall make available funds in a reasonable amount for any such work, as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or associated facilities, 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 a mitigative plan for the protection of significant archeological or historical resources. If Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work ***63523** related to the project, the Commission reserves the right to require Licensee, at its own expense, to conduct any such work found necessary.

****8** *Article 38.* The Licensee shall pay 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 to the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 1,450 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 3.3 acres of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 39. Licensee shall commence construction of project works within two years from the issuance date of the **license** and shall complete construction of the project within four years from the issuance date of the **license**.

Article 40. Licensee shall provide one copy with the Commission's Regional Engineer and two copies to the Director, Division of Inspections, 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 41. Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall provide to the Commission's Regional Engineer and Director, Division of Inspections, and the Bureau of Reclamation, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 42. Licensee shall, within 90 days of completion of construction, file for approval by the Director, Division of Project Management, revised Exhibits A and F to describe and show the project as-built.

Article 43. (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 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.

****9** (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 ***63524** 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.

(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.

****10** (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 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.

(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.

****11** (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 ***63525** 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.

Article 44. Licensee shall continue to consult and cooperate with appropriate Federal, state and other natural resource agencies for the protection and development of the environmental resources and values of the project area. The Commission reserves the right to require changes in the project works or operations that may be necessary to protect and enhance those resources and values.

(G) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 385.1902 of the Commission's regulations, 18 C.F.R. §385.1902 ((1983). The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this order. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.

Federal Energy Regulatory Commission

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] Environmental Assessment, Ponderosa/Bailey Hydroelectric Project, FERC Project No. **8357**-000-California, Division of Environmental Analysis, Office of Hydropower **Licensing**, Federal Energy Regulatory Commission, February 28, 1985. This document is available in the Division of Public Information and in the Commission's public file associated with this proceeding.

[3] Project energy generation is equivalent to the energy that could be produced by burning 6,600 barrels of oil or 1,900 tons of coal annually in a steam electric power plant.

31 FERC P 62347 (F.E.R.C.), 1985 WL 65226

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