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December 24, 2002 **DEC 30 PM 2:48**

**FEDERAL ENERGY
REGULATORY COMMISSION**

Mr. Jack Blackwell, Regional Forester
USDA Forest Service
Pacific Southwest Region
1323 Club Drive
Vallejo, CA 94592

**Subject: Settlement Agreement Regarding the Kern River No. 3
Hydroelectric Project; File Code 1950/2770**

Dear Mr. Blackwell:

Enclosed for the use of the United States Department of Agriculture, Forest Service (USFS), is a settlement agreement among American Whitewater, Friends of the River, and their counsel, Natural Heritage Institute (collectively, the "Whitewater Interests") and Southern California Edison Company ("SCE"). The Settlement Agreement resolves contested issues associated with the USFS process to prepare and submit to the Federal Energy Regulatory Commission ("FERC") conditions for inclusion in the FERC license for the SCE Kern River No. 3 Hydroelectric Project (FERC No. 2290) ("Project"). Twice previously, the USFS has submitted conditions to the FERC pursuant to Federal Power Act Section 4(e) for inclusion in the FERC license for the Project. Each time, the Whitewater Interests and SCE filed administrative appeals of these "4(e) Conditions" at the USFS. The latest administrative appeals of the September 13, 1998, USFS Decision Notice submitting the 4(e) Conditions to FERC, resulted in a December 14, 1998 decision by the Appeal Deciding Officer vacating and remanding the 4(e) Condition Decision. The USFS has not yet taken final action on remand of the Appeal Deciding Officer's decision.

At the beginning of the year 2002, the Whitewater Interests and SCE agreed to meet and discuss a potential resolution to two key issues in the prior contested USFS 4(e) Conditions: (1) Whitewater flows below the Project's diversion dam, and (2) governance of the Upper Kern Basin Fishery Resource Enhancement Settlement Agreement, Memorandum of Understanding, and Trust Fund. SCE and the Whitewater Interests have concluded our discussions and executed the attached Settlement Agreement. The Settlement Agreement proposes:

1. Establishment of a Whitewater Boating Schedule, and
2. An agreed upon interpretation of the Upper Kern Basin fishery enhancement documents.

Mr. Jack Blackwell, Regional Forester
December 24, 2002
Page 2

SCE and the Whitewater Interests request that the USFS adopt as a 4(e) Condition for submittal to FERC the whitewater recreation flow schedule attached as Settlement Agreement Exhibit A. The enclosed "Rationale Document" explains the basis for the Settlement Agreement and, along with other information already provided to the USFS, provides the evidentiary support for the USFS to adopt the whitewater recreation flow schedule. This Settlement Agreement and Rationale Document should assist the USFS in preparing timely 4(e) Conditions for submittal to FERC.

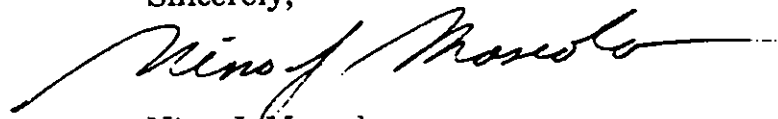
Additionally, the Whitewater Interests and SCE expect that FERC will amend the existing Project license and incorporate the new 4(e) Conditions into the Project license. The FERC Order Issuing New License for the Project was issued on December 24, 1996. FERC acknowledged the administrative appeals at the USFS regarding the 4(e) Conditions and stated:

"Any valid revisions to the Section 4(e) Conditions included in this license that result from the administrative appeals before the Forest Service will be incorporated in the license. Upon the submittal of such provisions by the Forest Service, the Commission will issue an order amending the license."

FERC's incorporation of the revised 4(e) Conditions will have another benefit – the Whitewater Interests will move to dismiss their lawsuit in the Ninth Circuit Court of Appeals against FERC that challenged certain articles (including the whitewater schedule) in the new Project license.

The Whitewater Interests and SCE agree to support inclusion of the Settlement Agreement whitewater flow schedule in the USFS 4(e) Conditions and in the FERC license for the Project. The Settlement Agreement is intended to lead to a positive domino effect – the USFS issuance of acceptable 4(e) Conditions, the FERC issuance of an acceptable Project license, and the dismissal of the Whitewater Interests' lawsuit. Thus, the Whitewater Interests and SCE respectfully request that the USFS expeditiously proceed to develop 4(e) Conditions consistent with the Settlement Agreement and then submit those 4(e) Conditions to FERC for incorporation into the FERC Project license. Should you have any questions please call me at (626) 302-4959 or Richard Roos-Collins of the Natural Heritage Institute at (510) 644-2900.

Sincerely,



Nino J. Mascolo

Mr. Jack Blackwell, Regional Forester

December 24, 2002

Page 3

Enclosures

cc: Ms. Magalie R. Salas, FERC Secretary ✓
David Coffman, FERC Solicitor
Margaret Corrigan, Circuit Mediator, 9th Circuit Court of Appeals
Jack Gipsman, USFS Counsel
Julie Allen, USFS
Nancy Ruthenbeck, USFS
Richard Roos-Collins, NHI
Lisa Jones, U.S. Department of Justice
Steve Evans, Friends of the River
John Gangemi, American Whitewater
Walt Pagel, SCE

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**Kern River No. 3 Hydroelectric Project
Settlement Agreement among American Whitewater,
Friends of the River, Natural Heritage Institute, and
Southern California Edison Company**

This Kern River No. 3 Hydroelectric Project Settlement Agreement ("Agreement") is made and entered into effective as of November 1, 2002 by and between American Whitewater, Friends of the River, and their counsel, Natural Heritage Institute (collectively the "Whitewater Interests") and Southern California Edison Company ("SCE"). The Whitewater Interests and SCE may be individually referred to as a "Party" or collectively referred to as the "Parties."

RECITALS

- A. SCE owns and operates the Kern River No. 3 Hydroelectric Project ("Project") located within the Sequoia National Forest on the Kern River in Kern County, California. The Project is licensed by the Federal Energy Regulatory Commission ("FERC") pursuant to the Federal Power Act ("FPA").
- B. Pursuant to FPA Section 4(e), the U.S. Forest Service ("USFS") has submitted to FERC certain conditions ("4(e) Conditions") for inclusion into the FERC Project license. The Parties have filed administrative appeals with the USFS contesting some of the 4(e) Conditions.
- C. FERC has included the 4(e) Conditions into a license for the Project. The license was issued to SCE on December 24, 1996. The Whitewater Interests and SCE filed Requests for Rehearing of the license order. The

Kern River No. 3 Hydroelectric Project Settlement Agreement

FERC Order on Rehearing was issued on November 4, 1997. The Whitewater Interests have filed a Petition for Review at the Ninth Circuit Court of Appeals appealing the Order on Rehearing.

- D. The Parties have reached an agreement that will result in a joint recommendation to the USFS for a 4(e) condition requiring a specific water release flow schedule below the Project's Fairview Dam for whitewater recreation in the Project bypass reach ("Whitewater Flow Schedule").
- E. SCE and others have entered into that September 27, 1995 Upper Kern Basin Fishery Resource Enhancement Settlement Agreement and that September 27, 1995 Upper Kern Basin Fishery Resource Enhancement Measures Implementing Memorandum of Understanding ("MOU") (collectively, the "Fishery Enhancement Agreements") that create, among other things, a Fishery Resource Enhancement Trust Fund and establish minimum instream flow requirements below the Project's Fairview Dam.

NOW THEREFORE, the Parties agree as follows:

1. Whitewater Flow Recommendation

- 1.1 The Parties will submit a joint recommendation to the USFS requesting that the USFS adopt a Whitewater Flow Schedule. The recommended Whitewater Flow Schedule is attached as Exhibit A to this Agreement and incorporated by this reference.

Kcm River No. 3 Hydroelectric Project Settlement Agreement

- 1.2 The Parties will jointly prepare and submit a rationale document to the USFS that provides the basis for the Whitewater Flow Schedule.
- 1.3 The Whitewater Flow Schedule will begin in April 2003, or as soon thereafter as FERC issues an order incorporating the Whitewater Flow Schedule into the Project License.

2. Governance of Fishery Trust Fund

2.1 During implementation of the Fishery Enhancement Agreements, SCE agrees that these documents should be interpreted or implemented to provide that:

2.1.1 public notice should be provided for any dispute referred to FERC for resolution pursuant to MOU Section I.D.2;

2.1.2 the parties to the Fishery Enhancement Agreements should consider relevant and timely public comments before selecting measures and studies pursuant to MOU Section II.B.2;

2.1.3 the parties to the Fishery Enhancement Agreements should undertake study or monitoring sufficient to determine the net benefits of the funded measures, both individually and collectively, pursuant to MOU section II.B.2;

Kern River No. 3 Hydroelectric Project Settlement Agreement

2.1.4 the criterion stated in MOU section II.B.6(e) should be interpreted in the context of MOU section II.B.5's provision that funding decisions should maximize fishery benefits; and

2.1.5 each annual report prepared pursuant to MOU Section II.D.5.(vi) should include in the "evaluation of performance of each activity" the following: (a) a restatement of the benefit that was the basis for the funding decision pursuant to MOU section II.B.2; (b) a comparison of the expected benefit against the measured benefit; (c) a determination whether the measure has actually provided or may still be expected to provide a net benefit; and (d) a decision whether to continue, change, or terminate the measure.

2.2 Should the American Whitewater or Friends of the River have standing to intervene, pursuant to 18 C.F.R. §385.214, in the dispute resolution process at FERC contemplated by the Fishery Enhancement Agreements, SCE shall not oppose any request for intervention.

3. Dismissal of Petition for Review

The Whitewater Interests shall file the appropriate pleading(s) with the Ninth Circuit Court of Appeals to have the outstanding proceeding, *American Whitewater Application, et al., v. Federal Energy Regulatory Commission*, Case No. 98-70012, dismissed with prejudice, within 30 days of the satisfaction of these conditions

Kern River No. 3 Hydroelectric Project Settlement Agreement

precedent: (A) the USFS has taken final action to adopt Federal Power Act Section 4(e) Conditions consistent with this Agreement, and (B) FERC has issued an order amending the Project license that incorporates a whitewater flow requirement consistent with this Agreement's Exhibit A Whitewater Recreation Flow Schedule. The Whitewater Interests shall not advocate to the USFS or FERC that SCE must fund the Fishery Enhancement Agreements Trust Fund until the above referenced proceeding is dismissed with prejudice.

4. Administrative Proceedings

- 4.1 The Parties agree to support inclusion of the Whitewater Flow Schedule and incorporation of the Fishery Enhancement Agreements in any proposed USFS 4(e) Conditions and FERC license.
- 4.2 The Parties agree not to seek administrative or judicial review due to the inclusion of the Whitewater Flow Schedule or the commitments dictated by the Fishery Enhancement Agreements or substantially similar conditions or articles included in a USFS 4(e) Condition or FERC license.
- 4.3 If a Party believes the USFS 4(e) Conditions or FERC license contains any unacceptable material modification to the Whitewater Flow Schedule or the Fishery Enhancement Agreements, the Party shall notify the other Parties within twenty (20) days after the date of the USFS 4(e) Condition submittal letter or the FERC license order. The Parties shall

Kern River No. 3 Hydroelectric Project Settlement Agreement

then meet and confer to determine if all Parties agree the USFS 4(e) Condition or FERC license order contains an unacceptable material modification. If so, one or more of the Parties may file an administrative appeal requesting that the materially modified condition or article be replaced with the Whitewater Flow Schedule or the exact commitment from the Fishery Enhancement Agreement. If the Parties do not agree there is an unacceptable material modification, the Parties shall hold at least two meetings/conference calls within thirty (30) days of the initial meet and confer meeting date. Any Party may request a facilitator be appointed to assist in resolving the dispute. The Parties shall request Margaret Corrigan of the Ninth Circuit Court of Appeal Mediation Office, or her successor, to facilitate the meeting unless the Parties mutually agree upon another facilitator. The Parties shall each bear their own costs for participating in a dispute resolution. The Parties shall agree to an appropriate arrangement to share any cost of a facilitator. If the Parties are unable to resolve the dispute, the Party believing an unacceptable material modification is present may continue with its administrative appeal and, at its discretion, any subsequent judicial appeal of the offending condition or article. Because the dispute resolution process is likely to extend beyond the due date for any administrative appeal, the Party believing an unacceptable material modification exists may begin the administrative appeal process concurrent with the dispute resolution process.

Kem River No. 3 Hydroelectric Project Settlement Agreement

4.4 The Agreement does not preclude any Party from filing an administrative appeal contesting the USFS 4(e) Conditions or the FERC license for reasons unrelated to the Whitewater Flow Schedule or Fishery Enhancement Agreements. The Parties acknowledge that Project bypass flow requirements are a commitment within the Fishery Enhancement Agreements and are not subject to future administrative appeals without an unacceptable material modification to the Fishery Enhancement Agreements.

4.5 The Parties shall not challenge, or support or encourage any challenge by another person or organization, the incorporation of the Whitewater Flow Schedule or the Fishery Enhancement Agreements by the USFS into a 4(e) Condition or by the FERC into a license order.

5. General Provisions

5.1 Purpose. The purpose of this Agreement is to resolve among the Parties the issues related to whitewater recreation flow releases and those topics covered by the Fishery Enhancement Agreements.

5.2 Entire Agreement. The Parties agree that this Agreement constitutes the entire agreement with respect to the Parties.

Kern River No. 3 Hydroelectric Project Settlement Agreement

- 5.3 No Precedent. This Agreement is made upon the express understanding that it constitutes a negotiated resolution. Nothing in this Agreement is intended to or shall be construed as a precedent with regard to any other proceeding or hydroelectric project.
- 5.4 Non-Severable Terms of Settlement. The Agreement terms are not severable from each other. This Agreement is made on the understanding that each term is in consideration and support for every other term, and each term is a necessary part of the entire Agreement. If any part of the Agreement is declared to be unenforceable or illegal, the entire Agreement is voidable by any Party upon sixty (60) days notice to the other Parties.
- 5.5 No Third Party Beneficiary. This Agreement is not intended to and shall not create any right or interest in the public or any person or organization as a third party beneficiary.
- 5.6 Successors and Assigns. This Agreement shall apply to, and be binding upon the Parties successors. This Agreement may be assigned by SCE to any transferee of the Project, provided notice of the transfer is given to the Whitewater Interests within sixty (60) days of the completion of the transfer.
- 5.7 Governing Law. This Agreement shall be construed under the laws of the State of California.

Kern River No. 3 Hydroelectric Project Settlement Agreement

5.8 Notice. Any notice required by this Agreement shall be in writing. Notice shall be given by hand, certified mail, facsimile or other means by which delivery to the Parties' designated representative can be confirmed. Notice shall be deemed effective upon the delivery of such notice to the Parties at the addresses set forth below:

**SCE: Southern California Edison Company
Walt Pagel, Manager Eastern Hydro Region
300 North Lone Hill Avenue
San Dimas, CA 91773
Telephone: (909) 394-8720
Facsimile: (909) 394-8967**

**American Whitewater: John Gangemi
482 Electric Avenue
Bigfork, MT 59911
Telephone: (406) 837-3155
Facsimile: (406) 837-3156**

**Friends of the River: Friends of the River
Steve Evans
915 20th Street
Sacramento, CA 95814
Telephone: (916) 442-3155
Facsimile: (916) 442-3396**

**Natural Heritage Institute: National Heritage Institute
Richard Roos – Collins
2140 Shattuck Avenue, 5th floor
Berkeley, CA 94704
Telephone: (510) 644-2900
Facsimile: (510) 644-4428**

The Parties may change their respective representatives, addresses, or telephone and facsimile numbers by written notice to the other Parties.

Kern River No. 3 Hydroelectric Project Settlement Agreement

5.9 Term of Agreement. This Agreement shall terminate as to all Parties and be of no further force and effect upon expiration of the Project License issued by FERC on December 24, 1996, unless the Project License is succeeded by one or more annual licenses, which shall extend the term of this Agreement for the term of each annual license. Any Party may terminate this Agreement upon thirty (30) days notice to the other Parties if the Party is unsuccessful in achieving a resolution of an unacceptable material modification, as discussed in section 4.3.

6. Execution

6.1 Counterparts. This Agreement may be executed in multiple counterparts. Each counterpart shall have the same force and effect as an original instrument as if all the Parties had signed the same instrument.

6.2 Authority. Each signatory to this Agreement represents that the signatory is authorized to execute the Agreement and to legally bind the Party that the signatory represents.

American Whitewater

By: John Gangemi

Name: John Gangemi

Title: Conservation Director

Date: December 18, 2002

Kern River No. 3 Hydroelectric Project Settlement Agreement

Friends of the River

By: _____

Name: Steve Evans

Title: _____

Date: _____

Natural Heritage Institute

By: _____

Name: Richard Roos-Collins

Title: Attorney

Date: _____

Southern California Edison Company

By: *Russ Krieger*

Name: Russ Krieger

Title: Vice President, Power Production

Date: 12/17/2002

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By: <u><i>Kim Mando</i></u>
12/17 Attorney
20 02

Kern River No. 3 Hydroelectric Project Settlement Agreement

Friends of the River

By: Steve Evans

Name: Steve Evans

Title: Conservation Director

Date: Dec. 19, 2002

Natural Heritage Institute

By: _____

Name: Richard Roos-Collins

Title: Attorney

Date: _____

Southern California Edison Company

By: _____

Name: Russ Krieger

Title: Vice President, Power Production

Date: _____

Kem River No. 3 Hydroelectric Project Settlement Agreement

Friends of the River

By: _____

Name: Steve Evans

Title: _____

Date: _____

Natural Heritage Institute

By: Richard Roos-Collins

Name: Richard Roos-Collins

Title: Attorney

Date: 12/18/02

Southern California Edison Company

By: _____

Name: Russ Krieger

Title: Vice President, Power Production

Date: _____

EXHIBIT A

**Whitewater Recreation Flow Schedule
for the Kern River No. 3 Project Bypass Reach**

SCE shall allow sufficient water to remain in the Kern River below Fairview Dam pursuant to the flow schedule set forth below beginning in April 2003, or the date the FERC license order incorporating the flow schedule is final, whichever comes later. The flow schedule is designed to allow SCE to continuously divert 300 cubic feet per second ("cfs") into the Project powerhouse. However, this 300 cfs does not take priority over the instream flow releases required under Article 405 of the FERC Project license.

This flow schedule shall be discontinued for each day the California Independent System Operator, or its successor organization, declares a Stage II or greater power emergency notice. The flow schedule may be temporarily modified if required by operating emergencies beyond the control of SCE. If the flow schedule is discontinued or modified, SCE shall notify FERC as soon as possible, but no later than ten (10) days after each incident.

Beginning no later than 10 a.m. and ending no earlier than 5 p.m. of each day that whitewater flows are scheduled, SCE shall release the whitewater flows described below into the Project bypass reach.

1. Fridays and Weekends Between April 1st and the Weekend before the Memorial Day Weekend:

Kern River No. 3 Hydroelectric Project Settlement Agreement

- a. If between 1,000 cfs and 1,300 cfs is in the Kern River at Fairview Dam, SCE will release 700 cfs below Fairview Dam.
 - b. If 1,700 cfs or greater is in the Kern River at Fairview Dam, SCE will release 1,400 cfs below Fairview Dam.
2. Daily Between the Weekend Before the Memorial Day Weekend and July 4th:
 - a. If between 1,000 cfs and 1,300 cfs is in the Kern River at Fairview Dam, SCE will release 700 cfs below Fairview Dam.
 - b. If 1,700 cfs or greater is in the Kern River at Fairview Dam, SCE will release 1,400 cfs below Fairview Dam.
3. Weekends After July 4th and Up to July 31st:
 - a. If between 1,000 cfs and 1,300 cfs is in the Kern River at Fairview Dam, SCE will release 700 cfs below Fairview Dam.
 - b. If 1,700 cfs or greater is in the Kern River at Fairview Dam, SCE will release 1,400 cfs below Fairview Dam.

RATIONALE DOCUMENT
FOR
SETTLEMENT AGREEMENT

SOUTHERN CALIFORNIA EDISON COMPANY
KERN RIVER NO. 3 HYDROELECTRIC PROJECT

Purpose

The purpose of this document is to explain the rationale used in developing the attached November 1, 2002 Kern River No. 3 Settlement Agreement ("Agreement") among the Southern California Edison Company ("SCE"), American Whitewater, Friends of the River, and Natural Heritage Institute, jointly referred to as the "Parties". The Agreement settles issues related (i) to the level of flows to remain in the Kern River for whitewater boating (kayaking and rafting) recreation in the Kern River No. 3 Project (Project) diverted reach, and (ii) to the interpretation of the Upper Kern River Fishery Resource Trust Fund governance provisions. The Agreement is a compromise among the Parties and is intended to propose a license condition that will replace the whitewater boating flow article in the Federal Energy Regulatory Commission (FERC) license for the Project. This Rationale Document does not address the Trust Fund governance issue as that Parties do not propose that the Forest Service incorporate that aspect of the Agreement into the conditions prepared for submittal to FERC pursuant to Federal Power Act Section 4(e) ("4(e) Conditions").

Background

The FERC Project license contains article 422, which requires that SCE allow certain whitewater boating flows to remain in the Project diverted reach. Article 422 was submitted to the FERC by the Forest Service Regional Forester as a condition to be included within the Project license pursuant to Federal Power Act Section 4(e). The Parties administratively appealed this whitewater boating 4(e) condition, along with others, to the Chief of the Forest Service. The Chief order the Regional Forester to revise certain of the 4(e) conditions or further support the justification of those 4(e) conditions. Additionally, American Whitewater and Friends of the River filed a Petition at the Ninth Circuit Court of Appeals challenging the FERC license order for the Project. The Parties entered into the Agreement to resolve the issues being contested at the Ninth Circuit and in the Forest Service 4(e) condition administrative process.

Criteria for Agreement

The Parties set out to agree upon a revised whitewater boating schedule that attempted to meet each parties' needs to the extent feasible. The following criteria were developed as appropriate parameters upon which to base an Agreement:

- Maintain a 300 cubic feet per second (cfs) tunnel flow (anti-erosion) at all times;
- Increase whitewater boating days above that in the latest Forest Service 4(e) Condition;
- Minimize lost generation due to whitewater boating flow releases to create cost-effective whitewater boating flows;
- 700 cfs will allow for kayaking in the diverted reach; and
- 1,400 cfs will allow for rafting in the diverted reach.

Development of the Criteria

The criteria above were agreed upon based on the following considerations:

1. **Tunnel Maintenance Flows:** As reflected in the latest Regional Forester whitewater 4(e) condition, a minimum of 300 cfs must be kept within the Project tunnels to avoid damage to the tunnel walls. The Project tunnel walls have a concrete type liner. Regular watering and dewatering of the tunnel creates pressures on the wall liner that causes damage to the liner. The entire tunnel liner cannot be economically replaced. Currently, SCE replaces or patches sections of the tunnel liner as necessary. An SCE study has found that the removal of water from the tunnel for whitewater boating on a regular basis will create greater and more frequent damage to the tunnel liner. Thus, as previously recognized by the Forest Service, a minimum of 300 cfs should be left in the tunnel prior to releasing water for whitewater boating flows.
2. **Whitewater boating interests** believe the current Forest Service and FERC license proposal did not adequately provide for sufficient whitewater boating opportunities in the Project reach. These persons believe a greater emphasis needs to be placed on whitewater recreation to best meet the comprehensive development of the Kern River.
3. **SCE** believes that any recreation enhancements must consider the impact to Project generation, especially during the summer months when SCE's customers historically have consumed the greatest amount of energy. SCE believes that energy consumption, at a low cost, is in the best interests of its customers and that any recreation enhancements must be cost effective.
4. **The whitewater interests**, as represented by American Whitewater and Friends of the River, through the experience of their members and discussions with local commercial and private boaters, believe that a flow in the Project bypass reach of at least 700 cfs is reasonable to allow for kayaking in the bypass reach.
5. **The whitewater interests**, as represented by American Whitewater and Friends of the River, through the experience of their members and discussions

with local commercial and private boaters, believe that a flow in the Project bypass reach of at least 1,400 cfs is necessary to allow for rafting in the bypass reach. Kayakers will continue to be able to recreate in the bypass reach with this higher flow.

American Whitewater, Friends of the River and certain commercial outfitters operating on the Kern River have attempted to identify critical flow thresholds for the bypass reach below Fairview Dam. These thresholds represent their opinion as to the minimum acceptable flows for whitewater recreation in respective watercraft. Flows less than the minimum acceptable flows may result in safety problems due to the shallowness of the river channel and numerous obstructions for safe passage.

Kayaking Flows: The whitewater interests believe the minimum acceptable flow for whitewater kayaking in the bypass reach is estimated to be 700 cfs. Whitewater kayaking occurs in this reach at flows equal to or greater than 700 cfs.

Rafting Flows: The whitewater interests believe the minimum acceptable flow for whitewater rafting on the bypass reach below Fairview Dam is 1400 cfs. At flows less than 1400 cfs the river becomes more difficult to navigate presenting potential safety issues, particularly in the reach from Salmon Creek to Kernville. The section downstream of Salmon Creek is littered with numerous rock-choked sections. To maintain a commercially viable rafting operation, flows need to be equal to or greater than 1400 cfs in the bypass reach.

Development of Whitewater Boating Flow Scenarios

The Parties held a series of discussions in which they explored various potential methods for achieving the criteria above. For example, a series potential whitewater schedules were evaluated to determine how they met the various criteria. The Parties considered various alternative flow schedules, comparing the estimated number of whitewater boating days created and the estimated annual energy loss. Spreadsheets of available boating flows from April 1 through August 15 were developed using a thirteen year period of record. The analysis evaluated the daily river flows at Fairview Dam from 1988 to 2000 to determine the number of available whitewater boating days. This thirteen year period incorporates a full range of wet, normal, and dry water supply scenarios, making it a representative period for comparing the various whitewater boating schedules.

The various boating scenarios considered the existing seven day a week boating scenario in the current Forest Service 4(e) Condition from Memorial Day to the July 4th weekend, as this is the recreation period that is generally accompanied by river runoff capable of achieving boatable flows. The Parties also considered:

- Suspending boating flows during days when the California Independent System Operator declares either a Stage II or a Stage III Emergency. During these emergencies, power to SCE customers would be discontinued for the extent of the emergency. These emergencies are not expected to occur until the hotter part of the year and the latter part of the day. Thus, emergencies are more likely to occur in the latter part of July and the month of August during in the afternoon. Emergencies suspensions are not expected to affect the majority of whitewater boating trips prior to the July 4th weekend and even after that date, are expected to allow for whitewater boating trips to begin in the morning and finish prior to the declaration of an emergency.
- Providing boating flows on Fridays, Saturdays, and Sundays between April 1st and the weekend before Memorial Day. Until the end of May, weekends are the primary days for recreation due to the distance of the Kern River away from major urban centers. The Parties recognized that many persons planning to travel to the Kern River for a whitewater boating trip would attempt to make the trip a "three day weekend". Friday's tend to account for more recreational user days than other weekdays. Thus, the Parties considered adding Fridays before the weekend as days for which whitewater boating flows would be made available. This would result in additional boating day opportunities above that provided by the Forest Service 4(e) conditions.
- Providing boating flows seven days a week during the week before the Memorial Day weekend. The Parties discovered that whitewater boating days tended to be available during the week before the Memorial Day weekend and considered adding additional boating days during that week. The Parties agree that the peak recreational period is between Memorial Day and the 4th of July. The Forest Service 4(e) Condition did not begin mid-week whitewater boating until the week after Memorial Day.
- Providing boating flows on weekends only between July 4th and July 31st. The Parties acknowledged that boating days tended to be less available after July 31st due to the nature of the normal runoff pattern. As the Project does not have water storage, the streamflows available for whitewater boating are subject to the natural hydrograph. Further, the month of August tends to be hotter than other months and energy consumption is frequently at its peak. Therefore, the Parties agreed that whitewater flows during the month would be better served to generate electricity.

Comparison of Scenarios

The Parties compared the number of boating days and the lost generation resulting from the Forest Service 4(e) Condition to other scenarios. Each of the new scenarios attempted to meet the above listed criteria. The Parties created spreadsheets for most scenarios that included actual daily flows recorded at the Project diversion. Formulas

were then added to the spreadsheets to calculate how many days of boating flows would be provided for each scenario, and how much energy would be lost to the Project for each incremental increase in the number of boating days provided by each of the boating flow scenarios. The following were the results:

Scenario	Available Boating Days	Annual Energy Loss (MWh)	Scenario Description
1	20	3,546	April 1 to Aug 15 (weekends) release flows between 700 and 1,100 cfs; with tunnel maintenance flow
2	23	8,070	April 1 to Aug 15 (weekends) (700 - 1,100 cfs); without tunnel maintenance flow
3 USFS 4(e)	29	2,660	Apr 1 to April 15, and July 4 to Aug 15 (weekends) (700 - 1,100 cfs); April 16 to Mem Day (weekends) and Mem Day to July 4 (daily) (1,100 - 50/50 split above 1,100); with tunnel maintenance flows
4	33	2,689	Apr 1 to Mem Day and July 4 to August 15 (weekends) and Mem Day to July 4 (daily) (700 or 1,400 cfs when available); with tunnel maintenance flows
5	38	6,800	Apr 1 to Mem Day and July 4 to August 15 (weekends) and Mem Day to July 4 (daily) (700 - 1,400 cfs, when available); with tunnel maintenance flows
6	38	4,831	Apr 1 to Mem Day and July 4 to August 15 (weekends) and Mem Day to July 4 (daily) (700 and 1,400 cfs, when available 50/50 split above each target flow); with tunnel maintenance flows
7 Preferred	39	3,076	Apr 1 to one week before Mem Day (extended weekends - Fri - Sun), one week before Mem Day to July 4, July 5 to July 31 (weekends) (700 and 1,400 cfs, when available); with tunnel maintenance flows

Preferred Scenario

The Parties recommend that the Forest Service and FERC adopt Scenario 7, which allows for boating opportunities on Fridays from April 1st to the weekend before

the Memorial Day weekend, daily boating opportunities from the week prior to the Memorial Day weekend through July 4th, and weekends between July 4th and July 31st. The Project would be allowed to maintain 300 cfs in the Project tunnel before releasing water into the river for boating opportunities. For the time periods described above, when flows in the Kern River are (i) between 1,000 cfs and 1,699 cfs, then SCE will allow 700 cfs to remain in the Project bypass reach, or (ii) 1,700 cfs or greater, SCE will allow 1,400 cfs to remain in the Project bypass reach. These boating flows have no impact on the fishery instream flow requirements.

Additionally, the proposed whitewater boating flow schedule is less complicated to administer and maintain compliance. The preferred schedule relies on only two trigger points for allowing water to be diverted from the Project tunnel to the bypass reach for whitewater recreation. The Parties recognized that splitting flows over a certain prescribed amount between the bypass reach and the Project tunnel would be much more difficult to administer and offered little additional benefit in terms of whitewater recreation. Moreover, the proposed flow schedule will ensure that whitewater boaters have sufficient water for recreation when the water is available during the prime recreation season.

The Parties also have agreed that should the California Independent System Operator declare a Stage II or III Emergency Notice, then SCE shall no longer be required to allow water in the river for boating opportunities. Finally, the Parties agreed that the whitewater boating flow releases would begin in April 2003, assuming all necessary regulatory approvals are final by that time.

Conclusion

The Agreement meets the objectives of the Parties to provide whitewater boating flow recreation opportunities without jeopardizing the economic viability of the Project or its ability to provide power to the grid during emergency energy shortages. Accordingly, the Parties propose that the Forest Service adopt the whitewater boating flow scenario set forth in the Agreement as a 4(e) Condition for this Project and submit that 4(e) Condition to FERC for inclusion with the Project license.