

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Southern California Edison Company

Project No. 2017-020

ORDER ON REHEARING

(Issued April 20, 2004)

1. Southern California Edison Company (Edison) filed a request for rehearing of the December 4, 2003 Order of the Director, Office of Energy Projects (Director), issuing a new license for the continued operation and maintenance of the 98.822-megawatt (MW) Big Creek No. 4 Hydroelectric Project No. 2017 (Big Creek 4), located on the San Joaquin River, in Fresno, Madera, and Tulare Counties, California. 105 FERC ¶ 62,146 (2002). On January 30, 2004, the U.S. Forest Service filed a response to the request for rehearing.¹ As discussed below, rehearing is granted in part and denied in part.

BACKGROUND

2. Big Creek 4 is the lowermost project of Edison's Big Creek System, an integrated hydroelectric system consisting of six reservoirs and nine powerhouses operating under seven separate Commission licenses. The Big Creek 4 Project works include a 248.5-foot-high, 954-foot-long dam (known as Dam No. 7), which impounds the 465-acre Redinger Reservoir. Water is diverted at Dam No. 7 through a 6.3-mile-long conduit to the Big Creek 4 powerhouse and then returned to the San Joaquin River, bypassing almost 7 miles of the river. The project is located partly on Federal lands in the Sierra National Forest.

3. The new license included, in Appendices A and B, respectively, mandatory conditions submitted by the Forest Service under section 4(e) of the Federal Power Act

¹The Commission's rules do not permit answers to a request for rehearing, but the Commission may provide parties an opportunity to file briefs on issues presented in such a request. 18 C.F.R. § 385.713(d)(1) (2003). The Forest Service is an intervenor in this proceeding. We will consider the Forest Service's filing to the extent it aids in our resolution of the issues.

(FPA)² and by the State of California Water Resources Control Board (Water Board) under section 401 of the Clean Water Act.³ On rehearing, Edison raises issues regarding the relationship between these conditions and certain license articles. Edison also requests that we change the expiration date of the license, remove certain facilities from the license, and revise license requirements relating to protection of the valley elderberry longhorn beetle.

DISCUSSION

A. License Term

4. Section 6 of the FPA states that licenses can be issued for terms of no more than 50 years, and section 15(e) of the FPA states that new licenses shall be issued for terms of no less than 30 years. The Commission issues new licenses for 30, 40, or 50-year terms, depending on the extent of redevelopment, new construction, new capacity, or additional environmental measures required. See, e.g., Wisconsin Power Company, 94 FERC ¶ 61,037 at 61,164 (2001). It is also the Commission's policy to coordinate, whenever reasonable, the expiration dates of licenses for projects in the same basin, in order to facilitate future consideration of cumulative impacts of those projects.⁴

5. The Director found that only modest measures would be required under the Big Creek 4 Project's new license. Such measures typically would warrant a 30-year license. Here, the Director issued the new license for a term of 36 years, to enable coordination of the Big Creek 4 license term with potential terms of new licenses for the other Edison hydroelectric projects that make up the Big Creek System. The terms of the current

²Under section 4(e) of the FPA, 16 U.S.C. § 797(e), the Commission must include in any license for a project located within a Federal reservation such conditions as the agency managing the reservation shall deem necessary for the adequate protection and utilization of that reservation.

³Under section 401(d) of the Clean Water Act, 33 U.S.C. § 1341(d), certification issued by a State in connection with the issuance of any Federal license shall become a condition of that license.

⁴Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts, 59 Fed. Reg. 66,718 (December 28, 1994); FERC Stats & Regs ¶ 31,010 at 31,219 (1994).

licenses for those projects expire between 2003 and 2009.⁵ The Director reasoned that issuance of a 36-year license for Big Creek 4 would allow for the possibility that the licenses would expire at about the same time were the other projects relicensed for 30-year terms.

6. Edison argues that there is no assurance that the new licenses for the other Big Creek projects will be given terms that expire in 2039: some of the projects may be issued 30-year licenses after 2009, or may be issued licenses with terms longer than 30 years.⁶ Edison proposes that the Commission adopt a “flexible license term” to ensure coordination with the other six projects. Specifically, Edison requests that we establish the Big Creek 4 Project license term as the lesser of 50 years or the term of the next new license issued for one of the Big Creek projects having a 2009 original license expiration date. Edison envisions that the “actual license term” for the Big Creek 4 Project could be confirmed by a Commission order issued at the time the last new license for the Big Creek System is issued.

7. Although it is Commission policy to coordinate license terms for related projects whenever possible, we recognize that exact coordination of expiration dates cannot always be accomplished. The Director’s establishment of a 36-year term for the Big Creek 4 license was a reasonable attempt to achieve similar expiration dates for new licenses that may be issued for the Big Creek projects. Even if it develops that those expiration dates are within a few years of each other, the Commission would still have the option of coordinating the consideration of the relicense applications. Finally, we note that in some river basins licensees have voluntarily sought to coordinate approaching license expiration dates by applying to accelerate termination of later-expiring licenses.

8. In light of the above, we affirm the Director’s choice of license term in this proceeding.

⁵Those expiration dates are: Project No. 2086--August 31, 2003; Project No. 2174--March 31, 2005; Project No. 2085--November 30, 2007; and Project Nos. 120, 2175 and 67--February 28, 2009.

⁶Section 15(e) of the FPA specifies that any new license shall be issued for a term of not less than 30 years nor more than 50 years.

B. Project Lands and Facilities

9. On January 12, 2000, nearly three years after filing its relicense application, Edison filed an application to amend its existing license to delete from the project boundary a switchyard and certain transmission lines access roads.⁷ By order issued March 9, 2001, the Office of Energy Projects' Director, Division of Hydropower Administration and Compliance, granted in part the amendment application. 94 FERC ¶ 62,202, reh'g denied, 95 FERC ¶ 61,188 (2001).

10. The Division Director's order approved the deletion from the license of the switchyard and two transmission lines, based on a finding that these facilities are part of Edison's distribution system and, as such, are not the project's primary transmission lines.⁸ However, the order made these deletions and the revised project descriptions effective on the date that Edison received all necessary permits or approvals from the Forest Service for the continued use of Forest Service lands for these facilities, and it required Edison to file copies of such permits or approvals with the Commission.⁹

11. Edison contended that various access roads were no longer needed for the operation and maintenance of the project. The Division Director deferred to the relicensing proceeding disposition of Edison's request to remove these roads from the project, on the ground that they might be considered for project purposes under a new license.

⁷Edison supplemented its application on November 9, 2000. Since the Big Creek 4 license expired on February 28, 1999, the application, in effect, sought amendment of the annual licenses under which the project has been operating since the expiration of its license term.

⁸Under section 3(11) of the FPA, a project includes the primary lines transmitting power from the project to the point of junction with the distribution system or with the interconnected primary transmission system.

⁹By order issued February 27, 2002, the Division Director approved revised exhibits filed by Edison in connection with the amendment, effective upon compliance with the requirements for Forest Service approval and filing with the Commission. 98 FERC ¶ 62,139 (2002).

1. Lands and facilities not needed for project purposes

12. In the order issuing the new license, the Director stated that the transmission lines and related lands to be deleted from the project pursuant to the Division Director's March 9, 2001 Order would remain within the project boundary under the new license until the Forest Service approval and Commission filing requirements had been met.

13. As for the access roads, the relicense order agreed with Edison that certain of the roads served no project purpose and should be excluded from the license. However, as with the transmission lines, because the roads occupy National Forest land and still will be used by Edison, the relicense order concluded that their removal from the license is contingent on Edison receiving approval from the Forest Service to use the lands and on the filing of those permits or approvals with the Commission.

14. Edison challenges the authority of the Commission to condition the effective date of the removal of the transmission lines and roads from the project. Edison states that the Commission may issue licenses under section 4(e) of the FPA for "project works necessary or convenient for . . . the development, transmission, and utilization of power," and under section 23(b) of the FPA "for the purpose of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or other works incidental thereto" Edison argues that, once a determination is made that facilities are no longer used and useful in connection with hydropower development, the Commission "loses jurisdiction" over those facilities and may no longer include them in the project license or condition their removal on proof of receipt of the Forest Service's approval of use and occupancy.¹⁰

15. The Commission has long held that, at the time project facilities or lands are found to be outside the Commission's mandatory licensing authority, the Commission can consider the public interest in determining when, and in what manner, to bring the relevant part of a license to an end.¹¹ Moreover, the Commission has specifically rejected

¹⁰Edison concedes that the Forest Service must approve the location and use of transmission lines and access roads within the Sierra National Forest, and it states that it has been seeking such approval from the Forest Service for these facilities for the past few years. The Forest Service's jurisdiction over the transmission lines and roads addressed in this case is authorized pursuant to section 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761.

¹¹See, e.g., City of Phoenix, Arizona, 59 FPC 1061, 1070-71 (1977).

the argument that Commission jurisdiction over transmission lines ends simultaneously with a finding that the lines are no longer primary transmission lines. Pacific Gas and Electric Company, 85 FERC ¶ 61,411 (1998). In that proceeding, on the request of the U.S. Department of Agriculture, we conditioned the exclusion of transmission lines and associated facilities on the receipt of necessary permits for the continued use of Federal lands, in order to prevent the creation of a regulatory gap. The Director correctly followed this policy in this proceeding.¹²

(2) **Access roads needed for project purposes**

16. The relicense order found that some of the access roads that Edison proposed to remove from the project boundary continue to serve project purposes and should remain in the license. On rehearing, Edison objects to this finding with respect to four roads. Edison argues that roads numbered 4 and 12, and portions of roads numbered 6 and 20, should be removed from the license.

17. Edison contends that it uses road 4 to access one of its non-project transmission lines and a non-project microwave station, and that it does not lead to any project works. In fact, the Commission staff's Final Environmental Impact Statement (FEIS) prepared for this proceeding concluded that road 4 provides access to a microwave tower, which replaces a communications cable that had been used to coordinate the operations of the Edison's Big Creek 4 Project and its Big Creek 3 Project No. 120.¹³ Edison has not provided any information to support a determination that the finding in the FEIS is incorrect, and we therefore deny rehearing on this issue.

18. Edison contends that road 12 is a part of the Big Creek 3 Project No. 120, and it therefore should not be included in the Big Creek 4 project boundary. The fact that lands are included in the boundaries of one project does not preclude their inclusion in the boundaries of another project if they serve the purposes of the second project as well as

¹² The Director's order requires the licensee to file revised Exhibits A, F, and G within 60 days of the date of issuance of the license. Edison seeks an extension of time to file its revised exhibits until 60 days after our action on this rehearing request, on the ground that our disposition of the request would affect the facilities to be included in these exhibits. However, Edison filed the revised exhibits on February 3, 2004, which moots its extension request.

¹³FEIS at 127.

the first.¹⁴ As explained in the FEIS, road 12 provides access to a private boat ramp, owned and maintained by Edison in the upper end of Lake Redinger (Big Creek 4's reservoir), within the Big Creek 4 project boundary. Boats launched from this ramp would be used by Edison personnel to access Big Creek 4 project features for maintenance purposes and, accordingly, should remain within the Big Creek 4 Project.¹⁵ Edison has not provided any information to support a determination that the findings in the FEIS are incorrect, and we therefore deny its request to remove the road from its new license.

19. The relicense order requires Edison to file for Commission approval revised Exhibit G (project boundary) maps that incorporate, among other things, the project features and facilities shown in Appendix E-14 of Edison's relicense application.¹⁶ On rehearing, Edison states that Appendix E-14 mistakenly includes as project access roads certain portions of roads 6 and 20 that are not needed for any project purpose. Edison explains that road 6 is a project road only to the extent that it provides access to the project communication line, but Appendix E-14 also includes a portion of the road that provides Edison access to its non-project transmission line. As for road 20, most of it is a Forest Service fire road, which is open to the public, and it is only a project access road after it enters Edison-owned land and is inaccessible to the public.

20. We agree that only the portions of these roads that serve project purposes must be included in the revised Exhibit G drawings, and accordingly grant rehearing on this issue.

C. License Article 401

21. Various section 4(e) and water quality certification conditions require the licensee to prepare plans and reports for approval by the Forest Service and the Water Board, respectively. Article 401(a) requires the licensee to file these plans for Commission approval as well. Article 401(a) lists the plans and the underlying condition or conditions that require them. Edison contends that Forest Service Condition No. 21 should be added to the list in Article 401(a). Condition No. 21 requires Edison to file a restoration plan for approval by the Forest Service before seeking to surrender the project license.

¹⁴See, e.g., *Susquehanna Power Company and Philadelphia Electric Power Company*, 32 FPC 826 at 831 (1964).

¹⁵FEIS at 127.

¹⁶See 105 FERC at P. 21 and Ordering paragraph (D) at 64,356.

22. Article 401(a) lists plans that will govern operation of the project under license, whereas measures in a restoration plan would become conditions of any surrender authorized by the Commission. In any event, section 6.2 of the Commission's regulations, 18 C.F.R. § 6.2, provides that, where project works have been constructed on lands of the United States, the licensee, on surrendering its license, will be required to restore the lands to a condition satisfactory to the Department having supervision over those lands. Thus, the Commission will have an opportunity to consider appropriate restoration conditions when a surrender application is filed.¹⁷

23. Other section 4(e) and water quality certification conditions contemplate long-term changes to project operations and facilities that may be undertaken after the development of certain plans and surveys or upon other occurrences. Article 401(c) requires the licensee to file a license amendment application that must be granted by the Commission before any such changes may be implemented. Article 401(c) lists the contemplated modifications to project operations and the conditions to which these modifications relate. Edison suggests several changes to Article 401(c).

24. Edison requests that we add to Article 401(c) list the following conditions: Section 4(e) Condition No. 3, which reserves the right of the Forest Service to modify its conditions based on future annual consultation with the licensee; and water quality certification Conditions No. 2, 4, and 9, which reserve the right of the Water Board to add to or modify its conditions in certain circumstances. We agree and modify Article 401(c) accordingly.

25. Edison also requests that we make other changes to Article 401(c), such as expanding the descriptions of some of the listed conditions or combining references to others. These language changes are unnecessary. Article 401(c) is meant simply to

¹⁷We note that Condition No. 21 also provides for the licensee to fund a restoration plan and estimates of the cost of "surrender and restoration" in the event it seeks to transfer the license. While we must include all section 4(e) conditions in a license, it is pertinent to note that a license transfer is not a license surrender; therefore, the Commission's regulations requiring restoration of Federal lands would not apply if Edison were to seek to transfer its license. As we have stated elsewhere, the transfer of a license does not, as such, alter a project's environmental impacts or the determination of what mitigation measures are warranted. Consequently, it is "unnecessary, and indeed inappropriate, to bring into transfer proceedings issues of project impacts and proposed mitigation measures for such impacts." *Menominee Company and N.E.W. Hydro, Inc.*, 74 FERC ¶ 61,023 at 61,067 (1996), aff'd sub nom. *Wisconsin v. FERC*, 104 F.3d 462 (D.C. Cir. 1997).

summarize the contemplated modifications and to make clear that the licensee may not make these changes until it receives Commission approval through an amendment application.

D. License Article 405

26. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA), 16 U.S.C. § 1536 (a)(2), requires Federal agencies to ensure that their actions are not likely to jeopardize the continued existence of Federally listed threatened and endangered species, or result in the destruction or adverse modification of designated critical habitat. On October 17, 2003, the U.S. Fish and Wildlife Service (FWS) filed a biological opinion, in which FWS concluded that the project is not likely to jeopardize the continued existence of the valley elderberry longhorn beetle (longhorn beetle) but is likely to adversely affect it. The biological opinion incorporated an incidental take statement with terms and conditions to implement reasonable and prudent measures intended to minimize incidental take of the longhorn beetle.¹⁸

27. Article 405, reflecting the pertinent condition of the incidental take statement,¹⁹ requires the licensee to survey all potential longhorn beetle habitat in accordance with FWS's July 9, 1999 Conservation Guidelines for the Valley Elderberry Longhorn Beetle (Guidelines) "prior to any project-related ground disturbance within 100 feet of elderberry shrubs or prior to any partial or complete removal of elderberry shrubs." Article 405 provides that, if any potential habitat is detected, the licensee is to consult with FWS and file an application for Commission approval, prior to any such ground disturbance or shrub removal.

¹⁸Under section 7(b)(4) of the ESA, if the Secretary of the Interior, after consultation with the action agency, finds that neither the agency action nor the taking of a listed species incidental to that action will jeopardize the continued existence of the species, the Secretary shall provide the agency with a written statement that specifies the impact of any incidental taking on the species, specifies reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact, and sets forth terms and conditions that must be complied with by the agency or the applicant to implement the reasonable and prudent measures. Under section 7(o)(2) of the ESA, any taking that is in compliance with the terms and conditions of an incidental take statement shall not be considered a prohibited taking of the species.

¹⁹The biological opinion and incidental take statement also address the bald eagle, which is not at issue on rehearing.

28. Edison asserts that the language of Article 405 is confusing in several respects. It complains that the article does not specify the size of the project area that must be surveyed for potential beetle habitat prior to ground disturbance. Edison considers the article's language circular, because surveying for potential longhorn beetle habitat would be unnecessary if, as the article posits, it is already known that the licensee's proposed activity would occur within 100 feet of shrubs that constitute this potential habitat. Edison also argues that ground-disturbing activity could include activities that are local in nature, such as road grading, valve replacement, and stopping leaks, and that would have no potential impact on longhorn beetle habitat. Edison also objects to the requirement that it file an application for Commission approval prior to any such proposed ground disturbance, because Article 405 does not clarify what kind of application is to be filed, the incidental take statement does not contain such a requirement, and FWS's issuance of a statement authorizing incidental take should make further approvals unnecessary. Edison suggests revising Article 405 to require instead that the licensee prepare a longhorn beetle management plan consistent with the intent of the incidental take statement.

29. The survey requirement language of Article 405 is taken from the incidental take statement itself. However, Edison is correct that the take statement does not provide for the filing of an application for Commission approval; rather, it provides for the Commission to enter into section 7 consultation with FWS if elderberry shrubs are detected. The "reasonable and prudent measure" that this take condition seeks to implement in order to minimize incidental take provides that the licensee is to "[a]void effects of project activities on the beetle within the project area," and that, "[w]here such effects cannot be avoided, consultation with [FWS] must be initiated pursuant to section 7 of the Act."²⁰

30. In the text of the incidental take statement, FWS explains that, because some project activities, such as a proposed recreation plan, remain "unresolved," and because site-specific information regarding the distribution of the longhorn beetle at the project is lacking, it would treat consultation in this instance as "programmatic," so that, as other project activities come closer to implementation, "tiered" consultations with the Commission under its continuing oversight may be necessary to ensure that incidental

²⁰Biological opinion at 35.

take is authorized.²¹ FWS explains that project programs and actions that would require further review, coordination, and consultation may include management plans, significant changes in land use on project lands, or new programs proposed for implementation on project property. On the other hand, FWS states that project-related activities involving day-to-day management of the project and project lands would be “covered” by the biological opinion. Among such activities FWS would include adjustments to flows; modifications of existing structures; and repair and maintenance of levees, roads, trails, utilities, recreational facilities, parking lots, and similar facilities.²²

31. In short, it appears that FWS contemplates further consultation in respect to actions that the licensee would undertake in connection with a license amendment or with plans that have yet to be approved, not in respect to day-to-day project operations already authorized pursuant to our issuance of the license. However, because FWS’s intentions are not entirely clear, we will revise Article 405, as suggested by Edison, to require the licensee to prepare a valley elderberry longhorn beetle management plan, in consultation with FWS and other pertinent agencies, to be filed for Commission approval. During consultation, it should be possible for Edison and FWS to resolve the issues about which Edison is unclear, including identification of the situations in which FWS expects the licensee to conduct surveys for beetle habitat and in which ground-disturbing or shrub removal activity may be undertaken without further consultation or approval. The clarification of these issues should be reflected in the plan submitted for Commission approval.²³

E. Section 4(e) Condition No. 16

32. Section 4(e) Condition No. 16 requires Edison to file with the Commission a Noxious Weed Management Plan that has been approved by the Forest Service. Condition 16 also requires the licensee to clean equipment thoroughly before entering

²¹Biological opinion at 33. In reference to the lack of site-specific information, FWS notes the FEIS’s conclusion that it is “prudent to assume that potential habitat (elderberries) may occur throughout the project area” and the FEIS’s lack of an assessment of evidence of beetle occupancy within these shrubs. Biological opinion at 28.

²²Biological opinion at 29.

²³Edison submitted a suggested draft Article 405 that would provide for a beetle management plan. We are instead including our own replacement article, which we think emphasizes the issues that require resolution.

project areas to ensure that seeds of noxious weeds are not introduced into project areas, and to notify the Forest Service at least 10 working days before moving each piece of equipment onto Forest Service land, unless otherwise agreed. Edison argues that this condition, taken literally, would be burdensome and impractical. Edison states that it frequently moves vehicles and other equipment across project boundaries and onto and off of lands in the Sierra National Forest throughout the Big Creek system on a daily basis. In addition, Edison is concerned that the notice requirement could not be met in emergency situations and that the term “equipment” is broad enough to be applied even to passenger vehicles. Edison asks us to clarify that this condition does not apply to these situations.

33. Because this condition was submitted by the Forest Service and was included in the license as mandatory, the Commission had no role in its formulation and cannot be certain of its intended limitations. Since the equipment movement restrictions were devised in the context of controlling the spread of noxious weeds, Edison should consult with the Forest Service in preparing the Noxious Weed Management Plan to determine a practical method of handling these issues. The language of Condition 16 (“unless otherwise agreed”) suggests that the Forest Service could agree to more flexible vehicle cleaning and notification measures than those specified.

F. Water Year Classification

34. Section 4(e) Condition No. 5 and certification Condition No. 11 require Edison to maintain instream flows below Dam No. 7, based on water year classification. In dry and critically dry years, the minimum flow is to be 15 cubic feet per second (cfs) between October 1 and April 1. Similarly, section 4(e) Condition No. 6 and certification Condition No. 12 establish a cap on the number of days of whitewater releases based on the water year classification. Edison points out that the Forest Service conditions require it to determine the water year classification based on the April 1 forecast of the California Department of Water Resources, while the certification conditions require it to use the Department’s May forecast. Edison asks us to clarify the conflict among these provisions so that it will know which forecast to use in determining the minimum flows and whitewater release cap for any given year.

35. Edison is correct in stating that this conflict in methodologies exists. Since the agencies’ individual choices of forecast dates have been incorporated into their respective mandatory license conditions, we cannot direct the licensee to adopt one to the exclusion of the other. Edison suggests that it propose a solution to this conflict in the flow monitoring plan required by Article 402. We agree that this is an appropriate forum to

resolve this discrepancy. Once agreement is reached, we assume that the agencies will modify their mandatory conditions, as appropriate.²⁴

The Commission orders:

(A) The request for rehearing filed on January 5, 2004, by Southern California Edison Company is granted to the extent indicated in this order and is denied in all other respects.

(B) The table in Article 401(c) of the license is modified to read as follows:

WQC condition no.	Forest Service condition no.	Modification
12	6	Operational changes to reduce or enhance the effects of controllable factors after the first 5 years of monitoring and evaluation
12 and 13	6 and 7	Changes to adjust minimum flows
13	7	New projects to protect or enhance habitat for native aquatic species in the project area
	9	Proposed changes to the project and its operation based on Forest Service review of the Report on Recreational Resources (filed with the Commission every 6 years)
2, 4, and 9	3 and 32	Project changes that result from modified Forest Service section 4(e) or WQC conditions
17	33	Project changes based on Biological Opinion issued for the project by the U.S. Fish and Wildlife Service or the

²⁴Article 402 requires the licensee to prepare the plan after consultation with FWS, the U.S. Geological Survey, the Water Board, the California Department of Fish and Game, and the California Department of Boating and Waterways. Although the Forest Service is not included in this license article, its participation in the resolution of the water year methodology is appropriate, since the licensee must comply with the Forest Service’s instream flow condition. Therefore, we will modify Article 402 to include the Forest Service as a consulting entity.

WQC condition no.	Forest Service condition no.	Modification
		National Marine Fisheries Service

(C) Article 402 of the license is modified to substitute the following paragraph for the existing third paragraph, which specifies the consulting entities:

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, the U.S. Geological Survey, the State Water Resources Control Board, the California Department of Fish and Game, the California Department of Boating and Waterways, and the U.S. Forest Service.

(D) Article 405 of the license is replaced with the following:

Article 405. Valley Elderberry Longhorn Beetle Management Plan. The licensee shall file a Valley Elderberry Longhorn Beetle Management Plan, for Commission approval, within one year of license issuance. The plan shall be consistent with the 1999 guidelines of the U.S. Fish and Wildlife Service (FWS) to protect the valley elderberry longhorn beetle and its habitat (elderberry plants with stems 1 inch or greater in diameter) and with the terms and conditions of the incidental take statement filed by FWS on October 17, 2003. The plan shall include, at a minimum, provisions for: (1) identifying the activities for which the licensee should conduct a survey under the guidelines for valley elderberry longhorn beetle habitat at the project, and (2) the circumstances in which the licensee should notify the Commission of the presence of valley elderberry beetle habitat before conducting any land-disturbing or shrub-removing activity.

The licensee shall prepare the plan after consultation with the FWS, U.S. Forest Service, and California Department of Fish and Game. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the plan accommodates the comments of the agencies. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee’s reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No land-disturbing activities shall begin until the Commission notifies the licensee that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.