



SOUTHERN CALIFORNIA  
**EDISON**

An EDISON INTERNATIONAL Company

ORIGINAL

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REGULATORY COMMISSION

VIA UNITED PARCEL SERVICE

Ms. Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Subject: Offer of Settlement;  
Lundy Hydroelectric Project (No. 1390)

Dear Secretary Salas:

Pursuant to the Federal Energy Regulatory Commission (Commission) regulations at 18 C.F.R. §385.602, Southern California Edison Company (SCE) submits the enclosed Offer of Settlement regarding the SCE Lundy Hydroelectric Project (FERC No. 1390). The Offer of Settlement consists of the January, 2005 Settlement Agreement and its Explanatory Statement, both transmitted with this letter. SCE is filing this Offer of Settlement on behalf of itself and the other signatories to the Lundy Hydroelectric Project Settlement Agreement: United States Department of Agriculture, Forest Service, the United States Department of the Interior, Bureau of Land Management, the California Department of Fish and Game, American Rivers, California Trout, and the Mono Lake Committee. If the Commission accepts the Offer of Settlement, without material modification, then all of the pending requests for rehearing in this proceeding would be withdrawn.

The Offer of Settlement was developed after over three years of discussions, meetings, studies, and negotiations among the signatories and other persons. This Offer of Settlement is similar to and supercedes those draft settlement agreements submitted to the Commission on August 9, 2004 and October 21, 2004. The Offer of Settlement also benefits from the technical workshop held by the Commission staff on October 25, 2004, a public forum sponsored by the Forest Service on August 30, 2004, and numerous public comments submitted to the signatories by interested stakeholders. Additionally, enclosed with the hardcopy submittal to the Commission is a compact disc containing the models referenced in the Explanatory Statement, flow monitoring data, and a watershed assessment. Although the signatories believe that the Offer of Settlement is complete as filed, upon request, the signatories would be pleased to transmit to the Commission any of the other documents referenced in the Explanatory Statement.



The signatories are confident that the Commission will find the Offer of Settlement reasonable, supported by sound science, consistent with the Federal Power Act, and an appropriate resolution to the various outstanding requests for rehearing currently pending at the Commission regarding the Lundy Hydroelectric Project. Therefore, the signatories jointly, respectfully request that the Commission adopt in whole, without material modification, this Offer of Settlement.

Please contact me if you have any questions with regard to the Offer of Settlement.

Sincerely,

A handwritten signature in black ink, appearing to read "Nino J. Mascolo", with a stylized, flowing script.

Nino J. Mascolo

cc: Service List  
Offer of Settlement Signatories

NJM:yt:LW050100022.doc

Attachments



**SOUTHERN CALIFORNIA EDISON COMPANY**

**LUNDY HYDROELECTRIC PROJECT**

**FERC Project No. 1390**

**LUNDY HYDROELECTRIC PROJECT SETTLEMENT AGREEMENT**  
**For Submission to the Federal Energy Regulatory Commission**

**By and Among**  
**Southern California Edison Company**  
**United States Department of Agriculture, Forest Service**  
**United States Department of the Interior, Bureau of Land Management**  
**California Department of Fish and Game**  
**Mono Lake Committee**  
**California Trout**  
**American Rivers**

**January 2004**



## **TABLE OF CONTENTS**

<b>Section</b>	<b>Page</b>
<b>1.    <u>Introduction</u></b>	
1.1   Parties	1
1.2   Recitals	1
1.3   Effective Date of Settlement	2
1.4   Term of Settlement	2
1.5   Definitions	3
<b>2.    <u>Purpose of Settlement</u></b>	
2.1   Purpose	3
2.2   Entire Agreement	3
2.3   Reasonable and Appropriate Resolution of Issues	3
2.4   Unresolved Subjects	4
2.5   Withdrawal of Appeals and Rehearing Requests	4
2.6   Agreement Not to Litigate	4
2.7   No Precedent for Other Proceedings	4
2.8   Compliance with Legal Responsibilities	4
2.9   Reservation of Claims, Rights, and Responsibilities	4
2.10   ESA Responsibility Not Affected	5
<b>3.    <u>Use of Settlement in Amended Project License and Section 4(e) Conditions</u></b>	
3.1   Measures Recommended to be Included in Lundy Project License	5
3.1.1   Appendix A Conditions	5
3.1.2   Article 414	5
3.2   Measures Recommended to be Included in Amended 4(e) Conditions	5
3.3   License Articles	6
3.4   Explanatory Statement	6
3.5   Comment Period on Offer of Settlement	6
3.6   Joint Analysis for Mill Creek Return Water Conveyance Facility	6
3.6.1   SCE Choice of Conveyance Facility	6
3.6.2   Conveyance Facility Analysis	6
3.6.3   Water Rights Settlement	7
3.6.4   Alternative Conveyance Facility	7
3.6.5   Obtaining Incremental Funds	7



## **TABLE OF CONTENTS**

<b>Section</b>	<b>Page</b>
3.6.6 Funding Construction of the Conveyance Facility	8
3.6.7 Incremental Cost Dispute Resolution	8
3.6.8 Request to Include Funds in SCE Rates	9
3.7 Deer Creek Monitoring and Flows	9
 <b>4. <u>Implementation of Settlement</u></b>	
4.1 Support of Settlement	9
4.2 Support for Issuance of Amended Project License	9
4.3 Amended Project License or Amended 4(e) Conditions Inconsistent with this Settlement	10
4.3.1 Amended Project License	10
4.3.2 Amended 4(e) Conditions	10
4.4 Appeal or Judicial Review of Amended Project License or Amended 4(e) Conditions Inconsistent with this Settlement	10
4.4.1 Appeal to FERC	10
4.4.2 Judicial Review of USFS 4(e) Conditions	11
4.5 Cooperation Among Parties	11
4.5.1 Responsibility for Costs	12
4.5.2 SCE Solely Responsible for Operations of Project	12
4.5.3 Availability of Funds	12
4.5.4 USFS Participation in Settlement	12
4.6 Implementation Schedule	12
4.7 Reopener or Further Amendment of Amended Project License	13
4.7.1 Reopener	13
4.7.2 Amendment	13
4.8 Amendment of Settlement	13
4.9 Dispute Resolution	13
4.9.1 General	13
4.9.2 ADR Procedures	14
4.9.3 Enforcement of Settlement After Dispute Resolution	14
4.10 Withdrawal from Settlement	15
4.10.1 Withdrawal of a Party from Settlement	15
4.10.2 Withdrawal of SCE from Settlement	15
4.10.3 Method of Withdrawal	15
4.10.4 Continuity After Withdrawal	15



## **TABLE OF CONTENTS**

<b>Section</b>	<b>Page</b>
4.11 Termination of Settlement	15
<b>5. <u>General Provisions</u></b>	
5.1 Non-Severable Terms of Settlement	16
5.2 No Third Party Beneficiaries	16
5.3 Successors and Assigns	16
5.4 Failure to Perform Due to Force Majeure	16
5.5 Governing Law	16
5.6 Elected Officials Not to Benefit	17
5.7 No Partnership	17
5.8 Reference to Regulations	17
5.9 Notice	17
5.10 Section Titles for Convenience Only	17
5.11 No Other Commitments and No Precedent	17
5.12 Settlement Document Integration	17
<b>6. <u>Execution of Settlement</u></b>	
6.1 Signatory Authority	18
6.2 Signing in Counterparts	18
 Appendix A Lundy Hydroelectric Project Settlement Agreement, Proposed Revised License Conditions	 A-1



**FERC Project No. 1390**

**LUNDY HYDROELECTRIC PROJECT**

**SETTLEMENT AGREEMENT**

**1. Introduction**

1.1 **Parties.** This Settlement Agreement ("Settlement") is made and entered into by and among Southern California Edison Company ("SCE" or "Licensee"), the United States Department of Agriculture Forest Service ("USFS"), the United States Department of the Interior Bureau of Land Management ("BLM"), the California Department of Fish and Game ("CDFG"), American Rivers ("AR"), California Trout ("CT"), and Mono Lake Committee ("MLC"). Each entity is referred to individually as a "Party" and collectively as the "Parties." The Settlement is intended to be consistent with the Federal Energy Regulatory Commission ("FERC") settlement regulation at 18 CFR § 385.602.

The Parties to this Settlement agree as follows:

**1.2 Recitals**

1.2.1 On December 1, 1981, SCE filed with the Federal Energy Regulatory Commission ("FERC" or "Commission"), an application for a new license ("New Project License") for the Lundy Hydroelectric Project, FERC Project No. 1390 ("Lundy Project"), located on Mill and Wilson Creeks in the Mono County, California.

1.2.2 The Federal Energy Regulatory Commission ("FERC") issued an Order Issuing New License ("Licensing Order") to SCE for the Lundy Project on March 3, 1999. The USFS filed a Motion for Late Intervention and a Request for Rehearing of the Licensing Order by letter dated April 1, 1999. SCE filed an opposition to the USFS Request for Rehearing. On April 30, 1999, FERC granted the USFS Motion to Intervene. SCE filed a Request for Rehearing of the FERC order granting the USFS Motion to Intervene. Both Requests for Rehearing are still outstanding.

1.2.3 On April 2, 1999, AR/CT filed a Joint Motion for Late Intervention and, together with MLC, a Joint Request for Rehearing of the Licensing Order. By order dated April 30, 1999, FERC denied AR/CT's Motion for Late Intervention. AR/CT filed a Request for Rehearing of the April 30, 1999 Order. The Joint Request for Rehearing of the Licensing Order and AR/CT's Request for Rehearing of the April 30, 1999 Order are still outstanding. MLC's earlier Motion to Intervene was granted by FERC.



1.2.4. By letter dated April 19, 1999, the People for Mono Basin Preservation (PMBP) requested that FERC modify the Lundy Project license alleging that the minimum flow schedule in Article 404, requiring a release of 4 cubic feet per second (cfs) into the Project bypass reach below Lundy Dam, would impair water rights held by Mono County, U.S. Forest Service, and U.S. Bureau of Land Management (hereafter, "Wilson Creek Water Right Holders") for non-project uses on Wilson Creek (hereafter, "Wilson Creek Water Rights"). On May 18, 1999, Mono County sent a letter to FERC alleging that implementation of the minimum flow schedule would infringe upon its Wilson Creek Water Rights. Hereafter, these letters are referred to as the "Wilson Creek Water Rights Protests."

1.2.5 The Parties initiated settlement negotiations in 2001. They have met numerous times, as a group, in smaller committees, with other interested stakeholders, and bilaterally, to discuss the issues related to the Lundy Project, including instream flow, enhancement of the existing Mill Creek Return Ditch, and other related issues. Consensus among the Parties on disputed issues within the Commission's jurisdiction was reached as stated herein.

1.2.6 This Settlement is intended to resolve among the Parties: (A) the issues raised by the Parties in their respective Requests for Rehearing, and (B) the issue raised by PMBP and Mono County with regard to the claims that the Article 404 minimum flow schedule would interfere with Wilson Creek Water Rights.

1.2.7 Simultaneous with this Settlement, the USFS will submit modified conditions pursuant to Federal Power Act Section 4(e) to amend the current 4(e) conditions that address the issues resolved by this Settlement.

1.2.8 The Parties are requesting that FERC accept the Settlement and replace existing Articles 403, 404, 411, 412, and 417 with the conditions shown in Settlement Appendix A. Furthermore, as provided in Section 3.1.2, SCE requests that the Commission delete Article No. 414 in recognition that construction of the Mill Creek Return Water Conveyance Facility, proposed in Article No. 411, will result in the appropriate capacity to distribute tailrace flows consistent with water rights for Mill Creek and Wilson Creek.

1.3 Effective Date of Settlement. This Settlement becomes effective as of the date the FERC Order Amending License for the Lundy Project incorporating the Appendix A conditions becomes final and is no longer subject to appeal ("Effective Date").

1.4 Term of Settlement. The term of this Settlement shall commence on the Effective Date and shall continue (unless terminated as otherwise provided herein) until March 2, 2029. The term will be extended to include the term(s) of any annual license(s) which FERC may issue after the Amended Project License has expired on March 2, 2029, or until the effective date of any FERC order approving surrender of all or part of the Lundy Project.



**1.5 Definitions.**

1.5.1 “Amended Project License” means the amendments necessary to effect this Settlement that will be made to the Project License issued to SCE by the FERC on March 3, 1999.

1.5.2 “Lundy Project” means the Lundy Hydroelectric Project, owned and operated by SCE pursuant to the FERC Order of March 3, 1999.

1.5.3 “Mill Creek Return Ditch” is the existing dirt ditch that conveys water from the Project powerhouse to Mill Creek.

1.5.4 “Mill Creek Return Water Conveyance Facility” is a modification to the Mill Creek Return Ditch with a designed and engineered safe carrying capacity to convey at least 40 cfs, but no more than 52 cfs, from Lundy Project powerhouse to Mill Creek as specified in this Settlement. The Mill Creek Return Water Conveyance Facility will be constructed along the same or similar route as the Mill Creek Return Ditch.

1.5.5 “New License” means the Lundy Project License issued to SCE by the FERC on March 3, 1999.

1.5.6 “Settlement” means this Settlement Agreement, including Appendix A.

**2. Purpose of Settlement**

2.1 Purpose. The purpose of this Settlement is to resolve (A) the issues associated with the USFS, CT, AR, MLC, and SCE Requests for Rehearing, and (B) the issue raised by Mono County and PMBP that the Article 404 minimum flow schedule impairs Wilson Creek Water Rights. These are “Resolved Subjects.”

2.2 Entire Agreement. The Parties agree that this Settlement constitutes the entire agreement with respect to the Resolved Subjects. The issues raised by the Requests for Rehearing and the Wilson Creek Water Rights Protests are resolved by this Settlement to the satisfaction of the Parties. These issues include: (A) SCE’s duty to provide a minimum flow in the bypass reach of Mill Creek, (B) SCE’s duty to adopt a Water Management Plan for distribution of flows from the powerhouse tailrace consistent with Wilson Creek Water Rights, and (C) SCE’s duty to construct, operate, and maintain the Mill Creek Return Water Conveyance Facility

2.3 Reasonable and Appropriate Resolution of Issues. The Parties agree that this Settlement fairly, reasonably, and appropriately resolves the Resolved Subjects.



2.4 Unresolved Subjects. There are no unresolved subjects among the Parties regarding the Requests for Rehearing of the Licensing Order. The Parties believe that the agreement also resolves the Wilson Creek Water Rights Protests, although the Settlement does not purport to resolve any disputes regarding issues that may concern California water rights law.

2.5 Withdrawal of Appeals and Rehearing Requests. Within 30 days of the Effective Date, SCE will withdraw any outstanding administrative appeal of the USFS 4(e) conditions; the Parties will withdraw their respective Requests for Rehearing of the Licensing Order; CT/AR will withdraw their Request for Rehearing of the April 30, 1999 Order, and MLC will withdraw its Request for Rehearing of April 2, 1999. Each withdrawal document shall state that the Settlement resolves completely the issues raised in the rehearing requests, administrative appeal, or protests filed with the respective Federal agency.

2.6 Agreement Not to Litigate. The Parties agree not to file litigation or other actions in other jurisdictions regarding the Resolved Subjects, unless the Party exercises its limited right to withdraw as described in Settlement Section 4.10.

2.7 No Precedent for Other Proceedings. This Settlement is made upon the express understanding that it constitutes a negotiated resolution. No Party shall be deemed to have approved, admitted, accepted, or otherwise consented to any operation, management, valuation, or other principle underlying or supposed to underlie any of the Resolved Subjects dealt with, except as may be expressly dealt with herein. Nothing in this Settlement is intended or shall be construed as a precedent with regard to any other proceeding or hydroelectric project.

2.8 Compliance with Legal Responsibilities. Nothing in this Settlement is intended to or shall be construed to affect or limit the authority of any Party to fulfill its statutory, regulatory, or contractual responsibilities under applicable law. However, by entering into this Settlement, the Parties with such responsibilities represent that they believe their responsibilities relative to the Resolved Subjects will be met in a manner that best promotes the public interest and will comply with and otherwise carry out all applicable law.

2.9 Reservation of Claims, Rights, and Responsibilities.

2.9.1 Each Party reserves all claims, rights, and responsibilities, which it may otherwise have with respect to any subject not within and encompassed by the Resolved Subjects.

2.9.2 Nothing in this Settlement is intended or shall be construed to affect or restrict any Party's participation in or comments about compliance with the Amended Project License, future relicensing of the Lundy Project, or any other hydroelectric project licensed to SCE.



2.9.3 No Party shall make any claim, assertion, demand, or other allegation that compliance with the Amended Project License is a violation of, or inconsistent with (i) SCE's duties under any water right adjudication, (ii) any right to the waters of Mill or Wilson Creeks, or (iii) the public trust doctrine.

2.9.4 The Parties agree (i) not to assert that the Settlement, including the New License, results in a change or modification to any extent or degree of a Party's existing water rights to the waters of Mill or Wilson Creeks, (ii) that the Settlement and its implementation does not constitute a waiver or abandonment of water rights to any extent or degree of itself or others, (iii) that no Party requires or relies upon a waiver of water rights of itself or others, except as expressly set forth in this Settlement, including the stated reservations of rights and limitations, to implement the Amended Project License, and (iv) that the minimum instream flow release below Lundy dam into Mill Creek does not constitute, to any extent or degree, an abandonment, relinquishment, or transfer of any existing water right, or establish, to any extent or degree, an instream flow water right for the bypass reach.

2.10 ESA Responsibility Not Affected. Nothing in this Settlement is intended to or shall be construed to restrict or affect the continuing responsibilities of FERC or any Party under the Endangered Species Act ("ESA"), or the California Endangered Species Act ("CESA"), including the implementing regulation at 50 C.F.R. § 402.16.

### **3. Use of Settlement in Amended Project License and Section 4(e) Conditions**

#### **3.1 Measures Recommended to be Included in Lundy Project License.**

3.1.1 Appendix A Conditions. Subject to Sections 3.2 and 3.3, the Parties respectfully request that FERC substitute, without material modification, the proposed conditions set forth in Appendix A for the corresponding Articles in the New License. The Parties further request that FERC not include additional articles in the Amended New License.

3.1.2 Article 414. The Parties request that the Commission delete Article No. 414 in recognition that construction of the Mill Creek Return Water Conveyance Facility, proposed in Article No. 411, will result in an appropriate capacity to distribute tailrace flows to Mill and Wilson Creeks. The Parties further agree that, once the Mill Creek Return Water Conveyance Facility is constructed, SCE should not be required to construct a different such facility during the term of the Amended Project License.

3.2 Measures Recommended to be Included in Amended 4(e) Conditions. The Parties respectfully request that USFS accept and incorporate, without material modification, all the measures stated in Appendix A of this Settlement that are necessary for the adequate protection and utilization of reserved Federal lands pursuant to Federal Power Act Section 4(e) in their recommendation to FERC. The Parties further request that USFS not include additional conditions in its filing with FERC, other than those necessary for the Forest Service to implement the consultation requirements of this Settlement. The USFS agrees to propose as conditions regarding the Resolved Subjects the measures stated in Appendix A of this Settlement, except to



the extent that any changes may result from its analysis under the National Forest Management Act and any other applicable law or regulation. This section shall not be read to predetermine or limit the outcome or lawful discretion of USFS in submitting Amended 4(e) Conditions to FERC or in adopting Amended 4(e) Conditions inconsistent with those recommended herein.

3.3 License Articles. Pursuant to 18 CFR §385.602, SCE will file an Offer of Settlement with the FERC to amend the New Project License that requests approval of this Settlement and incorporation of the Appendix A conditions into an Amended Project License.

3.4 Explanatory Statement. FERC regulations concerning settlements require that an explanatory statement accompany the submittal of an Offer of Settlement. (18 CFR §385.602) SCE, in consultation with the Parties, will prepare an explanatory statement that sets forth the rationale supporting the Settlement, including the evidence necessary for FERC, USFS, and other regulatory agency to adopt the conditions in Appendix A.

3.5 Comment Period on Offer of Settlement. Pursuant to 18 C.F.R. § 385.602(f)(2), the Parties respectfully request that the Commission permit 90 days for public comment on the offer and 60 days for reply comments.

3.6 Joint Analysis for Mill Creek Return Water Conveyance Facility.

3.6.1 SCE Choice of Conveyance Facility. Proposed Article 411 does not specify the specific type or capacity of the Mill Creek Return Conveyance Facility required to convey water from the Project powerhouse to Mill Creek. SCE is evaluating options for a closed pipeline or an open, lined channel. In the interest of compromise and in accordance with the rest of Section 3.6, the Parties agree that SCE may select the conveyance system that is least costly, taking into account planning, design, approval, construction, operation, and maintenance over the term of the Amended New License.

3.6.2 Conveyance Facility Analysis. SCE and the USFS, in consultation with other interested Parties, will jointly develop a comprehensive cost comparison analysis of the Return Water Conveyance Facility before SCE selects a design in the plan required by Article 411. SCE and the USFS will provide that cost comparison analysis to the other Parties for review and comment. The analysis will (A) consider alternative types of conveyance systems, including an open channel and a pipeline, that will have a designed and engineered safe carrying capacity to convey at least 40 cfs and not more than 52 cfs from the Project tailrace to Mill Creek along the route of the existing Mill Creek Return Ditch, and (B) estimate the costs associated with planning, design, approval, construction, operation, and maintenance of each alternative conveyance system. SCE will use this analysis to propose the design of the conveyance system required by Article No. 411. No Party will oppose the SCE proposed design, unless the Party alleges that the design is inconsistent with the Settlement and has exhausted the Dispute Resolution procedure pursuant to Article 4.9.



**3.6.3 Water Rights Settlement.** Between the execution of this Settlement and the FERC deadline for reply to any public comments on the filed Offer of Settlement, the Parties will make best efforts to (i) resolve the otherwise unresolved water rights issues described in Section 2.4 that relate to the allocation of tailrace flows between Wilson and Mill Creeks for non-project uses, and (ii) enter into a Water Rights Settlement that resolves such issues. AR/CT will take the lead in this effort. Under this Settlement and proposed License Article 417, SCE would otherwise adopt an annual Water Management Plan (WMP) for the allocation of tailrace flows on a year-by-year basis. The Parties expect that a Water Rights Settlement would have the advantage of planning for tailrace flow allocations on a more defined, multi-year basis. While, in the Parties' judgment, such allocation of tailrace flows (under the WMP or any Water Rights Settlement) is not within FERC's jurisdiction and will not be submitted for FERC's approval, it may affect the engineering and design of the return conveyance system in the plan required by Article 411. If a Water Rights Settlement has been reached among all of the Parties and Mono County not later than the deadline for reply comments on the Offer of Settlement, as provided in Section 3.5, the Parties will reopen this Settlement to consider the effect of the Water Rights Settlement on the potential maximum capacity or the preferred design of the Return Water Conveyance Facility. If the Parties cannot agree upon modification to the Settlement prior to the deadline for reply comments on the Offer of Settlement, then the Settlement shall remain unchanged. No Party shall use a Water Rights Settlement to seek to require SCE to involuntarily pay for the construction of more than the 40 cfs capacity Return Conveyance Facility required by proposed Article 411.

**3.6.4 Alternative Conveyance Facility.** SCE agrees to propose to construct a Mill Creek Return Conveyance Facility with a designed and engineered safe carrying capacity of 40 cfs. SCE agrees to construct an alternative design, which may include a pipeline, up to a designed and engineered safe carrying capacity of 52 cfs, if other parties (hereafter, "Funding Parties") agree to provide the funds ("Incremental Funds") adequate to pay the incremental costs associated with the construction of the alternative facility ("Incremental Costs"). For the purposes of this section, Incremental Costs include all of the incremental reasonable costs estimated by SCE to create the alternative Mill Creek Return Conveyance Facility from conception to completion of construction, including but not limited to the costs of planning, overhead, design, engineering, a twenty percent contingency, contribution in aid of construction, taxes, obtaining necessary governmental permits or approvals, performing necessary studies, purchasing and transporting equipment and supplies, and building or installing the Mill Creek Return Conveyance Facility. The Incremental Costs also will consider the amount of any maintenance costs when compared to the SCE proposed Mill Creek Return Conveyance Facility.

**3.6.5 Obtaining Incremental Funds.** The Funding Parties, which include MLC, CT/AR, CDFG, and USFS, believe that a 52 cfs pipeline would provide for greater water management flexibility. The other Parties will also assist in seeking funds for covering the Incremental Costs to the extent appropriate. The Funding Parties will use their best efforts to obtain the Incremental Funds. MLC will have a leadership responsibility to identify possible sources and prepare applications, and the other Funding Parties will express their support for such applications and otherwise substantially contribute to the MLC efforts. If necessary to qualify for a grant or other potential funding source, SCE will sign funding source applications,



upon terms acceptable to SCE, in cooperation with the Funding Parties efforts. No Party is expected to use its existing budget, or to request a budget increase, to pay all or any part of the Incremental Funds.

**3.6.6 Funding Construction of the Conveyance Facility.** The Funding Parties shall deposit the Incremental Funds in an escrow account within six months of the date after FERC issues an Order Amending License incorporating Article 411, as proposed in Appendix A, into the Project License. If the funds are not deposited in the escrow account by the required time, then SCE may file with FERC the design of the conveyance system required by Article No. 411. After FERC approval, SCE will proceed with construction of the return conveyance facility. Funds in the escrow account will be disbursed to SCE upon presentation by SCE to the escrow agent of its reasonably incurred incremental costs in constructing the alternative facility. SCE may seek partial disbursements from the escrow account to cover costs incurred prior to the completion of construction, including funds necessary to hire contractors and to order parts and equipment. Any money left in the escrow account after completion of construction will be returned to the Parties who deposited the money in the escrow account, or to the Mill Creek Fund as provided below. SCE shall notify the Funding Parties as soon as SCE becomes aware of any potential for a cost overrun and arrange a meeting to discuss the situation. If the Incremental Funds are insufficient to cover SCE's Incremental Costs, the Funding Parties will use their best efforts to obtain any unreimbursed costs. SCE shall provide documentation of its reasonably incurred but unreimbursed construction costs to the Funding Parties. However, any payment in excess of the amount in the escrow account will be reduced by an amount equal to the ratio of the SCE preferred Mill Creek Return Conveyance Facility to the total incurred cost of construction.

**3.6.7 Incremental Cost Dispute Resolution.** If a dispute arises regarding the actual incurred Incremental Costs, then the Funding Parties and SCE will first use the Dispute Resolution process set forth in Article 4.9 of the Agreement, except that the Funding Parties and SCE will choose three civil engineers, each of whom will be a state-certified Professional Engineer, to arbitrate the dispute. SCE may choose one civil engineer. The Funding Parties will jointly select a second civil engineer. These two civil engineers will choose a third civil engineer. These three civil engineers will evaluate the actual costs incurred by SCE in constructing the Mill Creek Return Conveyance Facility. SCE and the Funding Parties will equally share the costs of the civil engineers acting as arbitrators of the dispute. The Funding Parties shall pay to SCE the Incremental Costs that at least two of the civil engineers believe to have been reasonably incurred by SCE and/or its contractors in constructing the alternative Return Conveyance Facility. The cost estimate by a good faith bidder chosen by SCE to construct SCE's preferred Mill Creek Return Conveyance Facility, or the cost estimate agreed to by SCE and the USFS if no acceptable bids are received, shall serve as the baseline from which the Incremental Costs for the alternative facility will be calculated. Subject to the rights of the Parties to seek judicial review, the results of the three civil engineers will be binding. The Funding Parties and SCE may also agree to choose a different dispute resolution mechanism at the time a dispute arises.



**3.6.8 Request to Include Funds in SCE Rates.** Any Funding Party may request that the California Public Utilities Commission (CPUC) include the Incremental Funds expended for this purpose in SCE's next General Rate Case following completion of the Mill Creek Return Conveyance Facility construction. The Funding Parties who want to avail themselves of this opportunity will jointly prepare the request, including testimony and supporting workpapers, to justify increasing the SCE revenue requirement by the Incremental Funds amount. Any request for recovery will not adversely impact SCE's shareholders. The Funding Parties will not file separate requests for recovery of the Incremental Funds. If the CPUC authorizes the recovery of any Incremental Funds in SCE's rates, SCE will repay the Incremental Funds, without interest, to the Funding Parties over the Incremental Fund recovery period. SCE will deposit such funds into a Mill Creek Fund. This Mill Creek Fund will be a new escrow account established by the Funding Parties and under their joint management. The Mill Creek Fund will be used to undertake measures not required by the New License to enhance the natural resources of Mill Creek between Lundy Dam and Mono Lake.

**3.7 Deer Creek Monitoring and Flows.** If the Deer Creek confluence with Mill Creek shifts above Lundy dam, then any of the Parties may request that FERC reopen the License to determine if additional minimum flows are necessary and appropriate for the protection and enhancement of fish and wildlife resources, riparian vegetation, and aesthetic resources in the bypassed reach of Mill Creek. No Party will request that the License be reopened (i) if someone other than SCE is diverting water from Mill Creek upstream of the confluence with the return water conveyance facility and below Lundy dam, and (ii) until the Party has consulted with SCE, and any other interested Party, regarding the potential to shift Deer Creek back to its current location, and has given SCE a reasonable opportunity to accomplish this relocation.

#### **4. Implementation of Settlement**

**4.1 Support of Settlement.** The Parties shall be bound by this Settlement for the term stated in Section 1.4, provided the Amended Project License is consistent with the terms of this Settlement, and specifically the conditions in Appendix A. The Parties will support the Settlement, to the extent that law or regulation does not prohibit their support, in correspondence or filings with applicable regulatory agencies. The Parties will support a request by SCE to the CPUC for recovery of all reasonable costs associated with implementation of the Settlement, and any request by SCE to the CPUC pursuant to Public Utilities Code Section 454.3 to receive a higher rate of return on Project investments for operating the Project in an environmentally sound manner; except that CT/AR and MLC will support recovery of the higher rate of return for costs associated with the Return Water Conveyance Facility only if the 52 cfs pipeline is constructed.

**4.2 Support for Issuance of Amended Project License.** To the extent permitted by applicable law, the Parties shall support or advocate through appropriate written communications to FERC, USFS, and other regulatory agencies issuing permits for the Mill Creek return water conveyance facility, this Settlement and the conditions in Appendix A. For Resolved Subjects, the Parties agree not to propose, support, or communicate to FERC, USFS or any other regulatory agency, any comments, recommended license conditions other than ones consistent



with this Settlement. If the Amended Project License does not contain all of the conditions stated in Appendix A because FERC expressly determines that it does not have jurisdiction to adopt or enforce the omitted conditions, the Parties agree that they shall be bound by the entire Settlement, including those conditions omitted by FERC, provided the Amended Project License contains those conditions stated in Appendix A over which FERC determines it does have jurisdiction and the Amended Project License is otherwise consistent with this Settlement.

**4.3 Amended Project License or Amended 4(e) Conditions Inconsistent with this Settlement**

**4.3.1 Amended Project License.** If the Amended Project License issued by FERC contains any material modification of the Appendix A conditions, incorporates fewer than all of the Appendix A conditions, or includes additional measures related to Resolved Subjects that are inconsistent with this Settlement, this Settlement shall be deemed modified to conform to the Amended Project License, unless a Party provides Notice that it disputes the inconsistency within 30 days after the date of the license order, and that Party initiates the Alternative Dispute Resolution (“ADR”) procedures stated in Section 4.9.1 - Section 4.9.3. The disputing Party(s) may, in addition, initiate the rehearing procedure described in Section 4.4.1. If the Settlement is deemed modified to conform to the Amended Project License, SCE’s duties under this Settlement related to Appendix A that are inconsistent with the Amended Project License are voided to the extent necessary to enable SCE to comply with the license. If the Amended Project License does not contain all of the Appendix A conditions because FERC expressly determines that it does not have jurisdiction to adopt or enforce the omitted conditions, the Parties agree that they shall be bound by the entire Settlement, including those recommended conditions omitted by FERC, provided the Amended Project License is not inconsistent with those Appendix A conditions that are not otherwise included in the Amended Project License.

**4.3.2 Amended 4(e) Conditions.** If any Amended 4(e) Condition is inconsistent with this Settlement, this Settlement shall be deemed modified to conform to the Amended 4(e) Conditions, unless a Party provides Notice that it disputes the inconsistency within 45-days of the final decision, and that Party initiates the ADR procedures stated in Section 4.9.1 - Section 4.9.3. The disputing Party(s) may, in addition, initiate or participate in the appeal procedure described in Section 4.4.2.

**4.4 Appeal or Judicial Review of Amended Project License or Amended 4(e) Conditions Inconsistent with this Settlement.**

**4.4.1 Appeal to FERC.** Any Party may petition FERC for rehearing or seek judicial review of any Amended Project License that is inconsistent with this Settlement. The ADR requirements stated in Section 4.9.1 - Section 4.9.3 and initiated pursuant to Section 4.3.1 do not preclude any Party from timely filing for and pursuing rehearing under 18 C.F.R. § 385.713(b), or judicial review, of the inconsistent license article or any other license article that relates to subjects not listed as a Resolved Subject. However, the Parties shall follow the ADR procedures stated in Section 4.9.1 - Section 4.9.3 to the extent reasonably practicable while such appeal of an inconsistency is pursued. If any Party or non-Party files for administrative rehearing



or judicial review of any Amended Project License article that is inconsistent with this Settlement, SCE's duties under this Settlement related to that license article are suspended to the extent necessary to enable SCE to comply with the license. If a Party has filed for rehearing or judicial review of any Amended Project License article that is inconsistent with this Settlement and the Parties subsequently agree to modify this Settlement to conform to the inconsistent article, the filing Party(s) shall take the necessary steps to withdraw the appeal, or recommend such withdrawal, as appropriate. Except as provided in Section 4.3.1 for omissions based on jurisdiction, if any Amended Project License article is inconsistent with this Settlement after a final and non-appealable administrative or judicial decision on the appeal, this Settlement shall be deemed modified to conform to the final decision unless a Party provides Notice that it disputes the inconsistency within 45 days after the date of the final decision and initiates the ADR procedures stated in Section 4.9.1 - Section 4.9.3. Parties are not required to initiate the ADR procedure for inconsistencies previously addressed in the ADR procedure. Except as necessary to fulfill a statutory or regulatory responsibility or policy, the Parties have a continuing duty to support this Settlement, or as appropriate, recommend such support, during an administrative rehearing or judicial review.

**4.4.2 Judicial Review of USFS 4(e) Conditions.** To the extent legally available, a Party may seek judicial review of any Amended 4(e) Condition that is inconsistent with this Settlement or in addition to the Appendix A conditions. The ADR requirements of Section 4.9.1 - Section 4.9.3 do not preclude any Party from timely filing and pursuing judicial review of any Amended 4(e) Condition that is inconsistent with this Settlement, or any other Amended 4(e) Condition that relates to a subject not within or encompassed by the Resolved Subjects. However, the Parties shall follow ADR procedures stated in Section 4.9.1 - Section 4.9.3 and initiated pursuant to Section 4.3.1, to the extent reasonably practicable while any such judicial review of an inconsistency is pursued. If a Party has filed for judicial review of any Amended 4(e) Condition that is inconsistent with this Settlement and the Parties subsequently agree to modify this Settlement to conform to the inconsistent condition, the filing Party(s) shall take the necessary steps to withdraw the judicial review as appropriate. Except as provided in Section 4.3.2 for omissions based on jurisdiction, if any Amended 4(e) Condition is inconsistent with this Settlement after the final and non-appealable decision by FERC, this Settlement shall be deemed modified to conform to the final decision, unless a Party provides Notice that it disputes the inconsistency within 45 days after the date of the final decision, and that Party initiates the ADR procedures stated in Section 4.9.1 - Section 4.9.3. Parties are not required to initiate the ADR procedure for inconsistencies previously addressed in an ADR procedure. Except as necessary to fulfill a statutory or regulatory responsibility or policy, all Parties have a continuing duty to support this Settlement, or as appropriate, recommend such support, during an administrative rehearing or judicial review.

**4.5 Cooperation Among Parties.** The Parties shall cooperate in the performance of this Settlement and compliance with the Amended Project License articles. Among other things, the Parties shall cooperate in implementing the Appendix A conditions, performing monitoring, and conducting all other activities within their statutory or regulatory authorities related to the measures stated in Appendix A, as may be modified in any Amended Project License. Further, subject to Section 4.1, and upon SCE's request, the Parties shall provide written communications



of support in any administrative approval that may be required for implementation of this Settlement or related articles of the Amended Project License, provided this sentence shall not apply to the agency exercising the authority, and provided further, that this sentence shall not require USFS to perform any act that in its discretion is deemed to be an inappropriate exercise of its discretionary authority.

**4.5.1 Responsibility for Costs.** SCE shall pay for the cost of actions required of SCE by this Settlement or the Amended Project License. SCE shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Settlement or the Amended Project License, unless expressly agreed to by SCE or as required by law.

**4.5.2 SCE Solely Responsible for Operations of Project.** By entering into this Settlement, none of the Parties, except for SCE, have accepted any legal liability or responsibility for the operation of the Lundy Project.

**4.5.3 Availability of Funds.** Implementation of this Settlement for a Party that is a federal agency is subject to the requirements of the Anti-Deficiency Act, 31 United States Code, § 1341, and the availability of appropriated funds. Nothing in this Settlement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Parties that are federal agencies shall not be required under this Settlement to expend any federal agency's appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures as evidenced in writing. Implementation of this Settlement by Parties that are state agencies is subject to the availability of appropriated funds. Nothing in this Settlement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. However, the lack of funds shall not excuse federal or state agencies from taking action inconsistent with this Settlement or taking action required by this Settlement that does not require the expenditure of funds.

**4.5.4 USFS Participation in Settlement.** USFS is not included in the definition of the words "Party" or "Parties" as used in Sections 3.2, 4.1, 4.2, 4.3.2, and 4.4.2 of this Settlement. Additionally, USFS obligations under and participation in this Settlement are fulfilled upon issuance of an Amended Project License containing Amended 4(e) Conditions that are no longer subject to judicial review. Notwithstanding any provision to the contrary, nothing in this Settlement is intended or shall be construed to create USFS authority over a subject that is not within its existing authority.

**4.6 Implementation Schedule.** Implementation of the Appendix A conditions shall begin (i) after the Amended Project License has been issued and is no longer subject to appeal, and (ii) consistent with the schedules specified in Appendix A (as may be modified by an Amended Project License). Unless a schedule is otherwise required in an Amended Project License, within six months after issuance of an Amended Project License, SCE shall prepare and provide to all Parties a schedule for implementing the measures recommended in this Settlement and incorporated in an Amended Project License. The schedule shall specify dates or time



periods for initiation, progress reporting, monitoring and completion, as appropriate, for each such measure and shall include milestones for major activities.

**4.7 Reopener or Further Amendment of Amended Project License.**

**4.7.1 Reopener.** Except as required to fulfill statutory or regulatory responsibilities or as provided in Section 4.7.2, a Party to this Settlement may not request that FERC act upon Resolved Subjects or modify or otherwise reopen, during the term of this Settlement, the conditions from this Settlement included in an Amended Project License.

**4.7.2 Amendment.** Nothing in this Settlement is intended or shall be construed to affect or limit the right of SCE to seek amendments to an Amended Project License, provided that SCE may seek a license amendment which would adversely affect this Settlement only if SCE can reasonably demonstrate in the amendment proceeding that the amendment is in furtherance of the public interest under the FPA or other applicable law. Prior to filing a proposed license amendment, which relates to a Resolved Subject or may otherwise adversely affect this Settlement, SCE shall provide the Parties at least 60-day Notice of its intention to do so, and promptly following the giving of such Notice, SCE shall consult with Parties responding within 30 days of such Notice regarding the need for and the purpose of the amendment. SCE shall not be required to comply with this 60-day Notice provision if insufficient time is available between the time SCE determines a license amendment application is necessary and the date the application is to be filed. In that event, SCE shall give Notice to the USFS within 10 days of the determination that a license amendment application is necessary. Other Parties shall be provided Notice as soon as practicable. In any application for a license amendment that relates to a Resolved Subject or would otherwise affect this Settlement, SCE shall provide copies of the license amendment application to the Parties. SCE shall not oppose a timely intervention request by any Party.

**4.8 Amendment of Settlement.** This Settlement may be amended at any time through the term of the Amended Project License plus the term(s) of any annual license(s) which may be issued after the foregoing Lundy Project License has expired, after Notice of a proposed amendment, with the unanimous agreement of all Parties still in existence. Any amendment of this Settlement shall be in writing and executed by the Parties still in existence.

**4.9 Dispute Resolution**

**4.9.1 General.** Except to the extent that FERC, USFS, or any other agency with jurisdiction over a Resolved Subject has a regulatory procedure that precludes implementation of Section 4.9.1 - Section 4.9.3, all disputes among the Parties regarding any Party's performance or compliance with this Settlement, including resolution of any disputes related to issuance of any Amended Project License article or Amended 4(e) Condition shall be the subject of a non-binding alternative dispute resolution ("ADR") procedure among the disputing Parties, as stated in this Section 4.9.1 - Section 4.9.3. Each Party participating in a dispute ("Disputing Party," or collectively, "Disputing Parties") shall cooperate in Good Faith to promptly schedule, attend, and participate in the ADR. The disputing Parties agree to devote such time, resources, and attention



to the ADR as is needed to attempt to resolve the dispute at the earliest time feasible. Each Disputing Party shall implement promptly all final agreements reached, consistent with its applicable statutory and regulatory responsibilities. Nothing in Section 4.9.1 - Section 4.9.3 is intended or shall be construed to affect or limit the authority of FERC, USFS, or other agency with jurisdiction over a Resolved Subject, to resolve a dispute brought before it in accord with its own procedure and applicable law.

**4.9.2 ADR Procedures.** A Party claiming a dispute shall give Notice of the dispute within 30 days of the Party's actual knowledge of the act, event, or omission that gives rise to the dispute, unless this Settlement provides otherwise. If the dispute includes a claim that any Amended Project License article or 4(e) Condition is inconsistent with this Settlement, and the claim arises prior to rehearing or appeal, the Notice shall be made within the time periods specified in Sections 4.3.1 or 4.3.2, respectively. If the dispute includes a claim that any Amended Project License article or 4(e) Condition is inconsistent with this Settlement, and the claim arises during or after rehearing or appeal, the Notice shall be made within the time periods specified in Sections 4.4.1 or 4.4.2, respectively. At a minimum and in any dispute subject to these ADR procedures, the Disputing Parties shall hold two informal meetings within 30 days after Notice, to attempt to resolve the disputed issue(s). Any Disputing Party may request that a FERC employee, who would not be involved in deciding this matter should it be brought before the FERC, facilitate these informal meetings to assist in resolving the dispute. If the informal meetings fail to resolve the dispute, the Disputing Parties shall attempt to resolve the dispute using a neutral mediator jointly selected within 15 days after Notice by a Disputing Party that the informal meetings did not resolve the dispute. The Disputing Parties shall select a mediator from the sources described in 18 CFR §385.604 (c)(3). Absent an agreement for equitable allocation of costs of the mediator, the Disputing Parties shall select a FERC employee, who would not be involved in deciding this matter should it be brought before the FERC, as mediator. The mediator shall mediate the dispute during the next 60 days after their selection. Any of these time periods may be reasonably extended or shortened by agreement of the Disputing Parties, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute. Unless otherwise agreed among the Disputing Parties, each Disputing Party shall bear its costs for its own participation in the ADR procedures.

**4.9.3 Enforcement of Settlement After Dispute Resolution.** Any Party may seek in a court or regulatory agency of competent jurisdiction specific performance of this Settlement by any other Party, after compliance with the ADR procedures stated in Section 4.9.1 - Section 4.9.3, or if the statute of limitations will expire on a claim, before or during compliance with the ADR procedures. No Party shall be liable in damages for any breach of this Settlement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Settlement, or any other cause of action arising from this Settlement. The time used to comply with the ADR procedures shall be excluded from computing any applicable statute of limitations, except where applicable law precludes such exclusion when computing time. Nothing in Section 4.9.1 - Section 4.9.3 is intended or shall be construed to affect or limit the jurisdiction of any agency or court as established under applicable law.



#### **4.10 Withdrawal From Settlement.**

**4.10.1 Withdrawal of a Party from Settlement.** A Party may withdraw from this Settlement only in the following circumstances: (a) a Disputing Party claiming a material breach or violation of this Settlement may withdraw once the Party has complied with the ADR procedures stated in Section 4.9.1 - Section 4.9.3 to attempt to resolve the dispute; (b) SCE seeks a license amendment under Section 4.7.2 over the objection of that Party that the amendment is inconsistent with the Settlement; or (c) a Party objecting to a final and non-appealable FERC order issuing an Amended Project License that is inconsistent with this Settlement may withdraw once the Party has complied with the ADR procedures stated in Section 4.9.1 - Section 4.9.3 to attempt to resolve the objection. In addition, SCE may withdraw as provided in Section 4.10.2. In addition, when required to fulfill statutory or regulatory responsibility, a Party that is an agency may suspend participation or, if necessary, withdraw from this Settlement, without first using the ADR procedures stated in Section 4.9.1 - Section 4.9.3. Finally, a Party may withdraw as provided in Section 5.3.

**4.10.2 Withdrawal of SCE from Settlement.** In addition to the provisions of Section 4.10.1, SCE may withdraw from this Settlement without first complying with the ADR procedures stated in Section 4.9.1 - Section 4.9.3 if a Party withdraws from this Settlement, and SCE reasonably determines at its sole discretion that the withdrawal (a) may adversely affect the likelihood of USFS issuing Amended 4(e) Conditions consistent with this Settlement; (b) may adversely affect FERC's issuance of an Amended Project License consistent with this Settlement; or (c) substantially diminishes the value of this Settlement to SCE. SCE shall exercise the right to withdraw from this Settlement as provided in this section within 30 days of SCE's knowledge of the event creating the right to withdraw.

**4.10.3 Method of Withdrawal.** A Party may exercise its right to withdraw from this Settlement by giving Notice. Withdrawal is effective 10 calendar days after Notice. A Party that is an agency may suspend participation in this Settlement as provided in Section 4.10.1 by giving Notice.

**4.10.4 Continuity After Withdrawal.** The withdrawal of a Party, other than SCE, does not terminate this Settlement for the remaining Parties. If a Party withdraws from this Settlement, the withdrawing Party shall not be bound by any term contained in this Settlement.

**4.11 Termination of Settlement.** This Settlement shall terminate as to all Parties and have no further force or effect upon expiration of the Amended Project License and any annual licenses issued after expiration thereof or upon SCE's withdrawal from this Settlement. If this Settlement is terminated, this Settlement and all documents related to its development and execution shall be deemed confidential and shall not be discoverable or admissible in any forum or proceeding for any purpose to the fullest extent allowed by applicable law, including 18 C.F.R. § 385.606, unless such documents were provided to FERC or otherwise made a part of the public record at FERC. This provision does not apply to (i) the results of resource studies or other technical information developed for use by the Parties, and (ii) documents prepared by a Party may use the documents in any manner seen as appropriate by that Party.



## **5. General Provisions**

**5.1 Non-Severable Terms of Settlement.** The terms of this Settlement are not severable from each other. This Settlement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Settlement. If any part of the Settlement is declared to be unenforceable, illegal or unconstitutional, the entire Settlement is voidable by any Party upon sixty (60) days notice to the other Parties, unless all Parties agree, in writing, to accept revised terms and conditions.

**5.2 No Third Party Beneficiaries.** Without limiting the applicability of rights granted to the public pursuant to applicable law, this Settlement shall not create, and shall not be construed to create, any right or interest in the public, or any member thereof, as a third party beneficiary hereof, and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Settlement. The duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

**5.3 Successors and Assigns.** This Settlement shall apply to, and be binding on, the Parties and their successors and assigns. Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Settlement. No change in ownership of the Lundy Project or transfer of the Amended Project License by SCE shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities or obligations under this Settlement. *Unless prohibited by applicable law, SCE shall provide in any transaction for a change in ownership of the Lundy Project or transfer of the Amended Project License, that such new owner shall be bound by, and shall assume the rights and obligations of this Settlement upon completion of the change of ownership and approval by FERC of the license transfer.* In the event applicable law prohibits the new owner from assuming the rights and obligations of this Settlement, any Party may withdraw from this Settlement. A transferring or assigning Party shall provide Notice to the other Parties at least thirty (30) days prior to completing such transfer or assignment.

**5.4 Failure to Perform Due to Force Majeure.** No Party shall be liable to any other Party for breach of this Settlement as a result of a failure to perform or for delay in performance of any provision of this Settlement due to any cause reasonably beyond its control. This may include, but is not limited to, *natural events, labor or civil disruption, or breakdown or failure of project works.* The Party whose performance is affected by a force majeure shall notify the other Parties in writing within seven (7) days after becoming aware of any event that such affected Party contends constitutes a force majeure. Such notice will: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. The affected Party shall make reasonable efforts to promptly resume performance of this Settlement, and give the other Parties written notice when performance of its obligations can be resumed.

**5.5 Governing Law.** The Amended Project License and any other terms of this Settlement over which a federal agency has jurisdiction shall be governed, construed, and enforced in accordance with the statutory and regulatory authorities of such agency. This



Settlement shall otherwise be governed and construed under the laws of the State of California. By executing this Settlement, no federal agency is consenting to the jurisdiction of a state court unless such jurisdiction otherwise exists. All activities undertaken pursuant to this Settlement shall be in compliance with all applicable law.

5.6 Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Settlement or to any benefit that may arise from the Settlement.

5.7 No Partnership. Except as otherwise expressly set forth herein, this Settlement does not and shall not be deemed to make any Party the agent for or partner of any other Party.

5.8 Reference to Regulations. Any reference in this Settlement to any federal or state regulation shall be deemed to be a reference to such regulation or its successor regulation.

5.9 Notice. Except as otherwise provided in this section, any Notice required by this Settlement shall be written. It shall be sent to all Parties still in existence by first-class mail or comparable method of distribution, and shall be filed with FERC. For the Purpose of this Settlement, a Notice shall be effective 7 days after the date on which it is mailed or otherwise distributed. When this Settlement requires Notice in less than 7 days, Notice shall be provided by telephone, facsimile or electronic mail and shall be effective when provided. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix B. The Parties shall provide Notice of any change in the authorized representatives designated in Appendix B; and SCE shall maintain the current distribution list of such representatives.

5.10 Section Titles for Convenience Only. The titles for the sections of this Settlement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Settlement or the intentions of the Parties.

5.11 No Other Commitments and No Precedent. This Settlement Agreement is made upon the express understanding that it constitutes a negotiated resolution based on unique facts. No Party shall be deemed to have approved, admitted, accepted or otherwise consented to any operation, management, valuation, or other principle underlying or believed to underlie any of the specific terms and conditions of the Settlement except as expressly declared herein. Nothing in this Settlement is intended or shall be construed as a precedent with regard to any other regulatory proceeding or the regulation of any other hydroelectric project.

5.12 Settlement Document Integration. The Parties have been involved in discussions regarding the Resolved Subjects and other matters for several years. Numerous documents relating to the Lundy Project have been prepared during this period. No document other than this Settlement Agreement, unless specified otherwise herein, is to be considered as binding upon or creating any obligation among the Parties. This Settlement incorporates Appendix A and the Explanatory Statement to be prepared pursuant to Section 3.4, along with any attachments to the Explanatory Statement. This Settlement is intended to and does constitute the complete and final



expression of the agreement among the Parties with respect to the Resolved Subjects. Any and all prior and contemporaneous statements, negotiations, discussions, promises, agreements, conditions, and covenants are superseded and replaced by this Settlement.

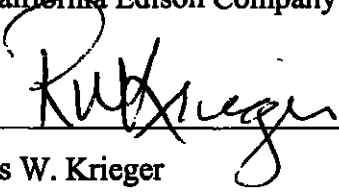
**6. Execution of Settlement**

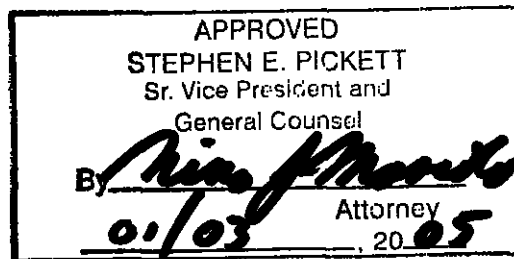
**6.1 Signatory Authority.** Each signatory to this Settlement certifies that he or she is authorized to execute this Settlement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization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

**6.2 Signing in Counterparts.** This Settlement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Settlement may be detached from any counterpart of this Settlement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Settlement identical in form hereto but having attached to it one or more signature pages.

WHEREFORE, for valuable consideration, which is hereby acknowledged, and by authorized representatives, the Parties execute this Settlement effective as of 12/31/ 2004.

Southern California Edison Company

By:   
Name: Russ W. Krieger  
Title: Vice President, Power Production  
Date: 01/03/05



United States Department of Agriculture Forest Service

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



expression of the agreement among the Parties with respect to the Resolved Subjects. Any and all prior and contemporaneous statements, negotiations, discussions, promises, agreements, conditions, and covenants are superseded and replaced by this Settlement.

**6. Execution of Settlement**

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

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

WHEREFORE, for valuable consideration, which is hereby acknowledged, and by authorized representatives, the Parties execute this Settlement effective as of 12/31 2004.

Southern California Edison Company

By: \_\_\_\_\_

Name: Russ W. Krieger

Title: Vice President, Power Production

Date: \_\_\_\_\_

United States Department of Agriculture Forest Service

By: Bernie Weingardt

Name: Bernie Weingardt

Title: Deputy Regional Forester

Date: 1/20/2005



Lundy Hydroelectric Project Settlement Agreement

United States Department of the Interior Bureau of Land Management

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Bill Dunkelberger*  
*BILL DUNKELBERGER*  
*BISHOP FIELD OFFICE MANAGER*  
*JANUARY 10, 2005*



California Department of Fish and Game

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

American Rivers

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

California Trout

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

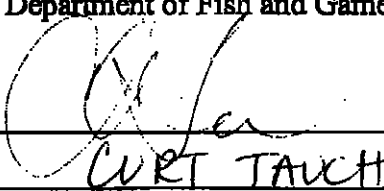


**Lundy Hydroelectric Project Settlement Agreement**

**United States Department of the Interior Bureau of Land Management**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**California Department of Fish and Game**

By:  \_\_\_\_\_  
Name: CURT TAUCHER  
Title: REGIONAL MANAGER  
Date: 1/20/05

**American Rivers**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**California Trout**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



Lundy Hydroelectric Project Settlement Agreement

United States Department of the Interior Bureau of Land Management

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

California Department of Fish and Game

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

American Rivers

By: Richard Ross Collins  
Name: Richard Ross-Collins  
Date: 1/4/05

California Trout

By: Richard Ross Collins  
Name: Richard Ross-Collins  
Title: Attorney  
Date: 1/4/05



Lundy Hydroelectric Project Settlement Agreement

Mono Lake Committee

By: 

Name: Geoffrey McQuilkin

Title: Co Executive Director

Date: January 7, 2005



## **APPENDIX A**

### **Lundy Hydroelectric Project Settlement Agreement Proposed Revised License Conditions**

**Article 403.** Within six months of the date of the Commission Order Amending License, the Licensee shall file for Commission approval a plan for providing the minimum flow required by Article 404 of this license. The plan shall include detailed drawings of the system to release flow to Mill Creek at the downstream base of Lundy dam, at the sand trap, or at any other appropriate location upstream of the existing stream gage that will measure the minimum flow. The plan shall also include a schedule for implementing the instream flow release, the point(s) where the minimum flow will be measured for compliance purposes, limits on the maximum rate of change in stream flow during any shifting of release points for the minimum flows, and any necessary provisions for promptly rescuing and releasing any stranded fish. A primary design consideration for the water release facility will be the dependability of the facility to operate on a year round basis, if feasible.

The Licensee shall prepare the plan after consultation with the U.S. Forest Service, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service, California Trout, Mono Lake Committee, and American Rivers. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the entities named above in this article, and specific descriptions of how the plan accommodates the entities' comments. The Licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before the Licensee files the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

#### **Article 404. Flow Requirements and Flow Monitoring**

- a. After implementation of the plan required in Article 403 is completed, the Licensee shall arrange to release a continuous minimum flow of: (A) 1.0 cubic feet per second (cfs) on an average monthly basis, but not less than 0.75 cfs on an average daily basis, or (B) the inflow to the project reservoir, whichever is less, as measured at either the existing Mill Creek gage located just upstream of the mouth of Deer Creek (USGS Station #10287069) and/or the release point on the project flowline, as described in the Article 403 plan. The release is for the protection and enhancement of fish and wildlife resources, riparian vegetation, and aesthetic resources in the bypassed reach of Mill Creek. This article does not require the Licensee to release more than 1.0 cfs.

The Licensee's minimum flow requirement below Lundy Dam will be reduced to the extent that the seepage and accretion flow is greater than 3 cfs. If seepage and accretion flows are above 3 cfs, the licensee must only release that amount of water necessary to result in a 4 cfs flow at the gage. The water may be released from the existing penstock tap located at the sand trap just upstream of the existing stream gage on Mill Creek or



from a new release facility between the stream gage and Lundy Dam, as described in the Article 403 plan. The Licensee is not required to operate the existing Mill Creek stream gage during the winter season if (i) the water turns to ice, (ii) the gage is covered in snow, or (iii) other factors beyond the Licensee's control preclude accurate stream flow measurements. Licensee is not required to extend electrical power to the stream gage.

The minimum flow release may be intentionally, temporarily modified if required for safety reasons, by operating emergencies beyond the control of the licensee, or upon agreement between the Licensee, the Forest Service and the California Department of Fish and Game (CDFG), for short periods. The minimum flow is not required if malfunctions or other circumstances beyond the licensee's feasible control cause the flow release to be unintentionally discontinued or reduced. If the flow is so modified or discontinued, the Licensee shall notify the Commission as soon as feasible, but no later than 10 days after the Licensee discovers each such intentional or unintentional incident.

- b. The Licensee shall monitor flows on Mill Creek above the return ditch to determine if the combination of minimum flows and accretion provide 7 cfs of flow in Mill Creek. The Licensee will measure the streamflow once each March, June, September, and December for an eight-year period beginning the first March after this article is effective. The Licensee need not install a permanent stream gage to measure these flows. The Licensee may use a handheld current meter, portable weir, or such other suitable device to obtain an accurate stream flow measurement. At the end of the monitoring period, the Licensee shall prepare and send a report documenting the monitoring results to the Commission, Forest Service, CDFG, California Trout, Mono Lake Committee, and American Rivers.
- c. If the Deer Creek confluence with Mill Creek shifts above Lundy dam, then the Commission may reopen the license to determine if an additional minimum flow release is necessary and appropriate for the protection and enhancement of fish and wildlife resources, riparian vegetation, and aesthetic resources in the bypassed reach of Mill Creek. The Commission shall consider whether: (i) an entity other than the Licensee is diverting flow from Mill Creek below Lundy Dam and upstream of the confluence with the return water conveyance facility and (ii) there is reasonable potential to shift Deer Creek back to its current location, and SCE has had a reasonable opportunity to accomplish this relocation.

Article 411. Subject to construction of the revised water conveyance facility described below, to the extent that the Licensee diverts water from Lundy Dam through the project powerhouse, the Licensee, in cooperation with the Water Rights Holders (Forest Service, Mono County, U.S. Bureau of Land Management (BLM), Los Angeles Department of Water and Power, and Jan Simis), shall release that water into Wilson Creek (which includes Upper Conway Ranch) and/or Mill Creek, through a powerhouse tailrace diversion structure, in a manner consistent with the water rights on Wilson Creek and Mill Creek and the Article 417 water management plan. The release may be intentionally, temporarily modified if required for safety reasons, by operating emergencies beyond the control of the licensee, or upon agreement between the Licensee, BLM, the Forest Service, and the California Department of Fish and Game (CDFG), for short periods.

Within one year, the Licensee shall file for Commission approval a plan for engineering, permitting, construction, and operation of a modified powerhouse tailrace diversion structure and



a Mill Creek return water conveyance facility. The Mill Creek return water conveyance facility will generally follow the path of the existing return ditch that delivers water from the project powerhouse to Mill Creek. The plan will include any proposed revisions to the project boundaries. At its discretion, the Licensee shall design and engineer the Mill Creek return water conveyance facility to safely convey at least 40 cfs but no more than 52 cfs. The plan may provide for phased construction of the powerhouse tailrace return structure, provided that such construction will be completed within three years after receipt of all necessary regulatory approvals. The Licensee shall apply for all known regulatory approvals for the construction of the Mill Creek return water conveyance facility within six months of receipt of Commission approval of the construction plan.

The Licensee shall prepare the plan after consultation with the Forest Service, BLM, Mono County, CDFG, California Trout, American Rivers, and Mono Lake Committee. The Licensee shall include in the plan documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the entities named above in this article, and specific descriptions of how the comments and recommendations are either accommodated by the plan or the reasons why the plan did not accommodate those comments and recommendations based upon project-specific information. The Licensee will obtain Forest Service and BLM approval of the plan for those activities on lands managed by those agencies. The Licensee shall provide the Forest Service, BLM, Mono County, CDFG, California Trout, American Rivers, and Mono Lake Committee with a minimum of 60 days to comment, make recommendations to, and approve as appropriate, the plan before the Licensee files the plan with the Commission. The Commission reserves the right to require changes to the plan. No land-disturbing activities shall begin until the Commission notifies the Licensee that the plan is approved. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

Article 412. Within six months, the Licensee shall file for Commission approval a plan to install, operate, and maintain streamflow gages or devices necessary to monitor the flow releases required in Article 404 and 411. The plan shall include the location and design of gages, a schedule for installation, the method of collecting flow data, and a provision for providing the data to the agencies. Except as otherwise provided below, streamflows and reservoir water elevations will be measured to USGS standards and reported on an annual basis. The plan may make use of the project's existing gages.

As a minimum, the plan will include flow monitoring and lake elevation gages at the following general locations, unless otherwise provided:

- (i) Mill Creek below Lundy Dam;
- (ii) Lundy Powerhouse Tailrace
- (iii) Upper Conway Ditch;
- (iv) Wilson Creek Diversion or the Mill Creek return water conveyance facility below Wilson Creek Diversion;



- (v) Mill Creek above confluence with Mill Creek return water conveyance facility (quarterly water current meter measurements only; a gage and meeting USGS standards are not required for measurements at this location).
- (vi) Lundy Reservoir (elevation).

The Licensee shall prepare the plan after consultation with the Forest Service, Mono County, and U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, California Department of Fish and Game, Los Angeles Department of Water and Power, California Trout, American Rivers, and Mono Lake Committee. The Licensee shall include in the plan documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the entities named above in this article, and specific descriptions of how the agencies' comments are accommodated by the plan. The Licensee shall allow a minimum of 60 days for the entities to comment and to make recommendations prior to filing the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

Article 417. The Licensee shall arrange to meet with the Forest Service by April 15<sup>th</sup> of each year to discuss a draft annual water management plan showing the estimated streamflow, lake levels, power diversions, and Mill Creek return water conveyance facility flows for the Lundy Project based upon the annual snow pack forecast or such other information that the Licensee deems relevant. The plan will be based on consideration of the following factors: project operational and power goals, maintenance plans, reservoir recreation objectives, agency streamflow management goals, water rights, and such other factors that will affect the Licensee's decision to divert water into the project powerhouse. Licensee shall use its best efforts to meet the water management plan objectives. Licensee may diverge from the water management plan objectives based upon the actual water runoff and changes to the factors underlying the establishment of the water management plan.

The Licensee shall prepare the final annual water management plan after consultation with the Water Rights Holders (Forest Service, Mono County, U.S. Bureau of Land Management, and Los Angeles Department of Water and Power, or their successors), U.S. Fish and Wildlife Service, California Department of Fish and Game, California Trout, American Rivers, and Mono Lake Committee. The Licensee shall give these entities until May 15<sup>th</sup> to provide comments to the draft plan. The Licensee shall file the final plan with the Commission by June 1<sup>st</sup> of each year and shall include with the final plan documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the entities named above in this article, and specific descriptions of how the plan accommodates the entities' comments. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on project-specific information. Upon the annual request of any interested party, SCE shall notify each interested party when the annual water management plan has been filed and shall either provide each interested party with a copy of the plan or instructions how the interested party may view the plan on the Commission's website.



## **CERTIFICATE OF SERVICE**

I hereby certify that, I have this day served the foregoing **OFFER OF SETTLEMENT REGARDING THE SOUTHERN CALIFORNIA EDISON LUNDY HYDROELECTRIC PROJECT (FERC NO. 1390)** on all parties identified on the attached service list. Service was effected by one or more means indicated below:

- ☐ Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.
- ☐ Placing the copies in sealed envelopes and causing such envelopes to be delivered by hand or by overnight courier to the offices of the Commission or other addressee(s).
- ☒ Placing copies in properly addressed sealed envelopes and depositing such copies in the United States mail with first-class postage prepaid to all parties.
- ☐ Directing Prographics to place the copies in properly addressed sealed envelopes and to deposit such envelopes in the United States mail with first-class postage prepaid to all parties.

Executed this 3<sup>rd</sup> February, 2005, at Rosemead, California.



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Meraj Rizvi

Project Analyst

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