

8 FERC P 62109 (F.E.R.C.), 1979 WL 19110

\*\*1 Office Director Orders

Kings River Conservation District

Project No. 2741

Order Issuing License (Major)

September 25, 1979

**\*63141** On January 31, 1977, Kings River Conservation District (KRCD) filed an application for a major license under Part I of the Federal Power Act (Act) for the proposed Pine Flat Project No. 2741.<sup>1</sup> The project would be located at the United States Army Corps of Engineers' (Corps) Pine Flat Dam, located on the Kings River in Fresno County, California, and would affect lands of the United States under the Corps' supervision.

Notice of the application has been published in accordance with the Act. The California Department of Fish and Game (CF&G) and Pacific Gas and Electric Company (PG&E) petitioned to intervene. Both were granted intervention.

#### *Project Description*

The Pine Flat Project would be located at the downstream toe of the Corps' Pine Flat Dam.<sup>2</sup> The project would consist of an outdoor-type powerhouse containing three generating units with capacities of 55 megawatts (MW) each, for a total installed capacity of 165 MW. KRCD would make use of the three existing 13.5-foot diameter penstocks that were installed in the Pine Flat Dam when it was constructed in 1954. The project is **\*63142** more fully described in Ordering Paragraph (B), below.

#### *Safety of Structures*

The corps stated in its comments that the powerhouse must be located sufficiently far down-stream from the toe of the dam to prevent undercutting of the dam by the powerhouse foundation excavation. The Corps also stated that there has been a continuing problem with pinhole leaks in the penstock liners. The Corps further reported that the construction of a wall will be necessary between the powerhouse and the spillway to protect the powerhouse from damage during the maximum spillway design discharge. KRCD has met with the Corps on these matters and states that during the final design of the project the Corps will be consulted.

The Commission's staff has, however, examined the preliminary plans for the powerhouse structure for stability and has found it to be safe under maximum hydrostatic loading, which would occur during a maximum spillway discharge of 391,000 cfs. The Commission's staff has also concluded that the proposed structures would be safe and adequate, with proper final design, and construction in accordance with sound engineering practices.

Article 37 of the license requires the KRCD to obtain Corps, approval of the final design plans before construction of the project begins. Article 42 of the license also requires that a copy of the final plans and specifications be filed with the Commission's Regional Engineer in San Francisco, California, before construction commences. Should any changes in the final plans or specifications be necessary to ensure the safety and adequacy of the project, the Director, Office of Electric Power Regulation, may require those changes.

#### *Economic Feasibility*

The average annual energy that would be generated at the power plant is estimated to be 418,920,00 kWh. Staff studies show that the proposed project is economically feasible when compared to the cost of producing equivalent power from the most economical alternative, a coal-fired steam-electric plant. Staff estimates that the annual value of the project's power output

would be about \$7.82 million.<sup>3</sup> When compared with \$4.96 million, the total estimated annual costs to KRCD of the Pine Flat Project, a net benefit of \$2.86 million would result. Accordingly, the proposed project is found to be economically feasible.

#### *Use of Project Power*

**\*\*2** The power to be developed by the project would be sold to the California Department of Water Resources (CDWR). CDWR would use the power to operate the California state water project. The U.S. Department of the Interior (Interior) recommends that the license be conditioned to require that KRCD provide the United States the first option to purchase the power generated by the project, with the Commission to set the rates in cooperation with the Western Area Power Administration, the Bureau of Reclamation, the Corps, and KRCD. In Interior's opinion this scheme would ensure that the United States is receiving just compensation for the private use of a Federal dam.

Interior's proposal will not be accepted. Interior has not recommended Federal development of hydroelectric power at the dam, or suggested any reason why the United States should have first option on project power except to provide for adequate compensation for use of the Corps' dam. The local Kings River water interests, which are represented by KRCD, are paying for 37.5 percent of the construction cost of Pine Flat Dam and Reservoir. Moreover, under the Federal Power Act the statutory mechanism for ensuring adequate compensation to the United States for use of its dams is proper annual charges under Section 10(e) (discussed *infra*).

#### *Fish and Wildlife*

When the project commences operation, fewer fish from Pine Flat Reservoir will pass downstream via the spillway and midlevel sluice gates. Instead, most of the fish that pass downstream will normally pass through the penstocks and turbines and their mortality rates will rise accordingly.

KRCD has entered into a memorandum of agreement with the California Department of Fish and Game (CF&G). According to this agreement, KRCD will conduct studies in cooperation with CF&G to determine if the operation of the project has caused a significant decrease in the number of rainbow trout and white catfish in the reservoir. Should the results of the study show a significant decrease, KRCD has agreed to implement appropriate mitigation or compensation measures.

KRCD has also agreed to conduct population surveys of rainbow trout and white catfish in the Kings River below Pine Flat Dam before and after the project is constructed. Should the studies indicate that construction or operation of the project has had a significant adverse impact on the white catfish and rainbow trout populations below the dam, KRCD has agreed to implement appropriate mitigation or compensation measures.

CF&G stated that the Exhibit S is complete and adequate. The Exhibit S, while not specifying the details of the studies set forth in the memorandum of agreement, states that KRCD would finance an annual stocking program in order to maintain the impacted fish species at pre-project levels. Because the agreement and the Exhibit S are so interrelated, KRCD will be expected as part of its compliance with the approved Exhibit S to adhere to the agreement. Standard Articles 15 and 16 reserve to the Commission authority to require additional studies or reasonable changes in the project or its operation to conserve and protect fish **\*63143** and wildlife resources, on its own motion or that of Interior or CF&G.

**\*\*3** The project's effect on terrestrial wildlife will generally be minor. Potential adverse effects will be eliminated through implementation of mitigation measures. The memorandum of agreement and Exhibit S provide that KRCD will conduct a study to determine any possible adverse impacts of construction activity on raptors. If field investigations uncover any active nests that are in an area of disturbance, measures are to be taken to mitigate disturbance, including alteration of construction schedules during the nesting period. Exhibit S also provides that the transmission lines will be designed to prevent any possible electrocution of raptors.

### *Recreation*

Existing public recreation sites within the project area include the Pine Flat Recreation Area, Choinumni Park, Winston Park, and Avocado Lake Park. These sites are owned and operated by local and state agencies. A number of recreation sites also exist at the Pine Flat Reservoir. These sites are operated jointly by the Corps and the U.S. Forest Service, U.S. Department of Agriculture. KRCD originally did not propose any additional facilities, but noted that the Fresno County Parks and Recreation Department plans to expand existing recreation areas in the vicinity of the project. The Corps and the California Department of Parks and Recreation concurred that no additional recreational facilities would be necessary beyond those referred to in the Exhibit R.

Interior, on the other hand, stated that the Exhibit R was inadequate. Interior contended that the Exhibit R did not adequately consider: (1) mitigation for loss of fishing access immediately below Pine Flat Dam; (2) mitigation for the temporary loss, and possible permanent degradation, of a fishing access site developed by Fresno County; and (3) provisions for recreationists' safety below the powerhouse. Interior believed that the loss of fishing access below the dam should be mitigated by construction of a picnic area on the north bank of the Kings River. Since the receipt of Interior's comments, KRCD has agreed to provide a fishing access site on the Kings River to replace the site that would be lost as a result of the project's construction and operation. With regard to the loss of the Fresno County fishing access site during project construction, KRCD pointed out that, in fact, the site is not yet developed. Moreover, KRCD agrees to conduct construction at this particular site in a manner that will allow public access for fishing. The Commission's staff favors KRCD's proposal to mitigate the loss of fishing access below Pine Flat Dam by providing lands for fishing access elsewhere, as more appropriate than Interior's proposal for an additional picnic area along the river.

KRCD's proposal will be approved, rather than adopting Interior's recommendation. But because that proposal is not set forth in the Exhibit R, Article 33 is included in the license to require inclusion of plans for fishing access on the Kings River, and to include the site within the project boundary. Article 17 of the license reserves the Commission's right to require the license to provide or arrange for reasonable additional recreational facilities at the project if the need should arise.

**\*\*4** In view of Interior's concern for the safety of recreationists, Article 36 has been included in the license to require the installation of safety devices, to the satisfaction of the Commission's authorized representative, to warn the public of fluctuations in flow from the project and to protect the public in its recreational use of project lands and waters.

### *Minimum Flows and Water Quality*

KRCD has obtained a state water quality certificate for the Pine Flat Project, in accordance with Section 401 of the Federal Water Pollution Control Act, [33 U.S.C. 1341](#). KRCD has also agreed with CF&G to release a continuous minimum flow of 25 cubic feet per second. Special Article 35 requires this flow or the natural flow into Pine Flat Reservoir, whichever is less.

Once the project commences operation, water would be released through the penstocks, rather than through the midlevel sluice gates. The difference in the release location would cause water to be withdrawn from the cooler bottom level of Pine Flat Reservoir where dissolved oxygen concentrations are low. Interior and CF&G commented that the California Water Resources Control Board adopted a minimum dissolved oxygen objective of 7.0 mg/1 for the 12-mile reach of the Kings River below the dam. KRCD has entered into agreement to maintain a minimum of 7.0 mg/1 at all times during power operation. Article 34 of this license requires KRCD to monitor the dissolved oxygen content on the Kings River during project operation and to ensure a dissolved oxygen concentration of at least 7.0 mg/1.<sup>4</sup>

### *Cultural Resources*

There are no sites within the project boundary that are listed or declared eligible for listing on the *National Register of Historic Places*. Archeological investigations did, however, identify a Yokut Indian food processing site in the area of the project. Even

though this site was determined not eligible for inclusion on the *National Register* by the California State Historic Preservation Officer, KRCD will take all necessary steps to protect it during construction. Article 43 of the license also requires KRCD to take any necessary steps to protect any currently unknown archeological resources that may be uncovered during construction of the project or by any future construction that may be permitted at the project.

#### *Other Exhibits*

KRCD's Exhibit K is approved to the extent \*63144 that it generally shows the project boundary and location of project works. Because Article 33 requires the license to include additional lands in the project for recreational purposes, Article 44 requires KRCD to file a revised Exhibit K map showing this change. Article 44 also requires KRCD to file within one year of completion of project construction 'as built' exhibits K, L, and M, to show and describe the project as finally constructed and located.

#### *Other Environmental Concerns*

Noise and human activities occurring during construction would have minor, temporary adverse effects on wildlife that inhabit or frequent the project areas. No threatened or endangered plant or animal species would be affected at the development, however, and the impacts will essentially cease with completion of construction. There would be no significant long-term effects on land use or the environment in general, because the project reservoir already exists.

\*\*5 The proposed project would provide short-term employment opportunities for construction workers. Most of the construction personnel would be from the local or regional labor force, and would commute daily to work. Consequently, no significant increase in the area's population is expected. There would, however, probably be a minor temporary increase in demands on public facilities and services in the immediate area.

Based upon the record, including agency comments and the staff's independent analysis, it is found that the environmental impacts associated with development of this project would be minimal and of short duration. Issuance of a license for this project is not therefore a major Federal action significantly affecting the quality of the human environment.

#### *Comprehensive Development*

The Corp's Pine Flat Dam is operated to provide flood control for about 80,000 acres of agricultural land in the Kings River service area, and to reduce flood damages on about 260,000 acres of cropland in the Tulare Lake area. The dam also stores water for irrigation, recreational opportunities, and re-regulation of releases from upstream power plants.

The Pine Flat project would develop the head created by the Pine Flat Dam and Reservoir. The project would utilize flow releases for irrigation which are not now being used to generate power. The operation of the project would not alter the existing releases from the reservoir. Interior stated that the proposed project would not affect either the use of the Pine Flat reservoir for irrigation purposes or the existing contracts executed by the Bureau of Reclamation in 1963.

The project would utilize a non-polluting, renewable resource to produce annually an average of 418.92 million kWh of electric energy. Equivalent fossil fueled generation of electric energy would consume approximately 690,000 barrels of oil or about 194,000 tons of coal per year.

Under the preliminary permit issued for Project No. 2741, KRCD had planned to investigate the feasibility of constructing an additional dam downstream from the Pine Flat Dam. The additional development would have re-regulated discharges from the Pine Flat Dam and provided an additional 24 MW of capacity. KRCD has not provided an analysis of the feasibility of that additional development. The Commission's staff reports that development of an afterbay dam to re-regulate Pine Flat discharges and increase the project's dependable capacity may be economically feasible. Article 44 of this license requires a study of the

economic feasibility of this additional development to be filed within six months. It also reserves to the Commission authority to require development of a re-regulating afterbay dam if economically sound and in the public interest.

Project No. 2741 is compatible with all other water resource projects in the region, both existing and proposed. Development of the project would permit utilization of a renewable resource to provide substantial power benefits. It is found that, under the terms of this license, the project is best adapted to the comprehensive development of the Kings River.

#### *License Term*

**\*\*6** KRCD has requested a 50-year license. Interior recommended that the license be limited to a shorter period of time and in no case to more than 25 years, with periodic reevaluation. In support of its position, Interior cites the Commission's order on rehearing for Pacific Gas and Electric Company's Pit 1 Project No. 2687.<sup>5</sup> That order is not apposite. There, the project had been constructed long before the license was issued. The Commission noted that the licensee had already had the benefit of unlicensed operation for nearly 50 years. In this proceeding, a new, unconstructed hydroelectric project is being licensed. In light of the extent of development, involving installation of 165 MW of new capacity, issuance of a 50-year license would be consistent with Commission practice and established policy.<sup>6</sup>

#### *Annual Charges*

Section 10(e) of the Act<sup>7</sup> requires the Commission to fix a reasonable annual charge to be paid to the United States for the use of a government dam. The Commission has had occasion to exercise this authority many times in the past. The method used historically to arrive at a charge has been the 'sharing of the net benefits method.' As the Commission has applied it, this method involves calculating the difference between the cost to the licensee of developing power at the proposed hydroelectric project and the hypothetical cost to the licensee of obtaining an equivalent amount of power \*63145 from the least expensive alternative. This difference is the net benefit to be derived from developing the power potential of the government dam. Half of this figure is then assessed as the annual charge for use of the government dam, thus dividing the value of the net benefit equally between the licensee and the United States.

This method results in different annual charges depending on whether the licensee is a tax-free public entity or a private entity that does pay taxes.<sup>8</sup> In two cases involving the City of Vanceburg, Kentucky,<sup>9</sup> the Commission found reasonable this method that computes annual charges on the basis of a public entity's own costs, reflecting its tax exempt status, rather than on the basis of what the licensee's costs would be if it were not tax exempt. The Commission's method in those two cases was upheld in *City of Vanceburg v. F.E.R.C.*, 571 F.2d 630 (D.C. Cir. 1977), *cert. denied*, 439 U.S. 818, 99 S. Ct. 79 (1978).

As noted above in discussing project feasibility, the annual cost to KRCD of the proposed project is estimated to be about \$4.96 million,<sup>10</sup> while the annual cost of producing equivalent power from the most economical alternative is estimated to be \$7.82 million<sup>11</sup>. Thus, under the current Commission methodology the annual net benefit of the project would be \$2.86 million and the reasonable annual charge for the use of the Corps' Pine Flat Dam would be \$1.43 million.

Fixed Charges (9.72% a of 1980 Capital Cost)	\$4,216,800
O & M Expense	\$491,700
A & G Expense	\$ 191,800
FERC Part I Administrative Charges	\$ 26,000
Fixed Charges of Transmission Line b	\$ 33,000

Total Estimated Annual Cost

\$4,959,300

The Commission's staff is currently reassessing comprehensively the subject of suitable annual charges for use of government dams, however, for the purpose of making recommendations to the Commission for any appropriate changes in its policies and regulations. Consequently, a final determination on the annual charge, for the use of the Pine Flat Dam will be reserved.<sup>12</sup> Article 40 provides for subsequent determination of that charge, which will be not more than \$1.43 million. Thus, the project need not be delayed pending staff's reassessment for recommendations to the Commission. Consistent with the Commission's orders licensing the City of Vanceburg's Project Nos. 2245 and 2614, the annual charge for the use of the Pine Flat Dam will be assessed proportionately beginning on the effective dates of commercial operation of the three project generating units. Because of the magnitude of the potential annual charge assessment, Article 45 provides for establishment of a reserve, if the commercial operation of the project begins before final determination of the annual charge for the use of the Pine Flat Dam.

#### *Reimbursement for Penstocks*

**\*\*7** The Corps and Interior also recommended that KRCD be required to reimburse the United States for the cost of the three existing penstocks that the project will use. The original cost of the penstocks has been included in KRCD's Exhibit N and, together with the cost of repairing them, in the staff's estimates of project costs used in its studies of economic feasibility and annual value of net power benefits. Pursuant to Article 41, KRCD must reimburse the United States for the original cost of the penstocks. Interior argues that KRCD should also pay interest on that cost from 1954 to present and KRCD argues that it should pay no interest and only the original cost less depreciation. It is concluded, however, that original cost without interest or depreciation is reasonable, inasmuch as KRCD has had no benefit from the penstocks to date and the penstocks do require repairs; and, on the other hand, the cost to KRCD of constructing penstocks now would be significantly greater than the original cost of the existing penstocks.

#### *It is ordered:*

(A) This license is issued under Part I of the Federal Power Act (Act) to the Kings River Conservation District of Fresno, California, for a fifty-year period effective the first day of the month in which this license is issued, for the construction, operation, and maintenance of the Pine Flat Project No. 2741, located in Fresno County, on the Kings River, and affecting the Pine Flat Dam of the United States and appurtenant lands administered by the U.S. Army Corps of Engineers. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the Regulations the Commission issues under the provisions of the Act.

(B) Project No. 2741 consists of:

(1) all lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary, the project areas and boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as:

<b>Exhibit</b>	<b>FERC No. 2741-</b>	<b>Showing</b>
J	4	Location Map
K	5	Site Plan

(2) Project works consisting of (a) three penstock extensions from the three 13.5-foot diameter penstocks in Pine Flat Dam to the powerhouse; (b) an outdoor-type powerhouse at the toe of the dam, with three Francis turbines, each coupled to a generator rated at 55 MW; (c) three generator leads and a step-up transformer bank at the powerhouse, consisting of three 70 MVA single-phase units; and (d) all appurtenant facilities.

The location, nature, and character of these project works are more specifically shown and described by the exhibits cited above and by certain other exhibits which also form part of the application for license and which are designated and described as:

Exhibit L	FERC No. 2741-	Showing
Sheet 1	6	Cross Section and Elevation
Sheet 2	7	Plans and Longitudinal Section
Exhibit M-	containing general specifications of equipment and consisting of 2 pages filed on January 31, 1977, and revised January 31, 1978.	
Exhibit R-	consisting of 24 pages of text and an Exhibit R map, FERC No. 2741-8, filed on January 31, 1977.	
Exhibit S-	consisting of 66 pages filed on January 31, 1977.	

(3) All of the structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located on the project area, all portable property that may be employed in connection with the project, whether located on or off the project area, as approved by the Commission, and all riparian or other rights necessary or appropriate in the operation or maintenance of the project.

**\*\*8** (C) Exhibits K, L, and M, designated in Ordering Paragraph (B) above, are approved and made a part of the license only to the extent that they show the basic location and layout of the project and its works and generally describe its mechanical and electrical equipment and appurtenances. Exhibits J, R, and S, designated in Ordering Paragraph (B) above, are approved and made a part of the license.

(D) This license is also subject to the terms and conditions designated Articles 1 through 32 in Form L-2 (revised October 1975), entitled 'Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States,' attached to (See 54 FPC 1808) and made a part of this license. This license is also subject to the following special conditions set forth as additional articles:

*Article 33.* The Licensee shall consult with the California Department of Fish and Game and the Heritage Conservation and Recreation Service of the U.S. Department of the Interior and, within one year from the date of issuance of this license, shall file for approval an amendment to the Exhibit R which shall include, but need not be limited to, a plan for development of a fishing access site on the Kings River, downstream from Pine Flat Dam, to be included within the project boundary.

*Article 34.* Upon commencement of commercial operation of the project, the Licensee shall install and operate continuously dissolved oxygen monitoring equipment in the Kings River at the Pine Flat Road bridge. The Licensee shall maintain records of the monitoring data and shall file with the California Department of Fish and Game and the Commission an annual summary at the end of each year after the commencement of commercial operation, and summaries for other intervals when requested, which shall include observed daily minimum, maximum, and average dissolved oxygen concentrations. If the results of the monitoring indicate that any change in project works or operation is necessary to maintain a minimum dissolved oxygen concentration of 7.0 mg/l, the Licensee shall promptly file for approval its proposal for the change.

*Article 35.* Pending further order by the Commission, on its own motion or at the request of others, the Licensee shall discharge from the Pine Flat Dam a continuous minimum flow of 25 cfs or a flow equal to the natural inflow to the Pine Flat Reservoir, whichever is less, for the purpose of protecting fish and wildlife resources. These flows may be modified temporarily: (1)

during and to the extent required by operating emergencies beyond the control of the Licensee; and (2) for fishery management purposes, upon mutual agreement between the Licensee and the California Department of Fish and Game.

*Article 36.* The Licensee shall, to the satisfaction of the Commission's authorized representative, install and operate any signs, lights, sirens, or other safety devices that may reasonably be needed to warn the public of fluctuations in flow from the project and to protect the public in its recreational use of project lands and waters.

**\*\*9** *Article 37.* The Licensee shall, prior to initiation of construction, obtain approval from the U.S. Army Corps of Engineers, Sacramento District, Sacramento, California, of the final design, construction plans, specifications, and operating plans for the Pine Flat Project.

*Article 38.* The Licensee shall have no claim under this license against the United States arising from the effect of any changes made in the pool levels of the Pine Flat Reservoir.

*Article 39.* The Licensee shall commence construction of the project works within two years from the effective date of this license and in good faith and with due diligence shall prosecute and complete construction of the project works within four years from the effective date of this license.

*Article 40.* The Licensee shall pay the United States the following annual charges, to be assessed according to this schedule: (a) one-third of each charge effective from the date when the first generating unit begins commercial operation; (b) two-thirds of each charge effective from the date when the second generating unit begins commercial operation; (c) the entire amount of each charge effective from the date when the third generating unit begins commercial operation:

(1) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined **\*63147** by the Commission in accordance with its Regulations in effect from time to time. The total authorized installed capacity for that purpose is 220,000 horsepower.

(2) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, a reasonable annual charge as determined by the Commission in accordance with its Regulations in effect from time to time. The acreage of United States lands for that purpose will be determined after submission of 'as built' exhibits for approval.

(3) For the purpose of recompensing the United States for the use of the Pine Flat Dam, an amount that shall be determined later and that shall not exceed \$1,430,000, subject to possible adjustment at the intervals specified in Section 10(e) of the Act.

*Article 41.* The Licensee shall reimburse the United States for all construction costs incurred by the United States for the specific and sole purpose of accommodating the installation of power facilities at the Pine Flat Dam. This reimbursement is in addition to the annual charge specified in paragraph (3) of Article 40. Arrangements for payment shall be made with the Chief of Engineers, Department of the Army, at the time of commencement of construction of the project.

*Article 42.* The Licensee shall file with the Commission's Regional Engineer in San Francisco, California, with a copy to the Director, Office of Electric Power Regulation, one copy each of the final design and construction plans and specifications prior to the start of construction. The Director, Office of Electric Power Regulation, may require any changes in those plans and specifications necessary to ensure a safe and adequate project.

**\*\*10** *Article 43.* The Licensee shall continue to consult and cooperate with the California State Historic Preservation Officer (SHPO) prior to any construction or development of any project works or other facilities at the project. If any previously unrecorded archeological sites are discovered during the course of any construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the

protection of significant archeological resources. The Licensee shall provide funds in a reasonable amount for any mitigative measures that may be necessary. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any archeological work found necessary.

*Article 44.* Within one year from the issuance date of this license, the Licensee shall prepare and file with the Commission a study of the economic feasibility of constructing an afterbay dam that would re-regulate project discharges for the purpose of increasing the dependable power capacity of the project, taking into account, to the extent reasonable, all benefits that would be derived from the re-regulating dam, including any contribution to the conservation of non-renewable energy resources. If the study shows the re-regulating dam to be economically feasible, the Licensee shall simultaneously file a schedule for filing an application to amend its license to include the additional project works. The Commission reserves the right to require the Licensee to develop such a re-regulating dam, to the extent economically feasible and in the public interest.

*Article 45.* If the Commission has not finally determined the amount of the annual charge for the use of the Pine Flat Dam by the time when the first generating unit begins commercial operation, the Licensee shall establish and shall maintain, until the Commission has finally determined that amount and the accumulated annual charges have been paid, a reserve sufficient to meet its potential liability for the accumulated annual charges for the use of the Pine Flat Dam.

(E) This order is final unless within 30 days from the date of its issuance a petition appealing it to the Commission is filed, as provided in 1.7(d) of the Commission's Regulations, 18 CFR 1.7(d) as amended in Docket No. RM79-59 (July 23, 1979) and Docket No. RM78-19 (Aug. 14, 1978). The Licensee's failure to file such a petition shall constitute acceptance of the license for Project No. 2741. The filing of a petition appealing this order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. In acknowledgment of acceptance of the license and its terms and conditions, the license shall be signed for the Licensee and returned to the Commission within 60 days from the date this order is issued.

**\*\*11** WILLIAM W. LINDSAY, *Director, Office of Electric Power Regulation.*

Federal Energy Regulatory Commission

#### Footnotes

- 1 Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under Section 3.5(g) of the Commission's Regulations, 18 CFR 3.5(g), as amended in Docket No. RM78-19 (August 14, 1978), and Docket No. 79-59 (July 23, 1979), *FERC Statutes and Regulations* P30,016, P30,068.
- 2 The Pine Flat Dam was completed by the Corps in 1954 at a cost of approximately \$39,000,000. The dam is a concrete gravity structure 429 feet high and 1,820 feet long. The dam was constructed to provide irrigation and flood control.
- 3 This analysis assumes the proposed plant would have no capacity value.
- 4 Interior noted that the future dissolved oxygen goal for this reach of the river is 9.0 mg/l. Articles 9, 12, and 15 of this license reserve sufficient authority for the Commission to require KRCD to meet this higher dissolved oxygen level in the future, if necessary.
- 5 Pacific Gas and Electric Co., Project No. 2687, Order on Rehearing, [45 FPC 28 \(1971\)](#).
- 6 See, e.g., City and Borough of Sitka, Alaska, Project No. 2818, Order Issuing Major License (issued April 5, 1979, [7 FERC P61,021](#)).
- 7 [16 U.S.C. 803\(e\)](#).
- 8 The difference in tax status affects not only the tax expenses of the public and non-public licensees' hydroelectric developments and hypothetical alternative power sources in these calculations, but also their respective costs of money.
- 9 See Order Issuing License (Major), Cannelton Project No. 2245 (issued Mar. 29, 1976), Order on Rehearing (issued June 21, 1976) (reh. denied), [55 FPC 1432, 2994](#); and Order Issuing License (Major) and Dismissing Application for Preliminary Permit, Greenup Project No. 2614 (issued Mar. 29, 1976), Order on Rehearing (issued June 21, 1976) (reh. denied), [55 FPC 1460, 3000](#).
- 10 *Total Estimated Annual Cost of Pine Flat Project*

a Fixed Charge Rate under Public Financing: 9.00% Cost of Money, 0.12% Depreciation, 0.40% Interim Replacements, 0.20% Insurance = Total Fixed Charge Rate 9.72%.

b Primary Transmission Line to be licensed as Project No. 2876.

11 Value of project output based on estimated variable cost of coal-fired steam plant energy is 18.66 mills/k Wh.

12 For the Pine Flat Project, Interior proposed that the Commission consider three alternative methods is determining this annual charge, one of which was the sharing of the net benefits method. The other two methods would either have the U.S. share equally in the 'net profit' from the project or allocate the investment cost of the joint-use facilities to power and to each of the other project purposes at Pine Flat Dam. The Corps did not recommend any particular method for setting this annual charge. KRCD urged that the annual charge take into account the fact that the ultimate burden of the charge would rest upon the California Department of Water Resources, which would purchase project power to pump water for the State Water Project, 'a public purpose and benefit. ' These matters will be considered during the review of the general question of annual charges for use of government dams and in determining the specific final annual charge for the use of the Pine Flat Dam by Project No. 2741. KRCD also requests the Commission to take into account the payments made to the United States by local Kings River water interest for the cost of the Pine Flat Dam. KRCD states that these payments are made in accordance with water storage contracts and would eventually be 37.5 percent of the cost of constructing the dam and reservoir, or \$14.25 million, of which \$11 million have already been paid When and how this 37.5 percent payment should be taken into account will be considered in finally determining the proper annual charge.

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