

Weeks Falls

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LICENSE
REHEARING

Project No. 7563-001

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Raymond J. O'Connor, Chairman;
Georgiana Sheldon, A. G. Sousa
and Charles G. Stalon.

South Fork II, Inc.) Project No. 7563-001

ORDER ON REHEARING
(Issued July 2, 1985)

On April 25, 1985, the Commission issued an order (license order) 1/ granting a license to South Fork II, Inc. (South Fork) to construct, operate and maintain the Weeks Falls Project No. 7563, to be located on the South Fork Snoqualmie River in the Snohomish River Basin in King County, Washington. On May 28, 1985, the Washington State Department of Fisheries, the Washington State Department of Game, the U.S. Fish and Wildlife Service, the Tulalip Tribes of Washington (hereinafter referred to as "joint agencies"), and South Fork filed a timely joint request for rehearing of the license order requesting that the Commission: 1) modify the ordering paragraph of the license order incorporating into the license a certain portion of South Fork's Report on Fish, Wildlife and Botanical Resources; 2) make certain revisions in Articles 24-28, 30 and 37 of the license; and 3) add an additional Article 38 to the license. As discussed in detail below, this order grants in part and denies in part their requests.

Discussion

At the outset we would like to commend South Fork and the joint agencies for promptly reviewing the license order for Project No. 7563 and bringing to our attention those changes they mutually believe would improve the construction, operation and maintenance of the project. The willingness of these entities to constructively and expeditiously resolve their differences over the project has been apparent throughout the proceedings for this project and should serve as a model to all other applicants, Indian tribes and natural resource agencies. Also, although we are not approving verbatim all of their requested changes, as our discussion below indicates, we have found most of their changes to be in the public interest and therefore are making appropriate changes in the license articles for the project.

1/ 31 FERC ¶ 61,097 (1985).

Report on Fish, Wildlife and Botanical Resources

In ordering paragraph (D) of the license order, 2/ we approved and made a part of the license pages E-69 and E-71 through E-76 of the Report on Fish, Wildlife and Botanical Resources filed with the Commission by South Fork on August 29, 1983, in this proceeding. Item 7 on page E-73 requires the construction of a 12 inch in diameter bypass conduit to transport fish from in front of certain fish screens back to the river. South Fork and the joint agencies have requested that the 12 inch diameter requirement be replaced with the requirement that a minimum water depth of 6 inches be maintained in the conduit. 3/ Inasmuch as the successful bypass of fish is more dependent upon the depth of water in a conduit than that conduit's diameter, we find that the change would be in the public interest and are approving it herein.

Article 24

Article 24 of the license presently requires South Fork, after consultation with a variety of agencies (not including the U.S. Fish and Wildlife Service) and the Tulalip Tribes of Washington (Tribes), to prepare a plan to control erosion, dust and slope stability and to minimize the quantity of sediment or other potential water pollutants resulting from the construction and operation of the project. Article 24 also establishes a formal procedure whereby the plan will be submitted to the agencies and the Tribes for review, comment and objection. Under this procedure, South Fork is required to file the plan with the Commission along with any comments and objections of the Tribes and agencies. Thereafter, and without further order of the Commission, South Fork is required to comply with the plan as filed unless changes are ordered by the

2/ See 31 FERC at 61,190.

3/ South Fork's and the joint agencies' specific request is that ordering paragraph (D) be amended to read as follows:

(D) Pages E-69, and E-71 through E-76 [paragraph IV (Mitigative Measures)] of the Report on Fish, Wildlife and Botanical Resources, filed August 29, 1983, and consisting of 7 pages of text, are approved and made a part of the license, except as modified by any license articles contained herein, provided that item 7, page E-73, is hereby replaced with the following: a minimum water depth in the fish return passage of 6 inches.

Commission pursuant to authority reserved to the Commission by that article. 4/

South Fork and the joint agencies have requested that numerous changes be made to Article 24. 5/ With regard to the plan to control

4/ See 31 FERC at 61,190-91 for the text of Article 24 as included in the license.

5/ South Fork's and the joint agencies' specific request is that Article 24 be amended to read, in part, as follows:

Article 24. Licensee shall, after consultation with the Washington State Department of Ecology, the United States Fish and Wildlife Service, the Washington State Department of Fisheries, the Washington State Department of Game, the Washington State Department of Transportation, the Washington State Parks and Recreation Commission, the King County, Washington, Department of Planning and Community Development, the U.S. Soil Conservation Service, the U.S. Army Corps of Engineers, and the Tulalip Tribes of Washington, prepare a pollution control plan to control erosion, dust and slope stability, and to minimize the quantity of sediment or other potential water pollutants resulting from the construction and operation of the project. Erosion control shall be provided for in all disturbed areas associated with the project. All recommendations of Thomas Dunne, in the August, 1984, report entitled "Effects of the Twin Falls and Weeks Falls Projects on Sedimentation Along the Snoqualmie River System", South Fork "Supplemental Information", October, 1984, Exhibit 3-11, are hereby incorporated as project requirements for the construction, operation and maintenance phases. The Licensee and joint agencies shall attempt to resolve any issues that arise regarding implementation of the Dunne recommendations in the course of development of the pollution control plan. Failing agreement among the Licensee and joint agencies, any such issue shall be resolved by Commission order. Among other Dunne study recommendations, the Licensee shall follow the measures set forth in Attachment A to the joint rehearing petition, which attachment is hereby approved and made a part of the license.

The pollution control plan shall address, among other things, vegetation, design and location of sedimentation ponds, grading of slopes,

(Footnote 5 continued on next page.)

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* * *

Within one year from the date of issuance of this license and at least 90 days prior to any ground disturbing activity or soil disposal at the project, the Licensee shall submit copies of the pollution control plan to the entities listed above for review, comment and objection.

At least 90 days prior to construction, and 90 days prior to any final authorization to proceed with construction, the Licensee shall submit copies of a detailed construction plan to the entities listed above for review, comment and objection. The construction plan shall include all aspects of project construction, as outlined in Attachment B to the joint rehearing petition, which attachment is hereby approved and made a part of the license. At least 90 days prior to operation and 90 days prior to any final authorization to proceed with operation, the Licensee shall submit copies of an operation plan to the entities listed above for review, comment and objection. The operation plan shall include, but not be limited to, the required minimum in-stream flow of 38 cfs, ramping rates, and erosion and other pollution control measures that will ensure no deleterious materials such as oil, hydraulic fluid, fresh concrete, etc., are discharged into the stream after project construction. The operation plan shall provide for monitoring the following factors once the project has been constructed: fish passage, screen operation, dissolved gases, flows, erosion controls, sediment, bed load movement, mitigation measures, temperature, and reestablishment of vegetation. The specific requirements for conducting and reporting these monitoring studies should be worked out with the entities listed above. The operation plan shall provide for an operational demonstration prior to the first sale of power and annually for every year that the plant operates. This will consist of a demonstration of all facilities relevant to fish and wildlife concerns, such as ramping, bypass valves, flow monitoring devices, automatic valves, transfer switches, alarm systems, and emergency power supplies. These functions and facilities will be demonstrated by simulating the actual signals intended to actuate them. The demonstration shall be done at a frequency of at least once every 12 months within a period designated by the entities listed above. The entities will be notified of the demonstration by the operator one month in advance. The agencies, when notified, will decide whether or not to participate and will respond accordingly. If

(Footnote 5 continued on next page.)

erosion, dust, slope stability, and sedimentation (which they have requested be called the "pollution control plan") they request that Article 24 be modified so that: 1) the U.S. Fish and Wildlife Service be among the agencies which must be consulted; 2) all

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operation deficiencies violating the terms of the license are found, the plan will be shut down until such deficiencies are corrected. In the event of any such deficiency, each of the entities listed above will be immediately notified. A demonstration of corrective operation will be scheduled. A report shall be submitted to the entities listed above subsequent to each demonstration describing deficiencies and actions taken to correct them. Copies of all such notifications and reports shall also be submitted to the Director, Office of Hydropower Licensing, and the Commission's Regional Engineer.

If any entity listed above does not provide the Licensee with written comments or objections within 30 days of its receipt of the pollution control plan, construction plan, or operation plan, the Licensee shall make a written request to such entity to confirm, within 10 days of its receipt of such request, that it has no objection to the plan. At the expiration of such 10 day period, the Licensee shall file the plan with the Commission along with any written comments and objections from the entities listed above and any comments its has on such comments and objections. The Licensee shall thereafter comply fully with the plan as filed with the Commission; provided, however, that the Commission reserves the right to direct changes in the plan. If there is an objection or dispute regarding the adequacy of the pollution control, construction or operation plan, the Licensee and entities listed above shall make a good faith effort to resolve the matter by unanimous agreement before filing the plan with the Commission. If any of the entities listed above, or the Licensee, determines unanimous agreement on resolving the issue cannot be reached, the matter may be referred by any of them for resolution to the Commission, in which event all interested parties involved shall provide the Commission a written explanation of their respective positions. Construction cannot begin prior to filing the pollution control and construction plans in accordance with these provisions, and may not begin until the Commission has resolved any plan dispute submitted to the Commission for determination. Similarly, operation of the project may not begin until the Commission has resolved any operation plan dispute submitted to the Commission for determination.

recommendations of the Dunne Study, 6/ including its major recommendations for erosion control as specified in Attachment A to the parties' joint rehearing request and which is attached to this order also as Attachment A, be made project requirements for the construction, operation and maintenance of the project and specifically be made part of the license; 3) disputes regarding the proper implementation of the Dunne Study recommendations shall be resolved by South Fork and the joint agencies; 4) if they fail to resolve any such disputes, they must be resolved by Commission order; and 5) following the filing of the plan with the Commission pursuant to the procedures embodied in the existing Article 24, if disputes over the adequacy of the plan remain and cannot be resolved by unanimous agreement of South Fork, the joint agencies and the other agencies specified in Article 24, then any entity may refer the matter to the Commission for resolution. With regard to this last point, they also request that Article 24 provide that until the Commission resolves any such matter submitted to it, South Fork may not begin construction of the project.

We have reviewed the requested changes in Article 24 as they relate to the plan to control erosion, dust, slope stability, and sedimentation and have determined that it would be in the public interest to approve many of them since they will facilitate better interaction of the parties and more prompt resolution of any disputes which may arise. Specifically, we are approving herein: the designation of this plan as the "pollution control plan"; the addition of the U.S. Fish and Wildlife Service to the group of entities that must be consulted by South Fork in its preparation of the plan; the designation of the major recommendations for erosion control of the Dunne Study as specified in Attachment A hereof as requirements for the construction, operation and maintenance of the project; 7/ and the requirement that South Fork and the consulted agencies 8/ work to resolve disputes regarding the proper implementation of those recommendations. We are not, however, approving their request that all of the recommendations of the Dunne Study (i.e., those in addition

6/ See 31 FERC at 61,185 and 61,194 n. 4 for the complete title of the Dunne Study and a discussion of its contents.

7/ We accomplish this not by specifically stating that the major recommendations of the Dunne Study are to be project requirements but, rather, by requiring that those recommendations be made a part of the pollution control plan and that South Fork comply with the plan.

8/ See n. 13, *infra*.

to those specified in Attachment A) be made project requirements. We are declining to do so since we have reexamined the Dunne Study and have determined that it is not entirely clear which portions of it should be considered as constituting the remaining recommendations of the study. We believe that if we were to amend Article 24 to require compliance with all of the Dunne Study recommendations, this ambiguity could lead to uncertainty with regard to the actual requirements of Article 24 and, thus, could pose a threat to the harmonious working relationship South Fork has developed with the joint agencies. We believe that the public interest would be better served by making the major recommendations of the Dunne Study binding on South Fork but providing it and the consulted agencies with the flexibility to determine the most appropriate way to successfully implement those major recommendations.

We are also not approving South Fork's and the joint agencies' requests that disputes regarding the proper implementation of the Dunne Study be resolved by Commission order if the parties fail to resolve them and that if any dispute remains regarding the adequacy of the plan following the filing of the pollution control plan with the Commission and the matter is referred to the Commission, construction of the project cannot begin until the Commission has resolved the dispute. We are not approving these related requests because they could, by requiring the Commission to take administrative action to decide all objections to South Fork's interpretation of what constitutes proper implementation of the Dunne Study recommendations 9/ and other aspects of the plan, including those without merit, unnecessarily delay construction of the project. Furthermore, although the requested revisions do recognize the ultimate authority of the Commission to determine when and how the project should be constructed, 10/ they would vest in the agencies to be consulted

9/ It is unclear from the language of the requested revisions if South Fork and the joint agencies are requesting that the Commission resolve disputes over the proper implementation of the Dunne Study recommendations before the pollution control plan is filed with the Commission or if they want those disputes to be resolved under their requested post-filing procedures. However, our determination that it would be inappropriate to approve their requests in this regard is applicable to both interpretations.

10/ As discussed in detail in the license order, South Fork and the Tribes had requested that the Commission approve an agreement between themselves regarding the project. We declined to

(Footnote 10 continued on next page.)

pursuant to Article 24 the authority to halt, at least temporarily, construction of the project. We believe that once a license for a project is issued by us, the authority to delay construction of the project--even temporarily--because of disputes over the adequacy of a plan required to be prepared by us as part of the license resides with the Commission and, therefore, should not be delegated to other entities. 11/ Consequently, we cannot approve these requested revisions.

In lieu of the revisions requested by South Fork and the joint agencies regarding Commission resolution of disputes over the proper implementation of the Dunne Study recommendations and the adequacy of the pollution control plan, we are revising Article 24 of the license to provide that if any of the agencies to be consulted under that article state any objections to the pollution control plan either before or within 10 days after their receipt of the plan for formal review, South Fork, instead of forwarding the plan to the Commission along with the objections, shall promptly, and in good faith, attempt to resolve the dispute to the mutual satisfaction of itself, the objecting entity and the other consulted agencies. If the matter is resolved, the revised Article 24 would require South Fork to modify the plan accordingly before filing it with the Commission. If the matter is not resolved, under the revised Article 24 South Fork would file the plan with the Commission along with the objections and written documentation of its attempt to resolve the matter. In such cases, all of the consulted agencies would have the opportunity to submit additional comments to the Commission on the disputed issue. To ensure that this dispute resolution procedure is expeditiously carried out, the revised Article 24 places a 20-day limit on South Fork's filing of the pollution control plan and related documents with the Commission. Also, and in accordance with our discussions herein and in the license order regarding the inappropriateness of giving agencies the authority to delay construction

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approve the agreement since it would have impermissibly granted to the Tribes the authority to determine if and how the project should be constructed and operated. See 31 FERC at 61,185-86. In their joint request for rehearing, South Fork and the joint agencies state that the aforementioned agreement was not intended to vest such authority in the Tribes. See joint rehearing request at 3. Their requested revisions to Article 24 specifying that the Commission resolve any dispute over the adequacy of the plan apparently was intended to clarify this point.

11/ See 31 FERC at 61,186.

of a project, the revised Article 24--like the original Article 24--does not prevent South Fork from beginning construction of the project if an agency raises an objection to it. However, the revised Article 24 makes clear that the Commission has the authority to direct changes in the plan in response to any unresolved objection or for any other appropriate reason. Finally, the revised Article 24 clarifies an ambiguity in the parties' request 12/ by specifying that disputes over the proper implementation of the major recommendations of the Dunne Study shall be subject to the same dispute resolution mechanism applicable to all other objections to the plan under the revised Article 24. 13/

Although not incorporating the requested provision prohibiting South Fork from commencing construction of the project until the Commission resolves all disputes and objections regarding the pollution control plan referred to it, we believe the procedures established by our revised Article 24 will force South Fork to accommodate all legitimate objections to the plan and will discourage the consulted agencies from advancing unjustified objections. In addition, the provisions requiring South Fork to document its attempts to resolve disputes when resolution has not been obtained and allowing the filing of additional comments by the consulted agencies in such cases will enable the Commission to promptly decide if South Fork had proceeded in good faith and if the pollution control plan should be modified in light of the objections. We believe that the procedures embodied in the revised Article 24, by putting the impetus to resolve disputes on both South Fork and the consulted agencies, will be in the public interest and will result in the attainment of the parties'

12/ See n. 9, supra.

13/ In providing that disputes over the proper implementation of the Dunne Study recommendations are to be subject to the same dispute resolution mechanism as other objections, we are providing that disagreements in this regard can be raised by all of the agencies to be consulted under Article 24, not just by the joint agencies, as apparently requested by South Fork and the joint agencies. See para. 1 of the revisions requested to Article 24 set out in n. 5, supra. Inasmuch as all of the consulted agencies can object to all other aspects of the pollution control plan under our original and revised Article 24, and under the revisions requested by South Fork and the joint agencies, we believe it would be more appropriate if all of the agencies listed in Article 24 are able to raise objections regarding implementation of the Dunne Study recommendations.

primary purpose in advancing their requested revisions to Article 24--to encourage the parties to resolve among themselves any future disputes. 14/

South Fork and the joint agencies have also requested that Article 24 be revised to require South Fork to prepare construction and operation plans for the project. 15/ With regard to the construction plan, they request that it address all aspects of project construction as specified in Attachment B to their joint rehearing request and which is attached to this order also as Attachment B. 16/ As to the operation plan, they request that it include such things as ramping rates, minimum instream flows, and erosion and other pollution control measures that will ensure no deleterious materials are discharged into the South Fork Snoqualmie River. In addition, they request that the operation plan provide for the monitoring and reporting of certain factors and the conducting of an initial and annual project operation demonstrations. Finally, they request that these plans be subject to the same objection procedures they have requested be made applicable to the pollution control plan. 17/

We have concluded that since the construction and operation plans are closely related to the pollution control plan and since their preparation will help ensure that the Weeks Falls Project is constructed and operated in an environmentally sound manner, modification of Article 24 to generally incorporate the requested revisions with regard to them would be in the public interest. Accordingly, we are approving herein the requested revisions with

14/ See joint rehearing request at 3.

15/ See n. 5, supra, for the specific requests made with regard to these two plans.

16/ Included in Attachment B are such things as requirements for the preparation of scale drawings of all pertinent project features, development of background and baseline data, and preparation of land acquisition plans and schedules.

17/ Specifically, South Fork and the joint agencies have requested that Article 24 be revised so that if the consulted agencies have any objections to the construction or operation plans and the objections are referred to the Commission, South Fork cannot begin construction or operation until the Commission has resolved the objections. See n. 5 supra.

the following modifications. First, we are requiring South Fork to engage in the same consultation process with regard to its preparation of these two plans as it is required to undertake in preparing the pollution control plan. Second, since there appears to be a certain degree of redundancy between the pollution control plan and the construction and operation plans, we are providing that matters addressed and described in the pollution control plan which relate to project construction or operation may be addressed in the latter two plans by appropriate reference to the pollution control plan. Third, we are specifying that the plans must be consistent with the provisions of all other articles of the license and must reflect Commission determinations on such matters as ramping rates and fish screens. Fourth, and for the same reasons discussed previously with regard to the pollution control plan, we are not approving South Fork's and the joint agencies' request that these plans be made subject to the same objection procedures they have requested be made applicable to the pollution control plan. Instead, we are providing that they be subject to the same objection procedures we are making applicable to the pollution control plan under our revisions to Article 24 of the license. Finally, we are not approving as part of Article 24 their request that project operation demonstrations be included in the operation plan. However, as will be discussed next, we are approving with modifications their requests in this regard as part of Article 25 of the license since this latter article is the more appropriate place in which to lodge these provisions.

Article 25

Article 25 of the license presently requires South Fork to: allow representatives of the Tribes to inspect the project during its construction and operation; maintain and make available to the Tribes a record of project operations; and notify the Tribes of unusual occurrences. 18/ The joint agencies and South Fork have requested that this article be revised so that the other members of the joint agencies be afforded the same rights given to the Tribes under this article. 19/ Since this requested revision

18/ See 31 FERC at 61,191 for the text of Article 25 included in the license.

19/ South Fork's and the joint agencies' specific request is that Article 25 be revised to read as follows:

Article 25. Licensee shall allow representatives of the Tulalip Tribes of Washington, USFWS, WDF and WDG to inspect the project site at any reasonable time before and

(Footnote 19 continued on next page.)

would facilitate agency oversight of the project, it would be in the public interest for us to approve it, and we are doing so herein.

As mentioned in the discussion of the Article 24 revisions, South Fork and the joint agencies have requested that the license be revised to require South Fork to conduct an initial and annual project operation demonstrations. Specifically, they have requested that: the first demonstration be held prior to the first sale of power; annual demonstrations be conducted within periods designated by the agencies specified in Article 24 of the license for every year that the project operates; the agencies be given prior notice of each demonstration; if the demonstrations disclose operation deficiencies violating the terms of the license the project may be shut down until the deficiencies are corrected; and the agencies be notified of such deficiencies and corrective measures.

We have reviewed the revisions requested by South Fork and the joint agencies and have determined that it would be in the public interest to approve most of them for the same reason we are approving their specific requests with regard to Article 25. However, we are not approving their request that the project automatically be shut down if the demonstrations disclose operation deficiencies violating the terms of the license. Pursuant to Section 4(g) of the Federal Power Act 20/ and Title III thereof, the Commission has wide discretion to determine the most appropriate means to respond to violations of license articles. While it may turn out in any particular instance that ordering the shutting down of the Weeks Falls Project for a violation of the license disclosed during an operation demonstration would be the most appropriate Commission response, we cannot ignore the

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during construction and operation of the Weeks Falls Project. Licensee shall also maintain and make available to the entities listed above a record of project operations, including daily amount of diversion, daily record of flows over the diversion, and rates of changes of both diverted flows and bypassed flows. In addition, the Licensee shall document all unusual occurrences such as load rejections, bring such events to the immediate attention of the tribes and other entities listed above, and make such documentation available to such entity.

20/ 16 U.S.C. § 797.

possibility that the public interest would be better served by our use of a different enforcement tool in other situations. 21/ If we were to approve their request to have the project automatically shut down for violations disclosed during the demonstrations, we would not be able to use the discretion vested in us by the Federal Power Act to respond properly to protect the public interest. This we decline to do.

In lieu of the requested revision calling for the shutting down of the project, we are approving herein an addition to Article 25 requiring South Fork to give the Commission prior notice of each demonstration so that Commission staff will have an opportunity to be present during the demonstrations. Also, this addition requires South Fork, if it receives written notification from any joint agency indicating that such agency believes a demonstration has revealed a license violation, to promptly forward such written notification to the Commission. We believe that these provisions, by promptly bringing license violations to the attention of the Commission, will better enable us to expeditiously fashion the most appropriate enforcement response.

Article 26

Article 26 of the license presently provides that the continuous minimum flow for the project may be modified for short periods upon mutual agreement of South Fork and the Washington State Department of Game. 22/ South Fork and the joint agencies have requested that this article be revised to provide that such modification should occur upon the mutual agreement of South Fork, all of the joint agencies, and the Washington State Department of Ecology. 23/ We believe that this requested revision is in the public interest and are therefore approving it herein.

21/ For example, because of energy shortages in the Pacific Northwest caused by the outage of other generating facilities, it may be more appropriate for the Weeks Falls Project to continue operating while South Fork carries out appropriate mitigation measures.

22/ See 31 FERC at 61,191 for the text of Article 26 included in the license.

23/ South Fork's and the joint agencies' specific request is that Article 26 be revised to read, in part, as follows:

Article 26. . . . This flow may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between the Licensee, the Joint Agencies and the Washington State Department of Ecology.

Article 27

Article 27 of the license presently requires South Fork, after consultation with all of the joint agencies except the Washington State Department of Fisheries, to conduct studies to determine an appropriate ramping rate for the project and to forward its recommendations on such to the Commission for approval. 24/ South Fork and the joint agencies have requested that Article 27 be revised to provide that pending determination of a final ramping rate by agreement of the above entities or Commission order, the maximum ramping rate shall be 1 foot/hour. 25/

We agree with the parties that Article 27 should be amended to provide for an interim maximum ramping rate of 1 foot/hour and are approving that revision herein. However, we are not approving their requested revision granting to the entities specified in that article the authority to set the final ramping rate. As discussed previously in relation to the requested revisions to Article 24, we do not believe approval of such a request would be appropriate. In lieu thereof, and to ensure that all objections to the recommendations of South Fork are brought to our attention, we are requiring South Fork to submit its ramping rate studies and recommendations to the entities specified in Article 27 for formal review, objection and submittal to the Commission in accordance with the procedures we are approving in Article 24 for the pollution control, construction and operation plans.

Article 28

Article 28 of the license presently requires South Fork to file for Commission approval functional design drawings of fish screens after consultation with the U.S. Fish and Wildlife Service and the Washington State Department of Game. 26/ South Fork and

24/ See 31 FERC at 61,191 for the text of Article 27 included in the license.

25/ South Fork's and the joint agencies' specific request is that Article 27 be revised to read, in part, as follows:

Article 27. . . . Comments on the results of the study from the entities listed above shall be included in the filing. Pending determination of a final ramping rate by agreement of the parties or Commission order, the maximum ramping rate shall be 1 foot/hour.

26/ See 31 FERC at 61,191 for the text of Article 28 included in the license.

the joint agencies have requested that this article be revised to expand the list of agencies to be consulted therein to include all of the joint agencies. 27/ We have determined that it would be appropriate to make the requested revision and are approving it herein.

Article 30

Article 30 of the license presently requires South Fork, prior to the commencement of any future construction at the project, to: consult with the Washington State Historic Preservation Officer (SHPO) about the need for any cultural resources survey and salvage work; develop, in consultation with the SHPO, a mitigation plan for the protection of significant archeological or historical resources discovered during the course of construction; and make available reasonable amounts of funds for such work. 28/ South Fork and the joint agencies have requested that Article 30 be revised to specifically include Indian religious resources within the scope of that article and to have South Fork consult with the Tribes in each instance Article 30 requires it to consult with the SHPO. 29/

27/ South Fork's and the joint agencies' specific request is that Article 28 be revised to read, in part, as follows:

Article 28. . . prepared, in part, after consultation with the U.S. Fish and Wildlife Service, WDG, WDF and Tribes.

28/ See 31 FERC at 61,191-92 for the text of Article 30 included in the license.

29/ South Fork's and the joint agencies' specific request is that Article 30 be revised to read, in part, as follows:

Article 30. Licensee shall, prior to the commencement of any future construction at the project, consult with the Washington State Historic Preservation Officer (SHPO) [and] the Tulalip Tribes, about the need for any cultural and/or Indian religious resources survey and salvage work. . . .and the Licensee shall consult with the SHPO and the Tulalip Tribe to develop a mitigation plan for protection of religious sites and significant archaeological or historical resources. If the Licensee and the SHPO and/or tribes or tribal organizations cannot agree on the amount of money to be expended on archaeological, religious or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Our review of the requested revisions to Article 30 indicates that it would be in the public interest to modify that article generally as requested. Although we believe that the existing Article 30 already encompasses Indian religious resources, specifically identifying them as within the scope thereof will clarify this point. Also, we think it would be appropriate for the Tribes, with its intimate knowledge of its own religious resources, to be consulted when those resources may be affected by future construction at the project. Therefore, we are approving herein the requested changes, but are providing that the Tribes are to be consulted only with regard to Indian religious resources. 30/

Article 37

Article 37 of the license sets out the situations in which South Fork may grant permission for use and occupancy of project lands and waters and those where it can convey certain interests in project lands and waters without prior Commission approval. 31/ Paragraph (e) thereof, which is only applicable to conveyances of interests in lands, provides, inter alia, that before any such conveyance can be made, South Fork must: 1) consult with Federal and state fish and wildlife or recreation agencies as appropriate; 2) determine that the conveyance would not be inconsistent with recreational reports or exhibits; and 3) include covenants in the conveyances requiring the grantees to take all reasonable precautions to protect the scenic, recreational, and environmental values of the project.

South Fork and the joint agencies have requested that paragraph (e) of Article 37 be revised to: 1) make it also applicable to grants of permission for use and occupancy; 2) require consultation with tribal agencies; 3) require grantees and permittees to take all reasonable precautions to protect the scenic, recreational, and environmental values of the Snohomish River Basin; 4) require that conveyances and grants of permission to use and occupy project lands be consistent with the provisions of the

30/ Although we are approving the requested revisions to Article 30, we take no position on South Fork's and the joint agencies' contention that these revisions are required for compliance with the American Religious Freedom Act, 42 U.S.C. § 1996. See joint rehearing request at 7.

31/ See 31 FERC at 61,192-94 for the text of the Article 37 included in the license.

pollution control, construction and operation plans to be prepared under Article 24 of the license; and 5) require that disputes regarding determinations of consistency with those plans be resolved through the dispute resolution provisions they have requested be included in Article 24 of the license. 32/

We have reviewed the parties' requested revisions to paragraph (e) of Article 37 and have concluded that, because they will help ensure that future operations of the project will not adversely impact environmental and Indian resources, the first three revisions specified in the immediately preceding paragraph are in the public interest. Accordingly, we are approving them herein. As to the last two items specified in that paragraph, we believe it would be in the public interest to require all conveyances and grants of permission to use and occupy project lands to be consistent with the three plans required to be prepared pursuant to Article 24 of the license.

32/ South Fork's and the joint agencies' specific request is that paragraph (e) of Article 37 be revised to read, in part, as follows:

Article 37. (e) The following additional conditions apply to any intended conveyance, or use and occupancy permission provided for in this Article:

(1) Before conveying the interest, the Licensee shall consult with Federal, tribal 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. The licensee shall also determine, after consultation with the joint agencies that the proposed use of the lands to be conveyed is not inconsistent with any pollution control plan, construction plan, operation plan or other fish and wildlife concerns. Any dispute regarding consistency with fish and wildlife requirements shall be resolved as provided in the dispute resolution provisions of Article 24.

(3) . . . (ii) . . . scenic, recreational, and environmental values of the project and Snohomish River basin.

However, and for the reasons discussed previously, we believe that disputes regarding consistency determinations should not be resolved in accordance with the parties' requested revisions to Article 24, but, rather, in accordance with procedures similar to those we are approving for inclusion in that article. Therefore, we are approving herein appropriate revisions to paragraph (e) of Article 37.

Proposed Article 38

South Fork and the joint agencies have requested that a new Article 38 be added to the license specifying that if project modifications requiring approval pursuant to Section 10(b) of the Federal Power Act 33/ are proposed, the joint agencies be notified in writing of the proposed modifications and be given an opportunity to comment and object to such modifications. 34/ While we have determined that notification of the joint agencies and the providing to them of an opportunity to comment and object with regard to modifications requiring approval pursuant to Section 10(b) would be in the public interest, we note that the provisions of Section 10(b) have generally been incorporated into Article 3 of Form L-11 which was made a part of the license for the Weeks Falls

33/ 16 U.S.C. § 803(b). This section provides:

That except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of an installed capacity in excess of two thousand horsepower without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

34/ South Fork's and the joint agencies' specific request is that an additional Article 38 be added to the license to read as follows:

Article 38. If a project modification(s) requiring approval pursuant to 16 U.S.C. § 803(b) is proposed, including, but not limited to, any modification in the design or location of project facilities, the Tribes, WDF, WDG and USFWS shall be directly notified in writing by mail and shall have the opportunity to comment upon and object to such modification(s).

Project by ordering paragraph (E) of the license order. ^{35/} Consequently, we will remove Article 3 of Form L-11 from the license, revise it to incorporate the changes requested by South Fork and the joint agencies in this regard, and reinsert it into the license as additional Article 38.

The Commission orders:

(A) The joint request for rehearing filed on May 28, 1985, with the Commission in this proceeding by South Fork II, Inc., the Washington State Department of Fisheries, the Washington State Department of Game, the Tulalip Tribes of Washington, and the U.S. Fish and Wildlife Service is granted in part and denied in part.

(B) Ordering paragraph (D) of the order issuing a license for the Weeks Falls Project No. 7563 (31 FERC ¶ 61,097 (April 25, 1985)) is amended to read as follows:

(D) Pages E-69, and E-71 through E-76 [paragraph IV (Mitigative Measures)] of the Report on Fish, Wildlife and Botanical Resources, filed August 29, 1983, and consisting of 7 pages of text, are approved and made a part of the license, except as modified by any license articles contained herein; provided, however, that item 7, page E-73, is hereby replaced with the following: a minimum water depth in the fish return passage of 6 inches.

(C) The first sentence of ordering paragraph (E) of the order issuing a license for the Weeks Falls Project No. 7563 (31 FERC ¶ 61,097 (April 25, 1985)) is amended to read as follows:

^{35/} See 31 FERC at 61,190 and the second sentence of para. 1 of Article 3 of Form L-11:

Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct.

This license is also subject to Articles 1, 2 and 4 through 23 set forth in Form L-11 (revised October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting The Interests of Interstate or Foreign Commerce" attached to and made a part of this license.

(D) Articles 24 through 28 and 30 of ordering paragraph (E) of the order issuing a license for the Weeks Falls Project No. 7563 (31 FERC ¶ 61,097 (April 25, 1985)) are amended to read as follows:

Article 24. (A)(1) Licensee shall, after consultation with the Washington State Department of Fisheries, the Washington State Department of Game, the Tulalip Tribes of Washington, the U.S. Fish and Wildlife Service (hereinafter referred to in subsequent articles hereof as the "joint agencies"), the Washington State Department of Transportation, the Washington State Parks and Recreation Commission, the King County, Washington, Department of Planning and Community Development, the U.S. Soil Conservation Service, the U.S. Army Corps of Engineers, and the Washington State Department of Ecology, prepare a pollution control plan to control erosion, dust, and slope stability in all disturbed areas associated with the project, and to minimize the quantity of sediment or other potential water pollutants resulting from construction and operation of the project. The pollution control plan shall address, among other things, vegetation, design and location of sedimentation ponds, grading of slopes, control of surface drainage, measures to contain sediment or minimize the amount of sediment that would be generated during a break in the pipeline/penstock, temporary stockpiling of topsoil, storage and disposal of excess excavation and slide materials, and any construction or upgrading of access roads, including construction access. The pollution control plan shall also include a subplan for the removal of accumulated sediment from the project impoundment. The subplan shall address possible placement of the removed sediment downstream from the diversion weir, and shall also include, among other things: a description of the final disposition of the removed sediment, an implementation schedule that provides for normal maintenance sediment removal periods defined to minimize adverse impacts on fish spawning and rearing, and provisions for cooperation with, and notification of, the entities listed above prior to sediment removal operations. The pollution control plan shall also include: provisions for identifying and mapping of erosive soils and potentially unstable slopes; an implementation schedule for the provisions not related to the subplan; monitoring and maintenance programs for project construction and operation; provisions for periodic review of the pollution control plan and for making any necessary revisions to the pollution control plan; provisions for submitting to the Director, Office of Hydropower Licensing, the Commission's Regional Engineer, and to the entities listed above, periodic reports on the progress of all investigations, implementation, monitoring,

and maintenance accomplished under the pollution control plan during the period, and of work contemplated under the pollution control plan for the ensuing period; and documentation of consultation with the above entities during preparation of the pollution control plan.

(2) All major recommendations, as specified in Attachment A to the rehearing request filed with the Commission on May 28, 1985, with regard to this project, of the August, 1984 report by Thomas Dunne entitled "Effects of the Twin Falls and Weeks Falls Projects on Sedimentation along the Snoqualmie River System" and identified in n. 4 of 31 FERC ¶ 61,097 (1985) shall be incorporated into and made a part of the pollution control plan; provided, however, that the specific means for the proper implementation of those major recommendations shall be determined through the consultation required by paragraph (A)(1) hereof, and shall be included in the pollution control plan; provided, further, that the pollution control plan shall be consistent with the provisions of all other articles hereof. If the Licensee and the entities specified in paragraph (A)(1) hereof fail to resolve any disputes regarding the proper implementation of those major recommendations prior to the submittal of the pollution control plan to those entities for formal review pursuant to paragraph (A)(3) hereof, such disputes, if objections are raised, shall be subject to the provisions of paragraph (D) hereof.

(3) Within one year from the date of issuance of this license and at least 90 days prior to any ground disturbing activity or soil disposal at the project, the Licensee shall submit copies of the pollution control plan to the entities specified in paragraph (A)(1) hereof for formal review.

(B)(1) Licensee shall, after consultation with the entities specified in paragraph (A)(1) hereof, prepare a detailed construction plan for the project. The construction plan shall include all aspects of project construction, as specified in Attachment B to the rehearing request filed with the Commission on May 28, 1985, with respect to this project; provided, however, that items specified in said Attachment B which are addressed and described in the pollution control plan prepared pursuant to paragraph (A)(1) hereof may be addressed by reference to the appropriate portions of the pollution control plan when appropriate; provided, further, that the construction plan shall be consistent with the functional design drawings of fish screens approved pursuant to Article 28 hereof and the provisions of all other articles hereof; provided, further, that the construction plan shall be deemed to have been modified to incorporate the report approved pursuant to Article 29 hereof when such approval is given.

(2) At least 90 days prior to construction, the Licensee shall submit copies of the construction plan to the entities specified in paragraph (A)(1) hereof for formal review.

(C)(1) Licensee shall, after consultation with the entities specified in paragraph (A)(1) hereof, prepare a detailed operation plan for the project. The operation plan shall include, but not be limited to, the continuous minimum flow specified in Article 26 hereof, and the ramping rates provided for in Article 27 hereof; provided, however, that the operation plan shall be deemed to have been modified to incorporate the ramping rate or rates approved by the Commission pursuant to Article 27 hereof when such approval is given; provided, further, that the operation plan shall be consistent with the provisions of all other articles hereof. The operation plan shall also include: erosion and other pollution control measures that will ensure no deleterious material such as oil, hydraulic fluid and concrete are discharged into the South Fork Snoqualmie River after completion of project construction; and provisions for monitoring fish passage, screen operation, dissolved gases, water flows, erosion controls, sediment, bedload movement, mitigation measures, water temperatures and reestablishment of vegetation and reporting to the entities specified in paragraph (A)(1) hereof the results thereof; provided, that the specific requirements for conducting and reporting these monitoring studies shall be determined through the consultation required herein; provided, further, that items which are addressed and described in the pollution control plan prepared pursuant to paragraph (A)(1) hereof which relate to project operation may be addressed in the operation plan by reference to the appropriate portions of the pollution control plan when appropriate.

(2) At least 90 days prior to initial operation of the project, the Licensee shall submit copies of the operation plan to the entities specified in paragraph (A)(1) hereof for formal review.

(D) If any entity specified in paragraph (A)(1) hereof does not provide the Licensee with written comments or objections within 30 days from its receipt of the pollution control plan, construction plan or operation plan pursuant to paragraphs (A)(3), (B)(2) or (C)(2) hereof, respectively, the Licensee shall make a written request to such entity to confirm in writing, within 10 days of its receipt of such request, that it has no objection to the particular plan. At the expiration of such 10-day period, and if no written objections to the particular plan are received by the Licensee before or during such 10-day period, the Licensee, at the expiration of such 10-day period, shall file the plan with the Commission along with any written comments from such entities and any comments it has on such comments. If the Licensee receives written objections to the particular plan before or during such 10-day period it shall promptly, and in good faith, attempt to resolve the matter which is the subject of the objection with the objecting entity and the other entities specified in paragraph (A)(1) hereof. If the matter is resolved to

the mutual satisfaction of the Licensee, the objecting entity and the other entities, the Licensee shall modify the particular plan to reflect the mutual agreement of the parties and shall file the plan with the Commission along with any written comments from such entities, any comments it has on such comments, and written documentation of the objection and the manner in which it was resolved; provided, however, that the filing of such plan and other documents in such cases shall be done no later than 20 days following the expiration of the appropriate 10-day period described above. If the matter is not resolved to the mutual satisfaction of the Licensee, the objecting entity and the other entities, the Licensee, no later than 20 days following the expiration of the appropriate 10-day period described above, shall file the particular plan with the Commission along with any written comments and objections from such entities, any comments it has on such comments and objections, and written documentation of its attempt to resolve the matter which was objected to; provided, however, that the Licensee shall notify all of the above-referenced entities when it will make such a filing with the Commission and such entities will have 10 days thereafter in which to file with the Commission any additional comments they may have on the matter which was the subject of the objection. The Licensee shall comply fully with the provisions of the pollution control plan, construction plan and operation plan as filed with the Commission; provided, however, that the Commission reserves the right to direct changes in any such plan in response to any unresolved objection or for any other appropriate reason.

Article 25. (A) Licensee shall allow representatives of the joint agencies to inspect the project site at any reasonable time before and during construction and operation of the Weeks Falls Project. Licensee shall also maintain and make available to the joint agencies a record of project operations, including daily amount of diversion, daily record of flows over the diversion, and rates of change of both diverted flows and bypassed flows. In addition, the Licensee shall document all unusual occurrences such as load rejections, brings such events to the immediate attention of the joint agencies, and make such documentation available to such entities.

(B) The Licensee shall, prior to the first sale of energy produced by the project and annually throughout the term of this license, conduct operational demonstrations of all facilities relevant to fish and wildlife concerns including, but not limited to, ramping, bypass valves, flow monitoring devices, automatic valves, transfer switches, alarm systems, and emergency power supplies. These functions and facilities will be demonstrated by simulating the actual signals intended to actuate them. The demonstrations will be conducted within a period of the year agreed upon by the joint agencies and the Licensee. The Licensee shall

give written notification of each demonstration one month in advance to the joint agencies, the Commission's Regional Engineer, and the Director, Office of Hydropower Licensing. If the Licensee receives written notification from any of the joint agencies following a demonstration indicating that it believes the demonstration has indicated that the project is in violation of any term or condition of this license, it shall promptly, but in no event later than 20 days after receipt thereof, file a copy of such written notification with the Commission.

Article 26. Licensee shall maintain in the bypassed reach a continuous minimum flow of 38 cubic feet per second, as measured immediately downstream from the Weeks Falls Diversion Dam, or inflow to the reservoir, whichever is less, for the protection of fish and wildlife resources in the South Fork Snoqualmie River. This flow may be temporarily modified if required by operating emergencies beyond the control of the Licensee, and for short periods upon mutual agreement between the Licensee, the joint agencies and the Washington State Department of Ecology.

Article 27. Licensee shall, after consultation with the Washington State Department of Game, the Tulalip Tribes of Washington, and the U.S. Fish and Wildlife Service, conduct studies to determine a ramping rate needed at the Weeks Falls Project to ensure protection of downstream aquatic resources. Further, Licensee shall, within 6 months of commencement of project operations, complete the study and submit a report on the results of the study and recommendations for a ramping rate to the entities specified herein for formal review, comment, objection and submittal to the Commission pursuant to the provisions specified in paragraph (D) of Article 24 hereof; provided, however, that until a final ramping rate is approved by the Commission, the maximum ramping rate shall be 1 foot/hour.

Article 28. Licensee shall, within 3 months from the date of issuance of this license, file for Commission approval functional design drawings of fish screens for the intake of the Weeks Falls Project, prepared after consultation with the joint agencies. Within 6 months following completion of construction of the screens, Licensee shall file as-built drawings with the Commission.

Article 30. Licensee shall, prior to the commencement of any future construction at the project, consult with the Washington State Historic Preservation Officer (SHPO) about the need for any cultural and/or Indian religious resources survey and salvage work and with the Tulalip Tribes of Washington (Tribes) about the need for any Indian religious resources survey and salvage work. The Licensee shall make available funds in a reasonable amount for any such work as required. If any previously unrecorded archeological, historical or Indian religious sites are discovered during the course of construction or

development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO, and with the Tribes in the case of previously unrecorded Indian religious sites, to develop a mitigation plan for protection of significant archeological, historical or Indian religious resources. If the Licensee and the SHPO, and the Tribes in the case of Indian religious resources, cannot agree on the amount of money to be expended on archeological, historical or Indian religious work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

(E) Paragraph (e) of Article 37 of ordering paragraph (E) of the order issuing a license for the Weeks Falls Project No. 7563 (31 FERC ¶ 61,097 (April 25, 1985)) is amended to read as follows:

(e) The following additional conditions apply to any intended conveyance and use and occupancy permission under this article:

(1) Before conveying the interest or granting the permission, the Licensee shall determine that the proposed use of the lands to be conveyed or for which a grant of permission is to be given 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 or for which a grant of permission is to be given do not have recreational value.

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

(3) Before conveying the interest or granting the permission, the Licensee, after consultation with the joint agencies, shall determine that the proposed use of the lands to be conveyed or for which a grant of permission is to be given is not inconsistent with the provisions of the pollution control, construction and operation plans prepared pursuant to Article 24 hereof. At least 90 days prior to conveying the interest or granting the permission, the Licensee shall submit a copy of the proposed conveyance or grant of permission to the joint agencies for formal review, comment, objection and submittal to the Commission pursuant to the provisions specified in paragraph (D) of Article 24 hereof; provided, however, that the Licensee, except when required by paragraph (d) hereof, need not make any filing with the Commission in cases where no objection has been received by the Licensee or where the objection has been resolved pursuant to the provisions of paragraph (D) of Article 24 hereof.

(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 and the Snohomish River Basin's scenic, recreational, and other environmental values.

(F) The license for the Weeks Falls Project No. 7563 is also subject to the following additional article:

Article 38. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission, prior written notice to the joint agencies, and a prior opportunity provided to such agencies to comment and object, any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

ATTACHMENT A

Dunne Study (August, 1984)--Major Recommendations
and Project Requirements for Erosion Control

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

By the Commission.

(S E A L)

Lois A. Cashell
Lois D. Cashell,
Acting Secretary.

1. Diversion Weir. Supervise construction of the diversion weir closely to ensure that coffer dam construction and dredging are conducted with care.

2. Intake Structure.

A. The site at the intake structure should be excavated in the summer when the flow is expected to be less than 200 cfs. All work in stream, adjacent to, or affecting the river shall be carried out at low flow.

B. Isolate the excavation site from the river by a dike of sand bags or of timber and rock fill. Pump out to a settling pond located in the long depression between the present and realigned road beds.

C. Reinforce the river bank along and downstream of the intake structure with large rip rap and a reverse filter, as necessary to prevent increased bank erosion and/or failure.

3. Pipeline Trench. Excavate the trench carefully and store the sediment on the southern side of the trench, away from the steep stream bank.

4. Penstock on the Slope to the Power House.

A. Disturb the slope as little as possible. Leave old growth cedar trees in place to the maximum allowable extent.

B. During installation of the penstock, install horizontal drains if the excavation reveals high ground water pore pressures.

C. After the penstock is buried, quickly revegetate the surface of the trench and use interim erosion control measures during autumn and winter until vegetation is established. Use the following interim control measures: loosen the soil surface; divert water that may run into any linear surface depression from disturbed areas up-slope; build water bars along the pipeline alignment to divert water onto the forest floor; revegetate with local shrubs or ferns; and lay straw or similar material over the disturbed soil.

5. Powerhouse. Pump water from the excavation site to a

settling pond. Carefully examine the site to determine proper location for suitable pond of sufficient size.

6. Operation. Keep the impoundment as sediment free as possible through a flushing procedure developed in consultation with WDF, WDG, USFWS, and the Tulalip Tribes.

7. Access Roads.

A. For the section of access road over the present right of way for Homestead Valley Road, slope the road to drain away from the river bank, cover the surface with crushed rock and place the side cast material carefully to prevent entry into the stream.

B. For the access road to the powerhouse, capture sediment (during construction?) in a sedimentation pond installed on the lower part of the site, west of the powerhouse excavation.

ATTACHMENT B

OTHER CONSTRUCTION PLAN REQUIREMENTS

A complete project description including size, shape and location of any structures; the extent and location of any alteration to the physical environment; the nature, frequency, and duration of activities associated with the project.

I. A scale drawing of the property indicating:

- a. boundaries, easements, and ownerships as set forth in the legal description
- b. topography at appropriate contour intervals
- c. existing structures and improvement
- d. vegetation, water courses, and other natural features
- e. proposed improvements
- f. utilities plans
- g. circulation plans on and off the site
- h. landscaping plans
- i. other plans and drawings deemed necessary for evaluation
- j. identification of soils found in project area

II. Background and baseline data including a complete description of the physical characteristics of the area and a discussion of the relationships of each of the physical elements to one another. An analysis of the capability of the environment to sustain the present resources and habitat potential; identify the critical factors for maintenance of the environment. If this information is already provided in license application documents, specific references to the documents containing those materials will be sufficient.

III. Land acquisition plan and schedule.

IV. Construction plan for the project should specify mitigations and the means of attaining those intended mitigations for:

- a. demolition of existing structures

- b. removal and disposal of man-made and natural materials
- c. excavation, restoration and revegetation
- d. erosion control
- e. drainage control
- f. traffic control during construction phases
- g. utilities continuity and disruption
- h. emergency preparedness and management

V. Schedules for construction, and mitigations. Anticipated effects of construction timing on the site and aquatic resources, including provisions for handling the consequences of project delays of various durations, especially those affecting aquatic resources.

VI. Identification of and schedule for obtaining permits, approvals and other agency actions.

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED
MAJOR PROJECT AFFECTING THE INTERESTS
OF INTERSTATE OR FOREIGN COMMERCE

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its

judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, of the Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and

across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for

the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

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Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the

Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 22. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 23. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

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Dane

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

South Fork II, Inc.) RECREATION
Project No. 7563-003

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- (A) The revised Report on Recreational Resources, filed by South Fork II, Inc. on September 16, 1985, consisting of:
- (1) 29 pages of text and tables; and
 - (2) 10 drawings:

ORDER APPROVING REVISED REPORT ON RECREATIONAL RESOURCES

(Issued November 22, 1985)

The South Fork II, Inc. (Licensee), licensee for the Weeks Falls Hydroelectric Project, FERC No. 7563, filed for approval on September 16, 1985, a revised Report on Recreational Resources pursuant to Article 29 of the license.

The Licensee, in consultation with the Washington State Parks and Recreation Commission, the National Park Service, and the Interagency Committee for Outdoor Recreation, examined recreational use data at regional, county and local levels in order to assess the need for additional recreational facilities in the Weeks Falls Project area. As a result of the consultation, the Licensee proposes to provide a formal falls overlook, primary and secondary public parking, a hiking trail, fisherman access routes, access around the powerhouse, interpretive signs and handicapped parking accessible to the falls overlook. In addition, as part of the revised recreation plan, the Licensee proposes to preserve aesthetic qualities of the project area by designing project facilities to blend with the surrounding environment and revegetating disturbed areas following project construction. All proposed recreational development is scheduled to be completed by October 1986. The Licensee's revised Report on Recreational Resources is approved herein.

Construction of the recreational facilities will result in minor, short term impacts on the environment. Approval of the revised Report on Recreational Resources will not constitute a major Federal action significantly affecting the quality of the human environment.

Pursuant to 18 C.F.R. §375.314, the Director of the Office of Hydropower Licensing or the Director's designee orders:

<u>Title</u>	<u>FERC No.</u>
Weeks Falls Hydroelectric Project sheet 3 of 5	7563- 8
Weeks Falls Hydroelectric Project sheet 4 of 5	7563- 9
Weeks Falls Hydroelectric Project sheet 5 of 5	7563-10
Weeks Falls Hydroelectric Project sheet 13 of 14	7563-11
Weeks Falls Hydroelectric Project sheet 14 of 14	7563-12
General Landscape and Recreation Plan	7563-13
Powerhouse Access Road Landscape Architectural Plan	7563-14
Powerhouse Access Road Planting Plan sheet 1 of 3	7563-15
Powerhouse Site Plan Planting Plan sheet 2 of 3	7563-16
Intake Diversion Planting Plan sheet 3 of 3	7563-17

is approved and made part of the license.

(B) Licensee shall file, within 90 days of the issuance date of this order, an original of each of the revised Report on Recreational Resources drawings reproduced on silver or gelatin 35 mm microfilm mounted on Type D (3 1/4" X 7 3/8") aperture cards. In addition, file two Diazo type duplicate aperture cards of each drawing. The original cards and one set of duplicate aperture cards shall be filed with the Commission's Portland Regional Office. The FERC project number shall be shown in the margin below the title block of the microfilmed drawings, and also in the upper right corner of each aperture card.