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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SHASTA

PEOPLE OF THE STATE OF CALIFORNIA EX REL. ATTORNEY GENERAL XAVIER BECERRA,

Plaintiff and Petitioner,

v.

WESTLANDS WATER DISTRICT AND DOES 1-20,

Defendants and Respondents.

Case No. 192487

DEFENDANT AND RESPONDENT WESTLANDS WATER DISTRICT'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

BY FAX

Date: July 29, 2019
Time: 8:30 a.m.
Dept.: 8

Assigned for All Purposes to:
Hon. Tamara L. Wood

Action Filed: May 13, 2019
Trial Date: April 14, 2020

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Pursuant to California Evidence Code sections 452 and 453, Defendant and Respondent Westlands Water District ("Westlands") hereby submits this request for judicial notice in support of its Opposition to the Motion for Preliminary Injunction of Plaintiff and Petitioner People of the State of California Ex Rel. Attorney General Xavier Becerra ("AG").

Evidence Code section 452(c) allows a court to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Section 453 requires a court to take judicial notice of any matter specified in section 452 if a party requests it, and if it gives the adverse party sufficient notice of the request and furnishes the court with sufficient information to enable it to take judicial notice of the matter. Accordingly, and pursuant to Evidence Code sections 452(c) and 453, Westlands respectfully requests that this Court take judicial notice of the following:

1. **Exhibit 1**, attached to the Declaration of Jenifer Gee in support of Defendant and Respondent Westlands Water District's Request for Judicial Notice in Support of Opposition to Motion for Preliminary Injunction ["Gee Declaration"], is a true and correct copy of an excerpt of the CALFED Bay-Delta Program's Programmatic Record of Decision, dated August 28, 2000 ("Record of Decision"). A court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evid. Code § 452(c).) A report prepared by a government agency is an official act. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484-485; see generally *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 235 fn. 1 [noting that a state department's semiannual report was a government document appropriate for judicial notice].) CALFED, which consisted of 18 state and federal agencies, prepared the Record of Decision, which is a report addressing efforts regarding California water management and related proposed actions. Thus, it is an official act subject to judicial notice. (See *ibid.*) The entire document is found online at https://www.dfg.ca.gov/erp/envcomp_rod.asp.

2. **Exhibit 2**, attached to the Gee Declaration, is a true and correct copy of an excerpt of the Federal Energy Regulatory Commission's ("FERC") Final Environmental Impact Statement for Hydropower License for the McCloud-Pit Hydroelectric Project, FERC Project No. 2106,

California, dated February 2011 ("Final EIS"). A court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evid. Code § 452(c).) A report prepared by a government agency is an official act. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484-485; see generally *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 235 fn. 1 [noting that a state department's semiannual report was a government document appropriate for judicial notice].) FERC is federal government agency that prepared the Final EIS, which is a report evaluating a proposal and alternatives for relicensing the McCloud-Pit Project. Thus, it is an official act subject to judicial notice. (See *ibid.*) The entire document is found online at https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp.

3. **Exhibit 3**, attached to the Gee Declaration, is a true and correct copy of an excerpt of the California State Water Resources Control Board's Draft Initial Study/Negative Declaration for PG&E McCloud-Pit Hydroelectric Project, FERC Project No. 2106, dated May 2019 ("Initial Study/Negative Declaration"). A court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evid. Code § 452(c).) A report prepared by a government agency is an official act. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484-485; see generally *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 235 fn. 1 [noting that a state department's semiannual report was a government document appropriate for judicial notice].) The State Water Resources Control Board is a state agency that prepared the Initial Study/Negative Declaration, which is a report analyzing the proposed continued operation of the McCloud-Pit Project. Thus, it is an official act subject to judicial notice. (See *ibid.*) The entire document is found online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/mccloud_ferc2106/20190502_mccloud_pit_draft_isnd.pdf.

4. **Exhibit 4**, attached to the Gee Declaration, is a true and correct copy of Winnemem Wintu Tribe and North Coast Rivers Alliance's comment letter regarding the Notice of Intent to Adopt a Negative Declaration for PG&E's McCloud-Pit Hydroelectric Project, FERC Project No.

2106, dated June 3, 2019, ("Winnemem Wintu Tribe letter"). A court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evid. Code § 452(c).) A report prepared by a government agency is an official act. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484-485; see generally *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 235 fn. 1 [noting that a state department's semiannual report was a government document appropriate for judicial notice].) A court may consider correspondence to government agencies as official acts when it is part of a government decision record. (See *Post v. Prati* (1979) 90 Cal.App.3d 626, 633-634.) The Winnemem Wintu Tribe letter was sent to the California State Water Resources Control Board ("State Water Board") as a comment to the State Water Board's Draft Initial Study/Negative Declaration, which is a government report subject to judicial notice. (See *Arce*, *supra*, 181 Cal.App.4th at pp. 484-485; *Pesticide Action*, *supra*, 16 Cal.App.5th at p. 235 fn. 1.) The Winnemem Wintu Tribe letter will be incorporated into the record of the State Water Board's final decision regarding the McCloud-Pit Project, and thus, is proper to include as an official act subject to judicial notice. (See *Post*, *supra*, 90 Cal.App.3d at pp. 633-634.)

5. **Exhibit 5**, attached to the Gee Declaration, is a true and correct copy of the Save California Salmon's comment letter regarding the Notice of Intent to Adopt a Negative Declaration for PG&E's McCloud-Pit Hydroelectric Project, FERC Project No. 2106, dated June 3, 2018[sic] ("Save California Salmon's letter"). A court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evid. Code § 452(c).) A report prepared by a government agency is an official act. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484-485; see generally *Pesticide Action Network North America v. Department of Pesticide Regulation* (2017) 16 Cal.App.5th 224, 235 fn. 1 [noting that a state department's semiannual report was a government document appropriate for judicial notice].) A court may consider correspondence to government agencies as official acts when it is part of a government decision record. (See *Post v. Prati* (1979) 90 Cal.App.3d 626, 633-634.) The Save California's Salmon letter was sent to the California State Water Resources Control Board ("State Water Board") as a comment to the State Water Board's

Draft Initial Study/Negative Declaration, which is a government report subject to judicial notice. (See *Arce*, *supra*, 181 Cal.App.4th at pp. 484-485; *Pesticide Action*, *supra*, 16 Cal.App.5th at p. 235 fn. 1.) The Save California's Salmon letter will be incorporated into the record of the State Water Board's final decision regarding the McCloud-Pit Project, and thus, is proper to include as an official act subject to judicial notice. (See *Post*, *supra*, 90 Cal.App.3d at pp. 633-634.)

DATED: July 16, 2019

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

By: _____
Daniel J. O'Hanlon
Attorneys for Defendant and Respondent
WESTLANDS WATER DISTRICT

PROOF OF SERVICE

People, et al. v. Westlands Water District, et al.
Shasta County Superior Court Case No. 192487

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814.

On July 16, 2019, I served true copies of the following document(s) described as **DEFENDANT AND RESPONDENT WESTLANDS WATER DISTRICT'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY FEDEX: I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 16, 2019, at Sacramento, California.

Selena Paradee

SERVICE LIST
People, et al. v. Westlands Water District, et al.
Shasta County Superior Court Case No. 192487

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EXHIBIT 1

CALFED
BAY-DELTA
PROGRAM

Programmatic Record of Decision

August 28, 2000

TABLE OF CONTENTS

APPENDICES

ATTACHMENTS

1. INTRODUCTION

The CALFED Bay-Delta Program is an unprecedented effort to build a framework for managing California's most precious natural resource: water. California and the Federal government in partnership, are launching the largest, most comprehensive water management program in the world. This is the most complex and extensive ecosystem restoration project ever proposed. It is also one of the most intensive water conservation efforts ever attempted. It is the most far-reaching effort to improve the drinking water quality of millions of Californians as well as an unprecedented commitment to watershed restoration. And it is the most significant investment in storage and conveyance in decades. This document is the Record of Decision (ROD) for addressing these efforts through a sustained, long-term effort by the CALFED Agencies and stakeholder groups.

The CALFED Bay-Delta Program began in May 1995 to address the complex issues that surround the Bay-Delta. The CALFED Bay-Delta Program is a cooperative, interagency effort of 18 State and Federal agencies with management or regulatory responsibilities for the Bay-Delta. The CALFED Program is a collaborative effort including representatives of agricultural, urban, environmental, fishery, and business interests, Indian tribes and rural counties who have contributed to the process.

The San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta) estuary is the largest estuary on the West Coast. It is a maze of tributaries, sloughs, and islands and a haven for plants and wildlife,

CALFED

State Agencies

Resources Agency of California*
- **Department of Water Resources**
- **Department of Fish and Game**
- **Reclamation Board**
- **Delta Protection Commission**

California Environmental Protection Agency
- **State Water Resources Control Board**

California Department of Food and Agriculture

Federal Agencies

U.S. Department of Interior
- **Bureau of Reclamation***
- **Fish and Wildlife Service***
- **Bureau of Land Management**
- **U. S. Geological Survey**

U.S. Army Corps of Engineers*

U.S. Environmental Protection Agency*

U.S. Department of Commerce, National Oceanic and Atmospheric Administration
- **National Marine Fisheries Service***

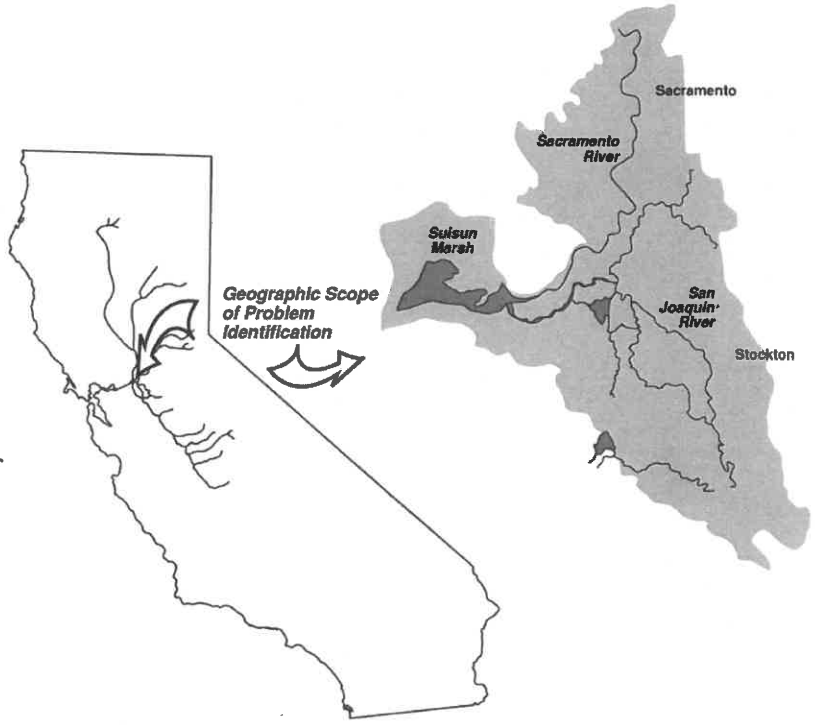
U.S. Department of Agriculture
- **Natural Resources Conservation Service***
- **U.S. Forest Service**

Western Area Power Administration

* Co-lead agencies for EIS/EIR

supporting over 750 plant and animal species. The Bay-Delta includes over 738,000 acres in five counties. The Bay-Delta is critical to California's economy, supplying drinking water for two-thirds of Californians and irrigation water for over 7 million acres of the most highly productive agricultural land in the world.

The Bay-Delta is also the hub of California's two largest water distribution systems - the Central Valley Project (CVP) operated by the U.S. Bureau of Reclamation (Reclamation) and the State Water Project (SWP) operated by the California Department of Water Resources (DWR). Together, these water development projects divert about 20 to 70 percent of the natural flow in the system depending on the amount of runoff available in a given year.



These diversions, along with the effects of increased population pressures throughout California, exotic species, water pollution, and numerous other factors have had a serious impact on the fish and wildlife resources in the Bay-Delta estuary. The drought of 1987-92 demonstrated just how vulnerable California is to water shortages. More recent conflicts between water quality, fish protection and water supply also demonstrate how little flexibility there is in the current system. With the State's population expected to grow from 34 million today to 59 million in 2040, the need to conserve, to build our capacity, and to manage our water system more efficiently is no longer just a goal, it is a reality.

Before CALFED, all agreed on the importance of the Bay-Delta estuary for both fish and wildlife habitat and as a reliable source of water, but few agreed on how to manage and protect this valuable resource. The CALFED Bay-Delta Program was established to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system. Over the last five years, hundreds of individuals have spent thousands of hours discussing and debating options for a long-term restoration and management plan for the Bay-Delta estuary. The task is fourfold: 1) to restore the ecological health of a fragile and depleted Bay-Delta estuary; 2) improve the water supply reliability for the State's farms and growing cities that draw water from the Delta and its tributaries, including 7 million acres of the world's most productive farmland; 3) protect the drinking water quality of the 22 million Californians who rely on the Delta for their supplies; and 4) protect the Delta levees that ensure its integrity as a conveyance and ecosystem. Through the Bay-Delta Advisory Council,

State and Federal agencies have worked with stakeholders and the public to shape these options into this framework for a comprehensive plan.

The CALFED Program and the CALFED Agencies have approached many ecosystem and water management issues from a regional perspective: what makes the most sense for the affected region. The regions, which include their respective watersheds, are the Sacramento Valley, the San Francisco Bay Area, the Delta, Westside San Joaquin Valley, San Joaquin River/South San Joaquin Valley, and Southern California. Although each region raises unique ecosystem and water management issues, each region's issues affect the health and function of the Bay-Delta system as a whole. Those regional issues nevertheless need regional solutions that contribute to overcoming the challenges facing the Bay-Delta system. In crafting regional solutions, the CALFED Program has also identified and considered the other, independent actions taken by Federal, State and local agencies operating outside the CALFED Program. In addition, CALFED has taken into account its obligations to comply with ongoing commitments, such as the commitments included in the State's area of origin laws.

Consistent with the stated purposes of the CALFED Bay-Delta Program since its outset in 1995, it is not the intent of this program to address or solve all of the water supply problems in California. The CALFED Program is directly or indirectly tied to a number of specific project proposals that would help toward meeting California's water needs for a wide variety of beneficial uses. CALFED is an important piece of a much larger picture that is the continuing responsibility of local, regional, State and Federal jurisdictions.

1.1 Overview

Following issuance of the Record of Decision, CALFED Agencies will proceed to Stage 1 implementation. Stage 1 covers the first seven years of a 30-year program and builds the foundation for long-term actions. This document sets out actions included in the Preferred Program Alternative for implementing Stage 1. These actions also depend upon subsequent project-specific environmental analyses as well as on subsequent review of financial and legislative proposals in this document by the State and Federal executive branches, Congress and the State Legislature.

The program components are as follows:

- Governance
- Ecosystem Restoration
- Watersheds
- Water Supply Reliability
- Storage
- Conveyance
- Environmental Water Account

- Water Use Efficiency (conservation and recycling)
- Water Quality
- Water Transfers
- Levees
- Science

These program components were recently described in the document entitled *California's Water Future: A Framework for Action*, issued on June 9, 2000. The document is referred to as "the Framework" in other locations in this ROD.

All aspects of the CALFED Program are interrelated and interdependent. Ecosystem restoration is dependent upon water supply and conservation. Water supply depends upon water use efficiency and consistency in regulation. Water quality depends upon improved conveyance, levee stability and healthy watersheds. The success of all of the elements depends upon expanded and more strategically managed storage.

California taxpayers, stakeholders and the Federal government will be called upon to invest billions of dollars over the next decade on CALFED programs. Expenditure of those funds must be based upon accountability and measurable progress being made on all elements of the Program. The project schedules described in this ROD depend upon certain assumptions about State and Federal budgets, optimized construction schedules, willing sellers, and other contingencies. These assumptions may change as the CALFED Program progresses and appropriate revisions to the Program may be necessary. Consistent with Federal law, nothing in this ROD constrains the discretion of the President or his successors to make whatever budgetary or legislative proposals he or his successors deem appropriate or desirable. The commitments of the United States and of the State of California under this ROD are necessarily contingent upon the availability of appropriated funds or upon enactment of authorizing legislation providing other sources of funding.

During implementation, the Program will incorporate both a high level of stakeholder participation and, as a central feature, science-based adaptive management. The Program includes a strong commitment to assure that its decisions and actions are based on sound science. To this end, the Program provides for comprehensive monitoring and data collection, and continuous and comprehensive scientific review of actions and decisions. The highest quality and credibility of science-based decision making will be assured by the integration in the Program of an independent board of scientific experts. In addition, the Program has hired a nationally-recognized scientist to coordinate the science effort, including related scientific studies conducted by CALFED Agencies.

Consistent with Proposition 204, prior to November 15, 2001 and each year thereafter, the CALFED Policy Group or its successor, in consultation with other interested persons and agencies, will review the CALFED Program's progress in meeting the implementation schedule in this ROD. The CALFED Policy Group or its successor will submit an annual report by December 15th to the Governor, the Secretary of the Interior, the State Legislature and the Congress that describes the status of implementation of all elements of the Program. The report will describe the status of all Stage 1 actions, including goals, schedules and financing agreements, taken to meet

CALFED objectives in the following areas:

- Completion of key projects and milestones identified in the Ecosystem Restoration Program.
- Development and implementation of local programs for watershed conservation and restoration.
- Progress in improving water supply reliability and implementing the Environmental Water Account (see section 2.2.7 for Environmental Water Account).
- Achievement of commitments under State and Federal Endangered Species Acts.
- Implementation of a comprehensive science program.
- Progress on storage projects, conveyance improvements, levee improvements, water quality projects, and water use efficiency programs.
- Progress toward acquisition of the State and Federal permits, including Clean Water Act Section 404 permits, for implementation of projects in all identified program areas.
- Progress in achieving benefits in all geographic regions covered by the Program.
- Legislative action on water transfer, groundwater management, water use efficiency and governance issues.
- Status of complementary actions.
- Status of mitigation measures.
- Revisions to funding commitments and program responsibilities.

If at the conclusion of each annual review, or if a timely annual review has not been issued, the Governor or the Secretary of the Interior determines that the schedule or objectives established in this ROD has not been substantially adhered to, the Governor and the Secretary, after notice to, and consultation with, State and Federal CALFED representatives, will prepare a revised schedule that ensures achievement of balanced solutions in all program areas consistent with the intent of this ROD and applicable regulatory compliance documents. Upon determination that the prior schedule has not been substantially adhered to, State funds, if the determination was made by the Governor, and Federal CALFED funds, if the determination was made by the Secretary of the Interior, will to the extent authorized be available for expenditure in the subsequent budget year only if a revised schedule has been developed within six months from the date on which the determination was made. Upon the submission of any revised schedule, funds will be expended in accordance with that revised schedule.

1.2 Purposes of This Record of Decision

This Record of Decision for the CALFED Bay-Delta Final Programmatic Environmental Impact Statement and Report (EIS/EIR) represents the culmination of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) processes. The ROD reflects a final selection of a long-term plan (Preferred Program Alternative), which includes specific actions, to fix the Bay-Delta, describes a strategy for implementing the plan, and identifies complementary actions the CALFED Agencies will also pursue.

For actions contained within the Preferred Program Alternative that are undertaken by a CALFED Agency or funded with money designated for meeting CALFED purposes, environmental review will tier from the Final Programmatic EIS/EIR. These actions will be carried out in a manner consistent with this ROD and incorporate the mitigation strategies contained in Appendix A to this ROD.

The Preferred Program Alternative is a set of programmatic actions, studies, and conditional decisions. It includes the broadly described actions that set the long-term overall direction of the Program. The description of the alternative is programmatic in nature, intended to help agencies and the public make decisions on the broad methods to meet program purposes. The Preferred Program Alternative description is an important legal element of compliance with CEQA and NEPA. The Preferred Program Alternative is not intended to define the site specific actions that will ultimately be implemented.

Whenever a broad environmental impact analysis has been prepared and a subsequent narrower analysis is then prepared on an action included within the entire program or policy, the subsequent analysis need only summarize the issues discussed in the broader analysis and incorporate discussions from the broader analysis by reference. This is known as tiering. Tiered documents focus on issues specific to the subsequent action and rely on the analysis of issues already decided in the broader programmatic review. Absent new information or substantially changed circumstances, documents tiering from the CALFED Final Programmatic EIS/EIR will not revisit the alternatives that were considered alongside CALFED's Preferred Program Alternative nor will they revisit alternatives that were rejected during CALFED's alternative development process.

Within the defined CALFED solution area, individual CALFED Agencies will implement actions that are part of CALFED's Preferred Program Alternative and will develop identified complementary actions, not part of the CALFED Program, which will help achieve CALFED goals and objectives. All actions will be subject to appropriate environmental review. Many of the complementary actions are not included in the CALFED Program because they were already underway when the CALFED effort was started in 1995. In those cases, CALFED programmatic actions have been designed to complement or supplement these existing actions and programs. Other actions will continue to be developed by individual CALFED Agencies over time. Because these new actions and programs are outside the programmatic analysis of impacts that CALFED has prepared, they are not the subject of final decision in this ROD. Implementation of all individual actions within the Preferred Program Alternative, complementary actions and new actions will be predicated on the appropriate level of environmental review, documentation and permitting.

In addition, many activities will be undertaken within the CALFED solution area by non-CALFED Agencies. By certifying the ROD, the CALFED Agencies do not intend to preclude implementation of projects not expressly evaluated in the CALFED Final Programmatic EIS/EIR. Nor do the CALFED Agencies intend to affect the ability of local communities to meet their individual water supply needs. Finally, nothing in this ROD is intended to, nor does, affect the regulatory responsibilities of individual CALFED Agencies.

This ROD recognizes that the CALFED Agencies have specific statutory and/or regulatory

authority and responsibilities, and that actions of these agencies must be consistent with applicable procedural and substantive requirements. Nothing in this ROD is intended to or shall have the effect of constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this ROD constitutes an admission by any party as to the proper interpretation of any provision of law; nor is anything in this ROD intended to, nor shall it have the effect, of waiving or limiting any public entity's rights and remedies under any applicable law. Additionally, this document in no way supersedes the requirements of Executive Order 12322 or other Federal water policies and authorities.

The CALFED Agencies recognize that certain departments, boards, and commissions have adjudicative responsibilities with respect to contested matters that are brought before them. Such responsibilities include the requirement that the adjudicative entity and its members avoid bias, prejudice, or interest in the adjudicative matters before them; e.g., they cannot decide, before completion of any required hearing or equivalent proceeding, the outcome of a matter. Some such adjudicative entities exist within the undersigned CALFED Agencies. This ROD does not in any way require or commit an adjudicative entity to participate in proposing a project that will come before it for approval. Under this ROD, the role of adjudicative entities in connection with matters that may require an adjudicative decision is limited to promptly and diligently processing any applications, petitions, or other requests for approval. Nothing in this ROD commits an adjudicative entity to an approval or disapproval of any project subject to the authority of the adjudicative entity, nor to a term or condition in any approval of a project by the adjudicative entity.

1.3 Background/Historical Context

1.3.1 Bay-Delta Accord

Seeking solutions to the resource problems in the Bay-Delta, State and Federal agencies signed an agreement in June 1994 to (1) coordinate their actions to meet water quality standards to protect the Bay-Delta estuary; (2) coordinate the operation of the State Water Project (SWP); and the Central Valley Project (CVP) more closely with recent environmental mandates; and (3) develop a process to establish a long-term Bay-Delta solution to address four categories of problems; ecosystem quality, water quality, water supply reliability, and levee system vulnerability.

This agreement laid the foundation for the Bay-Delta Accord and CALFED. The Accord, formally called the Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government, detailed interim measures for both environmental protection and regulatory stability in the Bay-Delta. On December 15, 1994, the Accord was signed by State and Federal resource agencies, as well as by stakeholders representing many local water agencies and environmental organizations. Under the terms of a December 1999 extension, the Accord formally expires when this ROD is executed. Thereafter, the provisions in the Accord are replaced in their entirety by the provisions and agreements in this ROD and associated documents.

1.3.2 Mission Statement

Early in the Program development, CALFED Agencies developed and adopted the mission statement, objectives and solution principles to guide how the Program will be implemented. The mission statement, objectives and solution principles are shown in the following box. CALFED used these to shape the alternatives and will continue to use these objectives and principles as actions are implemented. Carrying out the mission, achieving the objectives, and adhering to the solution principles will ensure that CALFED fulfills its commitment to continuous improvement in all of the four problem areas.

MISSION STATEMENT

The mission of the CALFED Bay-Delta Program is to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system.

OBJECTIVES

CALFED developed the following objectives for a solution:

- Provide good water quality for all beneficial uses.
- Improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species.
- Reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta system.
- Reduce the risk to land use and associated economic activities, water supply, infrastructure and the ecosystem from catastrophic breaching of Delta levees.

SOLUTION PRINCIPLES

In addition, any CALFED solution must satisfy the following **solution principles**:

- ***Reduce Conflicts in the System*** Solutions will reduce major conflicts among beneficial uses of water.
- ***Be Equitable*** Solutions will focus on solving problems in all problem areas. Improvements for some problems will not be made without corresponding improvements for other problems.
- ***Be Affordable*** Solutions will be implementable and maintainable within the foreseeable resources of the Program and stakeholders.
- ***Be Durable*** Solutions will have political and economic staying power and will sustain the resources they were designed to protect and enhance.
- ***Be Implementable*** Solutions will have broad public acceptance and legal feasibility, and will be timely and relatively simple to implement compared with other alternatives.
- ***Have No Significant Redirected Impacts*** Solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or to other regions of California.

1.3.3 Four Interrelated Program Objectives

The CALFED Program takes a broad approach to addressing the four problem areas of water quality, ecosystem quality, water supply reliability and levee system integrity, recognizing that many of the problems and solutions in the Bay-Delta system are interrelated. Problems in any one program area cannot be solved effectively without addressing problems in all four areas at once. This greatly increases the scope of efforts but will ultimately result in progress toward a lasting solution.

Thus, the single most important difference between the CALFED Bay-Delta Program and past efforts to solve the problems of the Bay-Delta is the comprehensive nature of CALFED's interrelated resource management strategies. A comprehensive CALFED solution will also be supported by governance mechanisms that overcome problem-specific or resource-specific limitations of previous, more narrowly focused, approaches.

1.3.4 Summary of Process

There are three phases to the CALFED Bay-Delta Program:

> **Phase I** - In Phase I, completed in September 1996, CALFED identified the problems confronting the Bay-Delta, developed the mission statement and guiding principles, and devised three preliminary categories of solutions for Delta water conveyance. In addition, CALFED identified three preliminary alternatives, representing differing approaches to conveying water through the Delta, to be further analyzed in Phase II.
>
> **Phase II** - In Phase II, CALFED has completed the Final Programmatic EIS/EIR and issued this ROD. This includes development of the Preferred Program Alternative and development of the Plan of Action (see Section 2.2) focusing on the first seven years (Stage 1) following issuance of this ROD.
>
> **Phase III** - Implementation will begin in Phase III. This period will include project-specific environmental review and permitting, as necessary.

During Phase I, CALFED held scoping meetings, technical workshops, public information meetings, and public BDAC workgroup meetings. The commitment to active public involvement continued through Phase II with additional public meetings, presentations before interested groups, media outreach, special mailings of newsletters, regularly updated information on the Program's web site, and a toll-free public information telephone line.

pursuant to the original Trinity authorization, the Trinity Restoration Act of 1984, and the CVPIA. The substance of that decision is unknown and therefore cannot be addressed at this time. It is separate from and will not be affected by this ROD. Certain CALFED Agencies have considered the potential that the Trinity River decision may affect CVP allocation and have concluded that it will not affect the allocations to CVP south-of-Delta agricultural water service contractors described immediately above.

Complementary Action

The Framework identified the following action which was not analyzed in the Final Programmatic EIS/EIR.

- **Governor's Drought Contingency Plan.** CALFED Agencies recognize that in the next several years critical water shortages may occur that severely impact the health, welfare and economy of California. To avoid such serious impacts, the Governor has convened a panel, chaired by the Director of DWR, for the purpose of developing a contingency plan to reduce the impacts of critical water shortages primarily for agricultural and urban water users. The plan will identify all available resources (e.g., water transfers, water exchanges, groundwater programs, local partnerships), building upon the experience gained with Governor's Drought Water Bank, to minimize such shortages. The plan also will recommend appropriate funding mechanisms. In addition, CALFED Agencies commit to facilitate transfers of water and expedite regulatory processes to assist in implementation of the plan consistent with legal requirements. The Governor's Panel will submit the plan to the Governor by December 2000.

2.2.5 Storage

Expanding water storage capacity is critical to the successful implementation of all aspects of the CALFED Program. Not only is additional storage needed to meet the needs of a growing population but, if strategically located, it will provide much needed flexibility in the system to improve water quality and support fish restoration efforts. Water supply reliability depends upon capturing water during peak flows and during wet years, as well as more efficient water use through conservation and recycling.

Actions Included in the Programmatic EIS/EIR

The Program identified actions that will be pursued in Stage 1 to expand storage capacity at existing reservoirs and strategically located off-stream sites by approximately 950 TAF, and to implement a major expansion of more environmentally sensitive groundwater storage for an additional 500 TAF to 1 MAF. CALFED Agencies are committed to increasing storage through the development of acceptable projects described below. Storage projects are not developed in

isolation but rather as part of an overall water management strategy. As such, storage combined with other program actions such as conservation, transfers and habitat restoration will contribute to and be compatible with the water supply reliability, water quality and ecosystem restoration program objectives. For example, storage projects must be constructed and operated in a manner that is consistent with CALFED's water quality goal of continuous improvement in Delta water quality. Local agencies will continue to independently develop storage projects to meet local needs.

The Final Programmatic EIS/EIR identified 12 potential surface reservoir sites and many possible groundwater storage sites. Based upon the work of the Integrated Storage Investigation and previous studies, DWR and Reclamation will work with other CALFED Agencies to take the necessary steps to pursue expansion of two existing reservoirs and construction of a new offstream reservoir, with a combined capacity of 950 TAF and a major expansion of groundwater storage for an additional 500 TAF to 1 MAF. DWR and Reclamation will also study two potential storage projects through partnerships with local agencies. However, these two additional sites will require substantial technical work and further environmental review and development of cost-sharing agreements before decisions to pursue them as part of the CALFED Program.

Project	Potential Storage (acre-feet)
In-Delta Storage	250,000
Enlarged Shasta	300,000
Expanded Los Vaqueros	400,000
Groundwater/Conjunctive Use	500,000-1,000,000
TOTAL	1,450,000 - 1,950,000

The remaining potential reservoir sites in CALFED's screened list of 12 sites, as well as those sites previously screened out earlier during the site review process, appear to have less potential for providing benefits during Stage 1 or soon thereafter, either because of cost, extensive planning and analysis required, or other factors. Some of these sites may be retained solely for analysis purposes and could serve as alternatives to the above projects. Future progress and experience with implementation of other parts of the Program, such as the EWA or south Delta conveyance improvements, may better define potential benefits of these storage projects. CALFED does not plan to pursue implementation of any of these projects at this time.

The benefits of increased water supply reliability resulting from actions to provide expanded storage (as well as to provide conveyance improvements, described in section 2.2.6) will be available to be shared among beneficial uses as appropriate to the specific action. In evaluating and allocating costs and benefits of CALFED storage and conveyance projects, actions taken outside the CALFED Program will not provide entitlements or the justification for claims for any

parties or class of beneficial users to any particular allocation of storage and conveyance assets developed through the CALFED Program.

Surface Storage Projects To Be Pursued With Project-specific Study. The CALFED Final Programmatic EIS/EIR identified as a list of twelve potential surface storage projects for consideration. Further project-specific review, however, will be required. Actions taken in Stage 1 will focus on the necessary feasibility studies and environmental review for implementing or proceeding with three surface storage projects. In addition, two reservoirs will need further study before the CALFED Agencies or their successor decides whether to proceed with those projects.

- **In-Delta storage project (approximately 250 TAF).** An in-Delta storage facility can provide both fishery benefits and enhanced water project flexibility. CALFED will explore the lease or purchase of the Delta Wetlands project. CALFED also may initiate a new project, in the event that Delta Wetlands proves cost prohibitive or infeasible.

    - Make decision as to whether to seek authorization for a feasibility study of alternatives (Federal funds) by October 2000.
    - Select project alternative and initiate negotiation with Delta Wetlands owners or other appropriate landowners for acquisition of necessary property by December 2001.
    - Develop project plan that addresses local concerns about effects on neighboring lands and complete any additional needed environmental documentation by July 2002.
    - Complete environmental review and documentation, obtain necessary authorization and funding, and begin construction by the end of 2002.

- **Expand CVP storage in Shasta Lake by approximately 300 TAF.** Such an expansion will increase the pool of cold water available to maintain lower Sacramento River temperatures needed by certain fish and provide other water management benefits, such as water supply reliability.

    - Resolve legal issues to allow State agency cooperation by the end of 2000.
    - Complete feasibility study and preliminary design by the end of 2003.
    - Complete environmental review and documentation, obtain Federal authorization and funding, and begin construction by the end of 2004.

- **Expand Los Vaqueros Reservoir by up to 400 TAF with local partners as part of a Bay Area water quality and water supply reliability initiative.** As part of a Bay Area initiative, an expanded Los Vaqueros Reservoir would provide water quality and water supply reliability benefits to Bay Area water users. As an existing reservoir operated by the Contra Costa Water District (CCWD), the Los Vaqueros Reservoir is subject to a number of mandates and agreements. DWR and

EXHIBIT 2

Office of
Energy
Projects
February 2011

FERC/F-0237

Final Environmental Impact Statement
For Hydropower License

McCloud-Pit Hydroelectric Project
FERC Project No. 2106, California

Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

FERC/F-0237

FINAL ENVIRONMENTAL IMPACT STATEMENT FOR HYDROPOWER LICENSE

McCloud-Pit Hydroelectric Project—FERC Project No. 2106

Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Licensing
888 First Street, NE
Washington, DC 20426

February 2011

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY PROJECTS

To the Agency or Individual Addressed:

Reference: Final Environmental Impact Statement

Attached is the final environmental impact statement (final EIS) for the McCloud-Pit Project (Project No. 2106), located on the McCloud and Pit Rivers in Shasta County, California.

This final EIS documents the view of governmental agencies, nongovernmental organizations, affected Indian tribes, the public, the license applicant, and Federal Energy Regulatory Commission (Commission) staff. It contains staff evaluations on the applicant's proposal and alternatives for relicensing the McCloud-Pit Project.

Before the Commission makes a licensing decision, it will take into account all concerns relevant to the public interest. The final EIS will be part of the record from which the Commission will make its decision. The final EIS was sent to the U.S. Environmental Protection Agency and made available to the public on or about February 25, 2011.

Copies of the EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, N.E., Washington DC 20426. The EIS also may be viewed on the internet at http://elibrary.ferc.gov. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Attachment: Final Environmental Impact Statement

COVER SHEET

a. Title: Relicensing the McCloud-Pit Hydroelectric Project, FERC Project No. P-2106

b. Subject: Final Environmental Impact Statement

c. Lead Agency: Federal Energy Regulatory Commission

d. Abstract: On July 16, 2009, Pacific Gas and Electric (PG&E) filed an application to relicense its 368-megawatt (MW) McCloud-Pit Hydroelectric Project (P-2106). The McCloud-Pit Project is located on the McCloud and Pit Rivers in Shasta County, California. The project consists of three power developments (James B. Black, Pit 6, and Pit 7) and generates an average of about 1,542.2 gigawatt-hours (GWh) annually.

The project occupies 1,651.4 acres of federal lands managed by the U.S. Department of Agriculture.

The staff's recommendation is to relicense the project as proposed, with certain modifications and additional measures recommended by the agencies.

e. Contact: Emily Carter
Federal Energy Regulatory Commission
Office of Energy Projects
888 First Street, NE
Washington, DC 20426
(202) 502-6512

f. Transmittal: This Environmental Impact Statement (EIS) prepared by the Commission's staff on the hydroelectric license application filed by PG&E for the existing McCloud-Pit Hydroelectric Project (FERC No. P-2106) is being made available to the public on or about February 25, 2011, as required by the National Environmental Policy Act of 1969.[1]

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[1] National Environmental Policy Act of 1969, amended (Public Law [Pub. L.] 91-190, 42 United States Code [U.S.C.] 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, §4(b), September 13, 1982).

FOREWORD

The Federal Energy Regulatory Commission (Commission), pursuant to the Federal Power Act (FPA)[2] and the U.S. Department of Energy Organization Act,[3] is authorized to issue licenses for up to 50 years for the construction and operation of non-federal hydroelectric developments subject to its jurisdiction, on the necessary conditions:

> That the project...shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e)...[4]

The Commission may require such other conditions not inconsistent with the FPA as may be found necessary to provide for the various public interests to be served by the project.[5] Compliance with such conditions during the licensing period is required. The Commission's Rules of Practice and Procedure allow any person objecting to a licensee's compliance or noncompliance with such conditions to file a complaint noting the basis for such objection for the Commission's consideration.[6]

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[2] 16 U.S.C. §791(a)-825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99-495 (1986) and the Energy Policy Act of 1992, Pub. L. 102-486 (1992), and the Energy Policy Act of 2005, Pub. L. 109-58 (2005).

[3] Pub. L. 95-91, 91 Stat. 556 (1977).

[4] 16 U.S.C. §803(a) (2006).

[5] 16 U.S.C. §803(g) (2006).

[6] 18 Code of Federal Regulations (CFR) §385.206 (2010).

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ACRONYMS AND ABBREVIATIONS

ABA	Architectural Barriers Act
ADA	Americans with Disabilities Act
Advisory Council	Advisory Council on Historic Preservation
APE	area of potential effects
APLIC	Avian Power Line Interaction Committee
basin plan	*Water Quality Control Plan for the Sacramento and San Joaquin River Basins*
BLM	Bureau of Land Management
BMP	best management practice
°C	degrees Celsius
California Boating	California Department of Boating and Waterways
California Fish and Game	California Department of Fish and Game
California Water Board	California State Water Resources Control Board
CDEC	California Data Exchange Center
Central Valley Regional Water Board	Central Valley Regional Water Quality Control Board
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
cfs	cubic feet per second
Commission	Federal Energy Regulatory Commission
CSU	California State University
CWHR	California Wildlife-Habitat Relationships
CZMA	Coastal Zone Management Act
DO	dissolved oxygen
draft EIS	draft environmental impact statement
DWR	California Department of Water Resources
EIR	environmental impact report
EIS	environmental impact statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
°F	degrees Fahrenheit
FERC	Federal Energy Regulatory Commission
final EIS	final environmental impact statement
Forest Service	U.S. Department of Agriculture − Forest Service
FLA	Final License Application
FPA	Federal Power Act
FR	Forest Road
FSORAG	Forest Service Outdoor Recreation Accessibility Guidelines

FSTAG	Forest Service Trail Accessibility Guidelines
FWS	U.S. Department of the Interior − Fish and Wildlife Service
GIS	geographic information system
GWh	gigawatt-hour(s) (equals one million kilowatt-hours)
HCM	Habitat Criteria Mapping
hp	horsepower
IBM	Individual Base Modeling
IFIM	instream flow incremental methodology
ILP	Integrated Licensing Process
Interior	U.S. Department of the Interior
KOP	key observation point
kV	kilovolt(s)
kW	kilowatt(s)
kWh	kilowatt hour(s)
licensee	Pacific Gas and Electric
LSR	Late Successional Reserve
LWD	large woody debris
msl	mean sea level
MMI	multimetric index
MOU	memorandum of understanding
MVA	megavolt-ampere
MW	megawatt
MWh	megawatt-hours
NA	not applicable
National Register	National Register of Historic Places
NEPA	National Environmental Policy Act
NERC	North American Electric Reliability Council
NFS	National Forest System
NHPA	National Historic Preservation Act
NMFS	U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service
NTU	nephelometric turbidity unit(s)
OCAP BiOp	NMFS Operations Criteria and Plan Biological Opinion
O&M	operation and maintenance
OHV	off-highway vehicle
PA	Programmatic Agreement
PAOT	people-at-one-time
Park Service	National Park Service
PG&E	Pacific Gas and Electric

PHABSIM	Physical Habitat Simulation Modeling
project	McCloud-Pit Hydroelectric Project
Public Draft Recovery Plan	Public Draft Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and the Distinct Population Segment of Central Valley Steelhead
QA/QC	quality assurance / quality control
RMO	road management objective
RO	runoff
ROD	Record of Decision on Management of Habitat for Late-Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl
ROS	recreation opportunity spectrum
RPA	Reasonable and Prudent Alternative
RV	recreational vehicle
SHPO	State Historic Preservation Officer
SMS	Scenery Management System
TCP	Traditional Cultural Property
TMDL	total maximum daily load
Tribes	Winnemem Wintu Tribe, Pit River Tribe, and Redding Rancheria
TSS	total suspended solids
U.S.C.	United States Code
USGS	U.S. Geological Survey
VAOT	vehicles-at-one-time
VELB	valley elderberry longhorn beetle
VQO	visual quality objective
WECC	Western Electricity Coordinating Council
WROS	Water Recreation Opportunity Spectrum
WUA	weighted usable area

EXECUTIVE SUMMARY

On July 16, 2009, Pacific Gas and Electric (PG&E) filed an application for a new major license for its McCloud-Pit Hydroelectric Project, Project No. 2106 (project). The 368-megawatt (MW) project is located on the McCloud and Pit Rivers in Shasta County, California, and consists of three power generating developments (James B. Black, Pit 6, and Pit 7). These developments collectively include four reservoirs, three powerhouses, five dams, two tunnels, an afterbay, and associated equipment and transmission facilities. The project is described in more detail in section 2.1.1, *Existing Project Facilities*. The project occupies 1,651.4 acres of federal lands managed by the U.S. Department of Agriculture − Forest Service (Forest Service).

Proposed Action

To improve aquatic resources, PG&E proposes changes to existing operations, including higher minimum instream flow releases in two project reaches: Lower McCloud River and Iron Canyon Creek. In addition, PG&E proposes measures to protect sensitive species and measures to maintain and enhance existing recreation opportunities as well as to provide additional recreational facilities. Furthermore, PG&E proposes to develop and/or implement the following plans: a Large Woody Debris (LWD) Management Plan; an Erosion and Sediment Monitoring and Control Plan; a Gravel and Coarse Sediment Monitoring Plan; a water quality and temperature monitoring plan; an Aquatic Biological Monitoring and Management Plan; a Vegetation Management Plan; a Terrestrial Management Plan; a Recreation Management Plan; a Project Sign and Education Plan; a Historic Properties Management Plan (HPMP); a Road and Transportation Facilities Management Plan; a Hazardous Substance Management Plan; and a Visual Quality Management Plan. PG&E's measures are described in more detail in section 2.2, *Applicant's Proposal*. Finally, PG&E proposes to construct a new powerhouse at the base of McCloud dam and a powerhouse at Pit 7 afterbay dam, along with associated transmission facilities.

Public Involvement and Areas of Concern

PG&E utilized the Federal Energy Regulatory Commission's (FERC or the Commission) Integrated Licensing Process (ILP) to prepare its license application. The intent of the Commission's pre-filing process under the ILP is to initiate public involvement early in the project planning process and to encourage citizens, governmental entities, Tribes, and other interested parties to identify issues and information needs prior to an application being formally filed with the Commission. As part of the pre-filing process, we distributed Scoping Document 1 to interested parties on September 25, 2006, and issued a letter responding to comments made on Scoping Document 1 on October 8, 2007. Scoping meetings were held in Redding, California, on October 23 and 24, 2006. On December 1, 2009, after the final license application filing, we requested comments, conditions, and recommendations in response to our notice of application ready for environmental analysis.

The primary issues associated with relicensing the project are appropriate minimum flows in project-affected reaches; assessment of project effects on special status species; effects of any new minimum flow regime on angling, whitewater boating, and reservoir-based recreation; assessment of project effects on recreation facilities; and potential effects of project operation on water quality, aquatic habitat, and fish.

Draft Environmental Impact Statement

On July 31, 2010, we issued a draft Environmental Impact Statement (EIS) for the McCloud-Pit Project that analyzed environmental impacts of PG&E's proposal, as well as the comments, conditions, and recommendations we received. We requested that comments on the draft EIS be filed by September 28, 2010. In addition, we hosted two public comment meetings September 9, 2010 in order to receive oral testimony on the draft EIS recommendations. In appendix A of this final EIS, we summarize the written and oral comments received; provide responses to those comments; and indicate, where appropriate, how we have modified the text for the final EIS.

In its November 29, 2010, filing of modified section 4(e) conditions, the Forest Service agrees in many cases with our recommendations in the draft EIS. Additionally, in its November 24, 2010, filing, PG&E supports the modified Forest Service conditions, except those pertaining to instream flows at McCloud dam (condition 19), road and transportation facility management (condition 29), and recreation development management (condition 30). In its filing, PG&E withdraws its alternative 4(e) conditions except for conditions 19, 29, and 30.

After reviewing the comments on the draft EIS and the filings related to the 4(e) conditions, we have revised some of our recommendations for the final EIS. The following recommendations differ from those in the draft EIS:

(1) PG&E should implement the Forest Service's specified instream flows below McCloud dam rather than those originally proposed by California Trout, Trout Unlimited, and McCloud River Club;

(2) PG&E should file an annual report with the Commission on the activities of the Interagency Fish Passage Steering Committee;

(3) PG&E should include modifications to some of the species-specific monitoring schedules included in the draft Aquatic Biological Monitoring Plan and draft Terrestrial Biological Management Plan that the Forest Service submitted with its modified 4(e) conditions (Forest Service, 2010d, Enclosure 3);

(4) PG&E should include additional parameters regarding the use of pesticides and herbicides associated with future project operation and maintenance (O&M) in the Vegetation and Invasive Weed Management Plan;

(5) If PG&E is unable to secure the use of the land at the Star City site for a campground, PG&E should file a plan with the Commission for approval for a different campground location at McCloud reservoir;

(6) PG&E should construct a new campground at the Gap Creek site for single unit campsites; and

(7) PG&E should provide streamflow data from gage MC-7 in addition to gage MC-1 and reservoir drawdown information to the public via its website on the internet.

Finally, we no longer recommend that PG&E develop a plan to enhance angling access to Iron Canyon Creek.

Alternatives Considered

This final EIS analyzes the effects of continued project operation and recommends conditions for a new license for the project. In addition to PG&E's proposal, we consider two alternatives: (1) staff alternative, and (2) no action—continued operation with no changes.

Staff Alternative

Under the staff alternative, the project would include most of PG&E's proposed measures and would be operated to maintain existing flows in the Pit 7 reach of the Pit River, but would include higher instream flows than proposed by PG&E in the Lower McCloud River bypassed reach and in the Iron Canyon Creek bypassed reach. The staff alternative also includes the following measures:

- development and/or implementation of plans for gravel and coarse sediment management, water quality and temperature monitoring, aquatic biological monitoring, vegetation and invasive species management, terrestrial biological management, recreation development and management, fish stocking, historic properties management, and visual resources, with staff modifications;
- ramping rates to protect fish, macroinvertebrates, and foothill yellow-legged frogs;
- O&M of gages to measure streamflows;
- foothill yellow-legged frog surveys; and
- real-time monitoring of water temperatures to assist in determining effects of mudflows from Mud Creek on project waters in the Lower McCloud River.

The staff alternative is based in part on recommendations made by the Forest Service, United States Department of Interior – Fish and Wildlife Service (FWS); California Department of Fish and Game (California Fish and Game), California Trout, Trout Unlimited, McCloud River Club, and American Whitewater. We include most, but not all, of the section 4(e) conditions filed by the Forest Service in the staff alternative.

Project Effects

The project alters flows in the McCloud and Pit Rivers and Iron Canyon Creek via water storage in four reservoirs and one afterbay, and diversion of flows to generate power at three powerhouses. Existing and potential project effects resulting from the current O&M of the McCloud-Pit Project include: the lack of LWD below McCloud dam; trapped sediments behind McCloud dam resulting in a degraded aquatic habitat below the dam; erosion and fine sediment delivery to stream channels; lower instream flows due to water diversions; a lack of flow ramping during spill events; increased water temperature, turbidity, and contaminants in project-stream reaches; introduction and spread of invasive weed species; avian collision and electrocution at project transmission lines; accessibility of project waters for recreational access (boating and angling); potential adverse effects to historic properties; and decreased aesthetic values throughout the project area.

In recognition of these existing and potential project effects, the table below summarizes the measures proposed to mitigate these effects associated with the three alternatives considered in this final EIS.

Resource	**No-Action Alternative**	**Proposed Action**	**Staff Alternative**
Generation	1,542.2 gigawatt-hours (GWh)	1,524.3 GWh	1,502.2 GWh
Geology and Soils	Continued removal of LWD behind McCloud dam	Prepare an LWD Management Plan to facilitate the placing of LWD downstream of McCloud dam	Same as proposed action
	Continue to maintain roadways and implement best management practices (BMPs) to reduce sediment input to project waters	Implement Erosion and Sediment Monitoring and Control Plan to minimize erosion	Same as proposed action

Resource	No-Action Alternative	Proposed Action	Staff Alternative
		Monitor gravel and coarse sediment that could benefit downstream aquatic habitat	The proposed action plus implement a Gravel and Coarse Sediment Management Plan to add 150 to 600 tonnes of gravel and coarse sediment, from Star City Creek or other potential sites, to the Lower McCloud River periodically for protection of geology and soil resources
Aquatic Resources	Provide existing minimum flows in all stream reaches	Higher minimum instream flows below McCloud and Iron Canyon dams	Higher minimum instream flows below McCloud and Iron Canyon dams consistent with a more natural spring hydrograph

Resource	No-Action Alternative	Proposed Action	Staff Alternative
		No ramping rates for seasonal minimum flow changes, but upramping at 100 cubic feet per second (cfs) per hour prior to uncontrollable spills at McCloud dam	Upramping at 100 cfs per hour prior to uncontrollable spills at McCloud dam Downramping at 150 cfs each 48 hours at McCloud dam during spills controllable by valve Maximum upramping during controllable spills at 200 cfs each 24 hours at McCloud dam Upramping and downramping related to testing of the flow valve at Iron Canyon dam in 20-cfs increments
		Move streamflow measurements for McCloud dam from gage MC-1 to MC-7	Measure streamflow compliance at two compliance points (MC-7 and MC-1)
		No Aquatic Biological Monitoring Plan	Implement an Aquatic Biological Monitoring Plan
		Implement water quality monitoring plan	Same as proposed action
			File annual reports on the reintroduction and status of listed salmonids in the project area.

Resource	No-Action Alternative	Proposed Action	Staff Alternative
Terrestrial Resources	Continue to implement vegetation management programs around project facilities	Implement Vegetation Management Plan to guide restoration using native plants and manage invasive plants Implement BMPs to protect wetlands during construction of McCloud transmission line Use native vegetation during restoration of areas disturbed by project-related activities	Implement a Vegetation Management Plan as proposed under Forest Service condition 25 with modifications to include provision of information to managers regarding sensitive species, protection of culturally significant plant populations, provisions for the use of herbicides and pesticides, and implementation of BMPs to protect wetlands
	Monitor bald eagle territories	Implement Wildlife Management Plan	Implement a Terrestrial Biological Management Plan as proposed under Forest Service condition 26 with modifications to include monitoring schedules and limited operating periods Prepare biological evaluations for special status species and biological assessments for threatened and endangered species prior to new construction within the project boundary

Resource	No-Action Alternative	Proposed Action	Staff Alternative
		Implement Avian Power Line Interaction Committee (APLIC) standards for transmission lines to minimize avian collision and electrocution hazards	Same as proposed action
Threatened and Endangered Species	Implement Valley Elderberry Longhorn Beetle (VELB) Conservation Program	Same as no-action plus conduct pre-construction surveys for Pacific fisher and to minimize effects on northern spotted owl	Same as proposed action
Recreation Resources	Fund California Fish and Game trout stocking program	Continue funding to California Fish and Game for stocking trout annually and to evaluate fish stocking program	Stock 60,000 pounds of trout annually at the project and develop and implement a fish stocking plan to evaluate stocking success at the project
	Continue to operate and maintain existing recreational facilities at the project	Develop and implement Recreation Development and Management Plan to include rehabilitation and upgrades to existing recreation facilities, reservoir water surface management, recreation monitoring, and a Signage and Education plan, providing streamflow information to the public via the internet	Same as proposed action but include posting of streamflow data at MC-7 on the internet in addition to MC-1, consultation with American Whitewater and Friends of the River

Resource	No-Action Alternative	Proposed Action	Staff Alternative
		Construct new day-use area, reconstruct and extend existing boat ramp, and add parking at Tarantula Gulch	Same as proposed action but add lighting at Tarantula Gulch boat ramp
		Provide a formal day-use area and campground at McCloud reservoir at Star City	Same as proposed action
		Conduct a feasibility study to find a suitable location for a floating dock or pier and trail at McCloud reservoir and construct if feasible	Same as proposed action
		Construct day-use areas at McCloud reservoir at Red Banks and Tarantula Gulch inlet	Same as proposed action
		Construct three access points to McCloud reservoir at Battle Creek and on each side of McCloud dam	Same as proposed action
		At McCloud and Iron Canyon reservoirs, assess and implement closures of user-created roads leading to the shoreline of McCloud and Iron Canyon reservoirs, in coordination with the Forest Service	Same as proposed action with inclusion of trails and dispersed use sites in the assessment and closures; expand to include area inside project boundary at both McCloud and Iron Canyon reservoirs

Resource	No-Action Alternative	Proposed Action	Staff Alternative
		Construct a day-use site and access trail along the Lower McCloud River, at the base of McCloud dam	Same as proposed action
		Reconstruct Hawkins Landing boat ramp and campground and provide additional parking, restroom facilities	Same as proposed action
		Conduct a site evaluation and provide three paved parking areas along FR37N78 with shoreline access points to Iron Canyon reservoir	Same as proposed action
		Construct new boat ramp and shoreline access at Iron Canyon reservoir	Same as proposed action with the inclusion of adding lighting at the boat ramp
		Relocate (if feasible) or reconstruct Deadlun Campground if a suitable location is found	Reconstruct Deadlun Campground to provide double and triple sites and construct new campground at Gap Creek for single unit campsites
		Remove snow at Iron Canyon dam boat ramp and access road when project operations require snow removal from Oak Mountain Road	Same as proposed action

Resource	No-Action Alternative	Proposed Action	Staff Alternative
		Evaluate the feasibility of constructing a pedestrian shoreline access trail at the upper end of Pit 7 reservoir, downstream of Pit 6 powerhouse tailrace, and construct if suitable location found	Construct the shoreline access trail
		Conduct feasibility assessment for providing boat put-in or boat hand- launch at Montgomery Creek, near the lower end of Pit 7 reservoir, if not feasible construct a fishing access trail with boat hand-launch	Conduct a site evaluation to determine the location of a pedestrian shoreline access trail at the lower end of Pit 7 reservoir with paved parking and construct this facility
		Reconstruct Fenders Flat day-use area (above Pit 7 afterbay dam) and boat ramp	Same as proposed action
		If the Pit 7 afterbay powerhouse is constructed, provide access near the proposed Pit 7 afterbay powerhouse, and provide parking at the end of the powerhouse access road or along Fenders Ferry Road	Same as proposed action

Resource	No-Action Alternative	Proposed Action	Staff Alternative
		Develop and implement Project Patrol Plan to provide project patrols	No requirement for Project Patrol Plan, patrols, or funding for law enforcement position
Cultural Resources		Implement a final HPMP	Implement the final HPMP upon license issuance
	Continue employee environmental training and sensitivity program	Continue employee environmental training and sensitivity program as part of the HPMP	Same as proposed action
		Provide program to educate public about cultural significance of area (with assistance from Pit River Tribe, Winnemem Wintu Tribe, and the Forest Service)	Same as proposed action
Land Use and Aesthetics	Continue to maintain all project roads and facilities	Develop and implement a Road and Transportation Facility Management Plan for project roads	Same as proposed action plus revise project boundary to include all project roads and existing recreational facilities
		Execute a separate memorandum of understanding (MOU) with the Forest Service for areas with shared responsibility	Outside of licensing proceeding

Resource	No-Action Alternative	Proposed Action	Staff Alternative
	Continue to implement the Spill Prevention, Control, and Countermeasures Plan and the Hazardous Materials Business Plan	Same as no-action	Same as no-action, but file existing Spill Prevention, Control, and Countermeasures Plan and Hazardous Materials Business Plan with the Commission
		Identify specific visual quality mitigation measures and develop an implementation schedule	Same as proposed action
		Develop and implement a Fire Response Plan	Same as proposed action

Conclusions

Based on our analysis, we recommend licensing the project as proposed by PG&E, with some staff modifications and additional measures (staff alternative), as described previously under *Alternatives Considered*.

In section 4.2 of the EIS, *Comparison of Alternatives*, we compare the total project cost of obtaining power from a likely alternative source of power in the region (annual power value, table 4-3), for each of the alternatives identified above. Our analysis shows that during the first year of operation under the no-action alternative the project produces power at a cost of $23,102,000, or about $111,085,000 [$72.52/megawatt hours (MWh)] less than the cost of alternative power. Under the applicant's proposal, the project would produce power at a cost of $33,291,000, or about $100,085,000 ($65.66/MWh) less than the cost of alternative power. Under the staff-recommended alternative, the project would produce power at a cost of $33,951,000, or about $97,492,000 ($64.90/MWh) less than the cost of alternative power. With regards to PG&E's proposed additional generation units at McCloud dam and Pit 7 afterbay, we find that the cost of these new units may exceed the potential power benefits; however, PG&E has not yet determined the final size of the units and their hydraulic capacity. Until PG&E decides on the final capacity of the units, we make no recommendation regarding the proposed additional generation units.

We choose the staff alternative as the preferred alternative because:
(1) the project would provide a dependable source of electrical energy for the region

(1,502,200 megawatt-hours annually); (2) the project may save the equivalent amount of fossil fueled generation and capacity, thereby continuing to help conserve non-renewable energy resources and reduce atmospheric pollution; and (3) the recommended environmental measures proposed by PG&E, as modified by staff, would adequately protect and enhance environmental resources affected by the project. The overall benefits of the staff alternative would be worth the cost of the proposed and recommended environmental measures.

1.0 INTRODUCTION

1.1 APPLICATION

On July 16, 2009, Pacific Gas and Electric (PG&E) filed an application to relicense its 368-megawatt (MW) McCloud-Pit Project (P-2106) with the Federal Energy Regulatory Commission (FERC or Commission). The McCloud-Pit Project is located on the McCloud and Pit Rivers in Shasta County, California, and consists of three existing developments (James B. Black, Pit 6, and Pit 7; figure 1-1). Project features collectively include two storage reservoirs (McCloud and Iron Canyon reservoirs), two regulating reservoirs (Pit 6 and Pit 7 reservoirs), one afterbay (Pit 7 afterbay), two tunnels, three powerhouses (James B. Black, Pit 6, and Pit 7 powerhouses), and associated equipment and transmission facilities. PG&E proposes to construct two new generation facilities at the base of McCloud dam (5 to 8 MW) and at the base of Pit 7 afterbay dam (10 MW), including a transmission line. A portion of the route of the proposed McCloud transmission line would cross about 5 miles of the southern portion of Siskiyou County. The current license expires July 31, 2011. The average annual energy generation (1979-2004) for James B. Black, Pit 6, and Pit 7 powerhouses is 656.3, 373.8, and 512.1 gigawatt-hours (GWh), respectively.

The project currently occupies 1,651.4 acres of federal lands, managed by the U.S. Department of Agriculture − Forest Service (Forest Service). The proposed new generation facilities would add about 45.4 additional acres within the project boundary, of which about 4.6 acres would be federally-owned lands managed by the Forest Service.

1.2 PURPOSE OF ACTION AND NEED FOR POWER

1.2.1 Purpose of Action

The purpose of the McCloud-Pit Project is to continue to provide a source of hydroelectric power. Therefore, under the provisions of the Federal Power Act (FPA), the Commission must decide whether to issue a license to PG&E for the McCloud-Pit Project and what conditions should be placed on any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (e.g., flood control, irrigation, and water supply), the Commission must give equal consideration to the purposes of: (1) energy conservation; (2) the protection of, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat); (3) the protection of recreational opportunities; and (4) the preservation of other aspects of environmental quality.

Issuing a new license for the McCloud-Pit Project would allow PG&E to continue to generate electricity at the project for the term of a new license, making electric power from a renewable resource available to its customers.

This final environmental impact statement (EIS) assesses the effects associated with operation of the proposed project, examines alternatives to the proposed project, and makes recommendations to the Commission on whether to issue a new license, and if so, recommends terms and conditions to become a part of any license issued.

In this EIS, we assess the environmental and economic effects of continuing to operate the project: (1) as proposed by PG&E and (2) as proposed by PG&E with our recommended measures (the staff alternative). We also consider the effects of the no-action alternative. Important issues that are addressed include appropriate minimum flows in project-affected reaches, assessment of project effects on special status species, effects of any new minimum flow regime on recreation, and potential effects of project operation on water quality, aquatic habitat, fish, and recreational access.

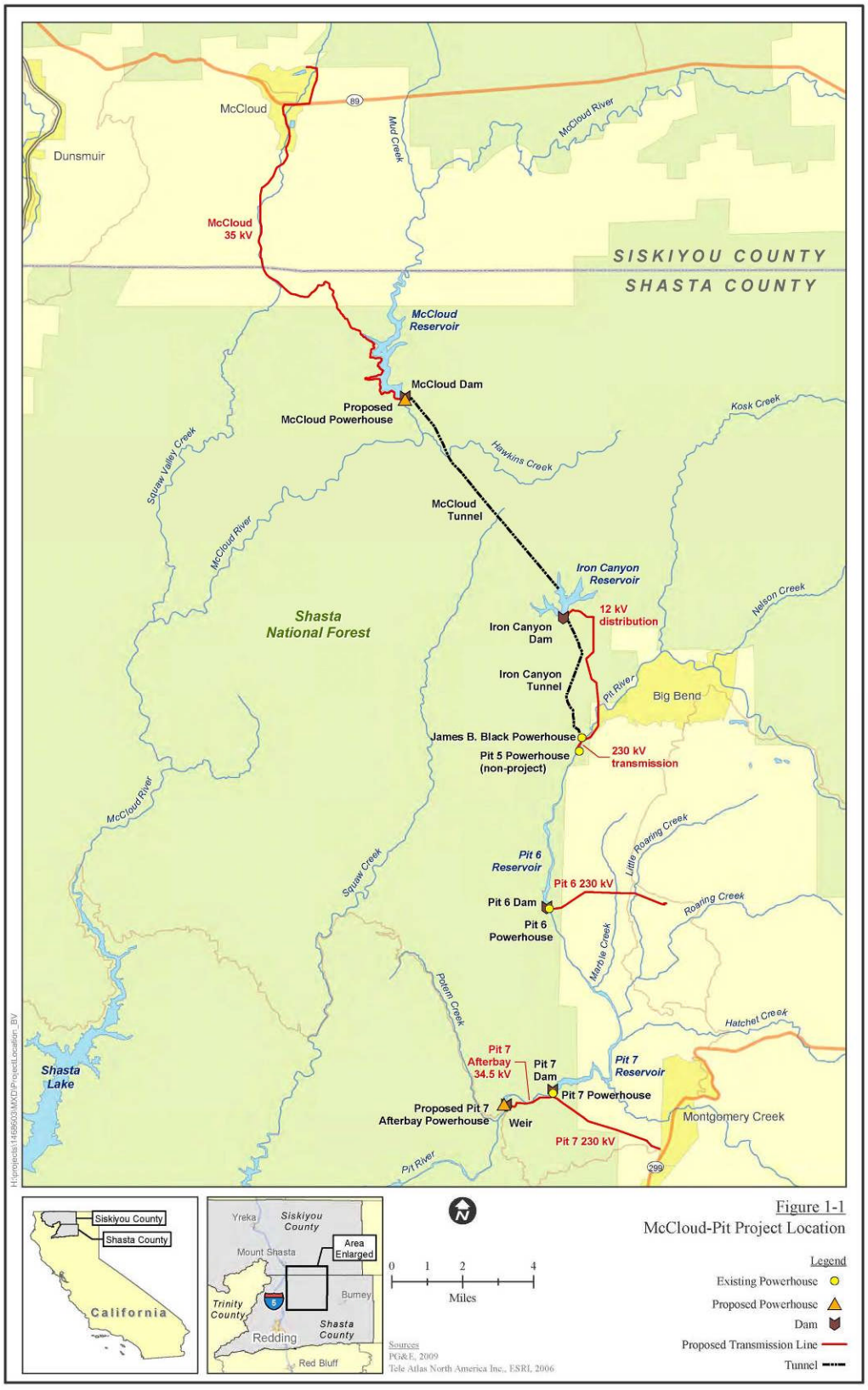

Figure 1-1. McCloud-Pit Project, location map. (Source: PG&E, 2009a)

1.2.2 Need for Power

The project is located in the California-Mexico Power area of the Western Electricity Coordinating Council (WECC). According to the North American Electricity Reliability Corporation (NERC, 2009), which forecasts electrical supply and demand nationally and regionally, summer total internal demands for the California-Mexico Power area is projected to grow at an annual compound rate of 0.9 percent from 2009 to 2018. Annual energy use is projected to grow at an annual compound rate of 1.3 percent. NERC forecasts that about 31,613 MW of capacity will be added to the California-Mexico Power area of WECC over the project planning period (2009 – 2018). The project could continue to meet part of the existing load requirements within a system in need of resources. In addition, pursuant to California Senate Bill 1078 passed in September 2002, the proposed new small hydro powerhouses may qualify as "eligible renewable energy resources," and could be used to help meet California's Renewable Portfolio Standard.

California's principal energy agencies (the California Energy Commission, California Public Utility Commission, and California Power Authority) developed a common policy vision calling for: optimizing energy conservation and resource efficiency; meeting new generation needs first with renewable energy resources and distributed generation, then with clean fossil fuel generation; and improving the bulk electricity transmission grid and distribution infrastructure. The California Energy Commission projects that the statewide annual peak demand will grow an average of 1.35 percent between 2008 and 2018.

We conclude that power from the McCloud-Pit Project could continue to meet a need for power in the WECC region in both the short- and long-term. The project provides low-cost power that may displace non-renewable, fossil-fired generation and contributes to a diversified generation mix. Displacing the operation of fossil-fueled facilities may avoid some power plant emissions and creates an environmental benefit.

1.3 STATUTORY AND REGULATORY REQUIREMENTS

The license for the McCloud-Pit Project is subject to numerous requirements under the FPA and other applicable statutes. Major regulatory and statutory requirements are summarized in table 1-1 and described below.

Table 1-1. Major statutory and regulatory requirements for the McCloud-Pit Hydroelectric Project.

Requirement	Agency	Status
Section 18 of the FPA (fishway prescriptions)	U.S. Department of Interior (Interior) – Fish and Wildlife Service (FWS); U.S. Department of Commerce – National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS)	FWS reserved its authority to prescribe fishways on January 28, 2010. NMFS reserved its authority on January 29, 2010.
Section 4(e) of the FPA (land management conditions)	Forest Service	The Forest Service provided conditions on January 29, 2010, one revised condition on March 1, 2010, and modified conditions on November 29, 2010.
Section 10(j) of the FPA	California Department of Fish and Game (California Fish and Game); NMFS	On January 29, 2010, NMFS provided section 10(j) recommendations. California Fish and Game provided recommendations on February 2, 2010.
Clean Water Act water quality certification	California State Water Resources Control Board (California Water Board)	PG&E filed an application for water quality certification with the California Water Board on January 27, 2010. PG&E withdrew that application and simultaneously re-filed its application by letter dated January 5, 2011. Certification due by January 5, 2012.

Requirement	Agency	Status
Endangered Species Act (ESA) consultation	FWS	We requested concurrence from FWS on our "not likely to adversely affect" determination on listed species under its jurisdiction. On December 21, 2010, FWS filed a letter concurring with our conclusions presented in the EIS.
Coastal Zone Management Act consistency	California Coastal Commission	Relicensing the project would not influence resources in the designated coastal zone.

1.3.1 Federal Power Act

1.3.1.1 Section 18 Fishway Prescriptions

Section 18 of the FPA states that the Commission is to require construction, operation, and maintenance by a licensee of such fishways as may be prescribed by the secretaries of Commerce or Interior. By letter filed January 28, 2010, the U.S. Department of the Interior (Interior) requested that a reservation of authority to prescribe fishways be included in any project license for the McCloud-Pit Project. NMFS filed a request for reservation of authority on January 29, 2010.

1.3.1.2 Section 4(e) Conditions

Section 4(e) of the FPA provides that any license issued by the Commission for a project within a federal reservation shall be subject to and contain such conditions as the Secretary of the responsible federal land management agency deems necessary for the adequate protection and use of the reservation. The Forest Service filed 34 section 4(e) conditions for the McCloud-Pit Project on January 29, 2010, and one revised condition on March 1, 2010. The Forest Service filed modified 4(e) conditions on November 29, 2010. These conditions are described under section 2.2.4, *Modifications to the Applicant's Proposal—Mandatory Conditions*, summarized in table 5-3, analyzed in the appropriate resource sections of section 3, *Environmental Analysis*, and discussed in section 5, *Staff's Conclusions*.

1.3.1.3 Alternative Conditions under the Energy Policy Act of 2005

The Energy Policy Act of 2005 provides parties to this licensing proceeding the opportunity to propose alternatives to 4(e) conditions. No trial-type hearings were

requested, but PG&E provided 16 alternative 4(e) conditions and California Trout, Trout Unlimited, and McCloud River Club provided one alternative condition.[7] On November 24, 2010, PG&E withdrew 13 of its alternative 4(e) conditions in full and one alternative condition in part. We discuss these alternative conditions in the appropriate resource analysis sections of this EIS and in section 2.2.4.2, *Alternative 4(e) Conditions Pursuant to the Energy Policy Act of 2005*. We discuss our conclusions in section 5, *Staff's Conclusions*.

1.3.1.4 Section 10(j) Recommendations

Under section 10(j) of the FPA, each hydroelectric license issued by the Commission must include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project, unless it determines that they are inconsistent with the purposes and requirements of the FPA or other applicable law. Before rejecting or modifying an agency recommendation, the Commission is required to attempt to resolve any such inconsistency with the agency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

On January 29, 2010, NMFS filed 12 recommendations under section 10(j) for the McCloud-Pit Project. California Fish and Game filed three recommendations on February 2, 2010. In the draft EIS, we made a preliminary determination that 10 of the recommendations made by NMFS and two of the recommendations made by California Fish and Game were within the scope of section 10(j). Of those 12 recommendations, we adopted three and partially adopted one. We did not adopt the remaining eight recommendations made by NMFS because they may be inconsistent with the comprehensive planning standard of section 10(a) and the equal consideration provision of section 4(e) of the FPA.

Commission staff held a 10(j) meeting with NMFS in Sacramento, California, on November 17, 2010, in an attempt to resolve these preliminary inconsistencies. California Fish and Game did not request its own 10(j) meeting; however, the agency attended the November 17, 2010, meeting.

We summarize these recommendations in table 5-1, analyze them in the appropriate resource sections in section 3, *Environmental Analysis,* and present our

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[7] McCloud RiverKeepers, American Whitewater, and Friends of the River also filed alternative conditions; however, in its September 27, 2010, letter, the Forest Service stated that because these filings occurred after the March 18, 2010, deadline for filing alternative conditions, these filings should not be classified as alternative condition filings to the Forest Service's preliminary section 4(e) conditions. As such, in this final EIS, we discuss and analyze these recommendations in section 3.3.2, *Aquatic Resources,* and present our conclusions in section 5, *Staff's Conclusions*.

conclusions in section 5, *Staff's Conclusions*. We also discuss and address the agency recommendations in section 5.4.1, *Fish and Wildlife Agency Recommendations*.

1.3.2 Clean Water Act

Under section 401 of the Clean Water Act, a license applicant must obtain certification from the appropriate state pollution control agency verifying compliance with the Clean Water Act. By letter dated January 27, 2010, PG&E submitted its application for water quality certification to the California Water Board. By letter dated February 26, 2010, the California Water Board documented receipt of the application on January 27, 2010.

By letter filed September 22, 2010, the California Water Board notes that while it has 1 year to act on an application for water quality certification, all of the information necessary for it to act on the application must be submitted, and environmental documents necessary to comply with the California Environmental Quality Act (CEQA) must be finalized. By letter dated October 27, 2010, PG&E filed a reply to the California Water Board's comments. Additionally, by letter dated January 5, 2011, PG&E withdrew its original application for water quality certification and simultaneously re-filed its application. Consequently, the water quality certification is due by January 5, 2012.

1.3.3 Endangered Species Act

Section 7 of the ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. Four federally-listed species have the potential to occur in the project vicinity: northern spotted owl, valley elderberry longhorn beetle (VELB), California red-legged frog, and Pacific fisher. Our analyses of project effects on threatened and endangered species are presented in section 3.3.4, *Threatened and Endangered Species*, and our recommendations in section 5.2, *Comprehensive Development and Recommended Alternative*.

In the draft EIS, we concluded that relicensing of the McCloud-Pit Project, as described under the staff alternative, would have no effect on the California red-legged frog and would not likely adversely affect the VELB, Pacific fisher, and northern spotted owl. On August 6, 2010, we issued a letter seeking concurrence from FWS on this determination, indicating that the draft EIS would serve as our biological assessment of the proposed licensing on listed species. On December 23, 2010, FWS filed a letter concurring with our determination.

1.3.4 Coastal Zone Management Act

Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 United States Code (U.S.C.) § 1456(3)(A), the Commission cannot issue a license for

a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification.

The project is located in the Sierra Nevada Mountains and is not located within the boundary of a designated Coastal Zone Management Program, which extends from a few blocks to 5 miles inland from the sea (www.coastal.ca.gov), and relicensing the project would not affect resources within the boundary of a designated coastal zone. Therefore, the project is not subject to California coastal zone program review and no consistency certification is needed. We provided a copy of the draft EIS to the California Coastal Commission for review and received no comment from that agency.

1.3.5 National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that every federal agency "take into account" how each of its undertakings could affect historic properties. Historic properties are districts, sites, buildings, structures, traditional cultural properties (TCPs), and objects significant in American history, architecture, engineering, and culture that are eligible for inclusion in the National Register of Historic Places (National Register).

To meet the requirements of section 106, the Commission intends to execute a Programmatic Agreement (PA) with the California State Historic Preservation Officer (SHPO) for the protection of historic properties from the effects of the operation of the McCloud-Pit Hydroelectric Project. The terms of the PA, a draft of which was issued August 26, 2010, ensure that PG&E addresses and treats all historic properties identified within the project's area of potential effects through the implementation of PG&E's Historic Properties Management Plan (HPMP).

1.3.6 California Environmental Quality Act

CEQA is the California counterpart to the National Environmental Policy Act (NEPA). CEQA went into effect in 1970 for the purpose of monitoring land development in California through a permitting process. This statute, enacted to protect the health of the environment from current and future development, requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. CEQA applies to all discretionary activities proposed to be undertaken or approved by California state and local government agencies. The California Water Board, which must act on PG&E's request for water quality certification for the project (see section 1.3.2, *Clean Water Act*), is the lead agency under CEQA.

Under CEQA, an environmental impact report (EIR) is prepared when the public agency finds substantial evidence that the project may have a significant effect on the environment. An EIR is the public document used to analyze the significant

Appendix A

Staff Responses to Comments on the Draft Environmental Impact Statement

APPENDIX A

STAFF RESPONSES TO COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

The U.S. Environmental Protection Agency (EPA) notice of availability of the draft environmental impact statement (EIS) for the McCloud Pit Hydroelectric Project (project) was issued on July 30, 2010, and comments on the draft EIS were due on September 28, 2010. In addition, Federal Energy Regulatory Commission (Commission) staff conducted two public meetings to receive oral comments on the draft EIS in Redding, California, on September 9, 2010. Twenty-one out of 33 members of the public that attended the meetings spoke. Speakers commented on instream flows for the project, including support for boating and angling/fishery flows; designation of project roads; delineation of the project boundary; snow removal; recreation facilities and access; dam safety; and the potential for anadromous fish reintroductions in the project area. Additionally, there were 428 filings by individuals during the comment period, which included comments regarding the hydrograph and fishery in the project area, as well as boating and angling flows. These topics were also addressed in 26 additional filings by individuals, organizations, or agencies, after the conclusion of the formal comment period.

In this appendix, we summarize the written and oral comments received; provide responses to those comments; and indicate, where appropriate, how we modified the text in the final EIS. We grouped the comment summaries and responses by topic for convenience. We do not summarize comments that point out minor edits to the draft EIS; however, we have made these edits in the final EIS. The following entities filed comments on the draft EIS.

Commenting Entity	**Filing Date**
California Fisheries and Water Unlimited	August 5, 2010
Pacific Gas and Electric (PG&E)	August 5, 2010
California Salmon and Steelhead Association	August 6, 2010
California Fisheries and Water Unlimited	August 19, 2010
California Fisheries and Water Unlimited	August 20, 2010
McCloud RiverKeepers	August 23, 2010
California Coastkeeper Alliance	September 17, 2010

Commenting Entity	Filing Date
California Sportfishing Protection Alliance	September 22, 2010
California Fisheries and Water Unlimited	September 23, 2010
U.S. Department of Agriculture – Forest Service (Forest Service)	September 24, 2010
Forest Service	September 24, 2010
Forest Service	September 27, 2010
PG&E	September 27, 2010
The Hearst Corporation	September 27, 2010
California State Water Resources Control Board (California Water Board)	September 28, 2010
National Park Service	September 28, 2010
U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS)	September 28, 2010
California Trout, Trout Unlimited, Northern California Council, Federation of Fly Fishers	September 28, 2010
Center for Water Advocacy	September 28, 2010
EPA, Region 9	September 28, 2010
McCloud River Club	September 28, 2010
American Whitewater and Friends of the River	September 28, 2010
Winnemem Wintu Tribe	September 28, 2010
Winnemem Wintu Tribe	September 29, 2010
McCloud RiverKeepers	September 29, 2010
Pit River Tribe	September 29, 2010

Commenting Entity	Filing Date
California Fisheries and Water Unlimited	November 12, 2010
McCloud RiverKeepers	November 30, 2010
California Department of Fish and Game (California Fish and Game)	December 22, 2010
McCloud RiverKeepers	December 23, 2010
McCloud RiverKeepers	December 29, 2010
California Fisheries and Water Unlimited	January 3, 2011

Individual Commenter	Filing Date	Individual Commenter	Filing Date
Eing Ong	August 25, 2010	Michael McWhirter	September 8, 2010
Eric Juday	August 25, 2010	Michael Brocchini	September 9, 2010
Mark R Zakutansky	August 25, 2010	Noel Alfague	September 9, 2010
Chris G. Uhtoff	September 1, 2010	Robert Dougherty	September 9, 2010
David E Schwartz	September 1, 2010	Ron Rogers	September 9, 2010
Jeffrey Sanchez	September 2, 2010	Bruce Jones	September 9, 2010
Mary Elliott	September 2, 2010	Dave Steindorf	September 9, 2010
Urs Schhuler	September 2, 2010	Eric White	September 9, 2010
David Greenleaf	September 3, 2010	Ilona Karow	September 9, 2010
Matt Jordan	September 3, 2010	Michael Caranci	September 9, 2010
Mira Boyda	September 3, 2010	Mike Martini	September 9, 2010
Robert Warren	September 3, 2010	Paul Gamache	September 9, 2010
Justin	September 7, 2010	Peter Gerodette	September 9, 2010
Todd Reasor	September 7, 2010	Steve Andrews	September 10, 2010

EXHIBIT 3

PG&E McCloud-Pit Hydroelectric Project

State Water Resources Control Board
Water Quality Certification

Draft Initial Study / Negative Declaration

FERC Project No. 2106

Cardno®

Document Information

Prepared for: State Water Resources Control Board—Division of Water Rights

Project Name: PG&E McCloud-Pit Hydroelectric Project

Water Quality Certification
Draft Initial Study / Negative Declaration
FERC Project No. 2106

Date: May 2019

Prepared for:

State Water Resources Control Board—Division of Water Rights
P.O. Box 2000, Sacramento, CA 95812-2000

Prepared by:

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Appendices

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Acronyms

AAQS	Ambient Air Quality Standards
ac-ft	acre-feet
APE	Area of Potential Effect
AQAP	Air Quality Attainment Plan
AQMD	Air Quality Management District
BE	Biological Evaluation
BMI	benthic macroinvertebrate
BMP	Best Management Practice
CAAQS	California Ambient Air Quality Standards
CARB	California Air Resources Board
CBC	California Building Code
CDC	Centers for Disease Control and Prevention
CDFW	California Department of Fish and Wildlife
CEC	California Energy Commission
CESA	California Endangered Species Act
CEQA	California Environmental Quality Act
cfs	cubic feet per second
CNDDB	California Natural Diversity Database
CO	carbon monoxide
CPUC	California Public Utilities Commission
CRHR	California Register of Historic Resources
CRPR	California Rare Plant Ranking
CVRWQCB	Central Valley Regional Water Quality Control Board
CWA	Clean Water Act
DOC	California Department of Conservation
DPS	Distinct Population Segment
DSOD	Division of Safety of Dams
DWR	California Department of Water Resources
EIS	Environmental Impact Statement
ESA	Endangered Species Act

FERC	Federal Energy Regulatory Commission
FYLF	foothill yellow-legged frog
GHG	greenhouse gas
gpd	gallons per day
GWh	gigawatt hours
GWh/yr	gigawatt hours per year
HMBP	hazardous materials business plans
hp	horsepower
IS	Initial Study
IS/ND	Initial Study/Negative Declaration
KOP	Key Observation Point
kV	kilovolt
LOP	limited operating period
MIF	minimum instream flow
msl	mean sea level
MT CO_2e	metric tons of carbon dioxide equivalent
MW	megawatts
MVA	megavolt-ampere
NAAQS	National Ambient Air Quality Standards
NAHC	Native American Heritage Commission
ND	Negative Declaration
NEPA	National Environmental Policy Act
NOx	oxides of nitrogen
NO_2	nitrogen dioxide
NPDES	National Pollutant Discharge Elimination System
NSVPA	Northern Sacramento Valley Planning Area
O_3	ozone
PAC	Protected Activity Center
PCA	Pest Control Adviser
PG&E	Pacific Gas and Electric Company
PM	particulate matter

ppm	parts per million
RM	river mile
RMO	Road Management Objective
ROG	reactive organic gases
RPS	Renewable Portfolio Standard
RTP	Regional Transportation Plan
RWQCB	Regional Water Quality Control Board
SHPO	California State Historic Preservation Officer
SO_2	sulfur dioxide
SPCC	spill, prevention, control, and countermeasures
STNF	Shasta-Trinity National Forest
SVAQEEP	Sacramento Valley Air Quality Engineering and Enforcement Professionals
SWPPP	Storm Water Pollution Prevention Plan
TCP	Traditional Cultural Properties
UCMP	University of California Museum of Paleontology
USACE	United States Army Corps of Engineers
USEIA	United States Energy Information Administration
USEPA	United States Environmental Protection Agency
USFS	United States Department of Agriculture – Forest Service
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
VELB	valley elderberry longhorn beetle
VMT	vehicle miles traveled
VQO	Visual Quality Objectives

Executive Summary

Pacific Gas and Electric Company (PG&E) owns and operates the McCloud-Pit Hydroelectric Project (McCloud-Pit Project, or Project) (Federal Energy Regulatory Commission [FERC] Project No. 2106) located in the McCloud and Pit River drainages of Northern California in Shasta and Siskiyou Counties, California. The existing Project has an installed capacity of 368-megawatts. The Proposed Project analyzed in this document is the continued operation of the existing McCloud-Pit Project. To receive a new FERC operating license, PG&E is required to obtain a water quality certification (certification) under section 401 of the federal Clean Water Act. The State Water Resources Control Board (State Water Board) is the agency responsible for certification in California.

Issuance of a certification is a discretionary action that, under the California Environmental Quality Act (CEQA), requires the State Water Board to analyze the subject project's potential environmental impacts to water quality and the designated beneficial uses of water. For the Project, those beneficial uses are identified in the Central Valley Regional Water Quality Control Board (CVRWQCB) *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* (Basin Plan)[1] (CVRWQCB 2018). This draft Initial Study/Negative Declaration (IS/ND) for the Proposed Project analyzes potential Project impacts and evaluates the level of significance of those impacts.

Project Description

In its application for a new FERC license, PG&E proposed changes to the McCloud-Pit Project to lessen potential Project impacts. The Proposed Project evaluated in this CEQA analysis included:

- The existing McCloud-Pit Project, including continued operations and maintenance of existing infrastructure;
- Increased minimum instream flows to protect aquatic resources in two Project-affected stream reaches: (1) McCloud River below McCloud Dam; and (2) Iron Canyon Creek below Iron Canyon Dam; and
- Construction of recreation facility improvements and continued operation of the recreational facilities.

In addition to the changes to the existing McCloud-Pit Project proposed by PG&E, the Proposed Project addressed in this document incorporates the following:

- Terms and conditions contained in FERC's final Environmental Impact Statement, Appendix D, Commission Staff Recommended Conditions, and Appendix E, Forest Service 4(e) Conditions (FERC 2011);

[1] *Water Quality Control Plan for the California Regional Water Quality Control Board Central Valley Region for the Sacramento River Basin and the San Joaquin River Basin.* Fifth Edition. Revised May 2018 (with Approved Amendments).

- United States Department of Agriculture – Forest Service (USFS) 4(e) Conditions (USFS 2010a); and
- Terms and conditions contained in the State Water Board's certification that are necessary to protect water quality and the beneficial uses of water outlined in the Basin Plan (CVRWQCB 2018).

Findings and Determination

There is no substantial evidence in light of the whole record before the State Water Board that the Proposed Project may have a significant impact on the environment. On the basis of this evaluation, the State Water Board concludes:

(i) Implementation of the Proposed Project will not degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory;

(ii) Implementation of the Proposed Project will not have impacts that are individually limited, but cumulatively considerable; and

(iii) Implementation of the Proposed Project will not have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly.

If the State Water Board approves the certification, it will file a Notice of Determination pursuant to California Code of Regulations title 14, section 15075.

DRAFT

Eileen Sobeck

Executive Director

Date

1 Introduction

1.1 Background

Pacific Gas and Electric Company (PG&E) owns and operates the McCloud-Pit Hydroelectric Project (McCloud-Pit Project or Project) located in the McCloud and Pit River drainages of Northern California in Shasta and Siskiyou Counties, California (Figure 1-1). The Proposed Project addressed in this document consists of the continued operation of the McCloud-Pit Project, Federal Energy Regulatory Commission (FERC) Project No. 2106, pursuant to a new 30- to 50-year FERC license, with modifications as described below.

In its application for a new FERC license, PG&E proposed changes to the Project including:

- Changes to minimum instream flows (MIFs) in the McCloud River below McCloud Dam, and Iron Canyon Creek below Iron Canyon Dam to protect aquatic resources;
- Implementation of management and monitoring plans to protect aquatic resources; and
- Measures to maintain and enhance recreational opportunities, including construction to provide additional recreation facilities.

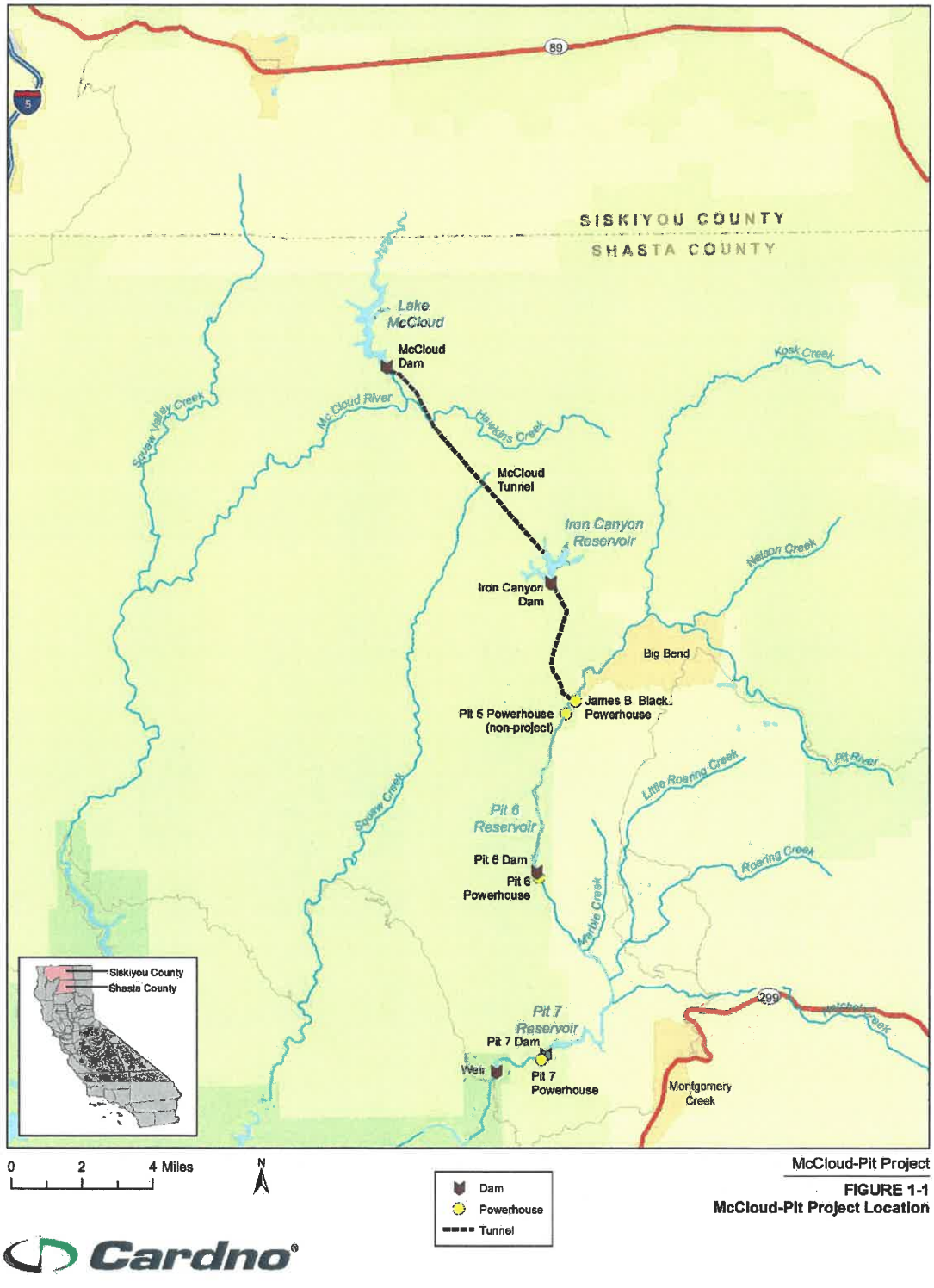
The Proposed Project under the California Environment Quality Act (CEQA) also includes:

- Terms and conditions contained in FERC's final Environmental Impact Statement (EIS), Appendix D, Commission Staff Recommended Conditions and Appendix E (FERC 2011);
- United States Department of Agriculture – Forest Service (USFS) 4(e) Conditions (USFS 2010a); and
- Impacts of potential terms and conditions contained in the State Water Board's certification, that are necessary to protect water quality and the beneficial uses of water that are outlined in the Central Valley Regional Water Quality Control Board (CVRWQCB) *Water Quality Control Plan for the Sacramento and San Joaquin Rivers Basins* (Basin Plan)[2] (CVRWQCB 2018).

The Proposed Project area totals 3,707.6 acres of land, of which: 1,651.4 acres (45 percent) are federally owned and managed by the USFS; 1,239.4 acres (33 percent) are owned by PG&E; and the remaining 816.8 acres are private lands. It consists of three power generating developments (James B. Black, Pit 6, and Pit 7). These developments collectively include four reservoirs, three powerhouses, five dams, two tunnels, one afterbay, and associated equipment, transmission, and recreation facilities. Installed generation capacity for the Project is 368-megawatts (MW). The Proposed Project is discussed in more detail in Chapter 2.

[2] *Water Quality Control Plan for the California Regional Water Quality Control Board Central Valley Region for the Sacramento River Basin and the San Joaquin River Basin.* Fifth Edition. Revised May 2018 (with Approved Amendments).

Figure 1-1 McCloud-Pit Project Location



The McCloud-Pit Project was originally licensed by FERC on August 18, 1961. On July 16, 2009, PG&E filed an application for a new 30- to 50-year license under FERC's Integrated Licensing Process. The original license expired on July 31, 2011; however, the McCloud-Pit Project continues to operate under annual license extensions issued by FERC. The 2009 license application included proposed changes to existing operations. The proposed changes include: (a) higher MIF releases to protect aquatic resources in the McCloud River below McCloud Dam, and in Iron Canyon Creek below Iron Creek Dam; (b) measures to protect sensitive species; and (c) measures to maintain and enhance existing recreation opportunities and provide additional recreational facilities (FERC 2011).

Compliance with the National Environmental Policy Act (NEPA) must be demonstrated prior to FERC undertaking a federal action, including issuance of a new license to PG&E for continued operation and maintenance of the McCloud-Pit Project. On February 25, 2011, FERC issued the final EIS that analyzed environmental impacts of PG&E's Proposed Project, as well as the comments, conditions, and recommendations that FERC received during the draft EIS public and agency review period.

To receive a new FERC license, PG&E is required to obtain a water quality certification (certification) under section 401 of the federal Clean Water Act (CWA). The State Water Resources Control Board (State Water Board) is the agency in California that is responsible for acting on applications for CWA section 401 certification of hydroelectric projects. The purpose of a certification is to protect the waters of the United States by ensuring waste discharged to waters from a proposed activity meets water quality standards and other appropriate requirements. As part of the FERC licensing process the State Water Board must issue or deny certification for the McCloud-Pit Project. Certification conditions will become mandatory conditions of the FERC license for the McCloud-Pit Project once the license is issued. PG&E originally applied for certification by submitting an application for the Proposed Project on January 27, 2010. An application initiates a one-year time period for the State Water Board to act on the request for certification. From 2010 through 2017, PG&E withdrew and resubmitted the application annually. In 2018, the State Water Board denied the application without prejudice. On November 9, 2018, PG&E submitted the most recent application.

Issuance of a certification is a discretionary action that requires the State Water Board to comply with CEQA. (CEQA Guidelines[3] §§ 15002, subd. (i), 15357.) The State Water Board is the lead agency under CEQA for the Project. (Pub. Resources Code, § 21067.) This analysis was prepared to comply with CEQA to assess the environmental effects from changes to the Proposed Project required by the certification issued by the State Water Board. In a CEQA analysis of an existing hydroelectric project, reauthorization of a project would not likely yield many environmental impacts because the environmental baseline against which impacts are measured for CEQA is the existing conditions. In contrast, certification requires an analysis of a project's overall effect on water quality, including whether the designated beneficial uses identified in the Basin Plan are adequately protected. The State Water Board may use a CEQA document prepared during the certification process to aid its review of a project's effects on public trust resources.

[3] The CEQA Guidelines are found at California Code of Regulations, title 14, sections 15000 et seq.

To ensure compliance with CEQA, the State Water Board issued a notice, dated October 26, 2012, for informal consultation with responsible and trustee agencies regarding the environmental document, pursuant to CEQA Guidelines section 15063(g) (see Appendix A). The purpose of the consultation was to seek input from the agencies responsible for resources affected by the Proposed Project, as well as from non-governmental organizations (NGOs), Tribes, and interested members of the community. The State Water Board sought recommendations and supporting information regarding the type of CEQA document to prepare for the Proposed Project. After review and consideration of comments received, it was determined that a Negative Declaration (ND) was the appropriate document for the Proposed Project. To confirm this conclusion and provide additional information regarding the potential impacts of the Proposed Project, the State Water Board prepared an Initial Study (IS) for the Project. The IS assessed potential impacts from the Proposed Project and found that the Proposed Project will not have a significant effect on the environment. The IS is included in Chapter 3.

1.2 Use of FERC's EIS

CEQA Guidelines section 15221 states that when a project requires compliance with both CEQA and NEPA, state agencies should use the EIS or Finding of No Significant Impact (FONSI) rather than preparing an Environmental Impact Report or ND if the EIS or FONSI complies with the provisions of CEQA. This draft IS/ND includes information that is necessary to comply with CEQA for the purposes of the State Water Board's certification process but was not included in the final EIS. However, consistent per section 15150 of the CEQA Guidelines, the draft IS/ND incorporates by reference appropriate sections of the final EIS to avoid repetition of information. In addition, since the McCloud-Pit Project contains lands owned by the USFS, the relicensing process resulted in the development of USFS staff recommendations and mandatory conditions under section 4(e) of the Federal Power Act. PG&E incorporated those recommendations and conditions into the project it presented to the State Water Board for certification, and so they are included in the Proposed Project that is analyzed by this draft IS/ND. The State Water Board's certification will include terms and conditions that require PG&E to carry out the Project in the manner it has proposed.

1.3 Additional Environmental Analysis Required Under CEQA

Pursuant to CEQA Guidelines, the scope of the environmental analysis in this draft ND augments the analysis of the EIS completed by FERC, and includes the following:

- Evaluation of resource areas that require additional analysis under CEQA that are not required by NEPA; and
- A determination of the level of significance of impacts under CEQA.

As the CEQA lead agency, the State Water Board will use the findings of this draft ND to support the certification. FERC will incorporate the certification conditions into the new license for the McCloud-Pit Project.

1.4 Agency Participation and Application

Compliance with federal, state, and local regulations, as well as environmental permits, is required for construction and operation of the Proposed Project. PG&E and its contractors will adhere to all applicable requirements. Major federal, state, and local permits, approvals, and consultations identified for the licensing, construction, and operation of the Proposed Project are described in Table 1-1.

Table 1-1 Overview of Potential Future Permit Approval and Consultation Requirements for the PG&E McCloud-Pit Hydroelectric Relicensing Project

Jurisdiction	Permits, Approvals & Consultations
Federal Agencies	
FERC	FERC issued the final EIS for Hydropower License, McCloud-Pit Hydroelectric Project, FERC Project No. 2106, California. FERC will also review this draft ND for the Proposed Project.
United States Army Corps of Engineers (USACE)	Section 404 of the CWA authorizes the USACE to issue permits, after notice and opportunity for public hearing, for the discharge of dredge or fill material into the waters of the United States and adjacent wetlands. A nationwide 404 permit could be triggered by implementation of some plans incorporated in the Proposed Project, such as the Coarse Sediment Management Plan.
United States Fish and Wildlife Service (USFWS)	The USFWS has jurisdiction over any species listed under the federal Endangered Species Act (ESA). Consultation under section 7 of the federal ESA with the lead federal agency is required. USFWS determines whether a proposed action is likely to jeopardize the continued existence of, or destroy or adversely modify critical habitat of, federally listed species. Under the Migratory Bird Treaty Act, USFWS has responsibility for protecting nearly all species of birds, their eggs, and nests.
USFS, Shasta Trinity-National Forest	The McCloud-Pit Project is located, in part, on USFS lands. USFS permits will be needed to implement certain Proposed Project components, such as a Special Use Permit, Road Use Permit, and Timber Harvest Agreement.
State Agencies	
State Water Board	Section 401 of the CWA requires that prior to the issuance of a federal license or permit for an activity or activities that may result in a discharge of pollutants into navigable waters, the applicant must first obtain a certification issued by the State Water Board or the appropriate California Regional Water Quality Control Board. The State Water Board is the CEQA lead agency for the Proposed Project and is responsible for issuing the ND, adopting CEQA findings, and filing an associated Notice of Determination.

Jurisdiction	Permits, Approvals & Consultations
California Office of Historic Preservation	Under section 106 of the National Historic Preservation Act, consultation is required regarding identification of cultural resources, and preparation of a Memorandum of Agreement for adverse effects on resources list in or eligible for listing on the National Register of Historic Properties and review of the Historic Properties Management Plan.
California Department of Fish and Wildlife (CDFW)	CDFW is a California Trustee Agency (CEQA Guidelines section 15386) that has jurisdiction over natural resources affected by a project, which are held in trust for the people of the State of California, with regard to the fish and wildlife of the state, designated rare or endangered native plants, and game refuges, ecological reserves, and other areas administered by CDFW. CDFW may also issue a Lake or Streambed Alteration Agreement (California Fish and Game Code sections 1600 - 1616) with conditions to protect resources whenever a bed or bank of a stream, lake, or reservoir is altered. For example, construction of boat ramps below the lake level would require a Lake or Streambed Alteration Agreement issued by CDFW.
Native American Heritage Commission (NAHC)	The NAHC provides protection to Native American burials from vandalism and inadvertent destruction; provides a procedure for the notification of most likely descendants regarding the discovery of Native American human remains and associated grave goods; and brings legal action to prevent severe and irreparable damage to sacred shrines, ceremonial sites, sanctified cemeteries, and places of worship on public property. The NAHC also maintains an inventory of sacred places. Cultural resources are identified in the Proposed Project area and NAHC guidance will help assess and mitigate any impacts to these resources.
California Department of Transportation (Caltrans)	A transportation permit may by required for transport of oversized loads on state highways (this permit is usually obtained by the construction contractor or subcontractors).

Jurisdiction	Permits, Approvals & Consultations
Regional Agencies	
Regional Water Quality Control Board (RWQCB)	California RWQCBs issue certifications according to the CWA section 401 for construction-related disturbance of water quality. The Proposed Project may be subject to the Construction General Permit[a] for stormwater discharges associated with construction activity. These permits would apply to all construction projects that would disturb one or more acres of soil. These permits would require filing a Notice of Intent as well as the preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP).
Local Agencies	
Shasta County	Shasta County has jurisdiction over planning, engineering, environmental health, traffic, and roads within the County. For the Proposed Project, Shasta County has specific interest in traffic, safety, and maintenance of road conditions.
Shasta County Air Quality Management District (AQMD)	Under state and federal law, the local AQMD is required to develop a plan for attaining ambient air quality standards. The Northern Sacramento Valley Planning Area (NSVPA) 2015 Triennial Air Quality Attainment Plan (NSVPA 2015) was adopted in Spring 2013. The air quality element of the Shasta County General Plan (County of Shasta 2004) contains control measures aimed at avoiding and reducing emissions of air contaminants into the local environment.

Notes:

[a] *General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities*. Water Quality Order No. 2009-0009-DWQ and National Pollutant Discharge Elimination System No. CAS000002, as amended by Order No. 2010-0014-DWQ, Order No. 2012-0006-DWQ, and any amendments thereto.

1.5 Public Review Process

This draft IS/ND is being circulated for a minimum of 30 days for public review to all individuals who have requested a copy, to the Office of Planning and Research, to the State Clearinghouse for distribution to appropriate resource agencies, and to the Shasta and Siskiyou County Clerks for posting.

A Notice of Intent will be distributed to the interested parties mailing list identified on FERC online[4]. The Notice of Intent identifies locations where the document is available for public review and invites interested parties to provide written comments. A copy of the Notice of Intent is attached to this document.

In addition, the State Water Board provided notice of intent to adopt a negative declaration by publication, in accordance with section 15072(b) of the CEQA Guidelines, in two newspapers of general circulation in the area affected by the Proposed Project: (1) Redding Record Searchlight; and (2) Mount Shasta Herald. Copies of the Notice of Intent and this draft IS/ND will also be available at two libraries near the area affected by the Proposed Project: (1) Redding library; and (2) McCloud library.

Reviewers should focus on the sufficiency of the document in identifying and analyzing possible impacts of the Proposed Project on the environment and, if potential impacts are identified, ways in which the impacts might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures to avoid or mitigate potential significant environmental impacts identified by the commenter.

[4] Interested parties mailing list is available at: www.ferc.gov, under "Documents & Filings", and under "eService".

EXHIBIT 4

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11.145.02

June 3, 2019

VIA EMAIL
wr401program@waterboards.ca.gov

Savannah Downey
State Water Resources Control Board – Division of Water Rights
Water Quality Certification Program,
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Notice of Intent to Adopt a Negative Declaration for Pacific Gas and Electric Company's McCloud-Pit Hydroelectric Project, Federal Energy Regulatory Commission Project No. 2106

Dear Ms. Downey:

INTRODUCTION

On behalf of the Winnemem Wintu Tribe and North Coast Rivers Alliance we submit the following comments on the State Water Resources Control Board's (the "Board's") Draft Initial Study and Negative Declaration ("DISND") for Pacific Gas and Electric Company's ("PG&E's") McCloud-Pit Hydroelectric Project, Federal Energy Regulatory Commission Project No. 2106 (the "Project").

The Winnemem Wintu Tribe is a California-recognized Tribe whose aboriginal territory encompasses the upper watersheds of the Sacramento River including the McCloud River. Indeed, the Winnemem Wintu Tribe's cultural identity is inextricably linked to the McCloud River. "Winnemem" is the Tribe's name for the McCloud River itself, and the Winnemem Wintu Tribe has historically occupied the lands along the banks of the McCloud River. Although some of the Tribe's traditional lands are now submerged under the McCloud Reservoir – due to the construction of the McCloud-Pit Hydroelectric Project – and Lake Shasta, the Tribe has continuously maintained its spiritual, cultural and traditional connection to its remaining unsubmerged native lands and waters, cultural spaces and subsistence uses. The Winnemem Wintu Tribe has long advocated for the restoration of the McCloud River Chinook salmon, and for additional protections for any remaining dolly varden bull trout, rainbow and red-banded trout, and suckers in the McCloud River.

North Coast Rivers Alliance ("NCRA") is a non-profit unincorporated association with members throughout Northern California. NCRA was formed for the purpose of protecting California's rivers and their watersheds from the adverse effects of excessive water diversions, ill-planned urban development, harmful resource extraction, pollution, and other forms of environmental degradation. Its members use and enjoy California's rivers and watersheds for recreational, aesthetic, scientific study, and related non-consumptive uses.

In preparing the DISND, the Board has failed to comply with the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA") and completely ignored CEQA's stringent tribal consultation requirements. The Board must prepare an Environmental Impact Report ("EIR") because the record shows that the Project may have a significant effect on the environment. The Board ignores the Project's inconsistencies with the beneficial uses of the applicable Basin Plan. And the Board has failed to address its duties under the Public Trust Doctrine. For these reasons, as detailed below, the Board cannot certify the proposed Negative Declaration or approve the Project.

THE DISND VIOLATES CEQA

I. THE BOARD FAILED TO CONDUCT THE REQUIRED TRIBAL CONSULTATION

CEQA requires each public agency to consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of the agency's proposed project. Pub. Res. Code §§ 21084.2, 21080.3.1. This consultation requirement applies to *all* CEQA projects that had "a notice of preparation or a notice of negative declaration or mitigated negative declaration filed on or after July 1, 2015." Stats. 2014, ch. 532 (A.B. 52), § 11(c) (eff. Jan 1, 2015). The Board's only notice for this Project that was submitted to the CEQA Clearinghouse maintained by the Governor's Office of Planning and Research ("OPR") was filed on May 2, 2019 – nearly four years after July 1, 2015.[1] Thus, the Board must comply with CEQA's tribal consultation requirements.

For the purposes of CEQA, Public Resources Code section 21080.3.1(a) incorporates the definition of "consultation" found in Government Code section 65352.4. The Board was required to undertake

[1] A search of OPR's online CEQAnet Database, available at https://ceqanet.opr.ca.gov, for "McCloud Pit" reveals only one notice: the May 2, 2019, notice for this Project, listed under State Clearinghouse Number 2019059010.

> [a] meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

Government Code § 65352.4. OPR publishes a technical advisory directive that provides additional guidance on agencies' duties to consult. It states:

> Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites – and on defining the full range of acceptable ways in which [an agency] can accommodate tribal concerns.

OPR *Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA* (2017),[2] p. 6 (quoting OPR *Technical Advisory: SB 18 Tribal Consultation Guidelines* (2005), p. 16).

CEQA mandates that the Board consult with the Winnemem Wintu Tribe respecting this Project. The Winnemem Wintu Tribe is traditionally and culturally affiliated with lands and waters within the Project's identified area of potential effect ("APE"), and the Winnemem Wintu Tribe's cultural resources are threatened by the Project. This consultation is necessary to determine whether the Project "may cause a substantial adverse change in the significance of a tribal cultural resource." Pub. Res. Code §§ 21084.2 (quote), 21074 (defining tribal cultural resource). The Winnemem Wintu Tribe's traditional cultural practices along the McCloud River, and its historical, spiritual, and subsistence relationship to the McCloud River Chinook salmon, should be considered and addressed as part of this required tribal consultation. The Board was required to consult with the Winnemem Wintu Tribe regarding its cultural resources and practices, the Project's potential impacts on them, and alternatives or measures that would mitigate impacts to these cultural resources, *before* completing its CEQA review and releasing this Negative Declaration. Pub. Res. Code §§ 21080.3.1, 21080.3.2(a), 21084.3.

Instead of conducting the required tribal consultation, the Board has improperly relied

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[2] Available at http://opr.ca.gov/docs/Revised_AB_52_Technical_Advisory_March_2017.pdf (last visited May 30, 2019)

upon the *woefully* insufficient information complied by *PG&E* – the Project's private, profit-driven applicant – during the Federal Energy Regulatory Commission ("FERC") relicensing process. DISND 2-35, 3-90. The DISND falsely claims that "[s]tudies to identify [Traditional Cultural Properties ("TCPs")] were conducted with the assistance of the Pit River Tribe and the Winnemem Wintu Tribe to identify culturally sensitive areas within the Project area." DISND 3-90, 3-164, 3-165. But the Winnemem Wintu Tribe's TCPs were *not* included in the Historic Properties Management Plan ("HPMP"), because PG&E never completed the Winnemem Wintu Tribe's cultural study.

This essential cultural study was never completed because PG&E failed to respect its Memorandum of Understanding with the Winnemem Wintu Tribe, and demanded that the Winnemem Wintu Tribe allow third-party access to its *confidential* tribal information. When the Winnemem Wintu Tribe declined to provide this sensitive data to those outside parties, PG&E refused to allow further work on the cultural study to continue. *See*, *e.g.*, February 25, 2011 FERC Final Environmental Impact Statement ("FERC FEIS") 307.

The U.S. Forest Service's mandatory section 4(e) conditions require the HPMP to be revised, should the Winnemem Wintu Tribe's cultural study be completed. FERC FEIS Appendix E-24. PG&E's unilateral approach to the Winnemem Wintu Tribe's cultural resource study is no substitute for the government-to-government consultation required by CEQA. Pub. Res. Code § 21080.3.1(a); Government Code § 65352.4.

The DISND fails to adequately address the extent of Project impacts on the Winnemem Wintu Tribe's traditional cultural properties – including areas used to collect significant ethno-botanical resources, ceremonial areas, and other culturally significant areas – because essential cultural resource studies were never completed. The Board cannot accurately conclude that the Project's impacts will be less than significant because the Board has failed to gather and examine the relevant information. FERC's proposed solution – to allow licensing to go forward and integrate the Winnemem Wintu's cultural information into the HPMP *after* the completion of environmental review – is insufficient under CEQA and fails to honor and protect these resources. Because the Winnemem Wintu Tribe's cultural resource study was omitted from the FERC FEIS, the Project jeopardizes the Tribe's cultural resources at Star City Creek, Ah Di Na, and throughout the APE.

Contrary to the DISND's entire premise, the Project's resource management plans, including those mandated by the 4(e) conditions imposed by the U.S. Forest Service, set forth Project activities that will *directly impact* areas of cultural importance to the Winnemem Wintu Tribe. The management plans for vegetation and weeds, coarse sediment, and recreation development, for example, all implicate cultural resources that have not been adequately addressed. As it stands, the DISND allows PG&E to destroy the Winnemem Wintu Tribe's

cultural resource by refusing to cooperate with the Winnemem Wintu Tribe's requests to adequately protect its confidential, culturally sensitive information.

The Board's complete abdication of its duty to timely consult with the Winnemem Wintu directly contravenes the Legislature's clear command that the Board consider the special expertise of tribes regarding their cultural resources. Pub. Res. Code § 21080.3.1(a).

II. THE BOARD MUST PREPARE AN EIR

"All lead agencies shall prepare . . . an [EIR] on any project which they propose to carry out or approve that may have a significant effect on the environment." Pub. Res. Code, § 21100(a). This mandate applies fully here.

A. The Board has Failed to Examine and Detail the Significant Effects of the Project

As discussed above, the Board has failed to account for the Project's significant impacts on the Winnemem Wintu Tribe's tribal resources because it has failed to consult as CEQA requires. The Board's improper reliance upon PG&E's inadequate resource information led the Board to its unsupported – and unsupportable – conclusion that the Project would not impact tribal cultural resources. DISND 3-163 to 3-165. The DISND states that all impacts "would not be significant" (DISND 3-91), but the Board cannot make this conclusion without receiving required input from the Winnemem Wintu Tribe. This error must be corrected. *Id.*

The DISND fails to address additional impacts of the Project. For example, the DISND does not address the hydrological impacts associated with the construction of recreational accommodations as part of a Recreation Development Management Plan ("RDMP"). DISND 3-123 to 3-126. The new recreational accommodations include river-adjacent trails, the installation of vault toilets in at least eight recreational sites, new day-use areas, new access points for the McCloud Reservoir, boat ramps, parking spaces, paths, and other facilities. DISND 2-21 to 2-31. In addition, the construction of new day-use areas along the McCloud River, and the improvements to existing recreational facilities are intended to increase recreational access to the Project's rivers.

Yet the DISND fails to address how this plainly foreseeable increase in recreational use will impact water quality. All of these activities are sources of erosion, run-off, and other potential contaminants that could impair water quality. The DISND assumes that PG&E's "best management practices" and future compliance through coverage under a Construction General Permit will prevent any impacts. But CEQA requires more than vague assurances that a future plan will mitigate potentially significant impacts. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306 ("adopt[ion of] mitigation measures [to be] recommended in a future study

is in direct conflict with the guidelines implementing CEQA"); *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793-794 (mitigation measures that merely "require a report be prepared and followed," without establishing specific performance standards, violate CEQA). Instead, the Board must examine the impacts and adopt binding, enforceable mitigation measures as part of its CEQA process.

The Project includes the placement of large woody debris in the McCloud River below the McCloud Dam. While such debris is likely beneficial to fish, its placement may impact flow, temperature and turbidity. The FERC FEIS states that the monitoring program included in the Large Woody Debris Management Plan ("LWDMP") "would provide information necessary to assess whether the locations and quantity of [large woody debris] placement are appropriate to achieve the objectives." FERC FEIS 78. The Forest Service's Draft LWDMP identifies a preferred site for the introduction of the debris below the dam, but is silent as to the potential impacts of placing the debris in the McCloud River.

Likewise, the Project includes the excavation of coarse sediment from Star City Creek or Tarantula Gulch to allow for the periodic addition of 150 to 600 metric tons of gravel and coarse sediment to the McCloud River below the McCloud dam. But the FERC FEIS, and the DISND fail to account for the impacts to cultural resources of the Winnemem Wintu Tribe associated with such excavation. And the DISND also does not account for the water quality impacts that could arise from the large woody debris or coarse sediment activities within the McCloud River. Instead, the DISND relies upon an Erosion and Sediment Control Management Plan – which will be finalized later – to claim that "the impacts will not be significant" upon its implementation. DISND 3-124.

In addition, the Board has incorporated the various plans proposed to monitor and reduce the Project's impacts as part of the Project itself instead of treating these plans as mitigation measures. *E.g.,* DISND 3-67; 3-128. Thus, the Board has failed to examine the Project's impacts independently of the measures proposed to lessen those impacts. By collapsing this analysis into a single step, the Board has failed to identify the Project's potentially significant impacts. *Lotus v. Dep't of Transportation* (2014) 223 Cal.App.4th 645, 655-656. By instead taking the Project as PG&E has presented it without critically examining the Project's impacts, the Board has failed to present the information required for informed decisionmaking and review.

B. The DISND Fails to Examine Project Impacts on Restored Native Fish Including Listed Salmonids, Despite Likelihood of Reintroduction During Project Operation

Early in FERC's integrated relicensing process, the Winnemem Wintu Tribe and other interested parties requested that PG&E and FERC consider, study and plan for the reintroduction

of native fish species along the McCloud River. Indeed, the Winnemem Wintu Tribe has long-advocated for the return of the McCloud River Chinook salmon from stock that was introduced to New Zealand over a century ago.

But all requests that PG&E and FERC examine and plan for the reintroduction of extirpated fish have fallen on deaf ears. For example, in studying the impact of various flow regimes at the McCloud Dam on fish species, PG&E did not include habitat criteria appropriate for the bull trout or the native salmonids despite the Tribe's requests. FERC FEIS 141. PG&E refused to acknowledge the need for providing such information on the grounds the fish were not present in the watershed. *See*, *e.g.*, PG&E's *SD-1, PAD, and Study Plan Comments Reply* (January 5, 2007), p. 25. In preparing the DISND, the Board likewise declined to analyze whether the Project would have an impact on these species. DISND 3-28. Instead, the Board asserted that "since listed anadromous fish are not currently present in the waters of the McCloud-Pit Project, this analysis does not include impacts of the Proposed Project on listed salmonids." *Id.*

Yet contrary to this Board's false premise, the U.S. Bureau of Reclamation and the National Marine Fisheries Service ("NMFS") have moved forward with plans to reintroduce endangered native salmonids to areas above Shasta and Keswick dams. FERC FEIS 387. These plans, in part, prompted NMFS to request minimum flows to support these species' reintroduction.

The FEIS improperly dismissed the minimum flows proposed by NMFS on the erroneous grounds that "the requested flows have not been based on results of the minimum flow studies conducted by PG&E." FERC FEIS Appendix A-59. Thus FERC ignored – and allowed PG&E to avoid examining – the likely environmental impacts of the Project on these salmonids. The Board has perpetuated FERC's inexcusable failure to recognize the grievous wrong done to the Winnemem Wintu Tribe when Shasta Dam extirpated its salmon. Although the DISND acknowledges that a fish passage program for fish reintroduction above Shasta Dam is part of the Reasonable and Prudent Alternative included in NMFS 2009 Biological Opinion for the Long-Term Operation of the Central Valley Project and State Water Project, it fails to apply that knowledge to this Project. DISND 3-28. The DISND completely fails to account for how Project operations might – and very likely would – impede these reintroduction efforts. By failing to include the necessary modeling, analysis, and appropriate flow regimes to accommodate reintroduced salmonids, the Board has failed to examine the potentially significant impact of the Project on the environment.

The Project does not include adequate measures to protect any reintroduced salmonids along the McCloud River. The FERC FEIS states that FERC's 'standard reopener' clause, Standard Form L-1, article 15, provides sufficient authority to allow the license to be altered to

respond to the presence of endangered salmonids. FERC FEIS 389. Form L-1, article 15, however, does not adequately protect listed species upon their reintroduction into the McCloud River watershed. This "reopener" clause merely reserves FERC's authority to make changes without mandating *any* action upon the reintroduction of listed species.[3] And, during the November 17, 2010, Section 10(j) meeting, FERC staff member Emily Connor informed participants that she could provide "no guidance on what [the standard reopener clause] entails." The FERC FEIS indicates that any potential reopener will occur after FERC's review of an annual status report on the Interagency Fish Passage Steering Committee (FERC FEIS 58),[4] now known as the Shasta Dam Fish Passage Steering Committee.[5] At the same time, however, other agencies continue to work to assess reintroduction. For example, in 2017 the Bureau of Reclamation announced that it would prepare an EIS for the Shasta Dam Fish Passage Evaluation. 82 Fed.Reg. 27552 (June 15, 2017); 82 Fed.Reg. 41049 (Aug. 29, 2017). The Winnemem Wintu Tribe has identified a potential fishway along Cow Creek, Little Cow Creek,

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[3] The full text of Article 15 states: "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." FERC Standard Form L-1, article 15, from https://www.ferc.gov/industries/hydropower/gen-info/comp-admin/l-forms/l-01.pdf (last visited May 30, 2019).

[4] As the Project is currently designed, *PG&E* is to file this report "on the reintroduction and status of listed anadromous species in the project area," detailing reintroduction status, the findings of the Interagency Fish Passage Steering Committee, and including comments by [NMFS]." FERC FEIS 58, 387. As noted by PG&E's April 2011 comments on the FEIS, "committee meetings are not open to entities other than the resources agencies involved on the committee." PG&E Comment Summary (April 29, 2011), p. 4. Thus, PG&E is not a participant, and its reports will necessarily be derived from reports issued from the committee itself. PG&E Comment Summary, p. 8. Given that PG&E's financial interests are adverse to the reintroduction of these species on the McCloud River, PG&E has recently filed for bankruptcy, and PG&E will not be participating the meetings, PG&E is plainly *not* the appropriate entity to provide FERC with reports on the reintroduction and status of listed anadromous species in the Project area.

[5] 2017 Interagency Fish Passage Steering Committee Report, p. 3 (available at http://deltacouncil.ca.gov/docs/interagency-fish-passage-steering-committee-ifpsc (last visited May 30, 2019)).

and Dry Creek that could allow for reintroduced fish to bypass the Keswick and Shasta Dams.

Under Form L-1, Article 15's "standard reopener," FERC will lack the ability to immediately modify the license conditions upon the reintroduction of listed anadromous species to the Project area. Instead, FERC will be notified of reintroduction activities on an annual basis. FERC FEIS 58. There may be a significant delay between any annual report provided to FERC and any FERC action. FERC FEIS 58, 387; PG&E Comment Summary 8. Upon receipt of any report regarding salmonid reintroduction, FERC has no deadline to develop or consider appropriate Project modifications. Standard Form L-1, Article 15. If and when FERC decides that such modifications are necessary, it will need to provide notice of the decision and an opportunity to comment. *Id.* Meanwhile, any reintroduced fish will be will be subjected to a flow regime that has not been managed to provide the appropriate water temperatures, water levels, and rate of flow necessary for their successful reproduction and survival. FERC FEIS 141.

The U.S. Forest Service correctly observed in its June 17, 2011, comment letter regarding the FERC FEIS that FERC has set up a potential catch-22 for the anadromous fish. USFS Comment Letter, p. 8. As the Project is currently designed, reintroduced anadromous fish will be deterred from reestablishing a presence on the McCloud River by conditions that will not be changed unless and until the fish reestablish a presence there. Without any built-in protections, the Project threatens to frustrate and impede the reintroduction of the McCloud River's native anadromous salmonids. The Board's DISND disregards this concern. DISND 3-28.

In its comments on the FERC FEIS, NMFS asked FERC to adopt NMFS' 10(j) conditions with an "active 'trigger mechanism' that will put the conditions into effect as soon as listed species are present and impacted by project operations." FERC FEIS A-58. A triggering condition provides clear guidance to all parties as to the future responsibilities, and allows the timely and orderly implementation of such conditions without mandating drawn out procedures. The U.S. Environmental Protection Agency also raised this concern. In keeping with the science underlying NMFS's flow proposal, the Winnemem Wintu Tribe proposed an alternative flow regime on August 5, 2010.[6] The Board must study whether increased flows, such as those in the NMFS or Winnemem Wintu Tribe proposals, would be protective of reintroduced anadromous fish. The Board must propose an appropriate flow regime for these reintroduced fish as either an alternative or a mitigation measure to reduce the Project's reasonably foreseeable significant

[6] August 5, 2010 Letter to PG&E and the U.S. Forest Service (attached as Exhibit 1).

impacts.[7]

THE PROJECT DOES NOT PROVIDE ADEQUATE PROTECTION FOR THE BENEFICIAL USES IDENTIFIED IN THE BASIN PLAN

The Project does not adequately protect the beneficial uses identified in the Basin Plan, including salmon and steelhead spawning habitat, and cold fresh-water habitat on the McCloud River. The existing operation of the McCloud-Pit Hydroelectric Project also impairs the potential beneficial use of the Pit River as warm fresh-water habitat because the cold water of the McCloud River is diverted through a series of tunnels and generators to the warmer Pit River. While the Project increases the cold-water flows downstream of the McCloud Dam (and thus has the potential to reduce hydroelectric diversions that flow to the Pit River), the Project's new flow regime still fails to adequately protect the beneficial uses of the McCloud River as cold fresh-water habitat and spawning habitat for salmon and steelhead.

The Basin Plan includes cold fresh-water and cold water spawning habitat that supports salmon and steelhead in the list of the McCloud River's beneficial uses. Without adequate protection for reintroduced native salmonids within the Project's new flow regime, the Project will impair these beneficial uses of the McCloud River. The Board must examine alternatives that will protect these beneficial uses as required under the Clean Water Act and Water Code sections 13240 et seq.

NMFS has described the reintroduction of steelhead, and winter-run and spring-run Chinook salmon, as "imminent" in its comments to FERC on this Project. Despite this, and repeated requests by both NMFS and the U.S. Environmental Protection Agency that FERC adopt a flow regime that would support reintroduced salmonids within the Project area, the Project's flow regime does not include measures to support reintroduction, as detailed above. In developing the Project's flow regime, PG&E declined to include habitat criteria appropriate for bull trout or these native salmonids. FERC FEIS 141. But the public, not PG&E, owns these rivers and their public trust fisheries. The Board must mandate that the Project include sufficient mitigation measures to ensure that the Basin Plan's beneficial uses are not impaired.

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[7] As discussed above, had the Board appropriately considered measures to reduce the Project's impacts separately from the Project itself, this would clearly be a mitigation measure. But, as the Board has inappropriately collapsed its CEQA analysis, the NMFS condition appears be an alternative to the conditions included in the Project itself.

THE PROJECT DOES NOT PROVIDE ADEQUATE PROTECTION FOR PUBLIC TRUST RESOURCES

The Board must take into account its duties under the Public Trust Doctrine. Although compliance with CEQA "may assist an agency in complying with its duties under the public trust doctrine . . . . [,] CEQA review of a project does not necessarily or automatically satisfy the agency's affirmative duties to take the trust into account and protect public trust uses whenever feasible." *San Francisco Baykeeper Inc. v. State Lands Com.* (2018) 29 Cal.App.5th 562, 571. "[A] public trust use is not any use that may confer a public benefit, but rather a use that facilitates public access, public enjoyment, or public use of trust land." *Id.* at 570.

Thus, the Board must consider whether the Project sufficiently protects the public trust resources and uses under its jurisdiction to the extent feasible. This consideration requires it to do more than simply maintain the baseline condition. Unlike CEQA, where the impacts of the Project – and the alternatives designed to lessen those impacts – are framed in the context of that baseline condition, the Public Trust Doctrine requires the Board to examine whether Project activities will protect public trust uses *independently* of that condition. Where, as here, Project activity has lead to the extirpation of native fish, the Board must take affirmative action to protect the remaining – and reintroduced – fish populations in the McCloud River below McCloud Dam and other waters in the Project area. These actions could include habitat restoration, new or improved fish passage projects, dam removal, increased instream flow requirements, and other protective measures to help restore these imperiled fish, including the recovery of the McCloud River salmon and the habitat required to accomplish that objective.

CONCLUSION

For the reasons stated above, the DISND violates applicable law. The Board's current environmental analysis violates CEQA, and its Project is counter to the Basin Plan and the Public Trust Doctrine. The Board must prepare a comprehensive EIR that details the Project's impacts, and alternatives and mitigation measures designed to lessen those impacts, before determining whether to move forward with this ill-considered and highly impactful Project.

Respectfully submitted,

Stephan C. Volker (AKF)

Stephan C. Volker
Attorney for the Winnemem Wintu Tribe
and North Coast Rivers Alliance

Exhibit List:

Exhibit 1: August 5, 2010 Letter to PG&E and U.S. Forest Service Re: McCloud-Pit Hydroelectric Project, FERC Project No. 2106

EXHIBIT
1

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11.145

August 5, 2010

Via Email
SAN3@pge.com

Steve Nevares
PG&E Sr. Project Manager
McCloud-Pit Relicensing
Mail Code NIID
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Julie Tupper
US Forest Service
Regional Hydropower Assistance Team
Regional Forester's Office
650 Capitol Mall, Suite 8-200
Sacramento, CA 95814

Re: McCloud-Pit Hydroelectric Project, FERC Project No. 2106

Dear Mr. Nevares and Ms. Tupper,

Pursuant to the commitment made by Pacific Gas & Electric ("PG&E") and the United States Forest Service ("USFS") during the April 22, 2010 relicensing meeting to allow further discussion and consideration of flows on the Lower McCloud River, including minimum instream flow and ramping, we submit the following on behalf of the Winnemem Wintu Tribe.

The Winnemem Wintu Tribe historically had a subsistence relationship with the salmonids that inhabited the McCloud River, including the endangered Sacramento River winter-run Chinook salmon and threatened Central Valley spring-run Chinook salmon. The tribe has been working with multiple agencies in order to restore these traditional runs to the McCloud River. As the National Marine Fisheries Service ("NMFS") noted in its January 28, 2010 *Preliminary Section 18 Prescriptions, Terms, Conditions, Recommendations and Comments*, "it is imminent that winter-run Chinook salmon, CV spring-run Chinook salmon, and CV steelhead will be passed upstream of the Shasta Dam and into their historic habitats in the McCloud, Sacramento, and Pit River Systems." *Id*, p. 22. For that reason, NMFS has reserved the right to mandate fishways upon the McCloud River under §18. In order for the McCloud River to present a hospitable environment for these salmonids, upon reintroduction the McCloud River flows must provide adequate temperatures, depths and velocities to support these fish.

The Tribe has been working with NMFS in an attempt to reestablish the traditional runs from Chinook salmon stock removed from the McCloud Hatchery and exported to New Zealand. For these fish to re-imprint to the McCloud River, they will require different flow regimes than those considered in the preliminary 4(e) proposals submitted this spring by USFS, PG&E, CalTrout and Trout Unlimited and American Whitewater. None of the proposed 4(e) flow conditions submitted maintain sufficient summer flows to preserve the cooler temperatures required by the winter-run Chinook.

The Tribe reminds USFS and PG&E that as early as scoping comments submitted in 2006, members of the public raised the goal of restoring historic fish species to the McCloud River, including

Chinook salmon, Central Valley steelhead and bull trout. *See, e.g. California Trout, Friends of the River and Trout Unlimited Comments and FERC Scoping Document 1 and Proposed Studies for PG&E's McCloud-Pit Project, FERC No. 2106-047* November 2006. The Winnemem Wintu Tribe emphasized this goal in its February 1, 2010 filing, recommending that "measures identified by NMFS as essential for full restoration of the native salmon runs on these rivers be fully implemented through inclusion in PG&E's license conditions."

The Tribe proposes that the minimum instream flows on the McCloud River be increased to 300 cfs by 2013 in order support the reintroduced salmon populations. A flow of 300 cfs is still substantially less than the historic unimpaired minimum flows on the McCloud River. In addition, the Winnemem Wintu Tribe proposes, consistent with the upper range of flows proposed by NMFS to keep water temperatures below levels that cause salmon mortality, that by 2015 flows be increased to 600 cfs in July, 400 cfs in August, and 400 cfs in dry and critically dry Septembers to assure the survival of these restored salmonids. In so doing, the Winnemem Wintu Tribe embraces the science underlying NMFS' January 28, 2010 filing with FERC.

Winnemem Wintu Summer Flow Proposal to Be Achieved by 2015		
Month	Water Year Type	Minimum Flow (cfs)
July	Wet	600
	Normal	600
	Dry	600
	Critically Dry	600
August	Wet	400
	Normal	400
	Dry	400
	Critically Dry	400
September	Wet	300
	Normal	300
	Dry	400
	Critically Dry	400

It is prudent to establish the appropriate flow regimes for reintroduced salmonids during the relicensing process. By considering the appropriate flows for reintroduced salmonids at this stage, FERC, PG&E and the conditioning agencies will preserve the necessary flexibility to alter the flow regimes as needed to restore these species. If PG&E's license does not now include provision for summer flows sufficient to support the reintroduction of these salmonids, FERC would needlessly set the stage for an endangered species "train wreck."

The Tribe additionally echoes the call for gradual down-ramping after spillover events, as rapid down-ramping increases the risks to the McCloud's aquatic resources.

The Tribe requests time to present information regarding the flow requirements of the McCloud River's native fish at the August 18 flow meeting.

Sincerely,

Stephan C. Volker
Attorney for the Winnemem Wintu Tribe

cc: The Winnemem Wintu Tribe
Stacy Smith, USFS Shasta Trinity NF, FERC Project Coordinator, slsmith01@fs.fed.us
Kathy Turner, USFS Lassen NF, FERC Forest Coordinator, kturner@fs.fed.us
Emily Carter, FERC emily.carter@ferc.gov

EXHIBIT 5

June 3, 2018

Savannah Downey,
State Water Resources Control Board
Division of Water Rights Water Quality Certification Program,
P.O. Box 2000 Sacramento, CA 95812-2000

Send via email: wr401program@waterboards.ca.gov

Re: COMMENTS ON NEGATIVE DECLARATION FOR PACIFIC GAS AND ELECTRIC COMPANY'S MCCLOUD-PIT HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2106

To whom it may concern,

Please accept the following comments on the Negative Declaration for the McCloud/Pit 401 certification. From Save California Salmon. We request an EIR with mitigation measures in the final license to protect water quality.

Save California's Salmon is dedicated to restoring rivers though restoring flows and salmon habitat, removing dams, and improving water quality throughout Northern California. We are also dedicated to fighting new threats to our rivers such as new dams, diversions and pipelines and empowering people to fight for rivers and salmon. Members of the Winnemem Wintu and Pit River Tribes sit on our advisory board and use the watersheds in question for spiritual, cultural, subsistence and recreational purposes.

First, we would like to say that we feel that the CEQA document was severely lacking in content, including a description of water quality conditions, beneficial uses and impairments. We request that an EIR corrects these deficiencies. We also request that the board initiate AB-52 consultation with the Pit and Winnemem Wintu Tribes. The relicensing four dams with significant water quality impacts is a significant action that should require an EIR and consultation. Instead the board has released an Negative Declaration with no mitigations to protect beneficial uses that largely relies on plans that are not described

for mitigations. Some of these plans do not yet exist. PG&E is requesting to build an additional power plant as part of this application, and to continue an interbasin transfer of sediment and turbidity impaired water, yet there is no discussion of either of these issues in this Negative Declaration. These are both significant actions under CEQA. A discussion on how PG&E bankruptcy will impact their ability to finish the outlined plans and studies, and satisfy the conditions of their license are also lacking on this document as it a discussion of cumulative impacts of this project and other past, current and foreseeable projects.

We also found little to no discussion of protection of Tribal beneficial uses or cultural sites, or how AB-52 is being applied in this CEQA document. Both the Winnemem Wintu and the Pit River Tribe are located in the project area and have been negatively impacted by PG&E dams and the dam's impacts on fisheries and water quality. The Pit and McCloud Rivers consist of high quality waters and are subject to a court ordered endangered species reintroduction program under the mandatory Reasonable and Prudent Alternative of a Biological Opinion. The Pit River is also home to hardhead, a California species of concern and a Forest Service sensitive species. It is is doubtful that an listed species, the winter run salmon, will survive reintroduction if habitat is not made available. Protection of endangered species and high quality water is a high priority of state water board.

Even without the reintroduction program the Pit and McCloud Rivers have cold water fisheries listed as a beneficial use. The state should propose mitigations to protect these beneficial uses.

The need for the state board to do a EIR with mitigation measures is apparent from reading the negative declaration. Examples of the state relying on non-existing or draft plans are common in the CEQA document. In some cases is the possibly that these mitigations could actually harm, rather than help, water quality and aquatic life. One example is the Vegetation and Invasive Weed Management Plan. This plan does not exist yet, and may include a large amount of pesticide use, yet there is no analysis of this fact and instead this plan is listed as a mitigation that will help water quality. The impacts of many pesticides on fisheries and water quality are well documented.

"However, if the Proposed Project results in these potential impacts, they will not be significant because measures included in the Vegetation and Invasive Weed Management Plan will minimize effects on sensitive habitats, restore (revegetate) disturbed areas following construction, guide the implementation of BMPs, and protect special-status species, local revegetation sources, and botanical populations essential for wildlife habitat." Negative Declaration, Environmental Checklist 3-83

The Vegetation and Invasive Weed Management Plan is also relied on for the avoidance and protection of sensitive habitats, including wetlands even though it does not exist at this point and is not references. The protection of sensitive habitats is extremely important to the fish reintroduction project and to the cold water fishery beneficials use. Mitigations measures to ensure protection of these habitats need to be included in an EIR and final permit.

Water Quality Impacts

"*The McCloud River is designated in the Central Valley Regional Water Board Water Quality Control Plan for the Sacramento and San Joaquin River Basins (basin plan; Central Valley Regional Water Board, 2007) for municipal and domestic water supply, contact and non-contact recreation (including fishing, canoeing, and kayaking), power production, cold freshwater habitat, coldwater spawning, and wildlife habitat. The Pit River in the project area is designated for all of the beneficial uses designated for the McCloud River, as well as for water supply for irrigation and stock watering, warm freshwater habitat, and warmwater spawning*." FERC EIS, p. 107
https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

The impacts of dams on water quality are well documented, however this Negative Declaration has very little discussion on the impacts of these particular dams and relies on the FERC EIS to analyse impacts. This is not sufficient for the purpose of CEQA as the state of California has its own set of water quality laws, basin plans and protections.

The Pit River is listed for nutrients, organic enrichment/low dissolved oxygen (DO), and water temperature, with agriculture and grazing cited as the probable sources of impairment. The water board was supposed to have a TMDL completed in 2013, but if thisTMDL exists we are unaware of it. Instead the Central Valley water board has suggested delisting the Pit River for the cold water fishery beneficial use without scientifically supported evidence and over the objections of the Pit River Tribe.

Algal growth in the reservoirs is also documented in the FERC EIS, yet now discussed in this CEQA documents. Mercury is also not discussed. The alarming increase in harmful algal blooms is a very important issues and therefore mitigations to deal with algal growth need to be included in a license if this is a problem in the reservoirs. The same is true to mercury.

Perhaps the most serious water quality issue not discussed in the negative declaration is the turbidity and sediment issues in the McCloud River. Highly turbid water from the McCloud River is transferred through an non-permitted interbasin transfer into the Pit River, which has well documented water quality problems. A description of this issue, and mitigations that address it, should be addressed through a EIR. Much of the origins of the turbidity issues is natural, however the dams exacerbate the issue, and change the timing of when the sediment is moved and the interbasin transfer brings this turbid water into a 303 (d) listed watershed that is already highly impaired.

The following quotes show that there is a problem, however this board as the Clean Water Act regulatory agency should investigate it further as part of an EIR.

"*As reservoir levels are drawn down, this deltaic material is re-suspended and transported by incoming flows to the next depositional zone, forming a wedge-shaped deposit that gradually moves downstream*." FERC EIS, p. 115. https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

"Project operations can also alter sediment transport characteristics from McCloud reservoir and into the Lower McCloud River as well as the introduction of sediments into the Iron Canyon and Pit River

watersheds through interbasin transfer." FERC EIS page 116
https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

"*The increases in suspended sediment concentrations and turbidity in Iron Canyon Creek and the Pit River, resulting from interbasin transfer between the McCloud River basin and the Iron Canyon Creek and Pit River basins during episodic mass-wasting events, caused temporary exceedances of basin plan criteria*. " FERC EIS, page 116 https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.as

"During periods when mass wasting is occurring upstream on Mount Shasta, some signal of Mud Creek turbidity reaching the Iron Canyon Creek sites was apparent, with turbidity increases of up to 4 NTU above pre-event levels in August and September, 2008. However, the large volume of flow coming from the Pit 3, 4, and 5 project, as well as settling that occurs in Pit 6 and Pit 7 reservoirs, attenuates any potential effects of turbidity in the Pit River system." FERC, EIS p. 117
https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

Fisheries Impacts

Save California Salmon is very disappointed in the lack of information included in the Negative Declaration related to fisheries and water quality conditions, and water quality impacts to fisheries. This document is lacking in any information on any water quality parameters and does not include a discussion of flows, or of any possible mitigations measures. Instead it claims there is no environmental impacts from four dams, the building of a new power house, and an interbasin transfer of water. This is not true and needs to be remedied. We has several specific concerns related to PGE's plan for flows and habitat actions as part of the dam relicensing that we would like the state board to take a hard look at as part of an EIR.

Winter run salmon reintroduction to habitat above the Shasta Dam is a mandatory action under a current Biological Opinion. It is federal mandated. Both the Winnemem Wintu and Pit River Tribes support salmon reintroduction. There has been discussion that this action may not be included in the upcoming Biological Opinion for the state and federal water projects. Theorizing what the law might require in the future and not taking actions to protect water quality and the cold water beneficial uses in these watersheds based on possible federal actions does not comply with state or federal law and would be irresponsible of this agency. Furthermore, the California Department of Water Resources is now conducting its own analysis of the operations of the state water project and could decide to prioritize reintroduction on the state level as a action to save winter and spring run salmon from extirpation from the Sacramento River and Bay Delta. It is also quite possible that if the reintroduction reasonable and prudent action is cut out of future biological opinions that litigations would reinstate this requirement. .

Fish will need water and habitat to survive reintroduction and to recover and repopulate within the project area. Thanks to scientific process related to the Bay Delta Plan updates the state board now has much much more scientific evidence on the relationship between flows, water quality and habitat now than

eight years ago when FERC made flow and habitat recommendations. Much of this information is included in this board's Final Scientific Basis Report (Science Report) in support of the Update of the Bay-Delta Plan located at: https://www.waterboards.ca.gov/water_issues/programs/peer_review/docs/scientific_basis_phase_ii/201710_bdphaseII_sciencereport.pdf. Therefore we request that mitigations related to flows and sediments that support the recommendations of California Fish and Wildlife and NOAA fisheries to be included in an EIR or final decision. These mitigations would support the cold water fishery beneficial use within the project area and help achieve water quality standards.

It is very important that the state board include these mitigation measures in an EIR. It is not the job of FERC to protect the state's beneficial uses during a relicensing, and this is reflected in the EIS. For instance FERC uses a model that this board has questioned, claimed that rainbow trout in the McCloud River will suffer from flows increase, and has stated that the 25 cfs difference in flows suggested by the state over the recommendations of trout fishing organizations will not be beneficial. None of these assertions are scientifically supported. We disagree with this points and point out that fishing organizations are not regulatory agencies. This is why the state has to step in and use the best available science to protect water quality and fisheries.

Both the FERC EIS and this negative declaration have almost no discussion of water quality conditions or fisheries in the Pit River. This has to be remedied in an EIR and mitigations measures for protection of the Pit River need to be analysed.

FERC has set flat line flows in the Pit River below the dams. We request that the water board asks for a more natural hydrograph in the Pit River below the dams rather than a flatline baseline flow of 150. We are also concerned that it appears that PG&E is looking for ways to get out of their gravel augmentation actions in the McCloud watershed and has not proposed any augmentation below the Pit 7 dam. We request this gravel augmentation be discussed in an EIR along with how flows will be used to move the gravel and provide a more natural hydrograph for fisheries. We also requesting the issue of sediment plums and turbidity in the McCloud RIver be discussed in relation to fisheries impacts. While this impairment comes from natural causes, how the sediment moves through the McCloud River, and the Pit River due to an interbasin transfer, is not addressed and no mitigations measures or operational changes to address the problem have been suggested. This is a problem as reservoir retention can make the timing of the impairment correlate with future salmon run migration, and current rainbow trout run timing.

"*PG&E also proposed that implementation would be contingent on receipt of section 401 water quality certifications, a streambed alteration agreement from California Fish and Game, and a section 404 permit from the U.S. Army Corps of Engineers with terms and conditions that do not substantially alter the cost or specifications of the action proposed. If this is not the case, or if for any reason the sediment currently stored in the Star City Creek delta is considered to be of insufficient quantity or quality, PG&E proposed that it then would be exempt from the Forest Service's original condition. FERC EIS p. 23.* https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

We request that flow criteria to protect beneficial uses be included in an EIR and mitigations regarding ramping rates and drawdowns also be included in this EIR and final permit. We request that these

mitigations be protective of habitat needs and beneficials uses and take into account the controversy surrounding PG&E's model and recommendations. The following quotes support this request.

"McCloud Dam and Reservoir is part of PG&E's McCloud-Pit Project (FERC Project No. 2106), which diverts about 70 percent of the inflow at McCloud Reservoir to the Pit River for hydroelectric generation. The current minimum flow releases from McCloud Dam range from 40 cfs (December-April) to 50 cfs (May through November); the minimum flow requirement at Ah-Di-Na Campground gage (3.5 miles downstream from McCloud Dam) ranges from 160 to 200, depending on season and water year type (PG&E 2006)." Shasta Dam Fish Passage Evaluation 3-3
https://www.usbr.gov/mp/bdo/docs/shasta-pilot-imp-plan.pdf

"*Occasionally, extreme drawdowns of McCloud Reservoir cause sediments to be entrained in discharges to the lower rive*r *(Rode 1 and Dean 2004, STNF 1998*)." Shasta Dam Fish Passage Evaluation 3-3
https://www.usbr.gov/mp/bdo/docs/shasta-pilot-imp-plan.pdf

"*Reduction of seasonal high flow events as a result of project operations may contribute to the accumulation of fine sediment in spawning gravels, which could adversely affect trout spawning and incubation success and contribute to the encroachment of riparian vegetation into the stream channel*." Pg. 79 FERC EIS *https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp*

The NMFS 10(j) recommendation included general measures to affect sediment movement and deposition, substrate quality, and channel characteristics to support listed anadromous salmonids. No specific measures or procedures are recommended. The Keswick and Shasta dams on the Sacramento River downstream of the McCloud dam are existing barriers to upstream passage of anadromous salmonids including Chinook salmon and steelhead. None of the listed anadromous salmonids would be expected to have access to habitat in the Lower McCloud River until upstream migration of listed species is implemented through Shasta Lake. Therefore, the general recommendations by NMFS would provide no benefit for listed species at this time. FERC EIS, p. 82
https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

"The Forest Service reviewed the results of the HCM to evaluate its value in determining minimum flows for McCloud dam. The Forest Service determined that in the upper reach of the study area, maximum trout habitat would occur at flows between 190 and 250 cfs. In the lower reach below Squaw Valley Creek, the Forest Service suggested that maximum trout habitat would occur at flows between 250 and 450 cfs; these flows would generally be achieved in this reach by the incremental accretion from tributaries entering the Lower McCloud River below the Ah-Di-Na gage (MC-1). However, the Forest Service and the California Water Board concluded that the HCM analysis was not an accurate tool to determine flows that would provide maximum habitat. FERC EIS, p. 140
https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

Although California Fish and Game recommends minimum flows at 200 cfs during May through February 14 measured at one compliance point near the McCloud dam, the Forest Service specifies minimum flows of 175 cfs during the same period as measured at McCloud dam and 200/215 cfs as measured downstream of McCloud dam at USGS gage MC-1 (Ah-Di-Na). California Fish and Game did

not provide quantitative evidence that an increase of 25 cfs at McCloud dam would provide a substantial improvement in fish habitat." FERC EIS, p. 144
https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

California Trout, Trout Unlimited, and McCloud River Club indicated that their alternative flows would likely meet the needs of all life stages of rainbow and brown trout and provide optimum fishing conditions in the Lower McCloud River. Under these alternative flows, during the period March 16 to May 21 when the McCloud River runoff factor is 100 to 119 percent, the number of days when flows greater than 300 cfs would occur is about 60 days per year rather than about 95 days per year under the Forest Service condition 19 flows. During periods when runoff is equal to or greater than

120 percent, the number of days that flows would be greater than 300 cfs would be about 94 and the number days flows would be greater than 600 cfs would be 37, compared to 116 and 45 days, respectively, under Forest Service revised condition 19. All other seasonal flows for each runoff scenario would be the about same. The alternative flows proposed by California Trout, Trout Unlimited, and McCloud River Club may provide more days with optimum wading-condition flows (less than 300 cfs) for fishing (see discussion in section 3.3.5, Recreation Resources); however, there is no substantial evidence that these flows would provide additional benefit to resident fish populations. FERC EIS P. 145
https://www.ferc.gov/industries/hydropower/enviro/eis/2011/02-25-11.asp

We look forward to working with this board to make sure that the final permit and EIR include mitigations to protect water quality and beneficials uses in the Pit and McCloud Rivers.

Thank you,

Regina Chichizola

Save California Salmon