

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2020-0041-EXEC

In the Matter of Petitions for Reconsideration of the
Water Quality Certification for the McCloud-Pit Hydroelectric Project,
Federal Regulatory Energy Commission Project No. 2106

BY THE EXECUTIVE DIRECTOR:

The McCloud-Pit Hydroelectric Project (Project) is located on and in the vicinity of the McCloud River, Pit River, and Iron Canyon Creek in California's Cascade Range within the counties of Shasta and Siskiyou. The Project commenced commercial operation in 1965 and comprises three hydroelectric developments with an installed capacity of 368 megawatts.

Pacific Gas and Electric Company (PG&E) owns and operates the Project, which requires a license from the Federal Regulatory Energy Commission (FERC). The original FERC license for the Project expired on July 31, 2011. Since then the Project has operated under annual licenses issued by FERC.

The Clean Water Act requires every applicant for a federal license or permit that may result in a discharge to navigable waters to provide the federal agency with certification from the appropriate state agency that the project will comply with the Clean Water Act and standards adopted by states pursuant to the Clean Water Act. The State Water Resources Control Board (State Water Board) is responsible for issuing water quality certifications in California.

PG&E applied to the State Water Board for water quality certification (certification) for the Project on November 9, 2018. The State Water Board prepared a negative declaration for the Project under the California Environmental Quality Act (CEQA) to inform and support its decision regarding PG&E's application for certification. During the CEQA process, the State Water Board offered opportunities for informal and formal consultation to interested parties, including the Winnemem Wintu Tribe of California Native Americans (Winnemem Wintu Tribe). The State Water Board issued a final certification for the Project and the final supporting CEQA documentation on November 8, 2019.

On December 6, 2019, PG&E and the Winnemem Wintu Tribe filed separate petitions for reconsideration of the Project's certification. PG&E's petition requests deletion or modification of several conditions of the certification, and identifies miscellaneous minor corrections and clarifications it asserts are needed to facilitate implementation of the certification. The Winnemem Wintu Tribe's petition claims that the certification violates CEQA (due to failure to properly consult with the Winnemem Wintu Tribe and by erring in the environmental analysis), violates California's public trust doctrine, and is not sufficiently protective of designated beneficial uses of the McCloud and Pit rivers.

The consultation offered to tribes and other interested parties by the State Water Board during the CEQA process was appropriate given the circumstances of this Project. However, the State Water Board is committed to improving communication and relationships with California’s Native American tribes, and recognizes that even in the absence of legal requirements the best practice is to consult with tribes in instances where unique tribal interests may be affected by a proposed action.

Here, the Winnemem Wintu Tribe has raised concerns about unique tribal interests that warrant reinitiating tribal consultation. The consultation will inform whether, and if so, what, additional CEQA work may be necessary. Similarly, the results of any necessary supplemental CEQA work would inform the proper resolution of the other items raised in the two petitions for reconsideration. Accordingly, staff will address those other items after questions regarding supplemental CEQA work are addressed.

IT IS HEREBY ORDERED THAT:

Division of Water Rights staff are directed to reinitiate consultation with the California Native American tribes that are traditionally and culturally affiliated with the geographic area of the McCloud-Pit Hydroelectric Project and that have requested to be informed by the State Water Board of projects in that geographic area pursuant to Public Resources Code section 21080.3.1.

The petitions for reconsideration of PG&E and the Winnemem Wintu Tribe shall remain pending at the State Water Board, with final action on the petitions to be taken after staff have concluded consultation with interested California Native American tribes and completed any necessary supplemental CEQA review. Prior to final action on the petitions, the petitioners will be provided with an opportunity to modify or supplement their petitions and interested parties will be provided an opportunity to file responses to the petitions.

December 30, 2020

Date



Eileen Sobeck
Executive Director