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**EL DORADO PROJECT
FERC Project No. 184**

**El Dorado Relicensing
Settlement Agreement**

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1 **El Dorado Project**
2 **FERC Project No. 184**

3 **El Dorado Relicensing Settlement Agreement**

4 **41. Introduction**

5 1.1 Parties

6 This EL DORADO RELICENSING SETTLEMENT AGREEMENT (“Settlement”) is
7 made and entered into pursuant to Federal Energy Regulatory Commission (“FERC”)
8 Rule, 18 C.F.R. § 385.602, by and among the El Dorado Irrigation District (“licensee”),
9 the United States Department of Agriculture Forest Service (“FS”), the United States
10 Department of the Interior, National Park Service (“NPS”), California Department of
11 Fish and Game (“CDFG”), Alpine County (“Alpine County”), Amador County
12 (“Amador”), El Dorado County Water Agency (“EDCWA”), El Dorado Citizens for
13 Water (“ECW”), Friends of the River (“FOR”), Trout Unlimited (“TU”), Sierra Club
14 (“SC”), American Whitewater (“AW”), Chris Shutes, and Paul J. Creger, each referred to
15 individually as a “Party” and collectively as “Parties.”

16 The Parties to this Settlement agree as follows:

17 1.2 Recitals

18 1.2.1 On February 22, 2000, the licensee filed with FERC an application
19 (“Application”) for a new license (“New Project License”) under the Federal Power Act
20 (“FPA”) for the El Dorado Project, FERC Project No. 184 (“Project”) located on the
21 South Fork of the American River in El Dorado, Alpine, and Amador Counties,
22 California.

23 1.2.2 On June 26, 2001, the Parties agreed to engage in a public, collaborative process
24 with the goal of executing a Settlement Agreement by March 31, 2003, which resolves
25 all issues among them in support of FS issuing its Final 4(e) Conditions, California State
26 Water Resources Control Board (SWRCB) issuing a Certification pursuant to Section
27 401 of the Clean Water Act required in connection with the New Project License (“401
28 Certification”), and FERC issuing a New Project License. On November 27, 2001, the
Parties requested FERC to delay formal action on the Application to allow the Parties to
pursue the collaborative process. The collaborative group selected for itself the name El
Dorado Collaborative (“Collaborative”), adopted protocols in January 2002, conducted
numerous meetings, reviewed existing data, commissioned and evaluated studies, and
prepared and relied on a record of its actions. Meetings of the Collaborative were
publicly noticed by FERC. On March 7, 2002, FERC assigned facilitators to assist the
Collaborative.

1 1.2.3 On October 29, 2002, FS issued revised preliminary conditions (“Preliminary 4(e)
2 Conditions”) for the Project pursuant to 18 C.F.R. §4.34 (b)(1) and in furtherance of its
3 mandatory conditioning authority under Section 4(e) of the FPA. Various Parties and
4 others subsequently submitted comments to FERC and FS regarding the Preliminary 4(e)
5 Conditions. The Preliminary 4(e) conditions referenced FS’ intent to later issue Final
6 4(e) Conditions.

7 1.2.4 The Settlement is an end product of the Collaborative’s work.

8 1.3 Effective Date of Settlement.

9 The Settlement becomes effective as of April 30, 2003 (“Effective Date”).

10 1.4 Term of Settlement.

11 The term of the Settlement shall commence on the Effective Date and shall continue
12 (unless terminated as otherwise provided herein) for the term of the New Project License
13 and any annual licenses.

14 1.5 Definitions.

15 1.5.1 ADR: See Paragraph 4.9.1.

16 1.5.2 Beneficial Uses: Those beneficial uses listed in the Central Valley Region Basin

17 1.5.3 Plan and the Lahontan Region Basin Plan.

18 1.5.4 cfs: Cubic feet per second.

19 1.5.5 Collaborative: See Paragraph 1.2.2.

20 1.5.6 CWA: Clean Water Act.

21 1.5.7 Disputing Party; Disputing Parties: See Paragraph 4.9.1.

22 1.5.8 Effective Date: See Paragraph 1.3.

23 1.5.9 ERC: Ecological Resources Committee as established in Appendix A of the
24 Settlement.

25 1.5.10 ESA: Endangered Species Act.

26 1.5.11 FPA: See Paragraph 1.2.1.

27 1.5.12 Good faith: Honesty of purpose, free from intention to defraud, faithful to one’s
28 duty or obligation.

1.5.13 NA: Not applicable.

1.5.14 NEPA: National Environmental Policy Act.

1.5.15 New Project License: See Paragraph 1.2.1.

1.5.16 Notice: See Paragraph 5.9.

1.5.17 Party; Parties: See Paragraph 1.1.

1.5.18 PM&E: Protection, mitigation, and enhancement measures.

1.5.19 Project: See Paragraph 1.2.1

1.5.20 Resolved Subjects: See Paragraph 2.2.

1.5.21 Section 4(e) Conditions: Any revision of FS’ proposed license conditions under
FPA Section 4(e) to the Preliminary Conditions issued on October 29, 2002.

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2. Purpose of the Settlement

2.1 Purpose.

The primary purpose of the Settlement is to develop PM&E measures to recommend as Final 4(e) conditions, 401 Certification conditions, and FERC license conditions. The PM&E measures will be submitted to FS, SWRCB, and FERC for their consideration.

2.2 Resolved Subjects.

Except as provided in Paragraph 2.3, the Parties agree that the Settlement fairly, reasonably, and appropriately resolves the subjects listed in Table 1 (“Resolved Subjects”) in support of FS issuing Final 4(e) Conditions, SWRCB issuing the 401 Certification, and FERC issuing a New Project License.

Table 1

Subjects Resolved by the Settlement

- Minimum Streamflows
- Ramping Rates
- Operation of Lake Aloha
- Caples Lake Releases and Flow Limitations
- Oyster Creek Stabilization
- Esmeralda Creek Restoration
- Monitoring Program
- Ecological Resources Adaptive Management
- Streamflow and Reservoir Storage Gaging Plan
- Preferred Canal Drainage Structure and Release Point Plan
- Wildlife and Sensitive Plant Protection Measures
- Noxious Weed Plan
- Annual Review of Ecological Conditions
- Public Information Services
- Land Adjustment Proposal
- Silver Lake Leakage
- Access Improvements Along South Fork American River
- Gaging Improvements
- Future Modifications to Project
- Licensee Recreation Sites
- Mitigation for Entrainment
- Target Lake Levels
- Recreation Resource Management
- Carrying Capacity on Lands Affected by the Project
- Whitewater Boating Issues

1 Visual Resource Protection
2 Road and Trail Access and Facility Management

3 2.3 Unresolved Subjects.

4 The Settlement leaves unresolved specific subjects related to the Resolved Subjects.
5 These unresolved subjects are listed in Table 2. The Settlement also does not resolve
6 subjects not specifically listed in Table 1 and Table 2, except as provided in Appendix C.

7 **Table 2**

8 Subjects Not Resolved by the Settlement

9 Term of License. The Parties may submit comments in response to FERC’s request for
10 comments on the Settlement explaining their views regarding this subject.

11 2.4 No Precedent for Other Proceedings.

12 The Settlement is made upon the express understanding that it constitutes a negotiated
13 resolution of Resolved Subjects. No Party shall be deemed to have approved, admitted,
14 accepted, or otherwise consented to any operation, management, valuation, study results,
15 data interpretation, or other principle underlying or supposed to underlie any of the
16 Resolved Subjects, except as expressly provided herein. Nothing in the Settlement is
17 intended or shall be construed as a precedent with regard to any other proceeding or
18 hydroelectric project.

19 2.5 Compliance with Legal Responsibilities.

20 Nothing in the Settlement is intended to, or shall be construed to, affect or limit the
21 authority of any Party to fulfill its statutory, regulatory, or contractual responsibilities
22 under applicable law. However, by entering into Settlement, the Parties with such
23 responsibilities represent that they believe their responsibilities relative to Resolved
24 Subjects have been, are, or can be met for the purpose stated in Paragraph 2.1, consistent
25 with and by the terms of the Settlement. See Appendix D for the SWRCB Collaborative
26 Process Participation Statement.

27 2.6 Reservation of Claims, Rights, and Responsibilities.

28 Each Party reserves all claims, rights, and responsibilities that it may otherwise have with
respect to any subjects not listed as Resolved Subjects. Nothing in the Settlement is
intended or shall be construed to affect or restrict any Party’s participation in or
comments about compliance with the New Project License, future license amendments,
annual licenses, or relicensing of the Project subsequent to the current relicensing, or any
other project licensed to the licensee under the Federal Power Act. Nothing in this
Settlement is intended, or shall be construed to, affect any Party’s water rights.

3. Use of Settlement in New Project License and Section 4(e) Conditions and Section 10(a) Recommendations

3.1 Protection, Mitigation, and Enhancement Measures Recommended to be Included in New Project License.

Subject to Paragraphs 3.2 and 3.3, the Parties respectfully request that FERC accept and incorporate, without material modification, as license articles all the PM&E measures stated in Appendix A of the Settlement. Subject to the same limitation, the Parties further request that FERC not include in the New Project License additional articles on Resolved Subjects except as may be necessary to enable FERC to ascertain and monitor the licensee's compliance with the conditions of the New Project License and of its rules and regulations under the FPA.

3.2 Protection, Mitigation, and Enhancement Measures Recommended to be Included in Section 4(e) Conditions and Section 10(a) Recommendations.

The Parties respectfully request that FS accept and incorporate, without material modifications, as Section 4(e) Conditions, or Section 10(a) Recommendations, as appropriate, all the PM&E measures stated in Appendix A of the Settlement. The Parties further request that FS not include in its Section 4(e) Conditions or Section 10(a) Recommendations additional conditions on Resolved Subjects. FS agrees to propose as Section 4(e) Conditions or Section 10(a) Recommendations, as appropriate, on Resolved Subjects the PM&E measures stated in Appendix A of the Settlement which it determines are within its jurisdiction to prescribe as Section 4(e) Conditions, as appropriate, except to the extent that any changes result from its analysis under NEPA, National Forest Management Act, and any other applicable law or regulation. This paragraph shall not be read to predetermine or limit the outcome of lawful discretion of FS in issuing Section 4(e) Conditions, adopting Section 4(e) Conditions, or making Section 10(a) Recommendations inconsistent with those recommended herein.

3.3 Protection, Mitigation, and Enhancement Measures Recommended to be Included in 401 Certification.

The Parties respectfully request that SWRCB accept and incorporate, without material modifications, as conditions to the 401 Certification all the PM&E measures stated in Appendix A of the Settlement that are within the SWRCB's jurisdiction under Section 401 of the CWA. The Parties further request that SWRCB not include as conditions to the 401 Certification additional conditions on Resolved Subjects.

3.4 Relationship of Settlement to Section 7 Consultation.

The Parties acknowledge that if FERC submits the PM&E measures stated in Appendix A as part of the proposed action for consultation under Section 7 of the ESA, FWS may in its lawful discretion identify PM&E measures different from or additional to those set forth in Appendix A and Appendix B to minimize the effects of take of listed species.

1 The Parties respectfully request, however, that FWS exercise its lawful discretion to
2 accept and incorporate, without material modification, the PM&E measures set forth in
3 Appendices A and B that affect listed species as its complete prescription of “reasonable
and prudent alternatives” in any biological opinion it issues in an ESA Section 7
consultation.

4 3.5 Measures Agreed to But Not to be Included in the New Project License or Section
5 4(e) Conditions or 401 Certification.

6 PM&E measures agreed to among the Parties, which are not to be incorporated in the
7 New Project License or FS Section 4(e) Conditions or 401 Certification, are stated in
Appendix B.

84. **Implementation of Settlement**

9 4.1 Support of Settlement.

10 The Parties shall be bound by the Settlement for the term stated in Paragraph 1.4,
11 provided the New Project License is consistent with the terms of the Settlement, and
12 specifically the PM&E measures stated in Appendix A hereto.

13 4.2 Support for Issuance of New Project License.

14 To the extent permitted by applicable law, the Parties shall support or advocate through
15 appropriate written communications to FERC and FS and SWRCB, the Settlement and
16 the PM&E measures stated in Appendix A hereto. Subject to Paragraph 3.1, the Parties
17 agree not to propose, support, or communicate to FERC or FS or SWRCB any comments,
18 recommended PM&E measures, or license conditions for resolved subjects, other than
19 ones consistent with the Settlement. Subject to Paragraph 3.1, prior to the issuance of the
20 New Project License, upon notification by any Party of the need therefor, the other
21 Parties shall timely support the Settlement in written communications (or orally, in the
22 event written communication is impossible to obtain due to reasons outside a Party’s
control) to any other administrative agency with advisory or mandatory conditioning
authority over issuance of the New Project License. The preceding sentence shall not
apply to the agency exercising such authority. If there is disagreement about the need for
such support between the requesting Party and any other Party, those Parties shall meet
and confer within 5 days of the request being made, and shall take all reasonable good
faith efforts to resolve the disagreement consistent with the obligation to cooperate.

23 4.3 New Project License, Final 4(e) Conditions, 401 Certification, or Other Mandatory
24 License Conditions Inconsistent with the Settlement.

25 4.3.1 New Project License. If the New Project License issued by FERC contains any
26 material modification of the PM&E measures stated in Appendix A or Appendix B,
27 incorporates fewer than all the PM&E measures stated in Appendix A, or includes
28 additional measures related to Resolved Subjects (“Inconsistent with the Settlement”),

1 the Settlement shall be deemed modified to conform to the New Project License, unless a
2 Party provides Notice that it disputes the inconsistency within 30 days after the date of
3 the license order, and that Party initiates the Alternative Dispute Resolution (“ADR”)
4 procedures stated in Paragraph 4.9.1 et seq. The disputing Party(s) may, in addition,
5 initiate the rehearing procedure described in Paragraph 4.4.1. If the New Project License
6 does not contain all the PM&E measures stated in Appendix A because FERC expressly
7 determines that it does not have jurisdiction to adopt or enforce the omitted PM&E
8 measures, the Settlement shall not be deemed modified to conform to such omission,
9 such omission shall not be used as the basis for dispute among the Parties, and the Parties
10 agree that they shall be bound by the entire Settlement, including those recommended
11 PM&E measures omitted by FERC, provided the New Project License contains those
12 PM&E measures stated in Appendix A over which FERC determines it does have
13 jurisdiction and the New Project License is otherwise consistent with the Settlement.

9 4.3.2 Final 4(e) Conditions. If any Final 4(e) Condition is Inconsistent with the
10 Settlement, the Settlement shall be deemed modified to conform to the Final 4(e)
11 Conditions, unless a Party provides Notice that it disputes the inconsistency during the
12 45-day appeal period under 36 C.F.R. § 215.13, and that Party initiates the Alternative
13 Dispute Resolution (“ADR”) procedures stated in Paragraph 4.9.1 et seq. The disputing
14 Party(s) may, in addition, initiate the rehearing procedure described in Paragraph 4.4.2.
15 If the Final 4(e) Conditions do not contain all the PM&E measures stated in Appendix A
16 because FS expressly determines that it does not have jurisdiction to adopt or enforce the
17 omitted PM&E measures, the Settlement shall not be used as the basis for dispute among
18 the Parties, and the Parties shall be bound by the entire Settlement, including those
19 recommended PM&E measures omitted by FS, provided the Final 4(e) Conditions
20 contain those PM&E measures stated in Appendix A over which FS determines it does
21 have jurisdiction and the Final 4(e) Conditions are otherwise consistent with the
22 Settlement.

17 4.3.3 401 Certification. If any provision of the 401 Certification is Inconsistent
18 with the Settlement, the Settlement shall be deemed modified to conform to the
19 provisions of the 401 Certification, unless a Party provides Notice within 30 days
20 of the date of the 401 Certification that it disputes the inconsistency, and that
21 Party initiates the Alternative Dispute Resolution (“ADR”) procedures stated in
22 Paragraph 4.9.1 et seq. The disputing Party(s) may, in addition, initiate the
23 rehearing procedure described in Paragraph 4.4.3. If the 401 Certification does
24 not contain all the PM&E measures stated in Appendix A because SWRCB
25 expressly determines that it does not have jurisdiction to adopt or enforce the
26 omitted PM&E measures, the Settlement shall not be used as the basis for dispute
27 among the Parties, and the Parties shall be bound by the entire Settlement,
28 including those recommended PM&E measures omitted by SWRCB, provided the
401 Certification contains those PM&E measures stated in Appendix A over
which SWRCB determines it does have jurisdiction and the 401 Certification is
otherwise consistent with the Settlement.

1 4.3.4 Other Mandatory License Conditions. If any agency other than FS or the SWRCB
2 files with FERC any mandatory license condition that is inconsistent with the Settlement,
3 the Settlement shall be deemed modified to conform to such condition, unless a Party
4 provides Notice that it disputes the inconsistency within 30 days after the date of filing of
5 such condition, and that Party initiates the ADR procedures stated in Paragraph 4.9.1 et
6 seq. The disputing Party(s) may, in addition, initiate any appeal procedure applicable to
7 the agency that issued such condition. If such mandatory license conditions do not
8 contain all the PM&E measures stated in Appendix A because the issuing agency
9 expressly determines that it does not have jurisdiction to adopt or enforce the omitted
10 PM&E measures, the Settlement shall not be deemed modified to conform to such
11 omission, such omission shall not be used as the basis for dispute among the Parties, and
12 the Parties agree that they shall be bound by the entire Settlement, including those
13 recommended PM&E measures omitted by the issuing agency, provided the mandatory
14 license conditions contain those PM&E measures stated in Appendix A over which
15 issuing agency determines it does have jurisdiction, and the mandatory license conditions
16 are otherwise consistent with the Settlement.

17 4.4 Appeal of New Project License, Final 4(e) Condition, 401 Certification, or other
18 Mandatory License Conditions Inconsistent with the Settlement.

19 4.4.1 Appeal of FERC Order. Any Party who has intervened in the FERC relicensing
20 proceeding, P-184-065, may petition FERC for rehearing or seek judicial review of any
21 New Project License article, or omission of PM&E measures stated in Appendix A, that
22 is Inconsistent with the Settlement. The ADR requirements stated in Paragraph 4.9.1 et
23 seq. do not preclude any Party from timely filing for and pursuing rehearing under 18
24 C.F.R. § 385.713(b), or judicial review, of the inconsistent license article or any other
25 license article that relates to subjects not listed as a Resolved Subject. However, the
26 Parties shall follow the ADR procedures stated in Paragraph 4.9.1 et seq. to the extent
27 reasonably practicable while such appeal of an inconsistency is pursued. If any Party or
28 non-Party files for administrative rehearing or judicial review of any New Project
License article that is Inconsistent with the Settlement, the licensee's duties under the
Settlement related to that article are suspended to the extent necessary to enable the
licensee to comply with the license. If a Party has filed for rehearing or judicial review
of any New Project License article that is Inconsistent with the Settlement and the Parties
subsequently agree to modify the Settlement to conform to the inconsistent article, the
filing Party(s) shall withdraw the appeal, or recommend such withdrawal, as appropriate.
Except as provided in Paragraph 4.3.1 for omission based on jurisdiction, if any New
Project License article is Inconsistent with the Settlement after a final and non-
appealable administrative or judicial decision on the appeal, the Settlement shall be
deemed modified to conform to the final decision unless a Party provides Notice that it
disputes the inconsistency within 45 days after the date of the final decision and initiates
the ADR procedures stated in Paragraph 4.9.1 et seq. Except as necessary to fulfill a
statutory or regulatory responsibility or policy, the Parties have a continuing duty to
support the Settlement, or as appropriate, recommend such support, during an
administrative rehearing or judicial review. If there is disagreement about the need for
such support between the requesting Party and any other Party, those Parties shall meet

1 and confer within 5 days of the request being made and shall take all reasonable good
2 faith efforts to resolve the disagreement consistent with the obligation to cooperate.

3 4.4.2 Appeal of Final 4(e) Condition. Any Party may seek administrative rehearing or
4 judicial review of any Final 4(e) Condition, or omission of PM&E measures stated in
5 Appendix A, that is Inconsistent with the Settlement. The ADR requirements of
6 Paragraph 4.9.1 et seq. do not preclude any Party from timely filing and pursuing an
7 appeal under 36 C.F.R. § 215.13, or judicial review, of any Final 4(e) condition that is
8 inconsistent with the Settlement, or any other Final 4(e) Condition that relates to subjects
9 not listed as a Resolved Subject. However, the parties shall follow the ADR procedures
10 stated in Paragraph 4.9.1 et seq. to the extent reasonably practicable while any such
11 appeal of an inconsistency is pursued. If a Party has filed for administrative rehearing or
12 judicial review of any Final 4(e) Condition that is Inconsistent with the Settlement and
13 the Parties subsequently agree to modify the Settlement to conform to the inconsistent
14 condition, the filing Party(s) shall withdraw the appeal, or recommend such withdrawal,
15 as appropriate. Except as provided in Paragraph 4.3.2 for omissions based on
16 jurisdiction if any Final 4(e) Condition is Inconsistent with the Settlement after the final
17 and non-appealable decision on appeal, the Settlement shall be deemed modified to
18 conform to the final decision, unless a Party provides Notice that it disputes the
19 inconsistency within 45 days after the date of the final decision, and that Party initiates
20 the ADR procedures stated in Paragraph 4.9.1 et seq. Except as necessary to fulfill a
21 statutory or regulatory responsibility or policy, all Parties have a continuing duty to
22 support the Settlement, or as appropriate, recommend such support, during an
23 administrative rehearing or judicial review. If there is disagreement about the need for
24 such support between the requesting Party and any other Party, those Parties shall meet
25 and confer within 5 days of the request being made and shall take all reasonable good
26 faith efforts to resolve the disagreement consistent with the obligation to cooperate.

27 4.4.3 Reconsideration of 401 Certification. Any Party may seek administrative
28 rehearing or judicial review of any provision of the 401 Certification, or omission of
PM&E measures stated in Appendix A, that is Inconsistent with the Settlement. The
ADR requirements of Paragraph 4.9.1 et seq. do not preclude any Party from timely
filing and pursuing a petition for reconsideration under California Code of Regulations,
title 23, sections 3867-3869, or judicial review, of any provision of the 401 Certification
that is Inconsistent with the Settlement, or any other provision of the 401 Certification
that relates to subjects not listed as a Resolved Subject. However, the Parties shall
follow the ADR procedures stated in Paragraph 4.9.1 et seq. to the extent reasonably
practicable while any such petition or judicial review of an inconsistency is pursued. If a
Party has filed for administrative rehearing or judicial review of any provision of the 401
Certification that is Inconsistent with the Settlement and the Parties subsequently agree
to modify the Settlement to conform to the inconsistent condition, the filing Party(s)
shall withdraw the petition or dismiss the judicial action, or recommend such withdrawal
or dismissal, as appropriate. Except as provided in Paragraph 4.3.3 for omissions based
on jurisdiction, if any provision of the 401 Certification is Inconsistent with the
Settlement after the final and non-appealable decision on the petition or judicial action,
the Settlement shall be deemed modified to conform to the final decision, unless a Party

1 provides Notice that it disputes the inconsistency within 45 days after the date of the
2 final decision, and that Party initiates the ADR procedures stated in Paragraph 4.9.1 et
3 seq. Except as necessary to fulfill a statutory or regulatory responsibility or policy, all
4 Parties have a continuing duty to support the Settlement, or as appropriate, recommend
5 such support, during an administrative rehearing or judicial review. If there is
6 disagreement about the need for such support between the requesting Party and any other
7 Party, those Parties shall meet and confer within 5 days of the request being made and
8 shall take all reasonable good faith efforts to resolve the disagreement consistent with the
9 obligation to cooperate.

6 4.4.4 Appeal to Other Agency with Mandatory Conditioning Authority. Any Party may
7 seek Administrative rehearing or judicial review of any mandatory license condition filed
8 with FERC by an agency other than FS, or that agency's omission of PM&E measures
9 stated in Appendix A, that is inconsistent with the Settlement. The ADR requirements
10 stated in Paragraph 4.9.1 et seq. do not preclude any Party from timely filing and
11 pursuing such appeal of a mandatory license condition that is inconsistent with the
12 Settlement, or any other mandatory license condition that relates to subjects not listed as
13 a Resolved Subject. However, the Parties shall follow the ADR procedures stated in
14 Paragraph 4.9.1 et seq. to the extent reasonably practicable while any such appeal of an
15 inconsistency is pursued. If a Party has filed for administrative rehearing or judicial
16 review of any mandatory license condition that is inconsistent with the Settlement, and
17 the Parties subsequently agree to modify the Settlement to conform to the inconsistent
18 condition, the filing Party(s) shall withdraw the appeal, or recommend such withdrawal,
19 as appropriate. Except as provided in Paragraph 4.3.4 for omissions based on
20 jurisdiction, if any mandatory license condition is still inconsistent with the Settlement
21 after a final and non-appealable administrative or judicial decision, the Settlement shall
22 be deemed modified to conform to that decision, unless a Party provides Notice that it
23 disputes the inconsistency within 45 days after the date of the final decision, and that
24 Party initiates the ADR procedures stated in Paragraph 4.9.1 et seq. Except as necessary
25 to fulfill a statutory or regulatory responsibility or policy, all Parties have a continuing
26 duty to support the Settlement, or as appropriate, recommend such support, during such
27 administrative rehearing or judicial review. If there is disagreement about the need for
28 such support between the requesting Party and any other Party, those Parties shall meet
and confer within 5 days of the request being made and shall take all reasonable good
faith efforts to resolve the disagreement consistent with the obligation to cooperate.

21 4.5 Cooperation Among Parties. The Parties shall cooperate in the performance of the
22 Settlement and compliance with related license articles. Among other things, the Parties
23 shall cooperate in implementing the measures stated in Appendices A and B, conducting
24 studies, performing monitoring, and conducting all other activities within their statutory
25 or regulatory authorities related to the measures stated in Appendices A and B of the
26 Settlement, as they may be modified in the New Project License. Further, subject to
27 Paragraph 2.5 and upon notification by any Party of the need therefor, the other Parties
28 shall provide written communications (or orally, in the event written communication is
impossible to obtain due to reasons outside a Party's control) of support in any
administrative approval that may be required for implementation of the Settlement or

1 related articles of the New Project License. The preceding sentence shall not apply to the
2 agency exercising the authority. If there is disagreement about the need for such
3 communications between the requesting Party and any other Party, those Parties shall
meet and confer within 5 days of the request being made and shall take all reasonable
good faith efforts to resolve the disagreement consistent with the obligation to cooperate.

4 4.5.1 Responsibility for Costs. The licensee shall pay for the cost of actions required of
5 the licensee by the Settlement or the New Project License. The licensee shall have no
6 obligation to reimburse or otherwise pay any other Party for its assistance, participation,
7 or cooperation in any activities pursuant to the Settlement or the New Project License
unless expressly agreed to by the licensee or as required by law. In the event of
administrative rehearing or judicial review, Parties bear their own costs.

8 4.5.2 Licensee Solely Responsible for Day-to-Day Operations of Project. By entering
9 into the Settlement, none of the Parties, except for the licensee, has accepted any legal
liability or responsibility for the day-to-day operation of the Project.

10 4.5.3 Availability of Funds. Implementation of the Settlement for a Party that is a
11 federal agency is subject to the requirements of the Anti-Deficiency Act and the
12 availability of appropriated funds. Nothing in the Settlement is intended, or shall be
13 construed, to require the obligation, appropriation, or expenditure of any money from the
14 U.S. Treasury. The Parties acknowledge that the Parties that are federal agencies shall
15 not be required under the Settlement to expend any federal agency's appropriated funds
16 unless and until an authorized official of each such agency affirmatively acts to commit
17 such expenditures as evidenced in writing. Implementation of the Settlement by Parties
18 that are state agencies is subject to the availability or appropriated funds. Nothing in the
19 Settlement is intended, or shall be construed, to require the obligation, appropriation, or
20 expenditure of any money from the Treasury of the State of California. The Parties
21 acknowledge that the Parties that are state agencies shall not be required under the
22 Settlement to expend any appropriated funds unless and until an authorized official of
23 each such agency affirmatively acts to commit such expenditures as evidenced in
24 writing.

25 4.5.4 FS Participation in Settlement. FS is not included in the definition of the words
26 "Party" or "Parties" as used in Paragraphs 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3.2, 4.4.1, 4.4.2,
27 4.5, 4.7.1, and 4.9.3 of the Settlement. Additionally, FS' obligations under and
28 participation in the Settlement are fulfilled upon issuance of a New Project License
containing Final 4(e) Conditions that are no longer subject to administrative appeal or
judicial review.

4.5.5 Escalation of Costs. Costs specified as a year 2002 cost basis shall be escalated
on the U.S. Gross Domestic Product – Implicit Price Deflator (GPD-IPD). Costs not
specified as a year 2002 cost basis are constant dollars not subject to escalation.

4.6 Implementation Schedule.

1 Implementation of the PM&E measures stated in Appendix A shall begin after issuance
2 of the New Project License and consistent with the schedule specified in Appendix A (as
3 it may be modified by the New Project License). Implementation of the measures stated
4 in Appendix B shall begin consistent with the schedule specified in Appendix B. Within
5 6 months after issuance of the New Project License, the licensee shall prepare and
6 provide to all Parties the licensee's planned schedule for implementing the PM&E
7 measures recommended in the Settlement and incorporated in the New Project License.
8 The schedule shall specify dates for initiation, development, progress reporting,
9 monitoring, and completion, as appropriate, for each such PM&E measure and shall
10 include milestones for major activities.

11 4.7 Reopener or Amendment of New Project License.

12 4.7.1 Reopener. Except as required to fulfill statutory or regulatory responsibilities or
13 as provided in Paragraph 4.7.2, a Party to the Settlement may seek to modify, or
14 otherwise reopen during the term of the Settlement the PM&E measures from the
15 Settlement included in the New Project License, only if and when significant new
16 information not known or understood as of the date of issuance of the New Project
17 License reasonably demonstrates that such proposed modification or other cause of
18 reopener is in furtherance of the public interest under FPA or other applicable law. Prior
19 to filing for such reopener, that Party shall provide the licensee and other Parties at least
20 90-days' Notice to consider the new information and that Party's position. Any Party
21 may request a meeting to discuss the issue within the 90-day period. A Party shall not be
22 required to comply with this 90-day Notice provision if it believes an emergency
23 situation exists, or if required to meet its responsibilities under applicable law. In such
24 an emergency situation, the Party shall give Notice to the licensee, FS, ERC, and
25 SWRCB within 5 days of recognition of the need for such reopener. Notwithstanding
26 the provisions of this paragraph, any Party may seek to reopen the New Project License
27 to implement future changes in applicable law. A license reopener that, as approved by
28 FERC, would adversely affect the Settlement is subject to Paragraph 4.3.1.

17.2 Amendment. Nothing in the Settlement is intended, or shall be construed, to
affect or limit the right of the licensee to seek amendments of the New Project License,
provided that the licensee may seek a Project license amendment that would adversely
affect the Settlement only if the licensee, relying on significant new information not
known or understood as of the date of issuance of the New Project License, can
reasonably demonstrate in the amendment proceeding that the amendment is in
furtherance of the public interest under the FPA or other applicable law. Prior to filing a
proposed license amendment that relates to a Resolved Subject or would otherwise affect
the Settlement, the licensee shall provide the Parties at least 90 days' Notice of its
intention to do so, and promptly following the giving of such Notice, shall consult with
Parties responding within 30 days of such Notice regarding the need for and the purpose
of the amendment, provided the licensee shall not be required to comply with this 90-day
Notice provision if it believes an emergency situation exists or if required to meet its
responsibilities under applicable law or an order of an agency with jurisdiction over the
licensee. In such an emergency or compliance situation, the licensee shall give Notice to

1 the ERC, FS, and SWRCB within 5 days of recognition of the need for such amendment.
2 In any application for a Project license amendment that relates to a Resolved Subject or
3 would otherwise affect the Settlement, the licensee shall provide with its application
4 documentation of its consultation with the responsive Parties, a summary of the positions
5 and recommendations of the responsive Parties, and its response to those positions and
6 recommendations. The licensee shall not oppose an intervention request by any Party
7 that satisfies FERC's procedural requirements in a proceeding for a Project license
8 amendment that any Party has concluded would adversely affect the Settlement. A
9 Project license amendment that, as approved by FERC, would, in the opinion of any
10 Party, adversely affect the Settlement is subject to Paragraph 4.3.1. Further, a Project
11 license amendment that, as approved by FERC, would, in the opinion of any Party,
12 adversely affect the Settlement may be considered by a Party as significant new
13 information, allowing that Party to invoke the reopener provision in Paragraph 4.7.1.

9 4.8 Amendment of Settlement.

10 The Settlement may be amended at any time through the term of the New Project License
11 plus the term(s) of any annual license(s) that may be issued after the New Project License
12 has expired, after Notice, with the unanimous agreement of all Parties still in existence
13 and responsive within 30 days of such Notice. Any amendment of the Settlement shall be
14 in writing and executed by the responding Parties.

13 4.9 Dispute Resolution.

14 4.9.1. General. All disputes among the Parties regarding any Party's performance or
15 compliance with the Settlement, including resolution of any disputes related to any
16 Project license article, Final 4(e) Condition, 401 Certification, or other mandatory license
17 condition that is Inconsistent with the Settlement, shall be the subject of a non-binding
18 alternative dispute resolution ("ADR") procedure among the disputing Parties, as stated
19 in this Paragraph 4.9.1 et seq., except to the extent that: (a) FERC, FS, SWRCB or other
20 agency with jurisdiction over a Resolved Subject has a procedure that precludes
21 implementation of Paragraph 4.9.1 et seq., or (b) the Settlement provides otherwise.
22 Each Party participating in a dispute ("disputing Party," or collectively "disputing
23 Parties") shall cooperate in good faith to promptly schedule, attend, and participate in the
24 ADR. The disputing Parties agree to devote such time, resources, and attention to the
25 ADR as are needed to attempt to resolve the dispute at the earliest time possible. Each
26 disputing Party shall implement promptly all final agreements reached, consistent with
27 its applicable statutory and regulatory responsibilities. Nothing in Paragraph 4.9.1 et
28 seq. is intended, or shall be construed, to affect or limit the authority of FERC, FS,
SWRCB, or other agency with jurisdiction over a Resolved Subject to resolve a dispute
brought before it in accord with its own procedure and applicable law.

25 4.9.2 ADR Procedures. A Party claiming a dispute shall give Notice of the dispute
26 within 30 days of the Party's actual knowledge of the act, event, or omission that gives
27 rise to the dispute, unless the Settlement provides otherwise. If the dispute includes a
28 claim that any New Project License article, Section 4(e) Condition, 401 Certification, or

1 other mandatory license condition is Inconsistent with the Settlement, and the claim
2 arises prior to rehearing or appeal, the Notice shall be made within the time periods
3 specified in Paragraphs 4.3.1, 4.3.2, 4.3.3, or 4.3.4, respectively. If the dispute includes a
4 claim that any New Project License article, Section 4(e) Condition, 401 Certification or
5 other mandatory license condition is Inconsistent with the Settlement, and the claim
6 arises during or after rehearing or appeal, the Notice shall be made within the time
7 periods specified in Paragraphs 4.4.1, 4.4.2, 4.4.3, and 4.4.4, respectively. At a
8 minimum and in any dispute subject to these ADR procedures, the disputing Parties shall
9 hold two informal meetings, within 30 days after Notice, to attempt to resolve the
10 disputed issue(s). Any disputing Party may request that a FERC employee facilitate
11 these informal meetings to assist in resolving the dispute. If the informal meetings fail to
12 resolve the dispute, the disputing Parties shall attempt to resolve the dispute using a
13 neutral mediator jointly selected within 15 days after Notice by a disputing Party that the
14 informal meetings did not resolve the dispute. The disputing Parties shall select a
15 mediator from the sources described in 18 C.F.R. § 385.604(c)(3). In the event the
16 Parties shall not select a FERC mediator, the Parties shall agree on equitable allocation
17 of costs of a mediator. The mediator shall mediate the dispute during the next 60 days
18 after their selection. Any of these time periods may be reasonably extended or shortened
19 by agreement of the disputing Parties, or as necessary to conform to the procedure of an
20 agency or court with jurisdiction over the dispute. Unless otherwise agreed among the
21 disputing Parties, each disputing Party shall bear its costs for its own participation in the
22 ADR procedures.

23 4.9.3. Enforcement of Settlement After Dispute Resolution. Any Party may seek in a
24 court of competent jurisdiction specific performance of the Settlement by any other
25 Party, after compliance with the ADR procedures stated in Paragraph 4.9.1 et seq. A
26 Party shall not be liable in damages for any breach of the Settlement, any performance or
27 failure to perform a mandatory or discretionary obligation imposed by the Settlement, or
28 any other cause of action arising from the Settlement. The time used to comply with the
ADR procedures shall be excluded from computing any applicable statute of limitations,
except where applicable law precludes such exclusion when computing time. Nothing in
Paragraph 4.9.1 et seq. is intended, or shall be construed, to affect or limit the
jurisdiction of any agency or court as established under applicable law.

20 4.10 Withdrawal from Settlement.

21 4.10.1 Withdrawal of a Party from Settlement. A Party may withdraw from the
22 Settlement only in the following circumstances: (a) a disputing Party claiming a material
23 breach or violation of the Settlement may withdraw once the Party has complied with the
24 ADR procedures stated in Paragraph 4.9.1. et seq. to attempt to resolve the dispute, (b) a
25 Party objecting to a final and non-appealable order issuing a New Project License that is
26 Inconsistent with the Settlement may withdraw once the Party has complied with the
27 ADR procedures stated in Paragraph 4.9.1. et seq. to attempt to resolve the objection, or
28 (c) the withdrawing Party provides an affirmative showing the unforeseen and
extraordinary circumstances warranting withdrawal, only after Notice, opportunity to
meet and discuss, and compliance with the ADR procedures stated in Paragraph 4.9.1 et

1 seq. In addition, the licensee may withdraw as provided in Paragraph 4.10.2. In
2 addition, when required to fulfill statutory or regulatory responsibility, a Party that is an
3 agency may suspend participation or, if necessary, withdraw from the Settlement,
4 without first using the ADR procedures stated in Paragraph 4.9.1. et seq. If a Party that
5 is an agency suspends participation or withdraws from the Settlement, that Party will
6 give written notice to the remaining Parties in accordance with Paragraph 5.9,
7 documenting its reason for its action. Reasons for such action include but are not limited
8 to the listing of a new species under Federal or California ESA or the discovery of
9 significant new information not known at the time the Settlement was executed. Finally,
10 a Party may withdraw as provided in Paragraph 5.3.

11 4.10.2 Withdrawal of Licensee from Settlement. In addition to the provisions of
12 Paragraph 4.10.1, the licensee may withdraw from the Settlement without first
13 complying with the ADR procedures stated in Paragraph 4.9.1 et seq. if a participant in
14 the Collaborative does not execute the Settlement by the Effective Date, or a Party
15 withdraws from the Settlement, and the licensee reasonably determines at its sole
16 discretion, after an opportunity to meet and discuss with Parties, that the failure to
17 execute or the withdrawal: (a) may adversely affect the likelihood of FS issuing 4(e)
18 Conditions consistent with the Settlement, and/or (b) may adversely affect the likelihood
19 of SWRCB issuing a 401 Certification consistent with the Settlement, and/or (c) may
20 adversely affect FERC's issuance of a New Project License consistent with the
21 Settlement, and/or (d) substantially diminishes the value of the Settlement, by giving
22 Notice identifying the reason for withdrawal within 30 days of the licensee's knowledge
23 of the event creating the right to withdraw.

24 4.10.3 Method of Withdrawal. A Party may exercise its right to withdraw from the
25 Settlement by giving Notice. Withdrawal is effective 10 calendar days after Notice. A
26 Party that is an agency may suspend participation in the Settlement as provided in
27 Paragraph 4.10.1 by giving Notice.

28 4.10.4 Continuity After Withdrawal. The withdrawal of a Party, other than the licensee,
does not terminate the Settlement for the remaining Parties. If a Party withdraws from
the Settlement, the withdrawing Party shall not be bound by any term contained in the
Settlement. Additionally, the withdrawing Party shall be deemed to have resigned from
the ERC upon the effective date of the withdrawal. The withdrawing Party shall continue
to be bound by the El Dorado Collaborative Protocol, to the extent permitted by
applicable law.

29 4.11 Termination of Settlement.

30 The Settlement shall terminate as to all Parties and have no further force or effect upon
31 expiration of the New Project License and any annual licenses issued after expiration
32 thereof or upon withdrawal from the Settlement of the licensee. Upon termination, the
33 Settlement and all documents related to its development, execution, and submittal to
34 FERC shall be deemed confidential and shall not be discoverable or admissible in any
35 forum or proceeding for any purpose to the fullest extent allowed by applicable law,
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1 including 18 C.F.R. § 385.606. This provision does not apply to the results of resource
2 studies or other technical information developed for use by the Collaborative. This
3 provision does not apply to any information that was in the public domain prior to the
4 development of the Settlement or that became part of the public domain at some later
5 time through no unauthorized act or omission by any Party. This provision does not
6 apply to: (a) any information held by a federal agency that is not protected from
7 disclosure pursuant to the Freedom of Information Act or other applicable law; or (b) any
8 information held by a state or local agency that is not protected from disclosure pursuant
9 to the California Public Records Act or other applicable state or federal law.

6 **5. General Provisions**

7 **5.1 Non-Severable Terms of Settlement.**

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9 The terms of the Settlement are not severable one from the other. The Settlement is made
10 on the understanding that each term is in consideration and support of every other term,
11 and each term is a necessary part of the entire Settlement.

11 **5.2 No Third-Party Beneficiaries.**

12 Without limiting the applicability of rights granted to the public pursuant to applicable
13 law, the Settlement shall not create any right or interest in the public, or any member
14 thereof, as a third-party beneficiary hereof, and shall not authorize any non-Party to
15 maintain a suit at law or equity pursuant to the Settlement. The duties, obligations, and
16 responsibilities of the parties with respect to third parties shall remain as imposed under
17 applicable law.

16 **5.3 Successors and Assigns.**

17 The Settlement shall apply to, and be binding on, the Parties and their successors and
18 assigns. Upon completion of a succession or assignment, the initial Party shall no longer
19 be a Party to the Settlement. No change in ownership of the Project or transfer of the
20 existing or New Project License by the licensee shall in any way modify or otherwise
21 affect any other Party's interests, rights, responsibilities, or obligations under the
22 Settlement. Unless prohibited by applicable law, the licensee shall provide in any
23 transaction for a change in ownership of the Project or transfer of the existing or New
24 Project License, that such new owner shall be bound by, and shall assume the rights and
25 obligations of the Settlement upon completion of the change of ownership and approval
26 by FERC of the license transfer. In the event that applicable law prohibits the new owner
27 from assuming the rights and obligations of the Settlement, any Party may withdraw from
28 the Settlement. A transferring or assigning Party shall provide Notice to the other Parties
at least 30 days prior to completing such transfer or assignment.

25 **5.4 Failure to Perform Due to Force Majeure.**

1 No Party shall be liable to any other Party for breach of the Settlement as a result of a
2 failure to perform or for delay in performance of any provision of the Settlement due to
3 any cause reasonably beyond its control. This may include, but is not limited to, natural
4 events, labor or civil disruption, or malfunction or failure of Project works. The Party
5 whose performance is affected by a force majeure shall make all reasonable efforts to
6 promptly resume performance of the Settlement.

7 5.5 Governing Law.

8 The New Project License and any other terms of the Settlement over which a federal
9 agency has jurisdiction shall be governed, construed, and enforced in accordance with the
10 statutory and regulatory authorities of such agency. The Settlement shall otherwise be
11 governed and construed under the laws of the State of California. By executing the
12 Settlement, no federal agency is consenting to the jurisdiction of a state court unless such
13 jurisdiction otherwise exists. All activities undertaken pursuant to the Settlement shall
14 be in compliance with all applicable law.

15 5.6 Elected Officials Not to Benefit.

16 No member of, or delegate to, Congress shall be entitled to any share or part of the
17 Settlement or to any benefit that may arise from it.

18 5.7 No Partnership.

19 Except as otherwise expressly set forth herein, the Settlement does not and shall not be
20 deemed to make any Party the agent for, partner of, or joint venturer with any other Party.

21 5.8 Reference to Regulations.

22 Any reference in the Settlement to any federal or state regulation shall be deemed to be a
23 reference to such regulation, or successor regulation, in existence as of the date of the
24 action.

25 5.9 Notice.

26 Except as otherwise provided in this paragraph, any Notice required by the Settlement
27 shall be written. It shall be sent to all Parties still in existence and FS and SWRCB, by
28 first-class mail or comparable method of distribution, and as applicable, filed with FERC.
For the purpose of this Settlement and unless otherwise specified, a Notice shall be
effective 7 days after the date on which it is mailed or otherwise distributed. When the
Settlement requires Notice in fewer than 7 days, Notice shall be provided by telephone,
facsimile, or electronic mail and shall be effective when provided. For the purpose of
Notice, the list of authorized representatives of the Parties, FS, and SWRCB as of the
Effective Date is attached as Appendix E. The Parties, FS, and SWRCB shall provide
Notice of any change in the authorized representatives designated in Appendix E, and the
licensee shall maintain the current distribution list of such representatives.

1 5.10 Paragraph Titles for Convenience Only.

2 The titles for the paragraphs of the Settlement are used only for convenience of reference
3 and organization and shall not be used to modify, explain, or interpret any of the
4 provisions of the Settlement or the intentions of the Parties. The Settlement has been
5 jointly drafted by the Parties and therefore shall be construed according to its plain
6 meaning and not for or against any Party.

6. **Execution of Settlement**

7 6.1 Signatory Authority.

8 Each signatory to the Settlement certifies that he or she is authorized to execute the
9 Settlement and to legally bind the Party he or she represents, and that such Party shall be
10 fully bound by the terms hereof upon such signature without any further act, approval, or
11 authorization by such Party.

11 6.2 Disclosure of Other Agreements.

12 Each party represents that it is not a party to any other existing agreement with any Party
13 or non-Party relating to the Settlement, except as described in the Appendices to this
14 Settlement. If a Party subsequently determines that it has such an agreement, such party
15 shall provide Notice of the terms of that agreement.

15 6.3 Signing in Counterparts.

16 The Settlement may be executed in any number of counterparts, and each executed
17 counterpart shall have the same force and effect as an original instrument as if all the
18 signatory Parties to all of the counterparts had signed the same instrument. Any signature
19 page of the Settlement may be detached from any counterpart of the Settlement without
20 impairing the legal effect of any signatures thereon, and may be attached to another
21 counterpart of the Settlement identical in form hereto but having attached to it one or
22 more signature pages.

21 WHEREFORE, for valuable consideration, which is hereby acknowledged, and by authorized
22 representatives, the Parties execute this Settlement effective as of April 30, 2003.

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1 United States Department of Agriculture Forest Service

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1 Friends of the River

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1 American Whitewater

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1 El Dorado County Water Agency

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1 Citizens for Water

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Appendix A

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2 **Protection, Mitigation, and Enhancement Measures Recommended to be Included in New**
3 **Project License, Section 4(e) Conditions, 401 Certification, and Other Mandatory License**
4 **Conditions**

4 **Section 1. Minimum Streamflows**

5 The licensee shall, beginning as early as reasonably practicable within 3 months after license
6 issuance, maintain minimum streamflows in Echo Creek below Echo Dam; Pyramid Creek
7 below Lake Aloha; Caples Creek below Caples Dam; Silver Fork American River below Silver
8 Lake Dam; South Fork American River (SFAR) below Kyburz Diversion; and Carpenter, No
9 Name, Alder, Mill, Bull, Ogilby, and Esmeralda Creeks below their diversions at the El Dorado
10 Canal, as specified in the following minimum streamflow schedules. All specified streamflows
11 are in cubic feet per second (cfs). The schedules specify minimum streamflows, by month and
12 water year type, for each of the specified stream reaches. Minimum streamflows for February
13 through May shall begin on or before the 5th day of each month. In all other months, minimum
14 streamflows shall begin by the 1st of the month.

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12 The minimum streamflows specified in the schedules may be temporarily modified if required by
13 equipment malfunction or operating emergencies reasonably beyond the control of the licensee.
14 If the streamflow is so modified, the licensee shall provide notice to the FS as soon as possible,
15 but no later than 10 days after such incident. The minimum streamflows specified may also be
16 temporarily modified for short periods in non-emergency situations 5 days after FS approval, for
17 areas within its jurisdiction.

15

16 Where facility modification is required to maintain the specified minimum streamflows, the
17 licensee shall complete such modifications as soon as reasonably practicable and no later than 3
18 years after license issuance. Prior to such required facility modifications, the licensee shall make
19 a good faith effort to provide the specified minimum streamflows within the capabilities of the
20 existing facilities.

19 In order for the licensee to adjust operations to meet the required minimum streamflows, the
20 licensee shall have a 3-year period after the license is issued or 3 years after completion of
21 necessary facility modifications, whichever is later, in which daily mean streamflows may vary
22 up to 10 percent below the amounts specified in the minimum streamflow schedules, provided
23 that the average monthly streamflow in any given month equals or exceeds the required
24 minimum amount for the month. After the applicable period, the licensee shall meet the
25 minimum streamflow requirements specified in the minimum streamflow schedules.

23

24 Water Year Types. The minimum streamflow schedules have been separated into five water
25 year types: Wet, Above Normal (AN), Below Normal (BN), Dry, and Critically Dry (CD). The
26 licensee shall determine water year type based on the forecast of unimpaired inflow to Folsom
27 Reservoir for the period of April through July, as set forth in Bulletin 120 (Water Conditions in
28 California as published by the California Department of Water Resources) until an alternative
forecasting tool is approved by the Forest Service (FS), Ecological Resources Committee (ERC),

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State Water Resources Control Board (SWRCB), and Federal Energy Regulatory Commission (FERC). Water year types are defined as follows:

- 2 Wet = greater than 125 percent of average
- 3 AN = less than 125 percent but greater than or equal to 100 percent of average
- 4 BN = less than 100 percent but greater than or equal to 75 percent of average
- 5 Dry = less than 75 percent but greater than or equal to 50 percent of average
- 6 CD = less than 50 percent of average

Each February through May, the licensee shall operate for that month, beginning on or before the 5th day of these 4 months (February through May), after forecasting information is available, using a water year type designation for that month based on the Bulletin 120 forecast or the alternative forecasting tool that has been approved by the FS, ERC, SWRCB, and FERC. The May forecast shall be used to establish the final water year type for the remaining months of the year until the next February, when forecasting shall begin again. The licensee shall provide notice to the FS, ERC, ERC, SWRCB, and FERC of the final water year type determination within 10 days of making the determination.

An exception to the operating rules in the previous paragraph shall be that a separate forecasting method for January and February, as described in Appendix A, Section 22, subsection 2, of the Settlement, shall be established within 1 year of license issuance. This forecasting method, once approved by the FS, SWRCB, ERC and FERC, shall govern the January and February operation of Caples Lake and the Kyburz Diversion Dam.

Echo Creek Below Echo Lakes Dam

The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as specified in the following schedule based on month and water year type. The compliance point for Echo Creek is the gaging station located downstream of the Echo Lake Dam (USGS Gage No. 10336608, EID Gage No. A-3). Echo Creek minimum streamflows flow into the Truckee River Basin and not the South Fork American River Basin.

Echo Creek Below Echo Lakes Dam						
Month	Minimum Streamflow by Water Year (cfs)					
	CD	DRY	BN	AN	WET	
OCT	6 or NF	6 or NF	6 or NF	6 or NF	6 or NF	
NOV	6 or NF	6 or NF	6 or NF	6 or NF	6 or NF	
DEC	6 or NF	6 or NF	6 or NF	6 or NF	6 or NF	
JAN	6 or NF	6 or NF	6 or NF	6 or NF	6 or NF	
FEB	6 or NF	6 or NF	6 or NF	10 or NF	10 or NF	
MAR	6 or NF	6 or NF	6 or NF	15 or NF	15 or NF	
APR	6 or NF	10 or NF	15 or NF	25 or NF	25 or NF	
MAY	6 or NF	15 or NF	30 or NF	45 or NF	45 or NF	
JUNE	6 or NF	15 or NF	30 or NF	40 or NF	40 or NF	
JULY	6 or NF	10 or NF	15 or NF	20 or NF	20 or NF	
AUG	6 or NF	6 or NF	6 or NF	6 or NF	6 or NF	
SEPT	6 or NF	6 or NF	6 or NF	6 or NF	6 or NF	

1 Pyramid Creek Below Lake Aloha Dam

2 The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as
 3 specified in the following schedule based on month and water year type. The compliance point
 4 for Pyramid Creek is the gaging station located near Highway 50 at Twin Bridges (USGS Gage
 5 No. 11435100, EID Gage No. A-40). This location, along with other compliance points, may be
 modified when the licensee develops a Streamflow and Reservoir Storage Gaging Plan as
 required in Section 10.

6 **Pyramid Creek Below Lake Aloha Dam**

7	Month	Minimum Streamflow by Water Year (cfs)				
8		CD	DRY	BN	AN	WET
9	OCT	1 or NF	1 or NF	2 or NF	3 or NF	3 or NF
10	NOV	1 or NF	3 or NF	4 or NF	5 or NF	5 or NF
11	DEC	2 or NF	3 or NF	5 or NF	6 or NF	6 or NF
12	JAN	2 or NF	3 or NF	5 or NF	6 or NF	6 or NF
13	FEB	2 or NF	4 or NF	6 or NF	8 or NF	8 or NF
14	MAR	2 or NF	5 or NF	7 or NF	10 or NF	10 or NF
15	APR	3 or NF	5 or NF	8 or NF	11 or NF	11 or NF
16	MAY	5 or NF	10 or NF	15 or NF	20 or NF	20 or NF
17	JUNE	5 or NF	10 or NF	14 or NF	19 or NF	19 or NF
18	JULY	2 or NF	4 or NF	6 or NF	8 or NF	8 or NF
19	AUG	1 or NF	2 or NF	3 or NF	4 or NF	4 or NF
20	SEPT	1 or NF	1 or NF	2 or NF	2 or NF	2 or NF

15 Caples Creek Below Caples Lake Dam

16 The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as
 17 specified in the following schedule, based on month and water year type, unless the natural flow
 18 is less than 5 cfs, in which case the minimum flow would be 5 cfs. The compliance point for
 19 Caples Creek is the gaging station located downstream of the Caples Lake Dam (USGS Gage
 No. 11434500, EID Gage No. A-6).

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Caples Creek Below Caples Lake Dam						
Month	Minimum Streamflow by Water Year (cfs)					
	CD	DRY	BN	AN	WET	
OCT	5	5	5	5	5	
NOV	5	6 or NF	8 or NF	10 or NF	10 or NF	
DEC	5	7 or NF	10 or NF	10 or NF	10 or NF	
JAN	5	7 or NF	10 or NF	15 or NF	15 or NF	
FEB	5	7 or NF	10 or NF	15 or NF	15 or NF	
MAR	5	10 or NF	15 or NF	20 or NF	20 or NF	
APR	10	12 or NF	18 or NF	25 or NF	25 or NF	
MAY	14	27 or NF	40 or NF	55 or NF	55 or NF	
JUNE	14	28 or NF	42 or NF	55 or NF	55 or NF	
JULY	12	25 or NF	35 or NF	50 or NF	50 or NF	
AUG	5	5	6 or NF	8 or NF	8 or NF	
SEPT	5	5	5	5	5	

Silver Fork American River Below Silver Lake Dam

The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as specified in the following schedule based on month and water year type. The compliance point for Silver Fork American River is the gaging station located downstream of the Silver Lake Dam (USGS Gage No. 11436000, EID Gage No. A-8).

Silver Fork American River Below Silver Lake Dam	
Month	
	ALL
OCT	4 or NF
NOV	4 or NF
DEC	4 or NF
JAN	4 or NF
FEB	4 or NF
MAR	4 or NF
APR	4 or NF
MAY	4 or NF
JUNE	4 or NF
JULY	4 or NF
AUG	4 or NF
SEPT	4 or NF

Silver Fork American River Below Oyster Creek

The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as specified in the following schedule based on month and water year type. “Natural flow” for the purposes of the Silver Fork American River below Oyster Creek includes the natural inflow of

water into Silver Lake plus the natural leakage and accretion flow of water out of Silver Lake directly into Oyster Creek. The recommended compliance point for Silver Fork American River is the gaging station located downstream of Oyster Creek. This gage site has not been formally installed and may be modified when the licensee develops a Streamflow and Reservoir Storage Gaging plan as required in Section 10.

If the FS determines that the flow of Oyster Creek associated with Silver Lake stage height has substantially changed, the FS shall, after notice and opportunity for comment and in consultation with the ERC and SWRCB, develop an alternative minimum streamflow regime for the Silver Fork American River below Oyster Creek.

Silver Fork American River Below Oyster Creek						
Month	Minimum Streamflow by Water Year (cfs)					
	CD	DRY	BN	AN	WET	
OCT	8 or NF	8 or NF	8 or NF	8 or NF	8 or NF	
NOV	8 or NF	8 or NF	10 or NF	16 or NF	16 or NF	
DEC	8 or NF	8 or NF	10 or NF	16 or NF	16 or NF	
JAN	8 or NF	8 or NF	12 or NF	16 or NF	16 or NF	
FEB	8 or NF	10 or NF	17 or NF	23 or NF	23 or NF	
MAR	8 or NF	15 or NF	26 or NF	35 or NF	35 or NF	
APR	8 or NF	18 or NF	50 or NF	50 or NF	50 or NF	
MAY	10 or NF	20 or NF	90 or NF	100 or NF	100 or NF	
JUNE	8 or NF	10 or NF	60 or NF	60 or NF	60 or NF	
JULY	8 or NF	8 or NF	18 or NF	20 or NF	25 or NF	
AUG	8 or NF	8 or NF	8 or NF	8 or NF	8 or NF	
SEPT	8 or NF	8 or NF	8 or NF	8 or NF	8 or NF	

South Fork American River Below Kyburz Diversion Dam

The licensee shall maintain the minimum streamflow specified in the following schedule based on month and water year type. The recommended compliance point for South Fork American River is the gaging station located downstream of the Kyburz Diversion Dam (USGS Gage No. 11439500, licensee Gage No. A-12).

South Fork American River Below Kyburz Diversion						
Month	Minimum Streamflow by Water Year (cfs)					
	CD	DRY	BN	AN	WET	
OCT	15	15	40	50	50	
NOV	15	18	40	50	50	
DEC	15	25	40	50	50	
JAN	15	25	40	50	50	
FEB	20	30	40	50	75	
MAR	30	60	110	110	110	
APR	60	120	180	180	180	
MAY	60	120	180	240	240	
JUNE	60	120	180	240	240	
JULY	40	85	125	160	160	
AUG	18	18	65	65	65	
SEPT	15	15	50	50	50	

Carpenter Creek

The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as specified in the following schedule. There is currently no compliance gage for this site. This site must be addressed in the Streamflow and Reservoir Storage Gaging Plan required in Section 10.

Carpenter Creek Below Carpenter Creek Diversion Dam		
Month		
	ALL	
OCT	1 or NF	
NOV	1 or NF	
DEC	2 or NF	
JAN	2 or NF	
FEB	3 or NF	
MAR	4 or NF	
APR	5 or NF	
MAY	4 or NF	
JUNE	2 or NF	
JULY	1 or NF	
AUG	1 or NF	
SEPT	1 or NF	

No Name Creek

The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as specified in the following schedule. There is currently no compliance gage for this site. This site must be addressed in the Streamflow and Reservoir Storage Gaging Plan required in Section 10.

No Name Creek Below No Name Creek Diversion Dam		
Month		
		ALL
OCT		1 or NF
NOV		1 or NF
DEC		1 or NF
JAN		1 or NF
FEB		1 or NF
MAR		1 or NF
APR		1 or NF
MAY		1 or NF
JUNE		1 or NF
JULY		1 or NF
AUG		1 or NF
SEPT		1 or NF

10

11 **Alder Creek**

12 The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as
 13 specified in the following schedule. There is currently no compliance gage for this site. This site
 14 must be addressed in the Streamflow and Reservoir Storage Gaging Plan required in Section 10.

14

Alder Creek Below Alder Creek Diversion Dam						
Month	Minimum Streamflow by Water Year (cfs)					
	CD	DRY	BN	AN	WET	
OCT	25 or NF	25 or NF	25 or NF	25 or NF	25 or NF	
NOV	5 or NF	5 or NF	5 or NF	5 or NF	5 or NF	
DEC	5 or NF	5 or NF	5 or NF	10 or NF	10 or NF	
JAN	5 or NF	5 or NF	10 or NF	10 or NF	10 or NF	
FEB	5 or NF	5 or NF	10 or NF	10 or NF	10 or NF	
MAR	25 or NF	25 or NF	45 or NF	45 or NF	45 or NF	
APR	25 or NF	35 or NF	65 or NF	90 or NF	90 or NF	
MAY	25 or NF	30 or NF	55 or NF	75 or NF	75 or NF	
JUNE	25 or NF	25 or NF	25 or NF	25 or NF	25 or NF	
JULY	25 or NF	25 or NF	25 or NF	25 or NF	25 or NF	
AUG	25 or NF	25 or NF	25 or NF	25 or NF	25 or NF	
SEPT	25 or NF	25 or NF	25 or NF	25 or NF	25 or NF	

24 **Mill Creek**

25 The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as
 26 specified in the following schedule. There is currently no compliance gage for this site. This site
 27 must be addressed in the Streamflow and Reservoir Storage Gaging Plan required in Section 10.

27

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1 **Mill Creek Below Mill Creek**
 2 **Diversion Dam**

3	Month	
4	OCT	1 or NF
5	NOV	2 or NF
6	DEC	3 or NF
7	JAN	4 or NF
8	FEB	6 or NF
9	MAR	7 or NF
10	APR	6 or NF
	MAY	4 or NF
	JUNE	2 or NF
	JULY	1 or NF
	AUG	1 or NF
	SEPT	1 or NF

11 **Bull Creek**

12 The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as
 13 specified in the following schedule. There is currently no compliance gage for this site. This
 14 site must be addressed in the Streamflow and Reservoir Storage Gaging Plan required in Section
 10.

15 **Bull Creek Below Bull Creek**
 16 **Diversion Dam**

17	Month	
18	OCT	1 or NF
19	NOV	1 or NF
20	DEC	1 or NF
21	JAN	1 or NF
22	FEB	1 or NF
23	MAR	1 or NF
24	APR	1 or NF
	MAY	1 or NF
	JUNE	1 or NF
	JULY	1 or NF
	AUG	1 or NF
	SEPT	1 or NF

25 **Ogilby Creek**

26
 27
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The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as specified in the following schedule. There is currently no compliance gage for this site. This site must be addressed in the Streamflow and Reservoir Storage Gaging Plan required in Section 10.

3
4 **Ogilby Creek Below Ogilby
Creek Diversion Dam**

5	Month		
6	OCT	1 or NF	ALL
7	NOV	1 or NF	
8	DEC	1 or NF	
9	JAN	1 or NF	
10	FEB	2 or NF	
11	MAR	2 or NF	
12	APR	2 or NF	
	MAY	2 or NF	
	JUNE	1 or NF	
	JULY	1 or NF	
	AUG	1 or NF	
	SEPT	1 or NF	

13 **Esmeralda Creek**

14 The licensee shall maintain the minimum streamflow or natural flow, whichever is less, as
15 specified in the following schedule. There is currently no compliance gage for this site. This site
must be addressed in the Streamflow and Reservoir Storage Gaging Plan required in Section 10.

16
17 **Esmeralda Creek Below
Esmeralda Diversion Dam**

18	Month		
19	OCT	1 or NF	ALL
20	NOV	1 or NF	
21	DEC	1 or NF	
22	JAN	1 or NF	
23	FEB	1 or NF	
24	MAR	2 or NF	
25	APR	2 or NF	
	MAY	2 or NF	
	JUNE	1 or NF	
	JULY	1 or NF	
	AUG	1 or NF	
	SEPT	1 or NF	

26
27 **Section 2. Ramping Rates**

1 The licensee shall, beginning as early as reasonably practicable within 3 months after license
2 issuance, use the following ramping rates for licensee-controlled streamflow releases at Echo
3 Lakes and Lake Aloha:

4	Change in Water Level of Stream (feet/hour)	Flow Range (cfs)
5	0.5	1-75
6	1.0	75-175
7	1.5	above 175

8 The licensee shall, beginning as early as reasonably practicable within 3 months after license
9 issuance, use the following ramping rates for licensee-controlled streamflow releases at Caples
Lake and Silver Lake:

10	Change in Water Level of Stream (feet/hour)	Flow Range (cfs)
11	1.0	1-75
12	0.5	75-175
13	0.55	above 175

14 Where facility modification is required to provide the specified ramping rates, the licensee shall
15 complete such modifications as soon as reasonably practicable and no later than 3 years after
16 license issuance. Prior to such required facility modifications, the licensee shall make a good
faith effort to provide the specified ramping rates within the capabilities of the existing facilities.

17 The licensee shall make available to the FS, ERC, and SWRCB the streamflow records related to
ramping upon request.

18 The licensee shall be excused from complying with the ramping rate requirements in the event of
19 law enforcement or search and rescue activities, Division of Safety of Dams compliance
20 requirements, equipment malfunction or failure that is directly related to providing the specified
21 ramping rates, or a large storm event that is beyond its ability to control. The licensee shall
22 provide notice to the FS, ERC, and SWRCB within 10 days after such an event occurs and shall
provide a report documenting the reason that ramping rates were not followed within 1 month
after such an event occurs.

23 **Section 3. Operation and Maintenance of Lake Aloha**

24 1. Prevention of Spills and Removal of Trout if Spill Occurs

25 The licensee shall operate Lake Aloha to attempt to prevent water in the reservoir from
26 spilling over Auxiliary Dams 1-7 during spring runoff and while the reservoir is filling,
27 recognizing that Auxiliary Dam 6 is designed to function as Lake Aloha's spillway. If

28

1 spill occurs over these dams and into the pools below, the licensee shall manually remove
2 trout from the pools. Within 14 days of spill occurring, the licensee shall submit a plan
3 for removing fish from these pools and ponds to FS and CDFG and, after approval of the
4 plan by the FS and CDFG, shall initiate the removal within 30 days after the spill occurs.
5 The FS and CDFG will make a good faith effort to assist the licensee in implementing the
6 removal program. The licensee shall annually, by July 30, produce a monitoring report
7 documenting whether spill occurred over the Auxiliary Dams and whether trout were
8 found and removed. If no fish are located after 5 years of surveys after spills, the licensee
9 shall consult with the FS and CDFG to determine whether further surveys are necessary.
10 In accordance with FS 4(e) Condition No. 3, the FS reserves the authority, within 5 years
11 after license issuance, to modify this section if monitoring indicates that spill cannot be
12 prevented and trout are entering the pools below the Auxiliary Dams.

82. Trout Survey and Removal

9 Within 1 year of license issuance, the licensee shall survey the pools and ponds below
10 Auxiliary Dams 1-7 on Lake Aloha to determine if trout are present in the pools and
11 ponds. If trout are present, the licensee shall submit a plan for removal of the trout to the
12 FS and CDFG within 30 days of locating the trout. Upon approval of the plan by the FS
13 and CDFG, the licensee shall implement the removal program. The FS and CDFG will
14 make a good faith effort to assist the licensee in implementing the removal program.

133. Authorized Flights into Desolation Wilderness for Maintenance

14 The licensee is authorized to make one flight per year into Desolation Wilderness to
15 maintain Project facilities at Lake Aloha. Flights necessary to perform major
16 maintenance work at Lake Aloha must be approved by the FS on a case-by-case basis.

17 **Section 4. Caples Lake Releases and Flow Limitations**

181. Pulse Flows

19 The licensee shall, within 3 months after license issuance but not prior to the
20 implementation of the new minimum streamflows, provide annual pulse flow events in
21 the natural Caples Creek channel below Caples Lake Dam specified in the following
22 pulse flow schedule by water year type. Pulse flows shall be timed to correspond to the
23 annual spring peak runoff based on the licensee's best estimate of maximum flow in any
24 particular year. All specified pulse flows are in cubic feet per second (cfs).

25 The licensee shall be excused from complying with the pulse flow requirements in the
26 event of law enforcement or search and rescue activities, Division of Safety of Dams
27 compliance requirements, equipment malfunction or failure that is directly related to
28 providing the specified pulse flows, or a large storm event that is beyond its ability to
control. If a pulse flow is so modified, the licensee shall provide notice to the FS, ERC,
and SWRCB as soon as possible but no later than 10 days after such incident. The pulse

flows specified may also be temporarily modified for short periods in non-emergency situations upon approval of the FS and SWRCB.

Pulse Flow by Water Year (cfs)						
Reach	CD	Dry	BN	AN	Wet	Duration and Timing
Caples Creek Channel Below Caples Lake Dam	0	150	210	300	345	5-day continuous pulse timed to correspond to annual spring peak runoff

Where facility modification is required to provide the specified pulse flows, the licensee shall make such modifications as soon as reasonably practicable and no later than 3 years after license issuance. Prior to such required facility modifications, the licensee shall make a good faith effort to provide the specified pulse flows within the capabilities of the existing facilities.

112. **Fall Release Flows**

September, October, and November release flows in the Caples Creek channel shall not be greater than 150 cfs. If a large storm event occurs during this period and the licensee cannot meet the fall release flows, the licensee shall provide notice to the FS, ERC, and SWRCB within 10 days after such an event occurs and shall provide a report documenting the reason that fall release flows were not followed within 1 month after such an event occurs.

163. **Caples Spillway Channel Flows**

The licensee shall not release more than 60 cfs into the existing Caples Lake Spillway channel.

The licensee shall be excused from complying with the spillway channel flows in the event of law enforcement or search and rescue activities, Division of Safety of Dams compliance requirements, equipment malfunction or failure that is directly related to providing the specified ramping rates, or a large storm event that is beyond its ability to control. If a spillway channel flow is so modified, the licensee shall provide notice to the FS, ERC, and SWRCB as soon as possible but no later than 10 days after such incident. The spillway channel flows specified may also be temporarily modified for short periods in non-emergency situations upon approval of the FS.

24 **Section 5. Oyster Creek Stabilization**

25 Within 2 years of license issuance, the licensee shall survey the channel and develop a plan that
 26 is approved by FS for stabilization of the Oyster Creek channel. The licensee shall be
 responsible for those portions of the plan that the FS, in cooperation with the licensee,

determines to be Project-related within 5 years of license issuance. The licensee may pursue a
1 Coordinated Resource Management Program with other landowners in the area.

2 **Section 6. Esmeralda Creek Restoration**

3 Within 2 years of license issuance, the licensee shall survey the portion of the channel located on
4 National Forest System lands and shall develop a plan that is approved by FS for restoration of
the Esmeralda Creek channel. The licensee shall implement the plan within 5 years of license
5 issuance.

6 **Section 7. Monitoring Program**

7 The licensee shall implement the following Monitoring Program after license issuance and
8 through the term of the new license and any annual licenses, in coordination with the FS, ERC,
9 and SWRCB. Within the scope of the specified monitoring program, the FS, ERC, and SWRCB
may select an equal number of alternative years to ensure that surveys occur during a range of
10 water year types. Final study plans shall be approved by the FS, ERC, and SWRCB. The FS,
ERC, and SWRCB have the flexibility to alter the monitoring program methodologies and
11 frequencies of data collection if it is determined that: (a) there is a more appropriate or
preferable methodology to use than that described in the monitoring plan or (b) monitoring may
12 be reduced or terminated because the relevant ecological resource objective has been met or no
13 change in resource response is expected.

14 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. The FS, ERC, and SWRCB shall have at least
15 30 days to review the report prior to filing with FERC. The licensee shall provide copies of the
annual report to the FS, ERC, and SWRCB.
16

17 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
18 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
19 for performing the monitoring, as well as specified contingency funding, shall be provided by the
licensee.
20

21 For purposes of the ecological resources adaptive management program, each year is defined on
a calendar year basis (i.e., January through December). This monitoring program covers
22 monitoring to be conducted during all years until a new license is issued. Most monitoring
described below is estimated to end after 30 years; however, if a new license is not issued within
23 30 years, the FS and/or SWRCB, in consultation with the ERC, reserve the right to extend the
24 monitoring period as necessary.

25 1. Fish Populations

26 Method: Electrofishing and/or snorkeling (as conducted in 1998-2002 by the licensee)
during late summer/fall at six stations for rainbow trout:
27

28

- South Fork American River below Carpenter Creek
- Lower Alder Creek
- Lower Pyramid Creek
- Lower Echo Creek
- Silver Fork American River at Forgotten Flat
- Caples Creek below Kirkwood Creek

Existing data on hardhead, a native species, are not sufficient to derive biomass indices for determining habitat quality; therefore, continued ERC- and FS-directed monitoring would provide these data so that the FS, ERC, and SWRCB may develop indices in the near future. An additional site shall be located upstream of the Akin Powerhouse and downstream of the confluence with Silver Creek in the section where hardhead were identified. This site may require a combination of snorkeling and electrofishing. If the hardhead data are collected in the UARP relicensing, they can be used to satisfy this requirement after FS, ERC, and SWRCB review and approval.

Frequency: Rainbow trout: Years 5, 6, 10, 11, 15, 16, 20, 21, 25, 26, 30, 31. Hardhead: At least 3 years of monitoring would be needed in the hardhead reaches as determined in Payne (1998). Thereafter, monitoring would continue at 5-year intervals if the FS, ERC, and SWRCB determine it is necessary.

Rationale: Sampling for 2 years in the beginning of each 5-year period provides a mean of 2 years for comparison to the ecological resource objective, reducing electroshocking effects to individuals, with sufficient response time to the new streamflow regimes.

Macroinvertebrates

Method: California Rapid Bioassessment Protocol methodology described in the Draft Benthic Macroinvertebrate Sampling Program (EID 2002) at the following sites:

- Echo Creek (EID site EC-B1)
- Pyramid Creek (EID site PY-B1)
- Caples Creek (EID site CA-B1)
- Silver Fork American River (EID site SV-B2)
- South Fork American River (EID site SO-B1)
- Carpenter Creek (EID sites CR-B1 and 2)
- No Name Creek (EID sites NN-B1 and 2)
- Alder Creek (EID sites AR-B1 and 2)
- Mill Creek (EID sites ML-B1 and 2)
- Bull Creek (EID sites BU-B1 and 2)
- Ogilby Creek (EID sites OG-B1 and 2)
- Esmeralda Creek (EID sites ES-B1 and 2)

1 Reference streams that were sampled as part of the macroinvertebrate monitoring
2 program during the relicensing shall be incorporated into the monitoring program. The
3 FS, ERC, and SWRCB shall make their best efforts to ensure comparability of these
4 reference sites to Project-affected sites but shall as expeditiously as possible identify
5 more suitable sites. Reference sites may be substituted upon approval by the FS, ERC,
6 and SWRCB. The upstream sample site locations on the feeder tributaries to the El
7 Dorado Canal will serve as the reference sites for those locations.

- 8 • Strawberry Creek (EID site SB-B1)
- 9 • Sherman Canyon Creek (EID site SH-B1)
- 10 • Woods Creek (EID site WC-B1)

11 Frequency: Years 5, 6, 10, 11, 15, 16, 20, 21, 25, 26, 30, 31.

12 Rationale: Same as for the Fish Populations monitoring element.

13 Amphibians (Habitat Evaluation & Determination of Species Presence/Distribution)

14 **Foothill Yellow-legged Frog**

15 Method: Conduct protocol surveys for sensitive species using the procedures of Pacific
16 Gas and Electric Company (2002) in a sub-sample of appropriate habitat types to
17 document species presence and distribution. Identify amphibian breeding and larval
18 periods in Project-affected reaches by periodically surveying reaches of known presence
19 during spring/summer.

20 The first year of surveys would be to determine the timing and success of the following
21 life stages of existing known populations: egg laying, tadpole rearing, metamorphosis,
22 and size/condition of metamorphs in late September to estimate probability of
23 overwintering success. For subsequent years, the FS, ERC, and SWRCB may approve a
24 subset of survey sites or a less intensive program, based on review of the first year's data.
25 In the future, FS, ERC, and SWRCB may request additional breeding site habitat data to
26 assess the cause of unexpected or chronic reproductive failures that may be related to
27 Project operations. If the FYLF data are collected in the UARP relicensing, they can be
28 used to satisfy this requirement after FS, ERC, and SWRCB approval.

29 Foothill yellow-legged frog Monitoring Sites:

- 30 • South Fork American River at Akin Powerhouse (EID site 105R)
- 31 • South Fork American River (EID site 110R)
- 32 • Silver Creek (EID site 115T)
- 33 • South Fork American River (EID site 120R)
- 34 • Soldier Creek (EID site 125T)
- 35 • Ogilby Creek (EID site 210DT)
- 36 • South Fork American River at Maple Grove (EID site 220R)

- South Fork American River from Alder Creek upstream to Kyburz Diversion Dam (sites to be determined)

Besides the above known site presence monitoring, surveys related to flow fluctuations shall also be conducted June through September at any time the SFAR flow is 100 cfs or less and the reach between Kyburz Diversion Dam and Silver Creek changes 50 cfs or more in 1 day. Once the FS, ERC, and SWRCB determine that a certain level of flow change or fluctuation can occur without effects to egg mass or tadpole displacement, then only flow changes in greater magnitude than that already monitored would need to be checked. Thus, the monitoring program shall address water velocities and discharge. To the maximum extent possible, the licensee shall provide advance notification to the FS, ERC, and SWRCB of any known type of Project-related flow fluctuation between June and September. The licensee shall attempt to monitor emergency Project-related flow changes prior to (if possible) and after any flow change that meets the criteria described above. Conclusions from such monitoring shall be reported to the FS, ERC, and SWRCB within 5 days. These elements of the monitoring program shall be consistent with Appendix A, Section 2.

The licensee, based on the first 3 years of monitoring results, may be required to modify Project operations to address Project-related flow fluctuations in the SFAR immediately below the Kyburz Diversion Dam if the FS, ERC, and SWRCB determine that such fluctuations adversely affect amphibian egg masses and tadpoles.

Frequency: For flow fluctuations in the SFAR downstream of Kyburz Diversion Dam and above Silver Creek, between June and September in the first 3 years after license issuance using the methods described above. This applies to both known site presence and flow change monitoring. After the third year, the need for continued monitoring after flow changes would be reassessed by the FS, ERC, and SWRCB.

For known site presence monitoring at the sites listed above: years 5, 10, 15, 20, 25, 30.

Rationale: Determination of presence and distribution of sensitive amphibian species and identification of breeding and larval periods are important in evaluating potential impacts resulting from streamflow modifications (particularly short-term fluctuations). Monitoring during years 1-3 provides baseline conditions prior to, and during the initial stages of streamflow modification, and effects to the egg and larval stages. Foothill yellow-legged frog monitoring would determine if any threshold is reached from project flow changes or fluctuations where this species is being affected in any life stage. Monitoring at the end of each 5-year period provides an index of changes in amphibian populations, following sufficient response time to streamflow modifications.

Mountain Yellow-legged Frog

Method: Protocol surveys for sensitive species using the procedures of CDFG (2001) in a subsample of appropriate habitat types to document species presence and distribution. Surveys would focus on presence of the larval stage at sites by periodically surveying

1 reaches of known presence during spring/summer. If CDFG collects data associated with
2 Lake Aloha and associated waters, that information can be used to satisfy this
requirement after FS, ERC, and SWRCB review and approval.

3 Mountain yellow-legged frog Monitoring Sites:

- 4 • Echo Lake – Camp Harvey Tributary and associated ponds (EID site 440 T/L)
- 5 • Silver Lake (EID site 750LB)
- 6 • Camp Silverado (EID site 753IT)
- 7 • Caples Lake
- 8 • Lake Aloha and associated downstream ponds and habitats

9 Frequency: For the sites listed above, years 5, 10, 15, 20, 25, 30. For Lake Aloha ponds,
10 year 1 and after any spill.

11 Rationale: Determination of presence and distribution of sensitive amphibian species are
12 important in evaluating long-term population trends. Monitoring during years 1-3
provides baseline conditions prior to, and during the initial stages of flow regime changes
and the effects to MYLF larval stages. Monitoring at the end of each 5-year period
provides an index of changes in amphibian populations.

13 Monitoring to ensure trout are not currently in the ponds below Lake Aloha from water
14 flowing over saddle dams 6 and 7 in the past and, preventing water from overtopping
those saddle dams in the future, would help in the recovery of the mountain yellow-
legged frog from Project effects.

15 4. Riparian Vegetation Species Composition

16 Method: Collection of pertinent data along fourteen existing transects at eight study sites
17 in representative habitat types. Methods in accordance with those used in *Composition of*
18 *Riparian Herb Communities on Streams with Regulated and Unregulated Streamflow*,
19 Eldorado National Forest, California (Harris and Lindquist 2000a). The study sites and
transect locations are listed in this study.

20 Frequency: Every 5 years.

21 Rationale: Collection of transect data provides for more detailed evaluation of riparian
22 condition and response to changes in streamflow regime. Monitoring at the end of each
23 5-year period provides an index of changes in riparian conditions over that period of
modified streamflow (it should be noted that, depending on the water year cycle that
24 occurs, 5 years may be a relatively short response time for riparian vegetation).

25 5. Riparian Vegetation Recruitment

26 Method: Method is described in *Riparian Vegetation Establishment and Survival on*
27 *Caples Creek and Kirkwood Creek, Summer, 2000* (Harris and Lindquist 2000b). Data

1 would be collected at 24 sites on two study reaches as described in Harris and Lindquist
2000b.

2 Frequency: Every 5 years.

3 Rationale: The riparian recruitment study provides for evaluation of riparian condition
4 and response to changes in the streamflow regime in the Caples Creek area. Monitoring
5 at the end of each 5-year period provides an index of changes in riparian recruitment
6 conditions over that period of modified streamflow (it should be noted that, depending on
the water year cycle that occurs, 5 years may be a relatively short response time for
riparian vegetation).

7
6. Geomorphology (Sensitive Site Investigation & Mitigation Plan Development)

8 Method: A detailed investigation of fluvial geomorphic properties of the following
9 reaches will be carried out:

- 10
- 11 • Caples Creek below the confluence of the Caples Lake Spillway channel to the Jake
Schneider Meadow
 - 12 • Caples Lake Spillway Channel
 - 13 • Oyster Creek from Silver Lake to below the confluence with the tributary stream that
would come from Highway 88

14 In Caples Creek, the site investigation will include, at the minimum, bedload transport,
15 thalweg longitudinal profile, bank erosion pins, and analysis of plain form (bar and flood
16 plain feature) strata. Consideration and development of mitigation measures (other than
streamflow releases) to correct channel stability problems. The details of this
investigation shall be consistent with Appendix A, Section 8.

17 Frequency: Years 1 and 2.

18 Rationale: The fluvial geomorphology study (implemented from 1998-2002) results
19 indicated a problem with channel stability in the Caples Dam spillway channel and
20 Oyster Creek channel, with an apparent imbalance in bedload and stream flow in these
21 reaches, and a potential impact on fluvial processes downstream, with an apparent
22 imbalance in bedload and stream flow in these reaches. There is a need to further
investigate these sites to determine the most effective method of stabilization. Channel
23 sites with identified problems may benefit from the implementation of channel
stabilization techniques.

24 7. Geomorphology (Continuing Evaluation of Representative Channel Areas)

25 Method: Establishment and monitoring of permanent cross-section transects,
26 longitudinal profiles, and channel properties in representative channel areas.
Measurement of cross-section profile and substrate composition at each transect. The
27 following sites would be evaluated:

- Lower Echo Creek
- SFAR below the diversion dam
- Silver Fork at Forgotten Flat
- Caples Creek all 3 reaches + spillway channel
- Oyster Creek below Highway 88

Frequency: Years 5, 10, 15, 20, 25, 30.

Rationale: Monitoring of permanent cross-sections, in combination with channel properties, provides the basis for evaluating changes in channel condition. Sampling as part of the relicensing process has provided baseline data prior to streamflow modification and/or measurable response to streamflow modification. Monitoring at the end of each 5-year period provides an index of changes in channel condition relative to changes in streamflow regime.

108. Water Temperature

Water temperature shall be monitored at existing or selected gaging sites or stream segments affected by Project operations.

Method: Continuous recorders shall be used. Temperature profiles may be added if the FS, ERC, and SWRCB determine that reservoir temperatures are a controllable factor and a temperature problem is identified:

- Echo Lake
- Lake Aloha
- Caples Lake
- Silver Lake

Stream temperature monitoring will be conducted at existing or selected stream gaging sites or specific stream segments. Monitoring sites shall be determined in consultation with FS, CDFG, and SWRCB. Approval of final monitoring sites shall be by the FS and SWRCB. All water temperature monitoring shall be consistent with the Water Temperature Monitoring Plan in Appendix A, Section 12.

Frequency: For streams, all years after license issuance until a subsequent license is issued or until it can be demonstrated by the licensee that operation of the project reasonably protects the "cold freshwater" beneficial use as determined by the SWRCB, FS, and ERC. For reservoirs, only if a determination as described above is made by SWRCB, FS, and ERC.

Rationale: Temperature monitoring is needed during summer on an annual basis to determine if the coldwater ecological resource objective is being met in designated Project reaches. Temperature monitoring is needed during spring to evaluate breeding conditions for amphibians. Temperature monitoring in the primary storage reservoirs is

1 needed to understand the extent of coldwater availability. Some temperature stations
2 may be deleted after FS, ERC, and SWRCB find sufficient temperature data have been
collected and find no temperature issue exists for the relevant area.

3⁹. General Water Quality

4 Method: Monitoring of selected water quality parameters (total suspended sediments,
5 turbidity, temperature, dissolved oxygen, pH, alkalinity, hardness, nitrate, copper, total
6 coliform, and fecal coliform) using standard methods. Samples will be collected and
7 analyzed 8 times per year during the first 3 monitoring years (March, May, June, July,
8 August, September, first storm of winter season, and December except fecal coliform
which will be collected May through September and requires repetitive sampling over a
30-day period) and quarterly during the other monitoring years (March, June, September,
and December) at the following stations:

- 9 • Echo Creek below Echo Lake Dam
- 10 • Pyramid Creek below Lake Aloha Dam
- 11 • Caples Creek below Caples Lake Dam
- 12 • Silver Fork American River below Silver Lake Dam
- 13 • South Fork American River upstream of Kyburz Diversion Dam
- 14 • South Fork American River downstream of Kyburz Diversion Dam
- 15 • Carpenter Creek above Carpenter Creek Diversion Dam
- 16 • Carpenter Creek below Carpenter Creek Diversion Dam
- 17 • No Name Creek above No Name Creek Diversion Dam
- 18 • No Name Creek below No Name Creek Diversion Dam
- 19 • Alder Creek above of Alder Creek Diversion Dam
- 20 • Alder Creek below of Alder Creek Diversion Dam
- 21 • Mill Creek above Mill Creek Diversion Dam
- 22 • Mill Creek below Mill Creek Diversion Dam
- 23 • Bull Creek above Bull Creek Diversion Dam
- 24 • Bull Creek below Bull Creek Diversion Dam
- 25 • Ogilby Creek above Ogilby Creek Diversion Dam
- 26 • Ogilby Creek below Ogilby Creek Diversion Dam
- 27 • Esmeralda Creek above Esmeralda Creek Diversion Dam
- 28 • Esmeralda Creek below Esmeralda Creek Diversion Dam

22 Frequency: Years 1, 3, and 5 with subsequent year sampling frequency to be determined
23 by the SWRCB, FS, and ERC.

24 Rationale: Monitoring in the first, third, and fifth years provides for the evaluation of
25 changes in water quality with changes in the streamflow regime. Some water quality
26 parameters and/or stations may be deleted after sufficient data are collected to indicate
27 lack of a water quality issue.
28

10. Trout Monitoring at Lake Aloha

1

2 Monitoring associated with Lake Aloha is described in Appendix A, Section 3, of the
3 Settlement.

3

11. South Fork American River Flow Fluctuations Monitoring

4

5 Monitoring associated with South Fork American River flow fluctuations is described in
6 Appendix A, Section 8, number 6, of the Settlement.

6

12. El Dorado Canal Monitoring for Wildlife

7

8 Monitoring associated with El Dorado Canal wildlife crossing structures, canal fencing,
9 and wildlife mortality is described in Appendix A, Section 13 of the Settlement
10 Agreement.

9

13. Heritage Resource Monitoring

10

11 Monitoring associated with heritage resources is described in the Heritage Resource
12 Management Plan.

12

14. Recreation Survey

13

14 Monitoring associated with the recreation survey is described in Appendix A, Section 17,
15 of the Settlement.

15

15. Review of Recreation Developments

16

17 Monitoring associated with the review of recreation developments is described in
18 Appendix A, Section 19, of the Settlement.

18

16. Target Lake Levels Evaluation

19

20 Monitoring associated with lake levels is described in Appendix A, Section 22, of the
21 Settlement.

21

Section 8. Ecological Resources Adaptive Management Program

22

23 The licensee shall, beginning as early as reasonably practicable within 3 months after license
24 issuance, implement an ecological resources adaptive management program as described below.

24

25 The program generally consists of: (a) implementation of a monitoring program and (b) specific
26 adaptive management measures that shall be implemented if the monitoring program and other
27 scientific information indicate that the applicable ecological resource objectives identified in
28 Appendix B, Section 1, will likely not be met without adjustment of the initial streamflows and
29 other initial conditions.

27

28

The ecological resources adaptive management program provides for an initial set of minimum streamflows and pulse flows to be implemented, followed by modified streamflow regimes. Monitoring shall be conducted to determine if the applicable ecological resource objectives are achievable and being met. Analysis of the monitoring results from a specified period shall be used to determine any needed changes in streamflow, or implementation of other adaptive management measures. Adaptive management decisions shall be based on monitoring results and other scientific information and a determination that the applicable ecological resource objectives identified in Appendix B of the Settlement are not being met and will likely not be met without application of the adaptive management measures.

For purposes of the ecological resources adaptive management program, each year is defined on a calendar year basis (i.e., January through December). Year 1 is defined as the first year during which all initial streamflows required by the license are implemented by May 1.

8

9 1. Monitoring Program

10 The licensee shall, within 3 months of license issuance, implement the monitoring program described in Appendix, A, Section 7, of the Settlement.

11

12 2. Minimum Streamflows From Project Reservoirs Not Diverted into El Dorado Canal

13

14 The licensee shall not divert into the El Dorado Canal applicable minimum streamflow releases as specified in the tables in Appendix A, Section 1, of the Settlement for the months listed below from Lake Aloha Dam, Caples Lake Dam, and Silver Lake Dam. These streamflows shall be combined with the minimum streamflows required at Kyburz Diversion Dam. The months in which this requirement would apply are listed in the table below. The licensee shall not divert these streamflows provided the FS, in consultation with the ERC and SWRCB, makes an affirmative determination, based on the first 5 years of monitoring results, that applicable ecological resource objectives are not being met with the initial flow regime described in Appendix A, Section 1, of the Settlement.

18

Minimum Streamflows Adaptive Management	
Water Year	Applicable Months
Wet	September, October
AN	September, October
BN	August, September, October
Dry	July, August, September, October
CD	August, September, October, November

19

20

21

22

23 3. Caples Dam Spillway Maximum Flows

24

25

26

27

28

The FS may adjust the Caples Dam Spillway channel maximum flow of 60 cfs if results of the geomorphology monitoring elements described in the El Dorado Hydroelectric Project Monitoring Plan indicate that these flows are resulting in damage to the Caples Creek Spillway Channel or it is determined, after channel stabilization and monitoring, that the channel can withstand higher flows without experiencing detrimental effects. The

1 FS shall make the final determination as to whether the allowable spill flow shall be
adjusted.

24. Caples Creek Pulse Flows

3 The licensee shall, after 5 years of implementation of the new license, and based on
4 monitoring results from the Geomorphology monitoring elements described in the El
5 Dorado Hydroelectric Project Monitoring Plan, increase pulse flows up to a maximum of
6 600 cfs, based on water year type, or change the duration of the existing pulse flow to a
7 maximum of 10 days in Caples Creek if initial pulse flows are not effectively mitigating
8 sediment/bedload transport or other fluvial processes problem caused by the Project. If
9 monitoring indicates that the pulse flows are resulting in damage to the Caples Creek
10 channel or if monitoring indicates that reduced pulse flows are effective in meeting the
fluvial geomorphology objective described in the El Dorado Hydroelectric Project
Monitoring Plan, the FS may decrease the magnitude of the pulse flows. The FS shall,
after consultation with the ERC and SWRCB, make the final determination as to whether
the pulse flow shall be increased, decreased, or whether the duration shall be lengthened.

11 Based on the following two studies, streamflows beyond the capability of the existing
12 outlet works (350 cfs) may be conveyed to Caples Creek through the Caples Spillway
Channel if the channel can be reconfigured to adequately handle these flows and meet
13 resource objectives.

- 14 a. Feasibility Study: Within 2 years of license issuance, the licensee shall complete
15 a Feasibility Study to determine whether the Caples Spillway Facility can be
16 designed to convey adaptive management pulse flows that cannot be released
17 through the existing outlet works into the Caples Creek natural channel in a
18 manner that addresses resource concerns. The existing outlet works is capable of
19 releasing up to 350 cfs. The spillway channel stabilization would need to be
20 designed to convey the additional 250 cfs into Caples Creek. The licensee will
21 ensure that appropriate staff from FS and SWRCB and members of the ERC are
consulted during the development of the feasibility study, specifically to describe
the problems with the existing spillway channel that need to be addressed in the
study. The study will also include a cost estimate for this work and a cost
estimate for redesigning the outlet works such that up to 600 cfs could be released
directly into the Caples Creek natural channel. The study shall be approved by
the FS, SWRCB, and ERC.
- 22 b. Caples Spillway Channel Stabilization Plan: Within 2 years of license issuance,
23 the licensee shall develop a stabilization plan for the Caples Spillway Channel.
24 The licensee will consult with appropriate staff from FS and SWRCB and
25 members of the ERC in the development of the stabilization plan. The licensee
shall implement the plan once it is approved by the FS, SWRCB, and CDFG and
shall involve them in implementing the plan if they desire.

265. SFAR Flow Fluctuations

1 In accordance with FS 4(e) Condition No. 3, the FS and SWRCB reserve the authority,
2 based on the first 3 years of monitoring results, to require modifications to Project
3 operations to address Project-related flow fluctuations in the SFAR reach between the
4 Kyburz Diversion Dam and Silver Creek that are determined to adversely affect
5 amphibian egg masses and tadpoles. Monitoring shall be conducted June through
6 September at any time the SFAR flow is 100 cfs or less and the diversion into the El
Dorado Canal causes the flow in the SFAR below Kyburz Diversion Dam to change 50
cfs or more in 1 day. Any such change of 50 cfs or more during June through September
shall be reported to the FS and ERC within 10 days.

76. Ecological Resources Committee

8 The licensee shall, within 3 months of license issuance, in coordination with the Parties,
9 establish an Ecological Resources Committee (ERC) for the purpose of assisting the
10 licensee in the design of monitoring plans, review and evaluation of data, and preparation
11 of adaptive management measures for implementation by the licensee as provided in the
12 Settlement. The licensee shall provide to FERC, FS, SWRCB, and the ERC by May 31
of each year an annual report of the activities of the ERC. The licensee shall provide
Notice to FERC within 30 days (but prior to implementing the change) of any decisions
by the FS, SWRCB, or ERC that result in changes to Project operations.

13 **Section 9. Mitigation for Entrainment**

14 Within 6 months of license issuance, the licensee shall develop a plan for screening Carpenter
15 and Alder Creeks for all life stages of trout. The plan shall be approved by the FS and CDFG
16 after consultation with the SWRCB and ERC prior to the licensee's implementing the plan.

17 **Section 10. Streamflow and Reservoir Storage Gaging**

18 The licensee shall, within 1 year after license issuance, develop and file for FERC approval a
19 Streamflow and Reservoir Storage Gaging Plan (gaging plan) that meets United States
20 Geological Survey (USGS) standards. The licensee shall provide copies of the gaging plan and
USGS review results to the FS, ERC, SWRCB, and FERC. The plan shall be approved by the
SWRCB prior to filing with FERC. The licensee shall implement the plan upon approval.

21 At a minimum, the plan shall address compliance gaging at the following locations:

- 22
- 23 Echo Creek below Echo Lakes Dam
 - 24 Pyramid Creek below Lake Aloha Dam
 - 25 Caples Creek below Caples Lake Dam
 - 26 Silver Fork American River below Silver Lake Dam
 - 27 Silver Fork American River below Oyster Creek
 - 28 South Fork American River below Kyburz Diversion Dam
 - Carpenter Creek below Carpenter Creek Diversion Dam
 - No Name Creek below No Name Creek Diversion Dam

- 1 Alder Creek below Alder Creek Diversion
- 2 Mill Creek below Mill Creek Diversion Dam
- 3 Bull Creek below Bull Creek Diversion Dam
- 4 Ogilby Creek below Ogilby Diversion Dam
- 5 Esmeralda Creek below Esmeralda Creek Diversion Dam

6 The licensee shall perform an investigation to determine whether telemetry equipment can be
7 installed at Lake Aloha to monitor conditions and/or control operations. If the licensee,
8 SWRCB, and FS concur that such equipment is economically and technologically feasible and
9 can be installed consistent with law, regulations, and policies applicable to Desolation
10 Wilderness, the licensee shall seek necessary approvals for such installation.

11
12 **Section 11. Preferred Canal Drainage Structure and Release Points**

13 The licensee shall, within 1 year after license issuance, file with FERC a plan approved by the
14 FS and SWRCB after consultation with the ERC, to designate preferred canal drainage structures
15 and release points to be used in the event of an emergency and for maintenance, that will
16 minimize adverse impacts to water quality. The licensee shall implement the plan upon
17 approval.

18
19 **Section 12. Water Temperature**

20 The licensee shall, within 1 year after license issuance, develop and file with FERC a Water
21 Temperature Monitoring Plan that has been approved by the Chief of the Division of Water
22 Rights for the SWRCB. The licensee shall consult with the ERC and FS in development of the
23 plan. The licensee shall implement the plan upon approval.

24
25 **Section 13. Wildlife and Plant Protection Measures**

- 26 1. To protect wildlife from the hazards of open canals and other Project facilities, the
27 licensee for the term of a new license for the Project shall maintain and operate in
28 working condition all devices and measures for wildlife along the El Dorado Canal that
are deemed necessary by the FS and CDFG.
 - 29 a. Ensure that all canal crossings and canal fencing on National Forest System lands
30 and licensee adjoining property are maintained in functioning condition. The
31 fencing, canal crossings, and approaches shall be inspected at least twice per year,
32 in the spring and fall prior to deer migration. Fencing repairs or replacement
33 necessary to prevent wildlife from entering the canal will be made and maintained
34 in a manner that will continually allow their use by wildlife. The licensee shall
35 report the results of inspections and maintenance at the annual review meeting
36 described in Section 15.
 - 37 b. The licensee shall provide the FS and ERC by April 1 of each year an annual
38 report describing the date, location, and species information (deer or other
39 wildlife) found in the El Dorado Canal. In consultation with the agencies listed in

1 Section 15, the FS and ERC shall review these data and determine the need for
2 additional fencing or other protective measures. The amount, kind, and location
3 of any additional future fencing shall be decided upon at the annual meeting
4 described in Section 15.

5 c. Within 6 months of license issuance, the licensee shall reconstruct those portions
6 of the canal fence that do not meet deer fencing specifications provided by CDFG
7 or shall develop a schedule for completing such work that is agreed upon by the
8 FS and CDFG.

9 2. Before commencing any new construction or maintenance (including but not limited to
10 proposed recreation developments) authorized by the license on National Forest System
11 lands that may affect a FS sensitive species or its habitat, the licensee shall ensure that a
12 biological evaluation (including necessary surveys) is completed that evaluates the
13 potential impacts of the action on the species or its habitat and follows the
14 recommendations in the biological evaluation determined necessary by the FS. The
15 operations and maintenance plan referenced in Section 15 will assist the FS in
16 determining whether a biological evaluation is necessary for any annual maintenance.
17 The biological evaluation must be approved by the FS. In consultation with FERC, the
18 FS may require mitigation measures for the protection of sensitive species. Before
19 commencing any activities to construct (including but not limited to proposed recreation
20 developments), operate, or maintain the Project that may affect a species proposed for
21 listing or listed under the federal Endangered Species Act, or that may affect that species'
22 critical habitat, the licensee shall ensure that a Biological Assessment that evaluates the
23 potential impacts of the action on the species or its critical habitat is prepared and
24 reviewed by the FS prior to the licensee submitting the Biological Assessment to the
25 relevant Service agency (United States Fish and Wildlife Service or National Marine
26 Fisheries Service) for consultation or conference in accordance with the Endangered
27 Species Act.

28 3. If occurrences of FS sensitive species are detected prior to or during ongoing
construction, operation, or maintenance of the Project or during Project operations, the
licensee shall immediately notify the FS. If the FS determines that the Project-related
activities are adversely affecting the sensitive species, the licensee shall, in consultation
with the FS, develop and implement appropriate protection measures.

Section 14. Noxious Weeds

The licensee has developed a Noxious Weed Plan for the prevention and control of Project-
related noxious weeds. Once the plan has been approved by the FS, it must be filed and
approved with FERC. The licensee shall implement the plan upon issuance of the new Project
license.

The licensee shall use certified weed-free straw for all construction or restoration needs. If
certified weed-free straw is not available, rice straw may be substituted. The licensee shall

comply with the Eldorado National Forest and Lake Tahoe Basin Management Unit prescriptions
1 for seed, mulch, and fertilizer for restoration or erosion control purposes.

2 **Section 15. Annual Review of Ecological Conditions**

3
4 Each calendar year, by April 1, the licensee shall schedule and facilitate a meeting with the FS,
5 CDFG, and SWRCB to review and discuss the results of implementing these conditions, as well
6 as to discuss other issues related to preserving and protecting ecological values affected by the
7 Project. The licensee shall make available to the FS and SWRCB 2 weeks prior to the meeting,
8 an operations and maintenance plan for the year in which the meeting occurs. The meeting may
9 also include the United States Fish and Wildlife Service. This meeting may be combined with
10 the Consultation meeting required in FS Condition No. 3, if feasible.

8 **Section 16. Recreation Implementation Plan**

9
10 A recreation implementation plan shall be developed by the licensee in coordination with the FS
11 within 6 months of license issuance. The implementation plan shall include a construction
12 schedule for the recreation facilities specified in Section 20, as well as other details related to
13 recreation resources. The implementation plan shall be maintained and updated in conjunction
14 with the review of recreation developments required in Section 19.

13 **Section 17. Recreation Survey**

14 The licensee shall conduct a Recreational Survey and prepare a Report on Recreational
15 Resources that is approved by the FS every 6 years from the date of license issuance. The
16 Recreational Survey shall include, but not be limited to, changes in kinds of use and use patterns,
17 levels of use, user survey as to preferences in recreation activities, kinds and sizes of recreation
18 vehicles, preference for day use versus overnight use, carrying capacity information sufficient to
19 indicate changes in capacity, and recreation user trends within the Project area. The Report on
20 Recreational Resources shall comply with FERC's regulations at 18 CFR section 4.51(f) (1996),
21 or as amended, and shall be provided to FS for review and comment prior to being filed with
22 FERC. Within 1 year of submission of the Report on Recreation Resources, the FS, ERC, and
23 other interested parties will meet to discuss the results of the Report and make recommendations
24 to address the findings. In accordance with FS 4(e) Condition No. 3, the FS reserves the
25 authority to require changes in the Project and its operation to accomplish protection and
26 utilization of National Forest resources identified as a result of these surveys.

22 The licensee will not be required to construct additional recreational improvements as the
23 remedy for a FS determination that carrying capacity is being exceeded anywhere in the Project
24 area. The licensee may be required to address resource impacts from Project-related recreation.

24 **Section 18. Forest Service Liaison**

25
26 The FS and the licensee shall each provide an individual for liaison whenever planning or
27 construction of recreation facilities, other major Project improvements, and maintenance

27

28

activities are taking place within the National Forest. The licensee agrees to cooperate with the FS through this individual in contract review and work inspection.

2
Section 19. Review of Recreation Developments

3
4 The FS and the licensee shall meet at least every 6 years to review all recreation facilities and
5 areas associated with the Project and to agree upon necessary maintenance, rehabilitation,
6 construction, and reconstruction work needed and its timing, as described in Sections 20 and 21.
7 The criteria for project selection will be dependent on the amount and type of use, current
8 recreation facility policy, condition of facilities, impacts to surrounding areas, and other factors.
9 Following the review, the licensee shall develop a 6-year schedule for maintenance,
10 rehabilitation, and reconstruction, which shall be approved by the FS prior to being filed with
11 FERC.

12 The following recreation facilities, which are associated with the Project, shall remain inside the
13 Project boundary: Silver Lake East Campground, Caples Lake Campground, Caples Lake Dam
14 Parking Area, Caples Lake Boat Ramp and Picnic Facility (when constructed), Echo Lakes
15 Trailhead and Upper Parking Facility, and Pacific Crest Trail Crossing of the Echo Lake
16 Conduit. If these facilities are not currently within the license boundary, the boundary shall be
17 adjusted to include them.

18
Section 20. Specific Recreation Conditions

19 The construction of the following recreation facilities is to be completed by the licensee at the
20 recreation sites listed below. The construction schedule will be approved by the FS. The FS will
21 be responsible for survey, design, contract preparation, and contract administration of the
22 facilities; the licensee will be responsible for funding these items.

23 171. Silver Lake East Campground

24 18 Within 5 years of license issuance, the licensee shall reconstruct the paved surfaces,
25 19 toilets, and water system at the 62-unit Silver Lake Campground, including upgrade of
26 20 this facility to meet the current FS design standards and the USDA Forest Service Region
27 5 accessibility standards requirements of the Americans with Disabilities Act (ADA).
28 The following describes the specific elements of this section.

- 29 a. Replace all toilets with accessible toilets relocated to reduce the distance from
30 camp units to the toilets and to avoid the steeper road grades. Construct paved
31 parking turnouts in front of each toilet with a paved access route to the toilet.
- 32 b. Replace and relocate adjacent to the roadway all faucet units with accessible ones.
33 Construct a paved area at all the faucet units to the most current accessibility
34 standards.

- c. Widen spurs for units 2, 3, 4, 8, 9, 11, 13, 14, 19, 20, 29, 44, 46, 47, 48, 49, 50, 51, 52, and 53 to meet most current accessibility standards. Re-construct and pave all spurs.
- d. Prepare existing campground roads for resurfacing by patching, scarifying, or other methods, as determined by the FS. Place asphalt overlay on campground road.
- e. Replace all waterlines, including the distribution lines within the campground and the collection lines from the source to the facility.

7². Caples Lake Campground

8 Within 10 years of license issuance, the licensee shall reconstruct the paved surfaces, toilets, and water system at the 36-unit Caples Lake Campground, including upgrade of
9 this facility to meet the most current FS design standards and the USDA Forest Service
10 Region 5 access standards and the Americans with Disabilities Act. The following
describes the specific elements of this section.

- a. Replace existing toilets with 4 single-unit accessible vault toilets. Relocate the new toilets to provide for easier access and less distance from the camp units. Also construct a paved parking turnout in front of each toilet for servicing and for parking access.
- b. Replace and relocate all the faucet units adjacent to the roadway. Provide a level and paved pad in front and on the sides of the faucet unit.
- c. For all pathways between camp units and spurs/roadway, remove ground protrusions, re-grade and widen the pathways, and compact the native surface where feasible and deemed appropriate by the FS. Meet most current grade and cross-slope accessibility standards for access to units 2, 3, 4, 5, 7, 11, 23, 24, 33, 34, and 35.
- d. Widen spurs where feasible to meet most current accessibility standards. Re-construct and pave all spurs.
- e. Prepare existing campground roads for resurfacing by patching, scarifying, or other methods, as determined by the FS. Place asphalt overlay on campground road.
- f. Remove obstacles and protrusions, and level and compact the native surface at each camp unit. Enlarge the camp units to a minimum of 900 square feet where feasible and when deemed appropriate by the FS. Grades of all the camp units shall be re-constructed to the most current accessibility standards including clear space around facilities.

1 g. Replace all waterlines, including the distribution lines within the campground and
2 the collection lines from the source to the facility.

3 3. Caples Lake Dam Parking

4 Within 5 years, the Caples Lake Dam Parking area shall be reconstructed and upgraded
5 to meet the current FS design standards and the USDA Forest Service Region 5 access
6 standards and the Americans with Disabilities Act. The licensee shall be responsible for
7 one-half of the cost of reconstruction. The following describes the specific elements of
8 this section.

9 a. Replace the toilet seats with 18-inch high seats. Install approved accessible
10 signing on the exterior of the toilet.

11 b. Replace one garbage container with one that is bear proof and accessible.

12 c. Construct a van-accessible parking space near the toilet, with required markings
13 and signage.

14 4. Caples Lake Boat Launching Facility

15 Within 7 years of license issuance, the licensee shall construct a new boat launching
16 ramp, associated parking lot, toilet facilities, access road, and picnic area at Caples Lake
17 on land designated by the FS, located on the northeast end of the lake. The licensee shall
18 be responsible for the construction of the ingress and egress from State Highway 88. The
19 FS shall be responsible for the access road from Highway 88 to the facility. The FS shall
20 make a good faith effort to assist the licensee in obtaining funding from other sources,
21 including but not limited to California Department of Boating and Waterways, if the
22 licensee decides to seek such funding. The licensee shall be responsible for the full cost
23 of constructing this facility in the event that the FS is unable to obtain funding prior to 7
24 years after license issuance. Construction of this facility will be delayed until 10 years
25 after license issuance if the licensee is responsible for the full cost of construction. In the
26 event that the facility site is totally, or a majority of the site is, on National Forest System
27 lands, the FS shall be responsible for surveying, planning, and designing the boat launch
28 ramp and associated picnic area and parking lot. In this event, the licensee shall be
responsible for funding the survey, planning, design and construction of the facilities.
The boat launching ramp, associated parking lot, toilet facilities, access road, and picnic
area shall be owned by the FS but operated and maintained by the licensee. The licensee
shall be responsible for funding the rehabilitation of paved surfaces at the facilities as
further described in Section 21. In the event that the facility site is situated totally, or a
majority of the site is, on lands owned by the licensee, the licensee shall be responsible
for survey, planning, a design approved by the FS, and construction of the facilities,
following FS approval of the design.

5. Information Kiosk on Highway 88

1 Within 5 years of license issuance, the licensee shall construct an information kiosk to FS
2 specifications, at a location agreed to by the FS. After construction, the licensee shall
maintain the kiosk structure to meet FS Region 5 standards as set forth in Section 21.

36. Martin Meadow Overflow Camping Area

4 Within 5 years of license issuance, the licensee shall make the following improvement at
5 the Martin Meadows Overflow Camping Area to address recreation impacts: Install
6 barrier rocks to restrict uncontrolled vehicle travel. The FS will make available the
barrier rocks from a site identified by the FS.

77. Echo Lakes Upper Parking Facility

8 Within 10 years of licensee issuance, the licensee shall provide one-half of the cost of the
9 following element for the Echo Lakes Upper Parking Facility, unless the licensee is
10 unable to acquire a grant to build the Caples Lake Boat Launching Facility, as described
11 in Section 20, Number 4, above, in which case the licensee is not responsible for one-half
12 the cost of the following element: Prepare existing parking facility for resurfacing by
patching, scarifying, or other methods, as determined by the FS. Place asphalt overlay on
parking area.

8. Pacific Crest National Scenic Trail Crossing

13
14 Within 5 years, the licensee shall construct a crossing for the Pacific Crest National
15 Scenic Trail across the Echo Conduit, to meet current FS design standards, at a location
agreed to by the FS.

16 **Section 21. Operation and Maintenance of Recreation Facilities**

17 1. Caples Lake Dam Parking

18 The licensee shall be responsible for one-half of the following annual maintenance items:

- 19 a. Routine cleaning, repair, and maintenance of all constructed features within the
20 developed site.
- 21 b. Toilet pumping.
- 22 c. Trash removal/litter pick-up within the site.
- 23 d. Maintenance of signboards and the information on those signboards to FS
24 standards.
- 25 e. Vegetation management.

26 2. Caples Lake Boat Launching Facility

27

28

1 At such time as facilities are constructed at this site, the licensee shall be responsible for
2 operating and maintaining the boat launching ramp, associated parking lot, and other
3 public facilities constructed at this site. The licensee shall also be responsible for
4 maintenance of signboards. The FS shall be responsible for maintaining the information
5 on those signboards to FS standards, in the event that this facility is totally, or a majority
6 of the facility is on, National Forest System lands. Fees may be charged at the site, after
7 consultation with the FS, provided the collection of fees is permissible under the terms of
8 other funding sources.

9
10 3. Echo Lakes Trailhead

11 The licensee shall be responsible for the following annual maintenance items, unless the
12 licensee is unable to acquire a grant to build the Caples Lake Boat Launching Facility, as
13 described in Section 20, Number 4, above, in which case the licensee is no longer
14 responsible for these maintenance items. The licensee shall be responsible for the cost of
15 these items while a grant is pursued but shall be responsible no longer than 7 years unless
16 a grant is acquired.

17 a. Toilet pumping.

18 b. Trash removal/litter pick-up within the site.

19 4. Information Kiosk on Highway 88

20 The licensee shall maintain the kiosk structure, to meet FS Region 5 standards.

21 5. Special Use Administration Funding

22 The licensee shall annually pay, by October 1, the amount of \$4,800 (year 2002 cost
23 basis) to provide for performing monitoring and permit compliance assurance for the
24 campground concessionaire special use permits at Caples Lake Campground and Silver
25 Lake East Campground. The costs shall be escalated based on the U.S. Gross Domestic
26 Product – Implicit Price Deflator (GDP-IDP).

27 6. Heavy Maintenance

28 a. The licensee will be responsible for the cost of the necessary maintenance,
rehabilitation, and reconstruction, including the costs of design and
administration, as determined through the Five-year review of Recreation
Developments (as described in Section 19) for the following tasks or
improvements at the following Project recreation facilities: Silver Lake East
Campground and Caples Lake Campground: Licensee is responsible for roads,
spurs, and other paved surfaces unless the licensee is unable to acquire a grant to
build the Caples Lake Boat Launching Facility, as described in Section 18,
Number 4, above, in which case the licensee is not responsible for replacing the
paved surfaces after the initial reconstruction described in Section 21, Numbers 1
and 2.

- b. Caples Lake Boat Launching Facility: Licensee is responsible for all heavy maintenance. The FS will make a good faith effort to assist the licensee in obtaining funding from other sources including, but not limited to, California Department of Boating and Waterways, if the licensee decides to seek such funding.
- c. Caples Lake Dam Trailhead: Licensee is responsible for 50 percent of the cost of heavy maintenance.
- d. Pyramid Creek Trailhead: Licensee is responsible for 18 percent of the cost of heavy maintenance.
- e. Highway 88 Information Kiosk: Licensee is responsible for heavy maintenance of the kiosk structure.

Heavy maintenance and rehabilitation for items b through d are defined as work that is necessary to keep existing facilities in serviceable condition to meet FS standards and includes components of recreation facilities such as water systems, traffic control barriers, roads, spurs, and associated drainage structures, grills and firerings, picnic tables, toilets, and signboards. The FS shall use FS standards for the frequency of heavy maintenance as a guideline, but not a prescription, for licensee's performance of its heavy maintenance responsibilities. As determined through the review of Recreation Developments (as described in Section 19), heavy maintenance projects may be deferred that would otherwise be timely under FS frequency standards, if the FS determines that actual conditions indicate that the project is not yet necessary.

157. Dispersed Area Patrol Funding on Lands Affected by the Project

The licensee shall annually pay, by October 1, \$25,000 (year 2002 cost basis). The cost shall be escalated based on the U.S. Gross Domestic Product – Implicit Price Deflator (GDP-IDP). These funds are to provide for patrol and operation of non-concessionaire developed and dispersed recreation facilities, as well as trails and other locations utilized by visitors to the Project, within and adjacent to the Project boundary. Work to be completed within these areas is separated into four units, each having different types and levels of associated work: Upcountry Highway 88 Unit, Silver Fork Unit, Pyramid Creek Unit, and Lake Aloha/Echo Lakes Unit. The licensee shall annually provide a boat and operator at least twice each season (time to be determined by mutual agreement between the licensee and the FS) on Caples Lake and Silver Lake to share with the FS in policing the shoreline along Silver Lake and Caples Lake, and to clean up litter.

238. Licensee Recreation Sites

Within 10 years of license issuance, the licensee shall bring the Ferguson Point, Sandy Cove, Woods Creek Fishing Access, and Silver Lake West recreation facilities or equivalent locations into compliance with accessibility standards for the Americans with Disabilities Act. These facilities, along with the Silver Lake Boat Ramp, shall continue to be operated and maintained by the licensee throughout the term of the license.

Section 22. Target Lake Levels and Minimum Pool

1. Echo Lakes

The licensee shall operate Echo Lakes such that the channel between the Upper and Lower Echo Lakes is navigable by motorized watercraft, between July 1 and Labor Day of each year, while still complying with minimum streamflow or other conditions and requirements. If the licensee anticipates that the reservoir will not meet this target level for reasons other than non-discretionary releases by the licensee, FS, ERC, SWRCB, and FERC shall be notified in writing, within 10 days of this determination, and provided an explanation of why the target reservoir level will not be attained.

82. Caples Lake

The licensee shall operate Caples Lake as follows:

Caples Lake						
		End of Month Lake Levels by Water Year				
Month		In Acre-Feet				
		CD	DRY	BN	AN	WET
JUNE		18704	18704	22338	22338	22338
JULY		18413	18646	22089	22338	22338
AUGUST		14376	14376	18006	18006	18006
SEPT		14376	14376	18006	18006	18006

The lake levels described above are target values. If the licensee cannot achieve the target level for any month from June through September, the licensee shall not make, or shall cease making as soon as it is able to determine this, discretionary releases from Caples Lake in that month.

Using the forecasting method described in Appendix A, Section 1, of the Settlement, subsection Water Year Types, the licensee shall annually, by March 15, provide a preliminary evaluation of the water year type and consult with the FS, ERC, and SWRCB to determine the anticipated June through September lake levels for the year based on that water year type and the table above. As described in Section 1 of this Appendix, subsection Water Year Types, the licensee shall, between May 1 and May 5 of each year, make the final water year type determination, and shall, within 10 days, so inform the ERC, SWRCB and FS. The final water year type selected for operations during the year will be subject to approval by FS and SWRCB.

The licensee shall report to the FS, ERC, and SWRCB any changes in its operations or factors beyond its control that render it unable to meet the target lake levels. The licensee shall make this report within 5 days of discovering its inability to meet a target. The licensee shall also, within 30 days, inform FERC. Members of the ERC or the FS may request a meeting of the ERC to review proposed or implemented operational

1 changes, or other factors, that make it impossible to meet a June through September lake
2 level target.

3 During the fall and early winter of each year, the licensee shall attempt to operate Caples
4 Lake so that target lake levels are likely to be met in the following summer. Such
5 operation may include, but is not limited to, maintaining adequate storage in Caples Lake
6 in early winter (model results to date indicate that necessary storage may be as high as
7 13,000 acre-feet on November 30). The licensee shall maintain a target minimum pool in
8 Caples Lake of 10,000 acre-feet. If the licensee anticipates reducing the level of Caples
9 Lake below the 10,000 acre-foot target level, such as during a water year when spill is a
10 concern, the licensee shall notify the ERC, FS, and SWRCB within 5 days and shall
11 provide them a detailed explanation as to why the target lake level is anticipated to be
12 reduced.

13 As described in Appendix A, Section 1, of the Settlement, subsection Water Year Types,
14 the licensee shall, within 1 year of license issuance, develop a forecasting method and
15 associated operating plan that will be used to re-assess the water year type and to adjust
16 minimum streamflows at Caples Lake Dam and Kyburz Diversion Dam during the
17 months of January and February, in order to address lake levels at Caples Lake. The
18 forecasting method shall be used to evaluate the water year type designations governing
19 operations for January and February. The method and plan shall be approved by the FS,
20 ERC, and SWRCB prior to filing the method and plan with FERC. Once approved by
21 FERC, the licensee shall operate Caples Lake Dam and Kyburz Diversion Dam for the
22 months of January and February, beginning on the 5th day of each of these months, based
23 on the approved forecasting method and operating plan. The licensee shall provide
24 notice to the FS, ERC, and SWRCB of the water year type designation governing
25 operations for January and for February within 5 days of making each determination.
26 After February, the forecasting method shall be consistent with the method described in
27 Appendix A, Section 1, of the Settlement, subsection Water Year Types (using Bulletin
28 120 or duly approved alternate forecasting tool).

3. Silver Lake

19 Notwithstanding any other provision of this section, the licensee shall not release prior to
20 Labor Day of each year water from Silver Lake for consumptive use, power production,
21 rediversion, maintenance, or other purposes, excluding any non-discretionary releases
22 required by FERC or the State Division of Safety of Dams.

23 Between Labor Day and September 15, the licensee shall not make discretionary releases
24 from Silver Lake unless a Stage 1, 2, or 3 Emergency Notice is issued during this time
25 period by the Independent System Operator (ISO) or a similar equivalent alert is issued
26 by the ISO or its institutional successor. In cases where such an Emergency Notice is
27 issued in this time period, the licensee shall, once the Project is no longer subject to
28 Emergency status and the Forebay has been replenished to pre-Notice levels, discontinue
discretionary releases until after September 15. Releases from Silver Lake in situations
where a Stage 1, 2, or 3 Emergency Notice is issued between Labor Day and September

1 15 shall not draw Silver Lake down to a stage lower than 12.0 feet as measured on the
2 gage at the outlet works on September 15.

3 After September 15 of each year, discretionary releases from Silver Lake may be made,
4 with the limitation that stage height on September 30 shall be no less than 12.0 feet as
5 measured on the gage at the outlet works. If Silver Lake reaches a stage height of 12.0
6 feet prior to September 30 because of pre-September 15 discretionary releases under the
7 preceding paragraph, the licensee shall make no further discretionary releases in
8 September.

9 The annual, as opposed to emergency, maintenance period for the El Dorado Canal and
10 Akin Powerhouse shall be scheduled by the licensee to begin no later than October 3rd of
11 each year. From the time maintenance begins until the time that maintenance that requires
12 the non-operation of the El Dorado Canal and/or Akin Powerhouse is completed, release
13 from Silver Lake shall meet the minimum flow requirements in the Silver Fork American
14 River, and, where applicable, may also be used to meet that portion of the minimum flow
15 at Kyburz Diversion Dam not being met from other sources. Further, release from Silver
16 Lake may also be increased after October 15 in cases where this is necessary to reach the
17 12.0-foot stage by October 25.

18 Silver Lake stage shall be no less than 7.4 as of November 1 of each year.

19 If the licensee is unable to operate the El Dorado Canal at any time between September
20 15 and September 30 of any year, the licensee shall make no discretionary releases from
21 Silver Lake during canal downtime between September 15 and September 30 of that year.

22 In years where the licensee is able to operate the El Dorado Canal, but is unable to
23 operate the Akin Powerhouse at any time between September 15 and September 30, the
24 licensee shall limit discretionary releases from Silver Lake during that powerhouse
25 downtime between September 15 and September 30 according to the following system of
26 priorities:

27 Water required to meet consumptive needs at Forebay, plus the required minimum flow
28 at Kyburz Diversion Dam, shall first be drawn from accretion between the high lakes and
29 Kyburz Diversion Dam, shall second be drawn from the required minimum flow from
30 Caples Lake Dam, Lake Aloha Dam, and Silver Lake Dam and from leakage from Silver
31 Lake, and shall third be drawn from the maximum available release from Echo Lakes.
32 Any additional water required to meet consumptive needs at Forebay plus required
33 minimum flow past Kyburz Diversion Dam may be met using discretionary releases from
34 Silver Lake, without, however, dropping the level of Silver Lake below the 12.0 stage at
35 the end of September.

36 Notwithstanding any or all of the above, the licensee shall meet the minimum streamflow
37 release requirement from Silver Lake Dam.

1 The licensee shall attempt to inform the FS, SWRCB, and ERC of the estimated duration
2 of the annual maintenance period by the date described in Section 15 for completion of
3 the operations and maintenance plan but shall notify those Parties no later than July 1.
4 The licensee shall post and update this information on its website.

3
4. Lake Aloha

4 The licensee shall operate Lake Aloha in such a manner as to comply with the End-of-
5 Month Lake Level Operational Requirements established in California State Water
6 Resources Control Board Decision 1635 as modified by Order WR 2001-22. If the
7 licensee anticipates that the reservoir will not meet this target level, FS, ERC, SWRCB,
8 and FERC shall be notified in writing, within 10 days of this determination, and provided
9 an explanation of why the target reservoir level will not be attained.

8
5. Target Lake Level Monitoring and Adjustment

9 Within 5 years of license issuance, and every 5 years thereafter, the licensee shall prepare
10 a report describing whether the target lake levels have been achieved, and if not, the
11 reasons and time periods when the target lake levels were not achieved. The licensee
12 shall provide a copy of the report to the FS, ERC, SWRCB, and FERC.

12 **Section 23. Public Information Services**

13
14 1. Streamflow and Lake Level Information

15 The licensee shall make recreation streamflow and lake level information available to the
16 public via toll-free telephone and internet. The licensee shall, within 1 year of license
17 issuance, submit a plan to FERC that addresses, at a minimum, information on lake
18 levels, real-time streamflows, simple staff gages, forecasting, and operations projections.
19 The plan shall be reviewed by the ERC and approved by the FS and SWRCB prior to
20 filing with FERC. Following approval, the minimum streamflow schedules from
21 Appendix A, Section 1, of the Settlement and current water year type information shall
22 be published on the licensee's website.

20 At a minimum, the licensee shall provide hourly averages of streamflows for gages on the
21 SFAR below Kyburz Diversion Dam and Silver Fork American River, and shall, within 4
22 hours, post the information on the licensee's website for the current and prior 7 days for the
23 entire year. All streamflow values shall be in cfs rounded to the nearest whole number, and
plots or tables showing these data will be labeled as follows: "These provisional data have
not been reviewed or edited and may be subject to significant change."

24 2. Recreation Information

25 The licensee shall provide public information relating to recreation opportunities,
26 restrictions, and responsibilities associated with Project-related recreation facilities at a
27 level approved by the FS. The licensee has the option to fund the FS for this work.

3. Project Recreation Brochure/Map

1

2 Within 5 years of issuance of the license, the licensee shall develop and print a brochure
3 and map that describe the recreation opportunities, recreation facilities, rules, and
4 responsibilities for the area of the Project, including the upper lakes and streams. The
5 brochure will be provided to the FS for review and approval prior to completion. The
6 licensee shall make the brochure/map available to the public free of charge. The
7 brochure/map shall be made available continuously throughout the remaining license
8 period and shall be updated as conditions change.

6.4. Winter Safety Signs

7

8 The licensee shall annually install prominent signs at Caples Lake, Silver Lake, and Echo
9 Lakes during the winter season that warn visitors of unstable snow and ice conditions.
10 The licensee shall remove these signs annually after the winter season. Signs shall be
11 installed in accordance with FS 4(e) Condition No. 23.

10 **Section 24. Visual Resource Protection**

11

12 During planning and prior to any new construction or maintenance of facilities that have the
13 potential to affect visual resources of National Forest System lands (including, but not limited to,
14 the recreation related construction), the licensee shall file with FERC a plan approved by the FS
15 for the protection and rehabilitation of National Forest System visual resources affected by the
16 Project. At a minimum, the plan shall address clearings, spoil piles, and Project facilities like
17 diversion structures, penstocks, pipes, ditches, powerhouses, other buildings, transmission lines,
18 corridors, and access roads. The plan shall address facility configurations, alignments, building
19 materials, colors, landscaping, and screening. The plan shall provide a proposed mitigation and
20 implementation schedule to bring the Project facilities affecting visual resources on National
21 Forest System lands into compliance with visual resource standards and guidelines in the
22 Eldorado National Forest Land and Resource Management Plan and the Lake Tahoe Basin
23 Management Unit Land and Resource Management Plan. The licensee shall implement the plan
24 upon approval by the FS.

19

20 Mitigation measures identified for either the visual resource plan for new construction or the
21 measures identified for existing facilities shall include, but are not limited to: (1) surface
22 treatments with FS-approved colors and natural appearing materials that will be in harmony with
23 the surrounding landscape, (2) use of non-specular conductors for the transmission lines, (3) use
24 of native plant species to screen facilities from view, (4) reshaping and revegetating disturbed
25 areas to blend with surrounding visual characteristics, and, (5) locating transmission facilities to
26 minimize visual impacts.

24 The licensee shall implement the following measures at existing facilities within 2 years of
25 license issuance:

25

- 26 1. Lower Echo Lake Spillway: Paint the metal components of the walkway across the
27 spillway a non-reflective black color. Perform a visual inspection every 2 years and
28 touch-up or re-paint as necessary to maintain the facility in good condition.

28

12. Caples Lake Auxiliary Dam: Paint the metal components of the stairway to the dam and walkway across the dam a non-reflective black color. Perform a visual inspection every 2 years and touch-up or re-paint as necessary to maintain the facility in good condition.
3. Silver Lake Dam: Paint the metal components of the stairway, ramps, and handrail associated with the west side dam that are visible from the new bridge a non-reflective black color. Perform a visual inspection every 2 years and touch-up or re-paint as necessary to maintain the facility in good condition.

Section 25. Heritage Resources

Within 6 months after license issuance, the licensee shall complete a Heritage Properties Management Plan (HPMP) for FS approval. The HPMP will be incorporated into the Programmatic Agreement (PA) by reference. The HPMP will take into account Project effects on prehistoric and historic resources, Native American traditional cultural values, direct and indirect effects to heritage resources within the area of potential effect, ethnographic studies, historic archaeological studies, and Project-related recreation impacts to archaeological properties affecting National Forest System lands. The HPMP shall also provide measures to mitigate the identified impacts, a monitoring program, and management protocols for the ongoing protection of archaeological properties. The plan shall be filed with FERC. The licensee shall implement the plan upon approval.

Section 26. Heritage Resource Discovery

If, prior to or during ground disturbance or as a result of Project operations, items of potential cultural, historical, archeological, or paleontological value are reported or discovered, or a known deposit of such items is disturbed on National Forest System lands and licensee adjoining property, the licensee shall immediately cease work in the area so affected. The licensee shall then notify the FS and shall not resume work on ground disturbing activities until it receives written approval from the FS.

If it deems it necessary, the FS may require the licensee to perform recovery, excavation, and preservation of the site and its artifacts at the licensee's expense through provisions of an Archaeological Resources Protection Act permit issued by the FS.

Section 27. Transportation System Management Plan

Within 1 year of license issuance, the licensee shall file with FERC a Transportation System Management Plan that is approved by the FS for roads on or affecting National Forest System lands. The plan shall establish the level of licensee responsibility for Project-related roads. The licensee shall have primary responsibility for non-system roads and for maintenance level 1 and 2 roads. There shall be shared levels of responsibility for maintenance level 3, 4, and 5 roads.

The FS shall make available to the licensee all information it has about these roads. The licensee shall implement the plan upon approval. At a minimum the Plan shall:

1. Include a map showing all roads, both FS system roads (classified), and FS non-system (unclassified) roads associated with the Project.
2. Identify the project related uses of all roads described above, including an estimate of the amount of use by season of the year.
3. Identify the condition of the roads described above that are determined to be the primary responsibility of the licensee, including any construction or maintenance needs. Information shall include length and width of road, location and size of culverts, grade, slope position, hydrologic connectivity, surfacing, and jurisdiction sufficient for the FS to complete the roads use permit Exhibit A and to complete any required Roads Analysis.
4. Include a map of a Traffic Safety and Signage plan for all roads described above that are determined to be the responsibility of the licensee. Include both safety and destination/distance information signs at major road intersections and features. An inventory of all signs, together with photographs of each sign, shall be included. Mapping shall be completed using global positioning system (GPS) instrumentation and made available as a digital format layer. Signs shall conform to FS Manual direction.
5. Include a map of all drainage crossings of bridges and culverts for all roads described above that are determined to be the responsibility of the licensee. Provide hydraulic calculations verifying that all intermittent and perennial stream crossings shall pass a 100-year storm event and associated bedload and debris, and allow fish passage through all culverts identified as fish habitat areas. The licensee shall develop a plan for FS approval to upgrade those culverts not meeting this standard. Priority for upgrading will be based on the potential impact to the ecological value of the riparian resources effected.
6. Address measures to control erosion related to Project facilities on or affecting National Forest System lands, including dams, roads, penstocks, powerlines, transformer sites, reservoirs, and reaches. Consider stream sedimentation, dust, and soil movement induced by Project roads and road maintenance activities, preventing loss of roads through ongoing hillside erosion, sediment management of roads within 150 feet of the river, and diversion prevention dips in specified areas to minimize damage from culvert failure.
7. Identify helispots routinely used to access Project facilities on National Forest System lands, including any staging areas and access roads. Include notification standards for FS (Camino dispatch), including radio frequencies and N (tail) numbers.
8. Every 5 years, the licensee shall prepare a 5-year plan to identify the maintenance and reconstruction needs for roads associated with the Project. The licensee shall file the plan with FERC after approval by the FS. All road maintenance and construction shall meet FS specifications and best management practices.
9. The licensee shall construct, operate, and maintain Project facilities, including roads, parking and storage lots, reservoir shorelines, bridges, and culverts to maintain natural fluvial and colluvial sediment transport to the Project reaches, as far as feasible.

1 All road maintenance and construction shall meet FS specifications and best management
2 practices.

3 Within 5 years of license issuance, the licensee shall replace the gate at Caples Lake Second
4 Dam.

5 **Section 28. Trails System Management Plan**

6 Within 1 year of license issuance, the licensee shall file with FERC a Trails System Management
7 Plan that is approved by the FS for the trails that are needed for Project operations and are
8 located on or affect National Forest System lands. The licensee shall implement the plan upon
9 approval. At a minimum the Plan shall:

- 9 1. Include a map showing the location of all trails, both FS system (classified) trails and FS
10 non-system (unclassified) trails associated with the Project.
- 11 2. Map trail locations using a global positioning system (GPS), software, pre-and post-
12 processing standards, collection standards and data dictionary approved by the FS, to
13 ensure that data collected meets national standards.
- 14 3. Identify the season(s) of use and the amount of use by the licensee for each trail annually.
- 15 4. Identify the condition of the trails described above, including any construction or
16 maintenance needs.

17 Every 5 years, the licensee shall prepare a 5-year plan identifying maintenance and
18 reconstruction needs for trails required for Project operations. The licensee shall file the plan
19 with FERC after approval by the FS. All trail maintenance and construction shall meet FS
20 specifications and best management practices.

21 **Section 29. Facility Management Plan**

22 Within 1 year of license issuance, the licensee shall file with FERC a Facility Management Plan
23 that is approved by the FS. The licensee shall implement the plan upon approval. At a minimum,
24 the Plan shall:

- 25 1. Include a map showing all Project facilities, including structures on or affecting National
26 Forest System lands (and associated water and septic systems, and other utilities); above
27 and below ground storage tanks; etc.
- 28 2. Identify the type and season of use of each structure.
3. Identify the condition of each structure, and planned maintenance or removal.

Every 5 years, the licensee shall prepare a 5-year plan that will identify the maintenance,
1 reconstruction, and removal needs for Project facilities. The licensee shall file the plan with
2 FERC after approval by the FS.

3 **Section 30. Future Commercial Development at Caples Lake, Silver Lake,**
4 **and Echo Lakes**

5 Prior to the licensee approving, developing, or providing for additional commercial services or
6 exclusive uses at Silver Lake, Caples Lake, or Echo Lakes, beyond those that exist as of the date
7 of issuance of this license, the licensee shall complete an analysis that displays the effects of the
8 proposed development on adjacent National Forest System lands.

8 **Section 31. Land Adjustment Proposal**

9 The licensee shall, within 2 years of license issuance, develop a Land Adjustment Proposal that
10 addresses possible land exchanges or other management actions that would result in more
11 efficient land management by concerned parties. This proposal shall include consideration of
12 land exchanges between the FS and the licensee at Silver Lake East and West Campgrounds,
13 Oyster Creek Rest Stop, and in the Sly Park/Pollock Pines area and shall require consultation
14 with the involved parties and filing of the proposal with FERC.

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Appendix B

**Measures Agreed to Among the Parties But Not to be Included in New Project License,
Section 4(e) Conditions, or Other Mandatory License Conditions**

Section 1. Objectives

The following resource objectives were developed from agency mandates, with consideration of licensee and non-governmental organization goals. It is recognized that factors beyond the licensee’s control could affect attainment of these objectives and that some or all of the objectives may not be achievable within the preliminary Section 4(e) conditions and 10(a) and 710(j) recommendations. The following objectives encompass FS Forest Plan direction; however, more specific existing and desired conditions are described in the following sections.

Fisheries Objectives

Biomass Indices

Do not decrease the means developed from sampling efforts conducted in 1998, 1999, 2000, 2001, and 2002 by more than 20 percent. For example, suppose 2 years of sampling at Lower Echo Creek results in a mean biomass of 10.5 lbs./surface acre of rainbow trout, an 11 percent decrease from the 11.8 lbs./surface acre. Because this decrease would be less than 20 percent, the management objective would be met and no further action would be necessary.

EID Site	Location	Recommended Species	Biomass Indices (lbs/surface acre)
EC-1	Lower Echo Creek	RT	11.8
PY-1	Lower Pyramid	RT	6.5
CA-3	Caples Creek Below Kirkwood	RT	9.1
SV-4	Silver Fork American River @ Forgotten Flat	RT	19.7
AR-1	Lower Alder Creek	RT	74.6
SO-2	SFAR below Carpenter Creek	RT	33.9

Rainbow trout has been chosen as the fish indicator of habitat quality because guidance in the Forest Plan directs focus to maintain, enhance, and restore habitat to support viable native species. Rainbow trout is also a Forest Management Indicator Species.

Fish Passage

Ensure fish passage.

Native Species

1 Maintain, enhance, or restore all life stages of native aquatic species.

2 **Macroinvertebrate Objective**

3 Macroinvertebrate indices (metrics) in Project-affected stream reaches should be similar to
4 reference reaches located within and outside the South Fork American River (SFAR) drainage
and the Truckee River. FS and CDFG will develop numerical objectives based on the collection
5 and review of additional macroinvertebrate data.

6 **Natural Hydrograph Objective**

7 Achieve seasonal discharge fluctuations that follow the natural hydrograph pattern in duration,
8 magnitude, rate of change, and frequency.

9 **Flow Fluctuations Objective**

10 Minimize Project-caused flow fluctuations uncharacteristic of the natural hydrograph to protect
11 biota and maintain public safety.

12 **Fluvial Geomorphology Objective**

13 Maintain or restore channel integrity. Maintain, improve, or restore fluvial processes to provide
14 for balanced sediment transport, channel bed material mobilization and distribution, and channel
structural stability that contribute to diverse aquatic habitat and healthy riparian habitat.

15 **Riparian Habitat Objective**

16 Maintain or restore riparian resources. Maintain and restore instream flows sufficient to sustain
17 desired conditions of riparian, aquatic, wetland, and meadow habitats.

18 **Connectivity Objective**

19 Maintain and restore spatial and temporal connectivity for aquatic and riparian species within
20 and between watersheds to provide physically, chemically, and biologically unobstructed
21 movement for their survival, migration, and reproduction.

22 **Water Quality Objective**

23 Ensure water affected by Project operations meets water quality criteria such as temperature to
protect designated beneficial uses as determined by the Central Valley and Lahontan Regional
24 Water Quality Control Board Basin Plans and through SWRCB's Clean Water Act Section 401
25 water quality certification authority and other applicable state laws and resource agency
mandates.

26 **Streamflow and Reservoir Storage Gaging Plan Objective**

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1 Develop a streamflow and reservoir storage gaging plan to evaluate compliance and resource
2 responses to changes in streamflows. The plan may include installation of additional gaging
3 stations.

3 **Threatened, Endangered, and Sensitive Species and Management Indicator Species**
4 **Objective**

5 Ensure that 4(e) conditions and 10(a) recommendations are consistent with any applicable FS
6 biological evaluation for sensitive species or any applicable biological opinion issued under the
7 federal or state Endangered Species Act. Ensure that 4(e) conditions and 10(a) recommendations
8 meet Forest Plan guidelines for management indicator species.

8 **Noxious Weed Control Objective**

9 Reduce and, where possible, reverse the spread of noxious weeds.

10 **Lake Levels Objective**

11 Maintain target reservoir pools in Echo Lakes, Lake Aloha, Caples Lake, and Silver Lake to
12 protect beneficial uses. Maintain lake levels sufficient to ensure that aesthetic and recreation
13 needs are met, while recognizing negotiated agreements and the protection of ecological
14 resources, power production, and consumptive water supply.

14 **Visual Resources Objective**

15 Ensure that visual quality meets appropriate management area direction.
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17 **Recreation Management Objective**

18 Provide for quality day use and overnight recreation opportunities associated with the Project
19 and ensure that other resources are not adversely impacted by this recreational use.

19 **Recreation Design Objective**
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21 Ensure Project-related facilities meet current FS design standards and standards for accessibility.

22 **Wilderness and Wild and Scenic River Objective**

23 Ensure wilderness values and outstandingly remarkable wild and scenic river values are
24 maintained or enhanced.

25 **Recreational Streamflow Objective**

26 Provide streamflow regime to optimize recreational opportunities, including stream angling,
27 swimming, waterplay, boating, and other recreational beneficial uses that are consistent with
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ecosystem capabilities, that minimize user and ecological conflicts, that consider hydropower operations, and that maintain a high degree of user satisfaction as determined by user surveys, with due consideration for lake levels and levels of quality lake-based recreation.

3 Lake Fishing Objective

4 Protect and enhance lake-fishing opportunities in Echo Lakes, Silver Lake, and Caples Lake consistent with overall lake-based recreation and lake level goals.

6 Recreational Access Objective

7 Provide river recreation facilities that are consistent with Recreation Opportunity Spectrum (ROS) class (or equivalent), physical, social, and ecological carrying capacity of the resource and demand levels, with the possibility of adjustment based on user satisfaction.

9 Streamflow and Lake Level Information Objective

10 Provide streamflow and lake level information for Project-affected reaches and lakes that is available to the general public and is adequate for river and lake recreation use.

12 Transportation and Facilities Management Objective

13 Ensure appropriate level of maintenance on Project-related roads and trails. Ensure roads and trails are maintained to FS standards. Ensure Project-related facilities are appropriately identified and maintained.

15 Special-Use Authorization Objective

16 Ensure that Project-related special-use authorizations are up to date and address the current permitted use.

18 Hydropower Operations Objective

19 The Project continues to be a competitive source of least cost, reliable, and flexible hydroelectric generation.

21 Consistency with Plans

22 Ensure that hydropower operations are consistent with Eldorado National Forest and Lake Tahoe Basin Land and Resource Management Plans and consistent with the reasonable protection of other beneficial uses of water as identified in the Central Valley and Lahontan Region Basin Plans.

25 Cultural Resources Objectives

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Evaluate heritage resources that may be affected by the Project, and protect/ conserve
1 significant resources, or mitigate effects to those resources.

2 Conduct, as part of Section 106 compliance, on-going consultation with the appropriate
3 Native American tribe(s) as defined by the FS.

4 Ensure full compliance of Section 106 through a Programmatic Agreement.

5 **Section 2. Ecological Resources Committee**

6 **Purpose**

7 The primary purpose of the Ecological Resources Committee (ERC) is to assist the licensee in
8 the design of the monitoring plans, review and evaluation of data, and preparation of adaptive
9 management measures for implementation by the licensee as provided in the Settlement.

10 **Members**

11 The membership of the ERC shall consist only of representatives of the Original Parties to the
12 Settlement except FS and SWRCB, which will designate liaisons to the ERC. The ERC may add
13 to its membership by unanimous agreement not subject to dispute resolution, after a finding that
14 the proposed new member has a particular knowledge, interest and/or expertise that is valuable
to the ERC. Any new member will sign the Settlement to indicate its support and commitment to
the provisions agreed to in the Settlement.

15 **Establishment**

16 The licensee shall establish the ERC within 3 months of license issuance. The ERC shall be
17 established on an interim basis within 1 month after the Effective Date of the Settlement for the
18 limited purpose of assisting the licensee in actions specified in the Settlement and scheduled for
19 implementation in advance of issuance of the new Project license. However, the ERC's primary
purposes as stated above will extend past new Project license issuance.

20 **Meetings**

21 The ERC shall hold an annual meeting prior to March 15 to discuss the results of the previous
22 year's monitoring, actions to be taken, and information to be submitted to FERC. This meeting
23 may be combined with the Annual Review of Ecological Conditions required in Appendix A,
Section 15. Additional meetings may occur as the ERC deems necessary.

24 **Conduct of Meetings**

25 The licensee shall be responsible for chairing ERC meetings and for providing timely meeting
26 notes. The licensee shall arrange meeting times and places that are acceptable to as many ERC
members as possible.

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1 Meeting Notices

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2 The annual meeting will be Noticed to all ERC members, SWRCB, and FS, and representatives
3 of all ERC members may attend. Meetings, including the Annual Meeting, may be held on no
4 fewer than 7 days' notice. In emergency situations, meetings other than the annual meeting may
5 be held on Notice of fewer than 7 days. Attendance at ERC meetings by non-members will be as
6 mutually agreed among the ERC members.

5 Responsibilities of the ERC

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1. Work cooperatively with the licensee to develop and implement the monitoring plan
7 described in Appendix B of the Settlement.

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2. Meet at least annually to review data and effectiveness of the monitoring plan.

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3. Provide recommendations concerning streamflows and Project operations related to
streamflows for inclusion in reports the licensee submits to FERC, including
recommendations for minimum streamflows and adjustments to the minimum
streamflows, pulse flows, ramping rates, and other PM&E measures stated in Appendix
A of the Settlement. The ERC may also identify non-Project factors that influence
achieving the identified resource objectives.

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13 Monitoring Data and Other Information

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The data collected under the monitoring program will be compiled and distributed annually by
January 31, or an alternate date agreeable to the ERC, SWRCB, and FS, and to each ERC
member by the ERC member responsible for performing the monitoring. Each ERC member
shall be responsible for sharing in a timely manner information of which it is aware relevant to
the work of the ERC.

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18 Annual Report

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Based on the results of the annual meeting, the licensee shall submit an annual report to FERC,
ERC, SWRCB, and FS by June 30 of each year. This report shall summarize the results of any
ongoing monitoring or study effort, changes that are to be implemented under the license and do
not require FERC approval, proposed changes for which the licensee will request FERC,
SWRCB, or FS approval, including a proposed schedule for such approval, and a summary of
any unresolved issues and proposed actions to resolve such issues. All ERC members and FS
shall have 30 days to review and comment on a draft of the annual report prior to its submittal to
FERC. The final annual report shall be distributed to ERC, FS, and SWRCB after submission to
FERC.

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25 Streamflow Evaluations, Recommendations, and Measures Implemented by ERC and approved by FS and SWRCB

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1 All flow evaluations, recommendations, and measures recommended by the ERC and, if within
2 its jurisdiction, approved by FS and/or SWRCB for implementation require that the ERC make
3 an affirmative determination of the benefit of such action. In making this determination, the
4 ERC will consider the cost-effectiveness of the proposed measures and the impacts on all
5 beneficial uses. No measure will be implemented in absence of scientific justification deemed
6 appropriate by the ERC and, if within its jurisdiction, FS and/or SWRCB.

7 **Decision Making and Dispute Resolution**

8 The ERC members will work collaboratively to make decisions and resolve issues assigned to
9 the ERC under the Settlement. The FS shall be responsible for decisions within FS jurisdiction.
10 Reference documents to be used by the ERC shall include, but not be limited to, the new Project
11 license, the Settlement, relevant FERC orders, and the Central Valley and Lahontan Regional
12 Water Quality Control Board Basin Plans (Basin Plan). If the participating ERC members are
13 unable to reach mutual agreement on an issue, the ERC shall use the dispute resolution
14 procedures provided in Paragraph 4.9.1 et seq. of the Settlement. In the event a disputed issue is
15 not resolved in a timely manner, the licensee shall prepare and file with FERC, SWRCB, and FS
16 a request that FERC, SWRCB, or FS, as appropriate, decide the issue. Each ERC member shall
17 be free to provide its support for the licensee's filing or file separate comments. The licensee
18 shall request that FERC, SWRCB, or FS, as appropriate, resolve the issue in dispute in a timely
19 manner.

20 **Funding**

21 Each member of the ERC shall be responsible for funding its participation on the ERC and, to
22 the extent the internal resources of an agency allows, assisting in data collection and other efforts
23 of the ERC at its own cost. Study efforts and monitoring that require the collection of data by
24 the licensee or a consultant shall be paid for by the licensee. Contracts for work funded by the
25 licensee shall be entered into and directed by the licensee unless otherwise mutually agreed.

26 **Section 3. Other Measures**

27 **Access Improvements Along the South Fork American**

28 The Parties have identified several locations between the Kyburz Diversion Dam and the Akin
29 Powerhouse that warrant access improvements for the public trying to reach the river. The
30 Highway 50 corridor coupled with private land holdings severely limits access to the South Fork
31 American. Minimal improvements for parking at several locations will greatly improve access to
32 the river and improve public safety along this busy highway.

33 To this end, the licensee will assist American Whitewater (AW) and other Parties will make a
34 good faith effort to make improvements as generally described below:

35 Whitehall Area

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In the upper end of the Whitehall area a bridge over the SFAR leads to "Randall Tract." Approximately 0.3 mile upstream of this bridge is a take-out location just below Slide Rapid. A parking area capable of accommodating 15 cars already exists, but there are two "No Parking Anytime" signs that convey the impression no parking is permitted anywhere in the area. If parking were permitted here, there would be easy access to the river for both kayaks and rafts.

Improvements needed: Licensee and AW will investigate and determine the sources of the "No Parking" signs and make reasonable attempts to determine a reason for "No Parking" signs and if appropriate will seek to have the appropriate agency reconsider and modify the signage. If the signage is changed to permit parking, licensee and AW will seek to have informational signs regarding access posted and will stripe the parking areas to improve public safety.

Riverton Bridge

The access point just downstream of the Riverton Bridge, river left (south side of river), has two trails down to the river, both quite short (< 100 yards). The upstream trail is relatively steep and narrow, appropriate for kayaks but unsuitable for rafts. The downstream trail is less steep though still narrow, offering easy access for kayaks and reasonable access for rafts. The parking area is large.

Improvements needed: Licensee and AW will investigate and determine who has ownership/control of this area and will seek to have the area designated as a parking area for recreation. If parking is permitted, licensee and AW will seek to have informational signs posted and the parking areas striped.

Pacific House-Peavine Ridge Road

Boaters access the Golden Gate Run via Peavine Ridge Road. However, limited parking by the river limits use of this road. Only four-wheel drive or high-clearance vehicles can reach the river. This area could be improved, allowing boaters to take out here for the upstream Riverton to Peavine Run or use it as a put-in location for the Golden Gate Run.

Improvements needed: This is National Forest System land. Within 1 year, licensee, AW, and FS will work together to develop improvements that allow public access and parking at this site.

Future Modifications to Project

During the term of the new project license, the licensee may wish to evaluate modifications to the Project that would require filing an amendment application with FERC. Because of its interest and continued involvement with the operation and effects of the Project on the objectives identified in Appendix B, the ERC has an interest in any proposed modification to the Project that could affect those identified objectives. To better identify issues and examine effects both positive and negative on these objectives while developing its proposal, the licensee will present to the ERC any proposed modifications.

One modification the licensee has stated that it is likely to evaluate is a potential reservoir in the Alder Creek watershed. The ERC will, to the extent feasible, provide a forum for early collaboration and consultation in the licensee’s potential evaluation of such a reservoir or any other potential Project modification. ERC members, to the extent they are able, shall share their expertise and opinions to identify and quantify the potential positive and/or negative effects, if any, of a proposed modification. Any modification proposed will comply with applicable federal and state laws. Collaboration and consultation shall not prevent any Party from seeking intervention in any license amendment proceeding. Such collaboration and consultation shall be consistent with Paragraph 4.7.2 of the Settlement.

6 Gaging Improvements

7 Throughout the term of the License, the licensee shall make best efforts to use all suitable and
8 available technologies to monitor and gage flows in the system to ensure meeting minimum
9 release requirements while minimizing losses throughout the system to the extent it is
10 technically and economically feasible. The licensee shall take into account, to the extent it is
11 design changes that provide an opportunity to substitute unregulated accretions, in total or part
12 thereof, for reservoir releases.

12 The licensee shall assess, annually, the possible system benefits that may be derived from
13 telemetered gaging data and remote control of reservoir releases.

14 Silver Lake Leakage

15 The licensee shall not alter or eliminate the Oyster Creek leakage from Silver Lake, except for
16 reasons of dam safety.

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Appendix C

Other Agreements Related to the Settlement

Settlement Agreement and Mutual Release of All Claims, effective April 6, 1999, between County of El Dorado, El Dorado County Water Agency, El Dorado Irrigation District, and County of Amador.

Appendix D

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SWRCB Collaborative Process Participation Statement

The State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards are the principal state agencies responsible for administering the state’s water quality control program. (Water Code sections 13000-14958.) The SWRCB is also the state agency authorized to grant, waive, or deny water quality certification as provided for under section 401 of the federal Clean Water Act. (Water Code section 13160; see generally 33 U.S.C. section 1341.) The SWRCB must grant or waive water quality certification before a license to operate a hydropower project may be issued by the Federal Energy Regulatory Commission (FERC). In addition, the SWRCB is the state agency responsible for administering surface water rights throughout the state. (Water Code sections 1000-5976.)

SWRCB staff agree to participate in the development of information regarding FERC Project 184 that may lead to a settlement among the interested parties. Although SWRCB staff are willing to participate in the collaborative effort in good faith, SWRCB staff cannot guarantee that a settlement agreement with El Dorado Irrigation District (EID) and the other stakeholders will be reached.

The SWRCB acts in an adjudicative capacity when it processes a request for water quality certification. The SWRCB must be impartial and afford all parties before it a fair hearing. The SWRCB’s obligation to be a neutral decision-maker may limit its ability to compromise in the course of negotiating an agreement with EID and the other stakeholders.

In addition, the SWRCB has an independent statutory duty under the Clean Water Act and the applicable regional water quality control plan to ensure that the operation of Project 184 will not adversely affect water quality or the beneficial uses of the affected lakes and stream reaches within the South Fork American River Basin and the Tahoe Basin.

Appendix E

List of Authorized Representatives

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