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Department of
Agriculture

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OFFICE OF THE SECRETARY

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FEDERAL ENERGY
REGULATORY
COMMISSION

File Code: 2770

Date: JAN 7 2000

Federal Energy Regulatory Commission
Office of the Secretary
Dockets - Room 1A
888 First Street, NE
Washington DC 20426

COMMENTS ON THE ALTERNATIVE PROCEDURE

Big Cr. No. 2A, 8 and Eastwood (FERC No. 67); Big Cr. No. 3 (FERC No. 120); Mammoth Pool (FERC No. 2085); and Big Cr. No. 1 and 2 (FERC No. 2175)

The Forest Service has provided Southern California Edison (SCE) with comments and suggestions for engaging in a collaborative relicensing effort for the projects in the Big Creek system. A consistent theme of our comments has been that this process should include all of the projects that exist in the watershed. The process that has been proposed only includes four of the seven projects with a statement that SCE will consider reopener clauses for licenses not covered by this process. The concept of a collaborative approach to relicensing is welcomed by the Forest Service but would only be successful if all licenses can be considered at the same time.

My letter to your agency dated October 6, 1999 acknowledges this situation. The operation of projects located lower in the watershed depend on flows from upstream projects. Upon review of the license boundary maps it is noticeable that many project features are located immediately adjacent to features of another license and in some cases the same land is included within the boundaries of two different licenses. It is clear that these seven licensed projects are connected actions as defined by the National Environmental Policy Act Regulations. Actions are connected if they are interdependent parts of a larger action and depend on larger action for their justification (40CFR 1508.25). These circumstances would suggest that the operations and impacts of these projects should be reviewed in total to accurately assess the project for the next thirty to fifty years. To proceed with relicensing these projects separately would not reflect how these projects currently operate and ignores their basin wide footprint.

In order to allow all licenses to go forward in the same analysis, the Forest Service is agreeable to some of the seven projects to continuing to operating under annual licenses while SCE establishes and proceeds with an Alternative Licensing Process that includes all of the Big Creek projects. In consideration of receiving annual licenses, the Forest Service would ask that SCE relicense some of the seven projects prior to their current expiration dates. In essence, projects that will soon expire would be delayed and the projects with later expiration dates would receive new licenses before they are due to expire with all projects in the watershed being relicensed at the same time.

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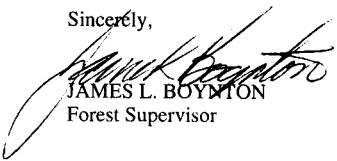
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Although SCE states that they are willing to accept reopener clauses for licenses already in the relicensing pipeline, this does not provide the certainty that the Forest Service requires as the federal agency responsible for management of the land affected by the projects. Reopener clauses in project licenses are extremely vulnerable to appeals and litigation as we are required to provide documented evidence supporting conditions submitted under section 4(e) of the Federal Power Act. The Forest Service would have no data or corresponding analysis to support the submittal of a reopener clause under the process as it has been proposed. A license condition without supporting evidence could be determined to be arbitrary and capricious and this is a great concern to the Forest. Additionally, the time required to implement a reopener clause could result in lengthy delays in providing resource protection.

I appreciate the opportunity to comment on this process. Thank you for considering these comments and if you have any questions please contact Carol Efirid at the number above, extension 4871.

Sincerely,



JAMES L. BOYNTON
Forest Supervisor