

21 FERC P 62551 (F.E.R.C.), 1982 WL 39879

**1 Office Director Orders

Frontier Land and Power

Project No. **6120**-000
Order Issuing **License** (Minor)
(Issued December 29, 1982)

***63832** Lawrence R. Anderson, Director, Office of Electric Power Regulation.

Frontier Land and Power¹ has filed an application for **license** under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Camp Creek Project No. **6120**.² The project would be located on Camp Creek in Butte County, California, and would occupy lands of the United States within the Plumas National Forest.

Notice of the application has been published and comments have been received from interested Federal, State, and local agencies. No protests or petitions to intervene have been received, and none of the agencies objected to issuance of the **license**.

Project Description

The Camp Creek Project would consist of a proposed 4-foot-high diversion structure, a pond with negligible storage capacity, a 400-foot-long, 34-inch-diameter penstock and three 16-inch-diameter, 800-foot-long penstocks, a powerhouse with a total rated capacity of 990 kW, a 600-foot-long transmission line, and appurtenant facilities.

A more detailed project description is contained in Ordering Paragraph (B).

Safety and Adequacy

Staff has analyzed the project and has determined that the project structures will be safe if constructed in accordance with sound engineering practices. The diversion structure does not impound a significant amount of water and its failure would not endanger downstream property or human life. It is concluded that the project, under the conditions of this **license**, will be safe and adequate.

Comprehensive Development and Economic Feasibility

The proposed project is not in conflict with any planned development and its proposed operation would be best adapted to the comprehensive development of Camp Creek upon compliance with the terms of the **license**. Staff has determined that the proposed project is economically feasible.³

Environmental Considerations

The California Department of Fish and Game (DFG) recommended that any **license** issued for the Camp Creek Project be conditioned to include: a release of a minimum flow of 2 cubic feet per second (cfs) from the diversion structure; installation of a fish screen on the intake structure; and implementation of other general mitigative measures for protection of fish and wildlife resources during construction and operation of the proposed project. The Applicant has agreed to release a minimum flow of 2 cfs, to install a fish screen, and to implement the measures recommended by DFG. Therefore, Article 27 requires the Licensee to maintain a continuous minimum flow of 2 cfs or the inflow to the diversion structure, whichever is less. Also, Article 28, included in the **license**, requires the Licensee to install fish screens and to implement other mitigative measures agreed upon with DFG.⁴

No federally-listed threatened or endangered species are known to occur in the area.

The California State Historic Preservation Officer commented that the project would have no effect on known cultural resource sites, but that project construction should be stopped if new sites are uncovered, and appropriate mitigative measures should be taken. In accordance with standard Commission practice⁵ Article 29 requires such action by the Licensee and ensures the continuing protection of cultural resources.

****2** On the basis of the record, including agency comments and staff's independent analysis, it is determined that issuance of a **license** for this project, as conditioned, is not a major Federal action significantly affecting the quality of the human environment.

***63833** *It is ordered that:*

(A) This **license** is issued to Frontier Land and Power, (Licensee), under Part I of the Federal Power Act (Act), for a period of 50 years, effective the first day of the month in which this order is issued, for the construction, operation and maintenance of the Camp Creek Project No. **6120**, located in Butte County, California, and occupying lands of the United States within the Plumas National Forest. 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 which the Commission issues under the provisions of the Act.

(B) The Camp Creek Project No. **6120** 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 area and boundary are shown and described by certain exhibits that form part of the application for **license** and that are designated and described as:

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(2) The project consisting of: (1) a 4-foot-high diversion structure; (2) a 34-inch-diameter intake pipe diverting water from a natural pool of water at the base of a 40-foot-high waterfall; (3) a fish screen; (4) a 34-inch-diameter, 400-foot-long penstock; (5) three 16-inch-diameter, 800-foot-long penstocks; (6) a powerhouse to contain three identical impulse-type, turbine-generating units with a total rated capacity of 990 kW; (7) a concrete tailrace; (8) a 600-foot-long, 12-kV transmission line interconnecting with an existing PG&E transmission line; and (9) appurtenant facilities.

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

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(C) Exhibits F and G designated in Ordering Paragraph (B) above, are approved and made a part of the **license**, only to the extent that they show the general location and nature of the project works.

(D) The section of Exhibit A entitled "Powerplant and Transmission Lines" is approved and made a part of the **license**.

(E) Pursuant to Section 10(i) of the Act, it is in the public interest to waive the following Sections of Part I of the Act, and they are excluded from the **license**:

Section 4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the **license** of terms and conditions of the Act that are waived here; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 20; and 22.

****3** (F) This **license** is also subject to Articles 1 through 26 set forth in Form L-17, (revised October, 1975), entitled "Terms and Conditions of **License** for Unconstructed Minor Project Affecting Lands of the United States", attached to (reported at 54 FPC 1896) and made a part of this **license**. The **license** is also subject to the following additional articles:

Article 27. Licensee shall discharge from the Camp Creek Project diversion structure, a continuous minimum flow of 2 cubic feet per second or the inflow to the diversion structure, whichever is less, for the protection and enhancement of aquatic

resources in Camp Creek. These flows may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods for fishery management purposes upon mutual agreement between the Licensee and the California Department of Fish and Game.

Article 28. Licensee shall develop and install, in consultation with the California Department of Fish and Game, an appropriate fish screen for the project intake structure, and implement other mitigative measures, as mutually agreed upon with the California Department of Fish and Game, for the protection of fish and wildlife resources in the area.

Article 29. Should previously unrecorded archeological resources be discovered during the course of construction or development of any project works or other facilities at the *63834 project, the Licensee shall halt construction activity in the vicinity of the discoveries, consult with a qualified archeologist to determine the significance of the sites, and cooperate with the California State Historic Preservation Officer to develop a mitigation plan for protection of or recovery of significant archeological resources. If the Licensee and the California State Historic Preservation Officer cannot agree on the amount of money to be expended on archeological work related to such discoveries, the Commission reserves the right to require the Licensee to conduct, at Licensee's own expense, any such work found necessary.

Article 30. The Licensee shall, within six months after completion of construction, file for approval in accordance with the Commission's rules and regulations, revised Exhibits F and G drawings, showing the project as-built.

Article 31. The Licensee shall commence construction of the project within two years from the effective date of the **license** and shall thereafter in good faith and with due diligence prosecute such construction and shall complete construction of such project works within three years from the starting date of construction.

Article 32. The Licensee shall pay the United States the following annual charges:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 1,320 horsepower.

**4 (b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 120 acres of its lands, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 33. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health

and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

****5 *63835** (c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

****6** (e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the Licensee shall consult with Federal and State fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or F drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, *63836 and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or F drawings would be filed for approval for other purposes.

Article 34. The Licensee shall continue to consult and cooperate with appropriate Federal, State and other natural resource agencies for the protection and development of the environmental resources and values of the project area. The Commission reserves the right to require changes in project works or operations that may be necessary to protect and enhance those resources and values.

(g) Failure of the Licensee to file an application for rehearing shall constitute acceptance of this **license**. In acknowledgment of acceptance of this **license**, the **license** shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Federal Energy Regulatory Commission

Footnotes

- ¹ The application was originally filed by McDowell Forest Products, Inc. which filed a request on October 12, 1982 to change its name to Frontier Land and Power.
- ² Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R §375.308 (1982). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R 385.1902, *FERC Statutes and Regulations* P 29,052, 47 Fed. Reg. 19014 (1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.
- ³ The proposed project, with its average annual generation of 4,478 MWh, would utilize a renewable resource that would save the equivalent of approximately 7,400 barrels of oil or 2,100 tons of coal.
- ⁴ The California Regional Water Quality Control Board has waived water quality certification for the project, in accordance with Section 401 of the Federal Water Pollution Control Act.
- ⁵ See *S.D. Warren*, Project No. 2897, Order Denying Rehearing (10 FERC P 61,153).

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