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September 2, 2011
File No. 01030A (P-2079-069)

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St. N.E.
Washington, DC 20426

Re: Placer County Water Agency's Submittal of Alternative Conditions to the United States Department of Agriculture-Forest Service for the Middle Fork American River Project (FERC Project No. 2079-069)

Dear Secretary Bose:

Enclosed for filing in the above-referenced docket is Placer County Water Agency's (PCWA) Submittal of Alternative Conditions to the United States Department of Agriculture-Forest Service (USDA-FS) with respect to the Middle Fork American River Project, FERC Project No. 2079, as filed today with the USDA-FS and parties included on the FERC Service List. This filing includes:

- One original and two copies of the public information (Attachment A-D) on paper and eight copies of the public information on compact disk (CD);
- One original and two copies of the privileged information (Attachment E) on paper and CD; and
- One original and two copies of the confidential information (Attachment F) on paper and CD.

As explained in the attached letter transmitting the submittal to the USDA-FS, Attachments A-D contain public information. Attachment E contains non-public information regarding the location(s) of sensitive cultural resources, and qualifies as privileged information [36 C.F.R. § 800.11(c)(1)]. The disclosure of this information could be harmful to these resources. Therefore, PCWA requests privileged treatment of Attachment E. Attachment F contains non-public information that provides details on the location(s) of special-status biological resources, and qualifies as confidential information [18 C.F.R. § 385.1112]. Disclosure of this information could be harmful to these resources. Therefore, PCWA requests confidential treatment of Attachment F.

Kimberly D. Bose, Secretary
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If you have any questions regarding this filing, please contact me at (530) 823-4889 or by e-mail at afecko@pcwa.net.

Sincerely,

PLACER COUNTY WATER AGENCY



Andrew Fecko
Resource Planning Administrator
P.O. Box 6570
144 Ferguson Road
Auburn, CA 95604



**BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE
UNITED STATES FOREST SERVICE**

**Attention: Deputy Chief
National Forest Systems, Forest Service
Washington Office (WO), Lands Staff
Mail Stop 1124
1400 Independence Ave., S.W.
Washington, D.C. 20250-0003**

**Placer County Water Agency's Submittal of Alternative Conditions for
16 Preliminary Section 4(e) Conditions Submitted by
the United States Forest Service for
the Middle Fork American River Project (FERC Project No. 2079-069)**

INTRODUCTION

Placer County Water Agency (PCWA) is the existing Licensee and applicant for a subsequent license for the Middle Fork American River Project (Federal Energy Regulatory Commission (FERC) Project No. 2079) (MFP or Project). Pursuant to Section 33 of the Federal Power Act (FPA), 16 U.S.C. § 823d, and Subpart O of the United States Department of Agriculture's (USDA) Rules, 7 C.F.R. § 1.601 *et seq.*, PCWA hereby submits alternative conditions for 16 of the preliminary conditions submitted to FERC by the USDA-Forest Service (USDA-FS) in a letter dated August 5, 2011 (USDA-FS Letter), for inclusion pursuant to Section 4(e) of the FPA (16 U.S.C. § 797(e)) in any subsequent license issued by FERC for the MFP.

PCWA has consulted with State and Federal Resource agencies, including USDA-FS staff, and a broad array of stakeholders since 2005. This collaboration has resulted in substantial consensus on license terms for PCWA's MFP. The intent of this filing is to seek clarification of several terms and conditions filed by the USDA-FS and to

submit alternative conditions for management and monitoring Plans where consensus has yet to be reached due to time constraints. PCWA remains committed and looks forward to continued collaboration and resolution of the outstanding issues. However, PCWA has a responsibility to the citizens of Placer County to pursue all administrative and judicial remedies available to reach a successful conclusion to its MFP relicensing proceeding, including submitting these alternative conditions and reserving its right to seek a hearing on all terms and conditions once fully developed by USDA-FS staff.

PCWA requests that the USDA-FS adopt the alternative conditions submitted herein in lieu of the 16 corresponding preliminary conditions set forth in the USDA-FS Letter, and, as provided by FPA § 33 and 7 C.F.R. § 1.672, file these PCWA alternative conditions with FERC as part of the USDA-FS's modified conditions. As discussed herein, PCWA's alternative conditions will provide for adequate protection and utilization of the affected "reservations" (the Eldorado and Tahoe National Forests), and they will cost less to implement than the USDA-FS's preliminary Section 4(e) conditions. In addition, PCWA's alternative conditions will not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality set forth in 7 C.F.R. § 1.671(b)(4). Adoption of PCWA's alternative conditions will also allow FERC to conduct a complete analysis of the License Conditions in its Draft National Environmental Policy Act (NEPA) document for the Project.

Therefore, pursuant to FPA Section 33 and Subpart O of the USDA's Rules, the USDA-FS, acting on behalf of the Secretary of Agriculture, should adopt PCWA's alternative conditions instead of the 16 corresponding preliminary conditions submitted to FERC on August 5, 2011. Further, as described herein, PCWA is notifying the USDA-FS that it is reserving its right, pursuant to Section 4(e) of the FPA, to an agency trial-type hearing of any modified conditions submitted by USDA-FS to FERC, and that it intends, if necessary, to contest any modified USDA-FS conditions on the grounds that they violate Section 4(e) of the Federal Power Act should USDA-FS not provide PCWA with an opportunity for an adequate administrative hearing of such modified conditions.

PCWA'S AUTHORITY TO REQUEST ADMINISTRATIVE HEARING ON MODIFIED SECTION 4(e) CONDITIONS

Section 241 of the Energy Policy Act of 2005¹ amended Sections 4(e) and 18 of the FPA, 16 U.S.C. §§ 797(e), 811, to provide that any party to a license proceeding is entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, before an administrative law judge (ALJ), of any disputed issues of material fact with respect to any agency's mandatory conditions or prescriptions. Under the USDA regulations promulgated to implement this statutory mandate, the timing of the hearing process was established to resolve disputed issues of material fact with respect to preliminary conditions or prescriptions prior to FERC's issuance of the draft NEPA document. The USDA-FS would then consider and analyze: (1) comments received on its preliminary conditions and prescriptions; (2) the ALJ's decision on disputed issues of material fact; (3) comments received on the draft NEPA document; and (4) any alternative conditions and prescriptions. Subsequent to this analysis, the agency would be required to issue its modified Section 4(e) conditions and file its analysis of the alternatives within 60 days of the close of the comment period on FERC's draft NEPA document (Resource Agency Procedures for Conditions and Prescriptions in Hydropower Licenses, 70 Fed. Reg. 69,804, 69,807 (Nov. 17, 2005)).

This process was not given due course because the USDA-FS filed a number of preliminary conditions that lacked sufficient specificity to allow PCWA, or any other party, to determine whether an issue of material fact exists. Specifically, USDA-FS filed six preliminary conditions that state only that the USDA-FS and PCWA will further consult to finalize management and monitoring plans provided in PCWA's Final License Application (FLA). These "placeholder" preliminary conditions include:

- Condition No. 28 – Monitoring Program;
- Condition No. 31 – Streamflow and Reservoir Elevation Gaging Plan;
- Condition No. 41 – Historic Properties Management Plan;
- Condition No. 43 – Transportation System Management Plan;
- Condition No. 44 – Fire Management and Response Plan; and

¹ Energy Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58, 119 Stat. 594.

- Condition No. 46 – Vegetation and Integrated Pest Management Plan.

Filing of “placeholder” preliminary conditions by the USDA-FS with the express intent of providing specific substantive requirements at a later date, after the deadline for PCWA to request a hearing has passed, amounts to the USDA-FS reserving its authority to develop future mandatory license conditions. This reservation of authority by the USDA-FS is improper and violates Section 4(e) of the Federal Power Act, unless PCWA and other parties have the right to an agency trial-type hearing on any disputed issues of material fact once those conditions are fully developed by USDA-FS. Failure to provide such an opportunity for hearing is also inconsistent with the intent and spirit of the hearing process outlined in the USDA’s own regulations. Specifically, 7 C.F.R. § 1.601(c) provides that when the USDA-FS notifies FERC that it is reserving its authority to develop one or more conditions during the term of the license, the hearing and alternatives processes of Subpart O will be available when the USDA-FS exercises its reserved authority. Although this regulation refers to future conditions developed during the term of the license, it reflects a recognition that it is inappropriate for the USDA-FS to develop mandatory conditions in a way that does not allow for the statutory right of other parties to request a hearing.

Therefore, PCWA is notifying the USDA-FS that PCWA reserves its right to an agency trial-type hearing on any modifications to the USDA-FS preliminary conditions that were filed on August 5, and that it intends, if necessary, to contest any modified USDA-FS conditions on the grounds that they violate Section 4(e) of the Federal Power Act if USDA-FS refuses to provide PCWA with an opportunity for an agency trial-type hearing of no more than 90 days on any disputed issues of material fact with respect to such modified conditions.

PCWA’S RIGHT TO SUBMIT ALTERNATIVE CONDITIONS

Section 1.671 of the USDA regulations implementing Section 241 of the EPAct (7 C.F.R. § 1.671) provides that a license applicant or other license party may submit alternative conditions to the Deputy Chief, National Forest Systems, U.S. Forest Service, within 30 days after the FERC deadline for the USDA-FS to file preliminary Section 4(e) conditions. In the case of the MFP, the deadline for filing preliminary

conditions at FERC was August 8, 2011. Accordingly, pursuant to 7 C.F.R. § 1.671, PCWA has the right to submit alternative conditions to the USDA-FS by September 7, 2011.

SUBMITTAL AND DISTRIBUTION OF THE ALTERNATIVE CONDITIONS

This submittal includes attachments which contain public, confidential, and privileged information. This submittal (one original paper copy and one electronic copy) is being provided to the Deputy Chief, National Forest Systems, Forest Service including all public, confidential, and privileged information. Consistent with 7 C.F.R. § 1.670(b), PCWA is also providing the public version of this submittal to FERC and to each license party via courier service. Attachments containing confidential and privileged information are also being provided to FERC and certain license parties (resource agencies), as described below. Although not required, PCWA is supplementing the submittal by providing FERC and each license party an electronic copy of this document on Compact Disk (CD). PCWA's submittal to FERC will also conform with FERC's filing and service requirements.

Attachments A–D contain public information and are being provided to the USDA-FS, FERC, and each license party. Attachment E contains privileged information regarding the location(s) of sensitive cultural resources. The disclosure of this information could be harmful to these resources. Attachment E is enclosed in a separate, sealed envelope marked "CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE". Pursuant to 36 C.F.R. § 800.11(c)(1), the head of a federal agency may withhold from public disclosure any information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional site by practitioners. PCWA is filing one original paper copy and one electronic copy of Attachment E with the USDA-FS and requests privileged treatment of Attachment E by the USDA-FS. Attachment E is also being provided to FERC and USDA-FS Hydro Coordinator for the Eldorado National Forest and Tahoe National Forest.

Attachment F contains confidential information that provides details on the location(s) of special-status biological resources. Disclosure of this information could be

harmful to these resources. Attachment F is enclosed in a separate, sealed envelope marked "CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE". PCWA is filing one original paper copy and one electronic copy of Attachment F with the USDA-FS and requests confidential treatment of Attachment F by the USDA-FS. Attachment F is also being provided to FERC and to state and federal agencies with stewardship over these resources.

BACKGROUND

The MFP is situated in the foothills and mountainous uplands of the western slope of the Sierra Nevada Range, northeast of Auburn, California. The majority of the MFP is located in Placer County on National Forest System Lands within the Tahoe National Forest (TNF) and Eldorado National Forest (ENF). The MFP serves as a multi-purpose water supply and hydro-generation project designed to conserve and control waters of the Middle Fork American River, the Rubicon River, Duncan Creek, and North and South Fork Long Canyon creeks. The MFP consists of two major storage reservoirs, five smaller regulating reservoirs and diversion pools, and five powerhouses that began operation in 1967. The MFP's major storage reservoirs, French Meadows and Hell Hole, have a combined capacity of 342,583 acre-feet (ac-ft). The MFP has a total dependable generation capacity of 223.7 megawatts (MW) and an average annual energy production of 1,039,078 megawatt-hours (MWh). The MFP was constructed and operates under a 50-year license (FERC Project No. 2079), which was issued on March 13, 1963, by the Federal Power Commission, predecessor of the current FERC. The current license expires February 28, 2013. PCWA is seeking renewal of its license to continue operation and maintenance of the MFP with a license term of 50 years (expiring on February 28, 2063).

PCWA filed its Draft License Application (DLA) on September 28, 2010, and its FLA for the MFP on February 23, 2011. FERC issued its Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions on June 7, 2011. The USDA-FS filed its preliminary Section 4(e) conditions with FERC on August 5, 2011.

PCWA'S PROPOSED ALTERNATIVE CONDITIONS

Section 4(e) of the FPA requires FERC to include in licenses located within reservations such as national forests "such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation." As stated above, the USDA-FS filed preliminary Section 4(e) conditions (preliminary conditions) with FERC on August 5, 2011, for the MFP. Included in the USDA-FS Letter were 46 preliminary conditions that the USDA-FS states are necessary for the adequate protection and utilization of the Eldorado and Tahoe National Forests.

Herein, PCWA provides alternative conditions for 16 of the preliminary conditions submitted by the USDA-FS for the MFP. The alternative conditions are organized into the following two categories:

- Nine alternative conditions that provide minor modifications to USDA-FS's preliminary conditions to clarify the preliminary condition or provide consistency with terminology used during the MFP relicensing process (PCWA's Clarified Alternative Conditions).
- Seven alternative conditions that modify and are intended to replace preliminary conditions submitted by the USDA-FS, including the six "placeholder" conditions filed by USDA-FS described above (PCWA's Modified Alternative Conditions).

PCWA's Clarified Alternative Conditions

Description of the Alternative Conditions

PCWA submits Clarified Alternative Conditions for nine of USDA-FS's preliminary conditions. Attachment C shows those clarifications as redlined edits, using USDA-FS's August 5, 2011 preliminary conditions as the base document. These nine PCWA alternative conditions provide minor, but important, changes to the preliminary conditions submitted by the USDA-FS to clarify the conditions and/or provide consistency with terminology used by all parties during the MFP relicensing process. The revisions are not intended to alter the objectives of the USDA-FS's preliminary conditions, or to reduce PCWA's obligations under those conditions as PCWA

understands the intent of USDA-FS. The following section briefly summarizes the changes to these nine USDA-FS preliminary conditions:

PCWA Alternative Condition No. 15 – Pesticide-Use Restrictions on National Forest System Lands

To maintain consistency with the Vegetation and Integrated Pest Management Plan (VIPMP), PCWA’s alternative condition modifies the USDA-FS preliminary condition to refer to the VIPMP for protective buffers (general and site-specific) around special-status plant populations when applying pesticides (Attachment C1).

PCWA Alternative Condition No. 22 – Minimum Streamflows

To maintain consistency with the water year types used in PCWA’s technical study reports, analyses, and license application, and with the California Department of Water Resources Bulletin 120 nomenclature, PCWA’s alternative condition (Attachment C2) revises the water year type names in all tables included in the USDA-FS preliminary condition to reflect the following:

- *‘Critically Dry’ should be replaced with ‘Critical’ (C)*
- *‘Extreme Dry’ should be replaced with ‘Extreme Critical’ (EC)*

To correct the minimum streamflow schedule for the Middle Fork American River below Middle Fork Interbay in May and June (Above Normal water year types), PCWA’s alternative condition (Attachment C2) includes revisions to page 17 of the USDA-FS Letter.

To clarify the minimum streamflow water year type schedule for the Middle Fork American River below Ralston Afterbay Dam, PCWA’s alternative condition (Attachment C2) includes revisions to page 13 and 20 of the USDA-FS Letter.

To clarify the Duncan Creek below Duncan Creek Diversion Dam minimum instream flow releases, PCWA’s alternative condition (Attachment C2) provides

additional language for footnote 2 of the table that appears on page 16 of the USDA-FS Letter.

PCWA Alternative Condition No. 23 – Pulse Flows

To maintain consistency with the compliance requirements for minimum instream flows specified in Condition No. 22, and to clarify the intent of the language, PCWA’s alternative condition (Attachment C3) modifies USFS preliminary Condition No. 23, so that the time period for PCWA to notify the resource agencies if access to the streamflow release infrastructure is prohibited by hazardous conditions is “3 business days,” rather than “3 days.”

PCWA Alternative Condition No. 24 – Ramping Rates

To clarify the USDA-FS Preliminary Condition No. 24, PCWA’s alternative condition (Attachment C4) includes one edit to reflect that the condition is for the “down ramp” spill flows at Hell Hole Reservoir Dam and French Meadows Reservoir Dam.

PCWA Alternative Condition No. 25 – Outages

To maintain consistency with the water year types used in PCWA’s technical study reports, analyses, and license application, and with the California Department of Water Resources Bulletin 120 nomenclature, PCWA’s alternative condition (Attachment C5) revises the water year type names in all tables included in the USDA-FS preliminary condition to reflect the following:

- *‘Critically Dry’ should be replaced with ‘Critical’ (C)*
- *‘Extreme Dry’ should be replaced with ‘Extreme Critical’ (EC)*

PCWA Alternative Condition No. 26 – Spawning Habitat Improvement Plan for the Middle Fork American River Below Ralston Afterbay Dam

Consistent with PCWA’s pre-filing discussions with the resource agencies (including USDA-FS) and other stakeholders, PCWA’s alternative condition (Attachment C6) provides additional language to clarify the reach location for

spawning habitat improvement. PCWA believes this is consistent with the intent of the USDA-FS preliminary condition.

PCWA Alternative Condition No. 37 – Reservoir Minimum Pool Elevations and Reservoir Levels Recreation Objectives

To maintain consistency with the water year types used in PCWA’s technical study reports, analyses, and license application, and with the California Department of Water Resources Bulletin 120 nomenclature, PCWA’s alternative condition (Attachment C7) revises the water year type names in the tables on pages 42 and 43 of the USDA-FS Letter to reflect the following:

- *‘Critically Dry’ should be replaced with ‘Critical’ (C)*
- *‘Extreme Dry’ should be replaced with ‘Extreme Critical’ (EC)*

In addition, the date range text related to Hell Hole Reservoir is revised to reflect the following:

- *‘After Labor’ should be replaced with ‘After Labor Day-5/31’*

PCWA Alternative Condition 39 – Recreation Streamflows in the Middle Fork American River Below Oxbow Powerhouse

To correct typographical errors and clarify the USDA-FS preliminary condition, PCWA’s alternative condition (Attachment C8) provides minor changes to the tables on the following pages of the USDA-FS Letter:

- *Page 44: deleted ‘Water Year Type’ from column 5 and replaced with dashes ‘—’*
- *Page 45: the language in column 4, row 4 was clarified to read ‘Saturdays (except for Western States 100 and Tevis Cup Race Days) and Sundays’*

PCWA Alternative Condition No. 45 – Erosion and Sediment Control and Management

To clarify the USDA-FS preliminary condition, PCWA’s alternative condition (Attachment C9) provides minor changes to reflect that PCWA is only

responsible to implement actions for Project-related issues. PCWA believes this is consistent with the intent of the USDA-FS preliminary condition.

Rationale

PCWA's nine "clarified" alternative conditions provide for adequate protection of the reservations (the Eldorado and Tahoe National Forests), pursuant to FPA Section 33. The alternative conditions are consistent with the intent of the USDA-FS preliminary conditions and only provide minor, but important, changes to the preliminary conditions submitted by the USDA-FS to clarify the conditions and/or provide consistency with terminology used by all parties during the MFP relicensing process. The revisions do not alter the objectives of the USDA-FS's preliminary conditions, or reduce PCWA's obligations under those conditions, and therefore PCWA's alternative conditions provide for adequate protection and utilization of the reservations.

PCWA's clarified conditions reduce costs by minimizing the need for future consultation to resolve potential confusion regarding the condition requirements. Implementation of PCWA's alternative conditions would not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality.

PCWA's Modified Alternative Conditions

PCWA is also submitting alternative conditions that modify seven of the USDA-FS preliminary conditions filed on August 5, 2011. Six of these PCWA modified alternative conditions propose specific management and monitoring plans in lieu of six "placeholder" preliminary conditions submitted by USDA-FS. The remaining PCWA modified alternative condition changes the substantive provisions of USDA-FS Preliminary Condition No. 19 regarding the Use of National Forest System Roads for Project Access. For each of PCWA's modified alternative conditions, PCWA provides a description of the proposed change, followed by the rationale for the revisions to the associated USDA-FS preliminary condition. The management and monitoring plans referred to in PCWA's modified alternative conditions are provided in Attachment D.

PCWA Alternative Condition No. 19 – Use of National Forest System Roads for Project Access

Description of the Alternative Condition

PCWA Alternative Condition No. 19 provides that the Licensee shall obtain suitable authorization for all Non-project General Access Roads located on NFS lands that are needed for Project access. The term of the permit shall be the same as the term of the license. The authorization shall require road maintenance and cost sharing in reconstruction commensurate with the Licensee's use and project-related use. The authorization shall specify road maintenance and management standards that provide for traffic safety, minimize erosion and damage to natural resources, and are acceptable to USDA-FS.

The Licensee shall pay the USDA-FS for its fair share of maintenance cost or perform maintenance or other agreed to services, as determined and mutually agreed to by USDA-FS and the Licensee for all use of Non-project General Access Roads related to project operations, project-related public recreation, or related activities. The maintenance obligation of the Licensee shall be proportionate to its share of the total use. Any maintenance to be performed by the Licensee shall be authorized by and shall be performed in accordance with an approved maintenance plan and applicable Best Management Practices (BMP). In the event a road requires additional maintenance, restoration, or reconstruction work to accommodate the Licensee's needs, the Licensee shall perform such work at its own expense after securing USDA-FS authorization.

The Licensee shall be responsible for its fair share of the cost (proportionate to its share of the total use) for completion of condition surveys, mapping of roads, development of proposed maintenance plans, and installation and maintenance of adequate signage on Non-project General Access Roads. The amount of payment required from the Licensee may be documented in a road maintenance agreement; provided all the above conditions are met as well as any conditions set forth in such an agreement.

At a minimum, the authorization shall include the following roads and may be amended as needed:

Road Name Road Number	Begin Termini / End Termini	Length	Jurisdiction
Mosquito Ridge Road NFSR 0096	Mile Post 1.5 Mile Post 40.6	38.10 miles	Forest Service - TNF
Soda Springs – Riverton NFSR 0022	Mosquito Ridge Road Forest Boundary	0.977 miles	Forest Service - TNF
Blacksmith Flat Road NFSR 0023	Mosquito Ridge Road Forest Boundary	2.300 miles	Forest Service - TNF
Eleven Pines Road NFSR 14N08	Mile Post 19.3 Mile Post 21.136	1.836 miles	Forest Service - ENF
Lower Meadows Road NFSR 14N16	Eleven Pines Road Mile Post 0.182	0.182 miles	Forest Service - ENF
Ralston Ridge Road NFSR 14N22	Blacksmith Flat Road Mile Post 3.11	3.11 Miles	Forest Service - ENF
Blacksmith Flat Road NFSR 14N25	Forest Boundary Mile Post 18.985	18.985 Miles	Forest Service - ENF
Tanners Point Road NFSR 14N31	Ralston Ridge Road Mile Post 1.12	1.12 Miles	Forest Service - ENF
North Long Canyon Road NFSR 14N42	Old Ice House Road Mile Post 0.45	0.45 Miles	Forest Service - ENF
End of the World Road NFSR 14N56	Tanners Point Road Mile Post 1.2	0.91 Miles	Forest Service - ENF
Old Ice House Road NFSR 17N02	Forest Boundary Mile Post 13.48	13.48 Miles	Forest Service - ENF
Horseshoe Bar Road NFSR 0096-006	Mosquito Ridge Road Private Property	1.00 Miles	Forest Service – TNF

Rationale

PCWA Alternative Condition No. 19 incorporates revisions to the USDA-FS's preliminary condition that appropriately focus the condition on authorization of use by USDA-FS and cost sharing responsibilities of PCWA (based on its share of total use) for

road maintenance, road reconstruction, signage, and periodic condition surveys on Non-project General Access Roads.

PCWA's responsibilities regarding use, road maintenance, and periodic condition surveys for Project Roads are clearly articulated in PCWA's Alternative Condition No. 43 – Transportation System Management Plan. PCWA believes that its responsibilities regarding road maintenance on Project Roads are clearly different from those for Non-project General Access Roads and that these responsibilities should be articulated in two separate conditions, as it appears was also the USDA-FS's intent.² PCWA has therefore revised USDA-FS Preliminary Condition No. 19 to remove from the roads list, three roads that are Project Roads already included in the Transportation System Management Plan (TSMP) that is part of PCWA's Alternative Condition No. 43 (Attachment D9).

PCWA's Alternative Condition No. 19 provides for adequate protection and utilization of the reservations (the Eldorado and Tahoe National Forests), pursuant to FPA Section 33. PCWA's Alternative Condition No. 19 is consistent with the intent of the USDA-FS preliminary conditions. The revisions do not alter the objectives of the USDA-FS's preliminary conditions, or reduce PCWA's obligations under those conditions, and therefore PCWA's alternative conditions provide for adequate protection and utilization of the reservations.

PCWA's Alternative Condition No. 19 addresses all issues raised by the USDA-FS regarding PCWA's use and maintenance responsibilities of Non-project General Access Roads. Acceptance of PCWA's Alternative Condition No. 19 will reduce costs to PCWA, USDA-FS, and other stakeholders by minimizing the need for future consultation to resolve potential confusion regarding the condition requirements. PCWA's Alternative Condition No. 19 would not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality.

² USDA-FS's August 5, 2011 filing included separate preliminary conditions, Preliminary Condition Nos. 19 and 43, for Non-project and Project roads, respectively.

PCWA Alternative Condition No. 28 – Monitoring Program

Description of the Alternative Condition

The Licensee shall implement the following Monitoring Program after license issuance and through the term of the New License and any subsequent annual licenses, in coordination with USDA-FS, California Department of Fish and Game (CDFG), and State Water Resources Control Board (State Water Board). The program has been designed to monitor those items that are considered to be essential for determining whether the resource objectives described in the USDA-FS's Rationale Report for Proposed License Conditions and Recommendation are being met. Within the scope of the specified monitoring program, USDA-FS, CDFG, and State Water Board may select an equal number of alternative years to ensure that surveys occur during a range of water year types. Final study plans for each element of the Monitoring Program shall be approved by USDA-FS, CDFG, and State Water Board prior to implementation of the program. USDA-FS, CDFG, and State Water Board have the flexibility to alter the monitoring program methodologies and frequencies of data collection if it is determined that: (a) there is a more appropriate or preferable methodology or site to use than that described in the monitoring plan; or (b) monitoring may be reduced or terminated because the relevant ecological resource objective has been met or no change in resource response is expected.

The Licensee shall file with FERC by June 30 of each year an annual report fully describing the monitoring efforts of the previous calendar year. USDA-FS, CDFG, and State Water Board shall have at least 30 days to review and comment on the draft report prior to its filing with FERC. Comments of USDA-FS, CDFG, and State Water Board shall be addressed in the final report, or as appropriate, comments shall be included with the filing to FERC. The Licensee shall provide copies of the final annual report to USDA-FS, CDFG, and State Water Board.

The following guidelines shall be used in implementing the monitoring program: (a) monitoring and studies shall be relevant to the Project, (b) monitoring and studies shall be conducted such that they provide useful information for management decisions or establishing compliance with license conditions, and (c) monitoring and studies shall

be as cost-effective as possible. Funding for performing the monitoring shall be provided by the Licensee.

Upon FERC approval, the Licensee shall implement the monitoring plans that were included in PCWA's FLA:

- Fish Population Monitoring Plan (Attachment D1);
- Foothill Yellow-legged Frog Monitoring Plan (Attachment D2);
- Western Pond Turtle Monitoring Plan (Attachment D3);
- Benthic Macroinvertebrate Monitoring Plan (Attachment D4);
- Mercury Bioaccumulation Monitoring Plan (Attachment D5);
- Geomorphology/Riparian Monitoring Plan (Attachment D6); and
- Water Quality Monitoring Plan (Attachment D7).

The following additional requirements are important for the overall monitoring program, and are addressed as elements of specific management or monitoring plans proposed by either USDA-FS or PCWA, as identified in each item:

Sensitive Plant Monitoring: Monitoring associated with sensitive plants that is related to vegetation management are described in the Vegetation and Integrated Pest Management Plan (see PCWA Alternative Condition No. 46, Attachment D11).

Monitoring Associated with Vegetation and Invasive Species Treatments: Monitoring associated with vegetation and invasive species treatments are described in the Vegetation and Integrated Pest Management Plan (see PCWA Alternative Condition No. 46, Attachment D11).

Recreation Survey: Monitoring associated with the recreation survey is described in the Recreation Plan (see USDA-FS Preliminary Condition No. 33).

Review of Recreation Developments: Monitoring associated with the review of recreation developments is described in the Recreation Plan (see USDA-FS Preliminary Condition No. 33).

Cultural Resource Monitoring: Monitoring associated with heritage resources is described in the Historic Properties Management Plan (see PCWA Alternative Condition No. 41, Attachment E).

Reservoir Levels Evaluation: Monitoring associated with reservoir levels is described in USDA-FS Preliminary Condition No. 37.

PCWA Alternative Condition No. 28 also provides that within one year of license issuance, the Licensee shall, in consultation with USDA-FS and CDFG, prepare a Bear Management Monitoring Plan that is approved by USDA-FS and CDFG.

Rationale

PCWA Alternative Condition No. 28 requires implementation of the seven monitoring plans identified above (Attachments D1 through D7) that have already been developed through extensive consultation with state and federal resource agencies (including USDA-FS) and other stakeholders, rather than continuing discussions on these plans as required in the USDA-FS Letter. The Fish Population Monitoring Plan and Foothill Yellow-legged Frog Monitoring Plan were included in PCWA's DLA, which was filed with FERC on September 28, 2010. Copies of the DLA were also provided to USDA-FS for a 90-day review and comment period ending on December 27, 2010. The USDA-FS provided comments on the two plans on December 22, 2010, and further, requested development of five additional monitoring plans (Western Pond Turtle Monitoring Plan, Benthic Macroinvertebrate Monitoring Plan, Mercury Bioaccumulation Monitoring Plan, Geomorphology/Riparian Monitoring Plan, and Water Quality Monitoring Plan).

Subsequent to receipt of USDA-FS's comments on the DLA, PCWA consulted with USDA-FS to clarify its comments. PCWA incorporated USDA-FS comments into the revised plans and used the comments as the basis for preparing the five new plans. The revised and new plans were included in the FLA, which was filed with FERC on February 23, 2011. Copies of the FLA were also provided to the USDA-FS. To date, no comments have been received from USDA-FS on these plans.

Since submittal of the FLA, PCWA has continued discussions with USDA-FS on potential license conditions, including monitoring plans. A total of 37 formal meetings,

webinars, and conference calls have been conducted. During these meetings, no comments were provided by the USDA-FS on these seven monitoring plans, nor did the USDA-FS request any additional meetings to discuss the plans. PCWA is unaware of any unresolved issues on these monitoring plans.

The USDA-FS Preliminary Condition No. 28 requires PCWA to consult with the USDA-FS, CDFG, and State Water Board to finalize these seven monitoring plans for inclusion in USDA-FS's Modified Terms and Conditions. However, given the considerable consultation that has already been conducted during development of these monitoring plans, PCWA believes the plans are complete, provides for adequate protection and utilization of the relevant USDA-FS reservations, and should be adopted by the USDA-FS.

PCWA's Alternative Condition No. 28 provides for adequate protection and utilization of the reservations (the Eldorado and Tahoe National Forests), pursuant to FPA Section 33. The attached monitoring plans were developed based upon consideration of relevant management goals of the resource agencies³; study methodologies approved by the resource agencies⁴ and FERC⁵; study results provided in agency and stakeholder approved Technical Study Reports⁶; extensive consultation with resource agency staff and technical experts and other stakeholders; and site-specific knowledge. Therefore, the attached monitoring plans incorporate the best available science and are consistent with generally accepted practices in the scientific community. PCWA is unaware of any unresolved issues on these monitoring plans.

PCWA's Alternative Condition No. 28 provides specific commitments, and therefore provides more robust resource protection as compared to the USDA-FS Preliminary Condition No. 28. Acceptance of PCWA's Alternative Condition No. 28 will cost significantly less to implement because it eliminates the need for future expenditures by PCWA, USDA-FS, and other stakeholders to complete additional

³ The relevant resource agency management goals are summarized in PCWA's Final License Application (Volume 3, Exhibit E, Section 12.5).

⁴ PCWA's Pre-Application Document filed with FERC December 13, 2007, contained stakeholder-approved technical study plans. These study plans were approved by resource agencies participating in the Middle Fork Project relicensing, including the USDA-FS.

⁵ FERC approved the study methodologies implemented for the MFP through issuance of their study plan determination on July 18, 2008.

⁶ PCWA's Final License Application filed with FERC February 28, 2011, included Technical Study Reports that were approved by the resource agencies, including the USDA-FS.

consultation as required in the USDA-FS Letter. PCWA's Alternative Condition No. 28 would not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality.

Adoption of PCWA Alternative Condition No. 28 will also facilitate FERC's review of the MFP relicensing application. FERC is required to consider in its Draft NEPA document "any preliminary mandatory terms and conditions and fishways prescriptions."⁷ This includes management and monitoring plans prepared for the Project. The seven monitoring plans identified above and attached hereto are already fully developed, and all comments received by the USDA-FS have been incorporated. USDA-FS's adoption of PCWA Alternative Condition No. 28 and the attached management and monitoring plans—rather than USDA-FS's preliminary condition that simply provides continuing consultation in the future—will enable FERC to conduct a complete NEPA analysis.

PCWA Alternative Condition No. 31 – Streamflow and Reservoir Elevation Gaging Plan

Description of the Alternative Condition

Upon FERC approval, the Licensee shall implement the Streamflow and Reservoir Elevation Gaging Plan (Attachment D8).

Rationale

PCWA Alternative Condition No. 31 requires implementation of the Streamflow and Reservoir Elevation Gaging Plan (SREGP) that was developed based on consultation with state and federal agencies (including the USDA-FS) and other stakeholders, rather than continuing discussions on the plan, as required in the USDA-FS Letter. This plan describes (a) the gages that will be used to document compliance with instream flow and reservoir elevation requirements and dissemination of real-time flow information to the public, (b) operations and maintenance of the gages, and (c) reporting of compliance with instream flow and reservoir elevation requirements.

⁷ 18 C.F.R. § 5.25(b).

A similar monitoring plan, the Flow and Reservoir Monitoring Plan (FRMP), was included in PCWA's DLA that was filed with FERC on September 28, 2010. USDA-FS provided comments on the plan on December 22, 2010. Following submittal of the DLA, PCWA continued discussions with resource agencies, including USDA-FS, on the FRMP. PCWA incorporated USDA-FS comments into a revised plan that was included in the FLA submitted to FERC on February 23, 2011. Copies of the FLA were also provided to the USDA-FS. No comments were received from the USDA-FS on the FLA.

Following submittal of the FLA, PCWA continued discussions with the USDA-FS, state and federal resource agencies, and other stakeholders on potential flow-related license conditions. A total of 15 instream flow meetings were conducted. During these meetings, PCWA and the resource agencies agreed to incorporate the gage and compliance information included in the FRMP filed with the FLA into PCWA's Revised Instream Flow and Reservoir Minimum Pool Measure to assist the development of preliminary conditions. This revised Instream Flow and Reservoir Minimum Pool Measure was provided to the Instream Flow and Reservoir Minimum Pool Measure subgroup for review and comment on June 24, 2011. PCWA continued to consult with the resource agencies on the contents of the plan until the USDA-FS filed its preliminary conditions on August 5, 2011.

USDA-FS Preliminary Condition No. 31 requires that PCWA consult with the USDA-FS, CDFG, and State Water Board to develop a SREGP. Subsequent to review of the USDA-FS Letter, PCWA consulted with the USDA-FS on August 15, 2011, and was provided an example SREGP from another proceeding to clarify the contents of the plan required under USDA-FS Preliminary Condition No. 31. Following discussion with USDA-FS, PCWA developed the USDA-FS-requested SREGP and has included it in PCWA Alternative Condition No. 31. This plan incorporates streamflow and reservoir elevation gaging information that was previously included in PCWA's Flow and Reservoir Monitoring Plan in the DLA and FLA, and additional USDA-FS and CDFG requested information. In light of the consultation that has already been conducted for the development of this plan, PCWA believes the plan is complete, provides for adequate protection and utilization of the USDA-FS reservations, and should be accepted by the USDA-FS, without requiring further consultation.

PCWA's Alternative Condition No. 31 provides for adequate protection and utilization of the reservations (the Eldorado and Tahoe National Forests), pursuant to FPA Section 33. The attached SREGP was developed based upon consideration of relevant management goals of the resource agencies⁸; methodologies currently employed by PCWA to monitor compliance with the existing license; current standards included in the Surface Water Quality Assurance Plan for the California District of the U.S. Geological Survey⁹; site-specific knowledge; and extensive consultation with resource agency staff and technical experts and other stakeholders. Therefore, the attached SREGP incorporates the best available science and is consistent with generally accepted practices in the scientific community. PCWA is unaware of any unresolved issues with the SREGP.

PCWA's Alternative Condition No. 31 provides specific commitments, and therefore provides more robust resource protection as compared to the USDA-FS Preliminary Condition No. 31. Acceptance of PCWA's Alternative Condition No. 31 will cost significantly less to implement because it eliminates the need for future expenditures by PCWA, USDA-FS, and other stakeholders to complete additional consultation as required in the USDA-FS Letter. PCWA's Alternative Condition No. 31 would not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality. In addition, as described above with respect to PCWA Alternative Condition No. 28, a preliminary condition that simply provides for continuing consultation in the future will prevent FERC from conducting a complete analysis of the License Conditions in its Draft NEPA document. Adoption of the attached SREGP by USDA-FS, rather than the USDA-FS's Preliminary Condition No. 31, will allow FERC to conduct a complete NEPA analysis.

⁸ The relevant resource agency management goals are summarized in PCWA's Final License Application (Volume 3, Exhibit E, Section 12.5).

⁹ See Attachment D8, Appendix A.

PCWA Alternative Condition No. 41 – Historic Properties Management Plan

Description of the Alternative Condition

Upon FERC approval, the Licensee shall implement the Revised Historic Properties Management Plan (May 2011) (Attachment E).

Rationale

PCWA Alternative Condition No. 41 requires implementation of the Revised Draft Historic Properties Management Plan (HPMP), which was filed with FERC on May 12, 2011, rather than continuing discussions on the plan as required in the USDA-FS Letter. The Revised Draft HPMP in PCWA's Alternative Condition No. 41 was developed in consultation with the Cultural Resources Technical Working Group (CUL TWG), which consisted of the USDA-FS, Native American Tribes, non-governmental organizations (NGOs), and members of the public. In addition, the Revised Draft HPMP in PCWA's Alternative Condition No. 41 includes additional information requested by FERC in a memo dated April 7, 2011.

Focused consultation regarding the HPMP has occurred since February 23, 2009, and has consisted of in-person meetings with the USDA-FS, Native American Tribes, and other members of the CUL TWG; e-mail and written correspondence; and distribution of draft versions of the HPMP for review and comment. PCWA's consultation efforts related to preparation of the Revised Draft HPMP is documented in PCWA's FLA (Tables 14-2, 14-3, and 14-6), Revised Draft HPMP (HPMP Table 2), and summarized below.

- After developing an understanding of the issues to be addressed in the Draft HPMP, PCWA developed a Draft HPMP. PCWA provided an overview of the Draft HPMP, including potential management measures, to the USDA-FS, Native American Tribes, and other members of the CUL TWG during a meeting held on June 2, 2010. The Draft HPMP (dated June 2010) was distributed to the Native American Tribes and USDA-FS cultural resource specialists immediately following the meeting for review and comment.

- PCWA held a meeting with members of the CUL TWG on June 25, 2010 to discuss verbal comments on the June 2010 Draft HPMP.
- PCWA subsequently received written comments on the June 2010 Draft HPMP from:
 - Washoe Tribe of Nevada and California (June 25, 2010);
 - United Auburn Indian Community (UAIC) (June 28, 2010);
 - Colfax Todds Valley Consolidated Tribe (July 2, 2010); and
 - Eldorado National Forest Heritage and Tribal Program Manager (July 8, 2010).
- The June 2010 Draft HPMP was revised to address comments received from the Native American Tribes. The revised HPMP was distributed and discussed at a meeting held on July 9, 2010. The comments provided by the USDA-FS on July 8, 2010 were received too late to address in the July 9, 2010 version of the HPMP, but were discussed during the July 9, 2010 meeting.
- The June 2010 Draft HPMP was subsequently revised to address the USDA-FS comments and verbal comments discussed at the July 9, 2010 meeting.
- A revised version of the Draft HPMP (dated September 2010), which addressed the July 8, 2010 comments of the USDA-FS, was included in the DLA, and distributed to relicensing participants on September 28, 2010 for a 90-day review and comment period. The comment period ended on December 27, 2010.
- The USDA-FS (in a letter dated December 22, 2010) provided comments on the September 2010 Draft HPMP. In addition, in a letter dated December 22, 2010, FERC requested that the Draft HPMP include maps showing the Area of Potential Effects (APE). No other party provided comments.

- The September 2010 Draft HPMP was revised to address the comments provided by the USDA-FS and FERC. The revised version of the Draft HPMP (dated February 2011) was included in PCWA's FLA, which was filed with FERC on February 23, 2011, and concurrently distributed to relicensing participants, including USDA-FS, Native American Tribes, and the California State Historic Preservation Officer (SHPO).
- FERC subsequently, in a memo dated April 7, 2011, requested that PCWA revise the February 2011 Draft HPMP to include the following information: (1) additional information about the cultural resources documented with the APE; (2) additional monitoring measures; (3) additional consultation steps; (4) map revisions; (5) measures to address paleontological resources on federal lands; and (6) consultation documentation. Accordingly, PCWA revised the February 2011 Draft HPMP and filed a Revised Draft HPMP with FERC on May 12, 2011, concurrently providing copies to the USDA-FS, Native American Tribes, and the SHPO.
- On July 25, 2011, the United Auburn Indian Community (UAIC) of the Auburn Rancheria filed a comment letter (dated July 6, 2011) pertaining to the HPMP. All the comments identified in the UAIC's letter were previously addressed and incorporated in the Revised Draft HPMP filed on May 12, 2011. PCWA is providing a response letter to UAIC directing them to the specific sections in the Revised Draft HPMP that address their comments.

PCWA is unaware of any unresolved issues on the Revised Draft HPMP (May 2011), which is attached hereto. As described above, PCWA has conducted extensive consultation with the USDA-FS and Native American Tribes to develop the Revised Draft HPMP. The USDA-FS participated in the development of the Revised Draft HPMP. All comments provided by the USDA-FS and Native American Tribes have been addressed in the attached version of the Revised Draft HPMP. PCWA requests that the USDA-FS accept the Revised Draft HPMP (May 2011) included in PCWA Alternative Condition No. 41 (Attachment E).

PCWA believes the Revised Draft HPMP thoroughly addresses potential impacts to National Register of Historic Places (NRHP)-eligible properties and other cultural resources that could be affected by operation and maintenance of the MFP. Given the amount of consultation that has occurred to develop the Revised Draft HPMP, and the inclusion of provisions to update the HPMP as necessary, PCWA believes the attached Revised Draft HPMP is complete and should be accepted by the USDA-FS.

PCWA's Alternative Condition No. 41 provides for adequate protection and utilization of the reservations (the Eldorado and Tahoe National Forests), pursuant to FPA Section 33. The attached Revised Draft HPMP was developed based upon consideration of relevant management goals of the resource agencies¹⁰; study methodologies approved by the resource agencies, Native American Tribes, and other stakeholders¹¹ and FERC¹²; study results provided in agency and stakeholder approved Technical Study Reports¹³; extensive consultation with resource agency staff, Native American Tribes, and other stakeholders; and site-specific knowledge. Therefore, the attached Revised Draft HPMP incorporates the best available science and is consistent with generally accepted practices in the scientific community. PCWA is unaware of any unresolved issues with the Revised Draft HPMP.

PCWA's Alternative Condition No. 41 provides specific commitments, and therefore provides more robust resource protection as compared to the USDA-FS Preliminary Condition No. 41. Acceptance of PCWA's Alternative Condition No. 41 will cost significantly less to implement because it eliminates the need for future expenditures by PCWA, USDA-FS, and other stakeholders to complete additional consultation as required in the USDA-FS Letter. PCWA's Alternative Condition No. 41 would not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality. In addition, as described above with respect to PCWA Alternative Condition No. 28, a

¹⁰ The relevant resource agency management goals are summarized in PCWA's Final License Application (Volume 3, Exhibit E, Section 12.5).

¹¹ PCWA's Pre-Application Document filed with FERC December 13, 2007, contained stakeholder-approved technical study plans. These study plans were approved by resource agencies participating in the Middle Fork Project relicensing, including the USDA-FS.

¹² FERC approved the study methodologies implemented for the MFP through issuance of their study plan determination on July 18, 2008.

¹³ PCWA's Final License Application filed with FERC February 28, 2011, included Technical Study Reports that were approved by the resource agencies, including the USDA-FS.

preliminary condition that simply provides for continuing consultation in the future will prevent FERC from conducting a complete analysis of the License Conditions in its Draft NEPA document. Adoption of the attached Revised Draft HPMP by USDA-FS, rather than the USDA-FS's Preliminary Condition No. 41, will allow FERC to conduct a complete NEPA analysis.

PCWA Alternative Condition No. 43 – Revised Transportation System Management Plan

Description of the Alternative Condition

Upon FERC approval, the Licensee shall implement the Revised Transportation System Management Plan (August 2011) (Attachment D9).

Rationale

PCWA Alternative Condition No. 43 requires implementation of the Revised TSMP (August 2011), rather than continuing discussions on the plan as required in the USDA-FS Letter. The Revised TSMP in PCWA's Alternative Condition No. 43 was developed in consultation with the Land Management Technical Working Group (LAND TWG), which consisted of USDA-FS regional and district officers and road specialists from both the TNF and ENF, other federal and state resource agency representatives, local government representatives, and NGOs. As documented in Table 14-2 of PCWA's FLA, PCWA conducted extensive consultation in the development of the TSMP, as summarized below.

- A Draft TSMP was developed in consultation with the LAND TWG during three meetings conducted on April 20, May 21, and June 23, 2010.
- Information provided to PCWA by the ENF and TNF road specialists by e-mail in July and August, 2010 was incorporated into the Draft TSMP.
- The Draft TSMP was subsequently filed with FERC as part of PCWA's DLA and distributed to the MFP relicensing participants on September 28, 2010 for a 90-day review and comment period ending December 27, 2010.

- One comment letter on the Draft TSMP was provided by the resource agencies (USDA-FS, et al.) in a letter filed with FERC on December 22, 2010.
- Additional information relevant to the TSMP was provided to PCWA by the TNF road specialist by e-mail correspondence dated January 27, 2011.
- The comments provided by the resource agencies and by the TNF road specialist were addressed in a Revised TSMP.
- The Revised TSMP (dated February 2011) was included in PCWA's FLA, which was filed with FERC on February 23, 2011, and concurrently distributed to relicensing participants.
- Following submittal of the FLA, PCWA continued discussions with the resource agencies on several management and monitoring plans, including the Recreation Plan. During these discussions, the USDA-FS provided comments on the TSMP. In addition to minor edits regarding recreation facility water supply access roads, the USDA-FS requested that PCWA: (1) incorporate road and trail improvements that were identified in the Recreation Plan into the TSMP; (2) synchronize the Recreation Plan and TSMP implementation schedules; and (3) update/revise the BMPs and Avoidance and Protection (AP) measures to be consistent with the BMPs and AP measures identified in the Recreation Plan, which was included in Enclosure 3 of the USDA-FS Preliminary Section 4(e) Terms and Conditions filed with FERC on August 5, 2011.
- The Revised TSMP included in Attachment D9 of this submittal incorporates all comments provided by the USDA-FS.

PCWA is unaware of any unresolved issues on the Revised TSMP (August 2011). As described above, PCWA has conducted extensive consultation during development of the plan. The USDA-FS participated in the development of the Revised TSMP (August 2011). All comments provided by the USDA-FS have been addressed in the attached version of the TSMP. In addition, the attached TSMP has been updated to

include Project recreation access roads and trails that were identified during discussion on the Recreation Plan, which was developed after PCWA filed the FLA. PCWA requests that USDA-FS accept the Revised TSMP (August 2011) included in PCWA's Alternative Condition No. 43 (Attachment D9).

PCWA's Alternative Condition No. 43 provides for adequate protection and utilization of the reservations (the Eldorado and Tahoe National Forests), pursuant to FPA Section 33. The attached Revised TSMP was developed based upon consideration of relevant management goals of the resource agencies¹⁴; study methodologies approved by the resource agencies¹⁵ and FERC¹⁶; study results provided in agency and stakeholder approved Technical Study Reports¹⁷; extensive consultation with resource agency staff and technical experts and other stakeholders; and site-specific knowledge. Therefore, the attached Revised TSMP incorporates the best available information and is consistent with generally accepted road management practices. PCWA is unaware of any unresolved issues with the Revised TSMP.

PCWA's Alternative Condition No. 43 provides specific commitments, and therefore provides more robust resource protection as compared to the USDA-FS Preliminary Condition No. 43. Acceptance of PCWA's Alternative Condition No. 43 will cost significantly less to implement because it eliminates the need for future expenditures by PCWA, USDA-FS, and other stakeholders to complete additional consultation as required in the USDA-FS Letter. PCWA's Alternative Condition No. 43 would not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality. In addition, as described above with respect to PCWA Alternative Condition No. 28, a preliminary condition that simply provides for continuing consultation in the future will prevent FERC from conducting a complete analysis of the License Conditions in its Draft NEPA document. Adoption of the attached Revised TSMP by USDA-FS, rather

¹⁴ The relevant resource agency management goals are summarized in PCWA's Final License Application (Volume 3, Exhibit E, Section 12.5).

¹⁵ PCWA's Pre-Application Document filed with FERC December 13, 2007, contained stakeholder-approved technical study plans. These study plans were approved by resource agencies participating in the Middle Fork Project relicensing, including the USDA-FS.

¹⁶ FERC approved the study methodologies implemented for the MFP through issuance of their study plan determination on July 18, 2008.

¹⁷ PCWA's Final License Application filed with FERC February 28, 2011, included Technical Study Reports that were approved by the resource agencies, including the USDA-FS.

than the USDA-FS's Preliminary Condition No. 43, will allow FERC to conduct a complete NEPA analysis.

PCWA Alternative Condition No. 44 – Revised Fire Management and Response Plan

Description of the Alternative Condition

Upon FERC approval, the Licensee shall implement the Revised Fire Prevention and Suppression Plan (August 2011) (Attachment D10).

Rationale

PCWA Alternative Condition No. 44 requires implementation of the Revised Fire Prevention and Suppression Plan (FPSP) (August 2011), developed through extensive consultation with the USDA-FS and other stakeholders, rather than continuing discussions on the plan as required in the USDA-FS Letter. A Draft FPSP was included in PCWA's DLA, which was filed with FERC on September 28, 2010, and concurrently distributed to relicensing participants for a 90-day review and comment period ending on December 27, 2010. USDA-FS provided minor comments on the FPSP on December 22, 2010. PCWA incorporated USDA-FS comments into a Revised FPSP (dated February 2011), which was included in PCWA's FLA filed with FERC on February 23, 2011. No comments were received from USDA-FS on the FLA.

Subsequent to submittal of the FLA, PCWA received verbal comments on the FPSP from USDA-FS, Tahoe National Forest, during a telephone conversation on July 21, 2011. USDA-FS comments were incorporated into the attached Revised FPSP (August 2011).

PCWA is unaware of any unresolved issues on the Revised FPSP (August 2011). PCWA requests that USDA-FS accept the Revised FPSP (August 2011) included in PCWA's Alternative Condition No. 44 (Attachment D10).

PCWA's Alternative Condition No. 44 provides for adequate protection and utilization of the reservations (the Eldorado and Tahoe National Forests), pursuant to FPA Section 33. The attached Revised FPSP was developed based upon

consideration of relevant management goals of the resource agencies¹⁸; study methodologies approved by the resource agencies¹⁹ and FERC²⁰; study results provided in agency and stakeholder approved Technical Study Reports²¹; extensive consultation with resource agency staff and technical experts and other stakeholders; and site-specific knowledge. Therefore, the attached Revised FPSP incorporates the best available information and is consistent with generally accepted fire management practices. PCWA is unaware of any unresolved issues with the Revised FPSP.

PCWA's Alternative Condition No. 44 provides specific commitments, and therefore provides more robust resource protection as compared to the USDA-FS Preliminary Condition No. 44. Acceptance of PCWA's Alternative Condition No. 44 will cost significantly less to implement because it eliminates the need for future expenditures by PCWA, USDA-FS, and other stakeholders to complete additional consultation as required in the USDA-FS Letter. PCWA's Alternative Condition No. 44 would not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality. In addition, as described above with respect to PCWA Alternative Condition No. 28, a preliminary condition that simply provides for continuing consultation in the future will prevent FERC from conducting a complete analysis of the License Conditions in its Draft NEPA document. Adoption of the attached Revised FPSP by USDA-FS, rather than the USDA-FS's Preliminary Condition No. 44, will allow FERC to conduct a complete NEPA analysis.

¹⁸ The relevant resource agency management goals are summarized in PCWA's Final License Application (Volume 3, Exhibit E, Section 12.5).

¹⁹ PCWA's Pre-Application Document filed with FERC December 13, 2007, contained stakeholder-approved technical study plans. These study plans were approved by resource agencies participating in the Middle Fork Project relicensing, including the USDA-FS.

²⁰ FERC approved the study methodologies implemented for the MFP through issuance of their study plan determination on July 18, 2008.

²¹ PCWA's Final License Application filed with FERC February 28, 2011, included Technical Study Reports that were approved by the resource agencies, including the USDA-FS.

PCWA Alternative Condition No. 46 – Revised Vegetation and Integrated Pest Management Plan

Description of the Alternative Condition

Upon FERC approval, Licensee shall implement the Revised Vegetation and Integrated Pest Management Plan (August 2011) (Attachments D11 and F).

Rationale

PCWA Alternative Condition No. 46 requires implementation of the Revised Vegetation and Integrated Pest Management Plan (VIPMP) (August 2011), rather than continuing discussions on the plan as required in the USDA-FS Letter. PCWA has conducted extensive consultation with USDA-FS, state and federal resource agencies, and other stakeholders to develop the Revised VIPMP (Attachments D11 and F). A Draft VIPMP was included in PCWA's DLA, which was filed with FERC on September 28, 2010. Copies of the DLA were also provided to USDA-FS for a 90-day review and comment period ending on December 27, 2010. USDA-FS provided comments on the Draft VIPMP on December 22, 2010. In response to the USDA-FS comments, PCWA committed to continue discussion with USDA-FS and other relicensing participants following submittal of the FLA (between March and June 2011) to resolve comments and reach consensus.

Subsequent to filing the FLA, PCWA scheduled a meeting with USDA-FS and relicensing participants on March 28, 2011, to discuss and clarify comments on the DLA. Two additional meetings were scheduled for April 27 and May 18, 2011, but were cancelled at the request of the USDA-FS to allow it additional time to review the plan and develop comments. On June 21, 2011, PCWA distributed the Revised VIPMP (June 2011) addressing USDA-FS comments provided on the DLA, as appropriate.

USDA-FS provided additional comments on the Revised VIPMP (June 2011) via e-mail on June 30, 2011, and PCWA addressed the comments and re-distributed the revised section of the VIPMP to USDA-FS on July 15, 2011. No comments were received from USDA-FS on the July 2011 version of the VIPMP. On August 5, 2011,

USDA-FS provided their Preliminary Section 4(e) Terms and Conditions for the MFP which included a list of specific elements to be included in the VIPMP.

Two elements included in USDA-FS Preliminary Condition No. 46 that are not included in PCWA's Alternative Condition No. 46 include: (1) development of boat cleaning stations at boat ramps for removal of aquatic invasive weeds; and (2) development of a plan to address invasive species such as the New Zealand mudsnail (*Potamopyrgus antipodarum*), Quagga mussels (*Dreissena bugensis*), and zebra mussels (*Dreissena polymorpha*) if they are found during any monitoring. PCWA also modified the invasive algae (*Didymosphenia geminata*) element of USDA-FS Preliminary Condition No. 46 in the Alternative Condition. Each of these revisions are described below.

PCWA did not include development of boat cleaning stations at boat ramps for removal of aquatic invasive weeds in its alternative condition because aquatic invasive weeds are not present in the Project area and the overall risk of introduction and establishment of aquatic weeds in the Project reservoirs is very low. Currently, no aquatic plant communities are present in the Project reservoirs as described in the FLA. However, PCWA has incorporated the following language into its Alternative Condition No. 46:

If aquatic invasive weeds are identified as being present at French Meadows or Hell Hole reservoirs or become established within the watershed, PCWA will consult with the resource agencies (CDFG, USDA-FS, and USFWS) to determine appropriate measures to prevent their spread.

PCWA's Alternative Condition No. 46 reduces overall Project costs by not requiring the construction and maintenance of unnecessary cleaning stations. PCWA's alternative condition still provides for adequate protection of resources by allowing the USDA-FS to require cleaning stations if the presence or risk of introduction of invasive aquatic weeds increases in the future.

PCWA did not include a plan to address invasive snails and mussels in its alternative condition because a separate Invasive Mussel Protection Plan has already been developed and approved by CDFG. In September 2008, California Governor

Arnold Schwarzenegger signed into law Assembly Bill (AB) 2065. This bill was designed to stop the spread of non-native zebra and quagga mussels throughout California. AB 2065 was enacted as Fish and Game Code Section 2302 which requires, in part:

(a) Any person, or federal, state, or local agency, district, or authority that owns or manages a reservoir, as defined in Section 6004.5 of the Water Code, where recreational, boating, or fishing activities are permitted, except a privately owned reservoir that is not open to the public, shall do both of the following:

(1) Assess the vulnerability of the reservoir for the introduction of nonnative dreissenid mussel species.

(2) Develop and implement a program designed to prevent the introduction of nonnative dreissenid mussel species.

(b) The program shall include, at a minimum, all of the following:

(1) Public education.

(2) Monitoring.

(3) Management of those recreational, boating, or fishing activities that are permitted.

The Invasive Mussel Protection Plan developed by PCWA meets these requirements and was accepted by CDFG in September 2010. Therefore, development of an additional plan for inclusion in the Revised VIPMP is unnecessary. Further, PCWA has committed, in PCWA Alternative Condition No. 46, to updating the Invasive Mussel Protection Plan, in consultation with resource agencies, to include feasible management and monitoring of other invasive aquatic mollusks (e.g., New Zealand mudsnail

(*Potamopyrgus antipodarum*)), if they are identified during monitoring activities and if their introduction is determined to be Project-related.

PCWA has modified the language regarding potential treatment of invasive algae (*Didymosphenia geminata*) in the Revised VIPMP (August 2011) in PCWA's Alternative Condition No. 46. The revised language clarifies that PCWA is only responsible for treatment of invasive algae (*Didymosphenia geminate*) if future scientific studies document that the presence or abundance of the algae found in river and stream reaches in the vicinity of the MFP is Project-related, and if a safe method of reducing this invasive algae exists. Further, if a feasible method exists, PCWA will implement this treatment only in Project-affected locations.

The Revised VIPMP (August 2011) (Attachments D11 and F) addresses all comments provided by the USDA-FS, state and federal resource agencies, and other stakeholders. With incorporation of these comments, and through more than two years of consultation with USDA-FS, the Revised VIPMP meets USDA-FS objectives regarding vegetation and pest management associated with the MFP. PCWA requests USDA-FS to accept the Revised VIPMP (August 2011) included in PCWA's Alternative Condition No. 46 (Attachments D11 and F).

PCWA's Alternative Condition No. 46 provides for adequate protection and utilization of the reservations (the Eldorado and Tahoe National Forests), pursuant to FPA Section 33. The attached Revised VIPMP was developed based upon consideration of relevant management goals of the resource agencies²²; study methodologies approved by the resource agencies²³ and FERC²⁴; study results provided in agency and stakeholder approved Technical Study Reports²⁵; extensive consultation with resource agency staff and technical experts and other stakeholders; and site-specific knowledge. Therefore, the attached Revised VIPMP incorporates the best available science and is consistent with generally accepted practices in the

²² The relevant resource agency management goals are summarized in PCWA's Final License Application (Volume 3, Exhibit E, Section 12.5).

²³ PCWA's Pre-Application Document filed with FERC December 13, 2007, contained stakeholder-approved technical study plans. These study plans were approved by resource agencies participating in the Middle Fork Project relicensing, including the USDA-FS.

²⁴ FERC approved the study methodologies implemented for the MFP through issuance of their study plan determination on July 18, 2008.

²⁵ PCWA's Final License Application filed with FERC February 28, 2011, included Technical Study Reports that were approved by the resource agencies, including the USDA-FS.

scientific community. PCWA is unaware of any unresolved issues with the Revised VIPMP.

PCWA's Alternative Condition No. 46 provides specific commitments, and therefore provides more robust resource protection as compared to the USDA-FS Preliminary Condition No. 46. Acceptance of PCWA's Alternative Condition No. 46 will cost significantly less to implement because it eliminates the need for future expenditures by PCWA, USDA-FS, and other stakeholders to complete additional consultation as required in the USDA-FS Letter. PCWA's Alternative Condition No. 46 would not adversely affect energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; or other aspects of environmental quality. In addition, as described above with respect to PCWA Alternative Condition No. 28, a preliminary condition that simply provides for continuing consultation in the future will prevent FERC from conducting a complete analysis of the License Conditions in its Draft NEPA document. Adoption of the attached Revised VIPMP by USDA-FS, rather than the USDA-FS's Preliminary Condition No. 46, will allow FERC to conduct a complete NEPA analysis.

CONCLUSION

PCWA looks forward to working with USDA-FS on the resolution of Section 4(e) conditions for the MFP. If you have any questions regarding the alternative conditions, please contact me at (530) 823-4889 or by e-mail at afecko@pcwa.net.

Sincerely,
PLACER COUNTY WATER AGENCY



Andrew Fecko
Resource Planning Administrator
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144 Ferguson Road
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LIST OF ATTACHMENTS

Attachment A: Distribution List

Attachment B: Certificate of Service

Attachment C: PCWA's Clarified Alternative Conditions (Public Information)

Attachment C1: PCWA Alternative Condition No. 15 – Pesticide-Use Restrictions on National Forest System Lands

Attachment C2: PCWA Alternative Condition No. 22 – Minimum Streamflows

Attachment C3: PCWA Alternative Condition No. 23 – Pulse Flows

Attachment C4: PCWA Alternative Condition No. 24 – Ramping Rates

Attachment C5: PCWA Alternative Condition No. 25 – Outages

Attachment C6: PCWA Alternative Condition No. 26 – Spawning Habitat Improvement Plan for the Middle Fork American River Below Ralston Afterbay Dam

Attachment C7: PCWA Alternative Condition No. 37 – Reservoir Minimum Pool Elevations and Reservoir Levels Recreation Objectives

Attachment C8: PCWA Alternative Condition No. 39 – Recreation Streamflows in the Middle Fork American River Below Oxbow Powerhouse

Attachment C9: PCWA Alternative Condition No. 45 – Erosion and Sediment Control and Management

Attachment D: PCWA's Modified Alternative Conditions (Public Information)

Attachment D1: PCWA Alternative Condition No. 28 – Monitoring Program – Fish Population Monitoring Plan

- Attachment D2: PCWA Alternative Condition No. 28 – Monitoring Program – Foothill Yellow-legged Frog Monitoring Plan
- Attachment D3: PCWA Alternative Condition No. 28 – Monitoring Program – Western Pond Turtle Monitoring Plan
- Attachment D4: PCWA Alternative Condition No. 28 – Monitoring Program – Benthic Macroinvertebrate Monitoring Plan
- Attachment D5: PCWA Alternative Condition No. 28 – Monitoring Program – Mercury Bioaccumulation Monitoring Plan
- Attachment D6: PCWA Alternative Condition No. 28 – Monitoring Program – Geomorphology/Riparian Monitoring Plan
- Attachment D7: PCWA Alternative Condition No. 28 – Monitoring Program – Water Quality Monitoring Plan
- Attachment D8: PCWA Alternative Condition No. 31 – Streamflow and Reservoir Elevation Gaging Plan
- Attachment D9: PCWA Alternative Condition No.43 – Revised Transportation System Management Plan
- Attachment D10: PCWA Alternative Condition No. 44 – Revised Fire Prevention and Suppression Plan
- Attachment D11: PCWA Alternative Condition No. 46 – Revised Vegetation and Integrated Pest Management Plan
- Attachment E: Revised Draft Historic Properties Management Plan (Privileged Information)
- Attachment F: Revised Vegetation and Integrated Pest Management Plan Maps (Confidential Information)

Attachment A
Distribution List

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Attachment B
Certificate of Service

CERTIFICATE OF SERVICE

Pursuant to the provisions of 7 C.F.R. § 1.670, I hereby certify that I have this day served a complete copy of the foregoing document to the Federal Energy Regulatory Commission and each "license party" in the relicensing proceedings for Project No. 2079 as set forth in the attached distribution list, by courier service.

Dated at Auburn, CA this 2nd day of September 2011.



Andrew Fecko
Placer County Water Agency
Resource Planning Administrator