

Attachment 3

Volume II Part 1:

**Responses to Comments on the Draft
Subsequent Environmental Impact Report**

**Order Granting In Part and Denying In Part Petitions for
Reconsideration and Certifying a Final Subsequent
Environmental Impact Report**

**Final Subsequent Environmental Impact Report
Volume II Part 1: Responses to Comments on the Draft Subsequent Environmental Impact Report**

Committer	Comment Code	Comment	Response
Indian Cultural Organization	ICO-1	<p>As our nonprofit organization serves the Winnemem Wintu Tribe under Chief Caleen Sisk's leadership, I'd like to submit my comments on the Draft SEIR.</p> <p>Our preference, in order to restore salmon to the Winnemem Waywaket (McCloud River) and the Winnemem Wintu people, is that the McCloud dam be removed.</p>	<p>Please see subsequent environmental impact report (SEIR) Section 5.1.2.1 Decommissioning Alternatives for a discussion on dam removals considered during SEIR development.</p>
Indian Cultural Organization	ICO-2	<p>Should the dam have to remain, any relicensing should:</p> <ol style="list-style-type: none"> 1. ensure that adequate flows be maintained year round to support salmon and proper distribution of gravel, as well as to maintain water temperature conducive to salmon habitat 2. require that fish ladders be built at the dams 3. require that proper protections (i.e. guards, etc) are installed and maintained to protect fish from turbines 4. include heat monitoring to count fish passage through the tunnels 5. require annual review to re-examine flow needs for fish 	<ol style="list-style-type: none"> 1. Current flows support egg incubation and spawning, as evidenced by adult salmon observed in the river (see SEIR Section 4.4.1.1 Aquatic Resources). The McCloud-Pit Hydroelectric Project relicensing (Proposed Project) includes minimum instream flows (MIFs) that are generally higher than baseline MIFs and will improve water temperatures in McCloud River compared to existing conditions. Additionally, under existing conditions and the Proposed Project, natural high flow winter events are sufficient to mobilize and distribute gravels in McCloud River below McCloud Dam. 2. The existing McCloud-Pit Hydroelectric Project (Hydroelectric Project) area supports 15 observed species of resident fish (<i>Id.</i>) and the Licensee helps fund rainbow trout stocking by CDFW. The Proposed Project also includes generally increased flows, which is anticipated to improve resident fish populations above existing condition. Additionally, the limit of anadromy in the system is the United States Bureau of Reclamation's Shasta Dam (constructed in the 1940s), located downstream of the Hydroelectric Project. As stated in Section 2.2 CEQA Baseline, on May 1, 2024, National Marine Fisheries Service (NMFS) provided the State Water Resources Control Board (SWRCB) with a letter that describes a collaborative effort that involved the incubation and rearing of winter-run Chinook eggs and fry in the McCloud River watershed, further reintroduction efforts over the summer of 2023, and NMFS issuance of a Final Rule (88 FR 58511) on the "Designation of Nonessential Experimental Populations of Chinook Salmon Upstream of Shasta Dam, Authorization for Release, and Adoption of Limited Protection Regulations Under the Endangered Species Act §10(j) and 4(d)." The Nonessential Experimental Population Area extends from Shasta Dam up to Pit 7 Dam on the Pit River, McCloud Dam on the McCloud River, and Box Canyon Dam on the upper Sacramento River. As the current limit of nonessential experimental anadromous fish populations does not reach past McCloud Dam, the Hydroelectric Project currently does not impede nonessential experimental populations of Chinook salmon.

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			<p>3. Entrainment studies during relicensing indicate that entrainment in Hydroelectric Project facilities is likely low because maximum intake velocities at McCloud Reservoir are slower than resident fish swim burst rates. (FEIS Section 3.3.2.2 Environmental Effects, page 156.) Additionally, fish tracking, mark-recapturing, and population assessments identified few inter-basin fish transfers. (<i>Id.</i>)</p> <p>4. Comment noted, See response 3 above.</p> <p>5. As required by the California Environmental Quality Act (CEQA), the SEIR evaluated the Proposed Project in relation to existing conditions. The Proposed Project includes increased MIFs and environmental components which will improve fish habitat conditions in relation to existing conditions. Annual evaluation of effects of the Proposed Project (i.e., 50 years in the future) is not a requirement of CEQA. Additionally, Alternative 2 evaluated increased flows for salmon needs.</p>
<p>American Whitewater (verbal comments from Dave Steindorf at the May 6, 2026, public meeting)</p>	<p>AW-1</p>	<p>So, starting off, American Whitewater has been involved in the McCloud-Pit relicensing since 2008. Throughout that time, our position has remained consistent. Our goal is not to create standalone whitewater boating releases, but rather restoration of a more natural hydrograph on the McCloud River.</p> <p>The central problem on the McCloud River is not simply low flow, the problem is that the river's natural seasonal flow pattern has been fundamentally altered. As we stated in our comments with FERC filed more than 15 years ago, natural flow patterns have been replaced with a flatline boating [<i>sic</i>] flatline flow below the dam that is only interrupted for relatively short periods of time when the dam is spilling during wet years.</p> <p>The ecological consequences of this alteration are documented throughout the DSEIR. The document recognizes that project operations impair sediment transport, large woody material recruitment, water temperatures, channel processes, and aquatic habitat downstream of the dam. Importantly, many of these impacts are tied to the loss of seasonal high flows and the loss of a functioning spring recession hydrograph.</p>	<p>Comment noted. The Proposed Project in the Draft SEIR includes flows that better resemble natural flow patterns, and environmental components that will restore ecological functions lost from construction of the Hydroelectric Project.</p>
<p>American Whitewater (verbal comments from Dave Steindorf at the May 6, 2026, public meeting)</p>	<p>AW-2</p>	<p>The DSEIR does move in a positive direction in several important aspects, particularly under Alternative 1. We support the recognition of PG&E's proposed 300 cfs boating flow, and the DSEIR states would not provide adequate whitewater recreation opportunities, and in its acknowledgement that the relicensing study identified 500 cfs as the minimum acceptable whitewater flow. We also support the recommendation of annual boating opportunities and higher instream flows.</p> <p>But the larger issue in the DSEIR is that it still treats whitewater boating largely as a standalone recreation release program, rather than integrating these flows into flow restoration of a more natural seasonal hydrograph. Healthy rivers naturally support multiple beneficial uses simultaneously¹. Fisheries, cultural resources, and whitewater boating are not competing uses under natural flow regimes; they coexist. We made this point back in 2009 when we wrote that such rivers as the Rogue, Cal Salmon, and Upper Sacramento</p>	<p>Mitigation Measure (MM) BIO-1: Whitewater Flow Seasonality would, among other things, require whitewater flows to be released during late winter/early spring, prior to foothill yellow-legged frog breeding. This would ensure that whitewater flows are released during naturally high flow periods, more closely resembling natural flow patterns.</p>

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		<p>all demonstrate how ecosystems function, functions, fisheries, and recreation could all be supported together under natural flow patterns.</p> <p>Restoring more natural spring flow patterns would benefit important aquatic species discussed throughout the DSEIR, including foothill yellow-legged frogs and salmonids. Frogs benefit from predictable spring recession patterns that reduce both scouring and stranding of egg masses, while recently reintroduced juvenile salmonids benefit from seasonal spring flows that support downstream migration cues. And importantly, those same ecological functional flows also provide whitewater boating opportunities. And that's the key point. Boating opportunities should emerge as part of restoring river function, not as an isolated recreational add-on. Under a functioning hydrograph, recreation becomes a byproduct of ecosystem recreation, rather than a competing use.</p> <p>[fn.1] See Yarnell, S. M., Stein, E. D., Webb, J. A., Grantham, T., Lusardi, R. A., Zimmerman, J., Peek, R. A., Lane, B. A., Howard, J., & Sandoval-Solis, S. (2015). A functional flows approach to selecting ecologically relevant flow metrics for environmental flow applications. <i>BioScience</i>, 65(10), 1000–1009. https://doi.org/10.1093/biosci/biv102</p>	
American Whitewater (verbal comments from Dave Steindorf at the May 6, 2026, public meeting)	AW-3	We also disagree with the implication in portions of the DSEIR that whitewater boating opportunity and protection of cultural resources are inherently in conflict. The Winnemem Wintu Tribe has consistently supported the restoration of more natural flows on the McCloud River. As for potential conflicts with ceremonies or cultural practices, American Whitewater has demonstrated on many rivers that we support measures necessary to ensure cultural practices are respected and protected.	State Water Board staff recognize that whitewater boating opportunities are not always inherently in conflict with tribal cultural resources and appreciate American Whitewater's support of tribal cultural practices. However, analysis of whitewater flow impacts to the Winnemem Wintu Tribe's Tribal Cultural Landscape/Tribal Cultural Resources (TCL/TCR) was informed by consultation with the Winnemem Wintu Tribe.
American Whitewater (verbal comments from Dave Steindorf at the May 6, 2026, public meeting)	AW-4	Unfortunately, the draft order then backs away from several important elements reflected in Alternative 1, and replaces them with something substantially weaker and less enforceable. Condition 10 creates a highly discretionary future whitewater recreation management plan that leaves flow magnitude, duration, timing, and frequency, and ramping largely to future development by PG&E. The draft order also establishes minimum boating opportunity of only once every four years. That standard is extraordinarily weak and inconsistent with meaningful protection of recreation as a beneficial use of the river. The McCloud River has historically had enough flow to support boating throughout much of the year prior to project construction. Current alternatives have eliminated 90% of boating opportunity on the river. The State Water Board has correctly identified throughout this process that project operations have impaired portion of river function as beneficial uses. The logical response to that finding is not a narrowly constrained recreation release program. The logical response is restoring more natural seasonal flow regime.	As described in response to Comment AW-3, and DSEIR Section 5.4.3.2 Ceremonies and Other Tribal Activities, Alternative 1 flows would have a significant and unavoidable impact on the Winnemem Wintu Tribe's ability to conduct ceremonies and practices that are integral to the integrity and significance of the Winnemem Wintu Tribe's TCL/TCR.
American Whitewater (verbal comments from Dave Steindorf at the May 6,	AW-5	We therefore encourage the Board to strengthen both the DSEIR and the draft order by placing a greater emphasis on restoration of functional flow in the spring snowmelt hydrograph, establishing enforceable seasonal flow objectives rather than discretionary future recreation planning, incorporating meaningful recession rate requirements, and recognizing that whitewater recreation is one of the many beneficial uses that naturally results from restoring river function.	Comment noted. The Proposed Project includes increased MIFs in most months, environmental protection measures, and environmental management plans that will improve environmental conditions compared to baseline.

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2026, public meeting)			
American Whitewater	AW-6	<p>Our longstanding position has been that whitewater recreation flows should not be viewed as a stand-alone recreational program, but rather as part of a broader seasonal spring flow management framework that provides ecological, hydrologic, geomorphic, cultural, and recreational benefits. The DSEIR appropriately recognizes and analyzes many of these interconnected functions and relationships. Our comments provided herein focus primarily on clarifying aspects of the DSEIR’s discussion and integration of these issues. Additionally, we incorporate by reference American Whitewater’s oral comments provided to the Water Board at its May 6, 2026 public comment meeting on this subject and our May 19, 2026 comments on the Draft Water Quality Certification.</p>	<p>Comment noted. Please see comment responses AW-1 through AW-5.</p>
American Whitewater	AW-7	<p>I. The DSEIR Contains Adequate Analysis to Support Integrating Whitewater Recreation Flows into Seasonal Spring Flow Variability</p> <p>American Whitewater concurs with the DSEIR’s recognition that the McCloud-Pit Project has substantially altered the natural hydrograph below McCloud Dam and reduced the frequency and magnitude of seasonal higher flows that historically shaped ecological and geomorphic processes in the river corridor. The DSEIR appropriately identifies and analyzes river processes and functions associated with seasonal spring flow variability, including sediment transport, gravel recruitment and mobilization, large wood transport, channel maintenance, aquatic habitat complexity, and whitewater recreation.</p> <p>In our May 19, 2026 comments on the Draft Water Quality Certification, we proposed recurring spring pulse flows that would provide whitewater recreation opportunities while occurring within the same seasonal period analyzed in the DSEIR for springtime flow variability designed to more closely mimic a natural hydrograph. Although the DSEIR does not specifically evaluate recurring spring pulse flows that combine whitewater recreation flows with the springtime variability provisions of minimum instream flows, the DSEIR adequately analyzes the relevant hydrologic, ecological, geomorphic, recreational, and cultural components underlying such an approach. The DSEIR evaluates whitewater recreation flows as occurring during the winter/spring high-flow season, consistent with natural high-flow hydrology timing. It also recognizes that minimum instream flow requirements and associated ramping provisions are intended, in part, to reflect natural hydrograph patterns and support fluvial geomorphic processes and aquatic ecosystem protection.</p> <p>The DSEIR further recognizes that higher seasonal spring flows play an important role in sediment transport, gravel mobilization, large wood movement, channel maintenance, aquatic habitat complexity, and related ecological and geomorphic river processes. In this regard, recurring spring pulse flows such as those proposed by American Whitewater would not only provide whitewater recreation opportunities, but would also help advance the ecological, geomorphic, and river process objectives already analyzed in the DSEIR. American Whitewater recommends that the Final SEIR acknowledge that recurring spring pulse flows providing whitewater recreation opportunities may also contribute to these ecological, geomorphic, and river process functions. Recognizing these additional functional benefits of recurring spring pulse flows would also align with contemporary</p>	<p>Comment noted. The information in the SEIR was used to inform updates to Condition 10 of the water quality certification (certification). Please also see comment responses AW-1 through AW-5.</p>

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		<p>functional flow approaches recognizing that aspects of natural hydrologic variability can support multiple river functions and beneficial uses simultaneously.</p> <p>American Whitewater believes the DSEIR provides adequate analysis to support the recurring spring pulse flow approach described in our May 19, 2026 comments on the Draft Water Quality Certification without requiring additional environmental analysis.</p>	
American Whitewater	AW-8	<p>II. Whitewater Recreation and Tribal Ceremonial Uses Can Be Effectively Coordinated</p> <p>American Whitewater appreciates the DSEIR’s expanded consideration of Tribal cultural resources and ceremonial uses below McCloud Dam, including Section 5.4.3.2 regarding potential interactions between whitewater recreation and Tribal ceremonies and activities. Protection of Tribal cultural resources, ceremonial uses, privacy, and access is critically important and should be a primary consideration in Project flow management and recreation planning.</p> <p>As demonstrated on other rivers, whitewater recreation and Tribal ceremonial uses can be effectively coordinated through communication, scheduling, consultation, education, and adaptive management. This occurs successfully on the Klamath River, where Tribal ceremonial uses and whitewater recreation activities are managed collaboratively among Tribes, agencies, river managers, and recreation stakeholders. For example, the Shasta Indian Nation’s Salmon Calling Ceremony and the Karuk Tribe’s World Renewal Ceremony involve coordination of river access and public use to provide privacy for ceremonial activities. On the Trinity and lower Klamath rivers, flows from Bureau of Reclamation dams are managed to support the Hoopa Valley Tribe and Yurok Tribe’s Boat Dance ceremonies.</p> <p>These examples demonstrate that flow management and public use management can protect and accommodate Tribal ceremonial practices while managing recreation activities around those needs. American Whitewater supports the mitigation measures analyzed in the DSEIR and recommends that the analysis also acknowledge these successful approaches on other rivers and how they may similarly be used on the McCloud.</p> <p>We further note that integrating whitewater recreation flows within a broader framework of seasonal spring flow variability helps reduce potential conflicts by focusing flow-related recreation during the natural winter and spring high-flow season, when elevated flows and higher minimum instream flows typically occur. This approach avoids shifting recreation-oriented flows into later seasonal periods when the river would otherwise experience lower summer and fall flows and when recreation activities may be more likely to conflict with Tribal cultural and ceremonial uses.</p>	Please see responses to comments AW-3 and AW-4.
American Whitewater	AW-9	<p>III. The DSEIR Overstates Whitewater Boating Benefits Associated with Proposed Minimum Instream Flows and Omits Comparison to Historic Hydrologic Conditions</p> <p>Section 4.7.3.3 of the DSEIR states that the proposed minimum instream flows would provide approximately 500 additional boating days compared to existing minimum instream flows. However, this conclusion relies in substantial part on counting boating days at flows as low as 300 cfs.</p>	<p>Section 4.7.3.3 is updated to include the flow thresholds identified in the whitewater boating study report (TM-24) to clarify that the proposed MIFs do not provide for all types of boating and, as such, the 500 additional boating days are not necessarily suitable for all types of boating. (See Attachment 3, Volume II Part 2, item 21.)</p> <p>CEQA requires a lead agency to compare potential impacts of the Proposed Project to the environmental baseline; for the Proposed Project, this is May 2024. As required by CEQA, the Draft SEIR</p>

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		<p>The relicensing’s whitewater boating study report² does not support 300 cfs as an acceptable whitewater boating flow for the McCloud River. The report indicates that for Segment 1 (McCloud Dam to Ah-Di-Na), kayaking becomes unacceptable below approximately 350 cfs and rafting below approximately 550 cfs. For Segment 2 (Ah-Di-Na to Shasta Reservoir), the report indicates that whitewater boating for kayaks and rafts becomes unacceptable below approximately 400 to 500 cfs.</p> <p>The DSEIR recognizes the extent to which Project operations have altered historic hydrologic conditions in the Lower McCloud River. In its discussion of Alternative 2 (section 5.5.2), the DSEIR states that historically unimpaired flows on the McCloud River at McCloud Dam were always greater than approximately 600 cfs, with median flows greater than 850 cfs. These historic flow conditions would have supported whitewater boating opportunities throughout the year. In contrast, under current Project operations, whitewater boating opportunities are rare, highly flow-dependent, and often unpredictable. Accordingly, the DSEIR likely overstates the extent to which the proposed minimum instream flows would provide whitewater boating opportunities and does not provide context disclosing the extent to which the Project has curtailed whitewater recreation opportunities. American Whitewater recommends that the boating-day quantification be recalibrated using a threshold more consistent with the boating study record, no less than 500 cfs, when evaluating days providing acceptable or better boating opportunities, and that the substantial reduction in boating opportunities resulting from the Project’s dramatic reduction in flow below McCloud Dam also be disclosed.</p> <p>At the same time, integrating whitewater recreation flows into a seasonal spring pulse flow as proposed by American Whitewater would provide a greater improvement in both the number and quality of whitewater boating opportunities, and the DSEIR should disclose this distinction.</p> <p>[fn.2] Nevares, Steve (PG&E), Doug Whittaker and Bo Shelby (Stillwater Sciences). 2009. Lower McCloud River Report on Recreation Flow Assessment (RL-S3). Technical Memorandum 24. Contained in PG&E’s Application for New License for the McCloud Pit Project under P-2106, Volume III, Disc 3 of 14. FERC eLibrary Accession # 20090716-4024.</p>	<p>evaluates changes from the environmental baseline, not from pre-Hydroelectric Project construction. Historic flows are provided for background but are not considered part of the environmental baseline in the context of CEQA.</p>
American Whitewater	AW-10	<p>IV. Recreation Access and Flow Information are Important Components of Protecting Recreational Beneficial Uses Below McCloud Dam</p> <p>Section 4.7.3.4 of the DSEIR appropriately recognizes the importance of recreation access and flow information as components of the Recreation and Development Management Plan. American Whitewater supports the proposed McCloud Dam River Access improvements described in the DSEIR, including the proposed whitewater boating put-in, parking, access improvements, and related facilities below McCloud Dam. These improvements are necessary to support safe and meaningful public access for whitewater boating, angling, and other contact and non-contact recreational beneficial uses below McCloud Dam.</p> <p>American Whitewater also supports the requirement for PG&E to provide real-time flow information from the MC-1 gage. However, the DSEIR should also address the requirement for real-time flow information from the MC-7 gage below McCloud Dam, which is required</p>	<p>Section 4.7.3.4 is updated to state that real-time flow dissemination of McCloud River gages (currently MC-1 and MC-7) is a requirement of Condition 1(C) of the certification. (See Attachment 3, Volume II Part 2, item 22.)</p>

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		<p>under Condition 1(C) of the Draft Water Quality Certification and is equally important for recreation and public safety purposes. The MC-7 gage is the appropriate gage for informing whitewater boating conditions on Segment 1 of the McCloud River between McCloud Dam and Ah-Di-Na Campground, while the MC-1 gage is necessary for informing boating and angling conditions downstream of Ah-Di-Na Campground in Segment 2.</p> <p>Together, the MC-7 and MC-1 gages provide important public information regarding flow conditions, boating suitability, and recreational safety below McCloud Dam. American Whitewater recommends that the DSEIR be revised for consistency with the Draft Water Quality Certification by expressly including the MC-7 gage information requirement in Section 4.7.3.4.</p>	
Pacific Gas and Electric Company (PG&E)	PGE-1	<p>CEQA is Not an Independent Source of Regulatory Authority</p> <p>“CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.” (CEQA Guidelines, § 15040, subd. (b).) Rather, “CEQA is intended to be used in conjunction with the discretionary powers granted to public agencies by other laws” and the “exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.” (CEQA Guidelines, § 15040, subds. (a), (e).) Accordingly, an agency can use only the legal powers otherwise available to it in mitigating a significant environmental impact of a project. (Pub. Res. Code, § 21004; CEQA Guidelines, § 15040, subd. (c); see also Pub. Res. Code, § 21083.1 [“[i]t is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.”].)</p> <p>That CEQA, and the imposition of mitigation measures, is dependent on the regulatory authority granted by other laws is well established in case law. (<i>Mission Peak Conservancy v. State Water Resources Control Bd.</i> (2021) 72 Cal.App.5th 873, 882 [the “test [of whether an agency’s action is discretionary and subject to CEQA] is whether the [agency] had the legal authority to impose environmentally beneficial changes as conditions to the project”]; <i>County of San Diego v. Grossmont-Cuyamaca Community College District</i> (2006) 141 Cal.App.4th 86, 102 [recognizing that “an agency’s authority to impose mitigation measures must be based on legal authority other than CEQA”]; <i>Corona-Norco Unified Sch. Dist. v. City of Corona</i> (1993) 13 Cal.App.4th 1577, 1587 [“CEQA is not an independent source of public agency power”]; <i>Golden Gate Bridge Etc. Dist. v. Muzzi</i> (1978) 83 Cal.App.3d 707, 713 [holding the power to condemn for environmental mitigation purposes cannot be unrelated to the agency’s specified purposes and powers of condemnation].)</p> <p>Here, because the Board’s jurisdiction under the Federal Power Act and CWA is limited to water quality issues, the Board is limited to including conditions in the 401 Certification that are related directly to water quality. To that end, the Board in the DSEIR properly recognizes that “[i]n the context of CEQA analysis of projects involving CWA Section 401 water quality certifications, mitigation measures not related to addressing water quality impacts cannot be imposed without agreement of the applicant.” (DSEIR, p. 4-2.)</p>	<p>Comment noted. Additionally, CEQA declares that the policy of the state is that public agencies should not approve projects that will result in significant environmental effects if there are feasible means of mitigating such effects or feasible project alternatives that would substantially lessen the significance of such effects. CEQA thus requires the analysis and public disclosure of potential impacts associated with the implementation of a project, identification of mitigation measures that would lessen or avoid significant project impacts, and, as appropriate, a reasonable range of alternatives. As the CEQA lead agency for the Proposed Project, the SWRCB has developed mitigation measures to reduce the significance of the Proposed Project’s potentially significant impacts, and has identified the mitigation measures that will take effect only if PG&E agrees to them – in other words, the measures the SWRCB lacks the authority to impose. Identification of mitigation measures pursuant to CEQA and identification of certification conditions under the SWRCB’s authority to condition the Proposed Project pursuant to section 401 of the Clean Water Act are separate responsibilities that the SWRCB has in relation to the Proposed Project.</p>
PG&E	PGE-2	<p>Mitigation Requires Nexus and Rough Proportionality and Must be Enforceable</p>	<p>All the mitigation measures identified in the SEIR are designed to lessen or avoid impacts that will result from changes to the</p>

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		<p>Even where an agency possesses authority to impose mitigation, CEQA requires that mitigation measures bear a sufficient nexus to an identified environmental impact of the project and be roughly proportional to that impact of the project. (CEQA Guidelines, § 15041, subd. (a) [a “lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the “nexus” and “rough proportionality” standards established by case law (Nollan v. California Coastal Commission, (1987) 483 U.S. 825, Dolan v. City of Tigard, (1994) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal. 4th 854.)”]; CEQA Guidelines, § 15126.4, subd. (a)(4) [same].) Further, CEQA requires that mitigation measures must be enforceable through conditions of approval, contracts or other means that are legally binding. (Pub. Res. Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2).) Indeed, an agency is not required to impose a mitigation measure when it has no ability to enforce the measure or ensure that mitigation would actually be implemented. (<i>Tracy First v. City of Tracy</i> (2009) 177 Cal.App.4th 912, 937–938.)</p>	<p>environmental baseline associated with the Proposed Project. Mitigation measures related to water quality are enforceable as they will be included in the certification and therefore become conditions of the new Federal Energy Regulatory Commission (FERC) license. As stated in PG&E’s comment PGE-1, the Draft SEIR acknowledges that other identified mitigation measures cannot be imposed without agreement from PG&E. Mitigation measures that will not be imposed on PG&E cannot violate the requirements of nexus and rough proportionality.</p> <p>The SWRCB does not propose to require PG&E to implement mitigation measures that are outside of the SWRCB’s authority under section 401 of the Clean Water Act. As set forth in the Draft SEIR, potentially significant impacts that cannot be mitigated will be deemed significant and unavoidable. CEQA is clear that a lead agency is not required to propose or analyze mitigation measures that cannot be legally imposed (e.g., Cal. Code Regs., tit. 14, § 15126.4(a)(5)), but nothing in CEQA prohibits a lead agency from identifying and describing such measures in an environmental impact report (EIR). The discussion of mitigation measures, including measures that the SWRCB cannot impose, in the SEIR furthers CEQA’s informational purpose and can help guide voluntary action that would contribute to CEQA’s goal of preservation and enhancement of the environment (Pub. Resources Code, § 21000.)</p>
PG&E	PGE-3	<p>CEQA Requires Meaningful Analysis Supported by Substantial Evidence</p> <p>An agency must determine where a project may have a significant impact on the environment based on substantial evidence. (Pub. Res. Code, § 21082.2, subd. (a); CEQA Guidelines, § 15064, subds. (a), (f).) CEQA does not permit an agency to characterize an impact as significant and then rely upon mitigation measures without first adequately analyzing the basis for the impact determination itself. (<i>See Lotus v. Department of Transportation</i> (2014) 223 Cal.App.4th 645, 653–658.) Indeed, mitigation measures are required to avoid only identified significant impacts. (See CEQA Guidelines, § 15126.4, subd. (a)(3) [mitigation measures are not required for effects which are not found to be significant]; <i>San Franciscans for Reasonable Growth v. City & County of San Francisco</i> (1989) 209 Cal.App.3d 1502, 1517 [no mitigation required to mitigate threats to open space as no significant impacts on open space identified in the first instance].)</p>	<p>Comment noted. The key problem identified in <i>Lotus</i> was that the lead agency’s failure to analyze the impacts of the project separately from mitigation measures resulted in the lead agency finding that the project’s impacts would be <i>less than</i> significant, which subverted CEQA’s informational purposes by precluding both identification of the environmental consequences of the project and thoughtful analysis of the sufficiency of measures to mitigate those consequences. (223 Cal.App.4th at p. 658.) The <i>Lotus</i> decision recognized that the distinction between project components and mitigation measures is not always clear, and that it may be “nonsensical” to analyze a project as if it involved different components than what was proposed. (223 Cal.App.4th at p. 656, fn.8.)</p> <p>The Draft SEIR reflects the good faith effort at full disclosure that CEQA requires. It includes an analysis of the Proposed Project including environmental components because it would be nonsensical not to analyze the project that PG&E has proposed as modified by requirements imposed by federal agencies under the Federal Power Act. The SEIR identifies the potentially significant impacts that would result from the Proposed Project and mitigation measures that would lessen or avoid the potentially significant impacts. However, the SEIR also includes analysis of the “No Project” alternative, which includes</p>

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			<p>continued operation of the Hydroelectric Project <i>without</i> the environmental components. Comparison of the “No Project” alternative (which does not include environmental components) and the Proposed Project (which does include environmental components). Additionally, the SEIR incorporates FERC’s environmental impact statement (EIS) for the Proposed Project, which includes analysis of a “No Action” alternative that consisted of continued operation of the Hydroelectric Project without implementation of the environmental components.</p> <p>The SEIR thus provides the information needed to compare the projected impacts of project operations without the environmental components and the projected impacts of project operations with the environmental components. The informational gap criticized in <i>Lotus</i> is not present in the CEQA analysis for the Proposed Project.</p>
PG&E	PGE-4	<p>Significant and Unavoidable Impacts</p> <p>Under CEQA, where a lead agency has properly concluded that an impact is significant, it may only conclude that the impact would be reduced to a less-than-significant level with mitigation where substantial evidence demonstrates that the identified mitigation is feasible and enforceable. (See <i>Sierra Club v. County of Fresno</i> (2018) 6 Cal.5th 502, 523.) Where mitigation remains infeasible and uncertain, a lead agency cannot rely upon such measures to support a less-than-significant conclusion. (See <i>id.</i>) In such circumstances, CEQA requires the impact to be identified as significant and unavoidable—with the lead agency determining whether project approval is appropriate based on other project benefits and notwithstanding those impacts through the adoption of a “statement of overriding considerations.” (CEQA Guidelines, § 15093.) Even though such impacts can still be “acceptable,” they nonetheless should be identified as significant and unavoidable. (<i>Id.</i>, subd. (a).)</p>	<p>Comment noted. Additionally, CEQA authorizes a lead agency to approve or carry out a project even if it will cause significant impacts that cannot be avoided or substantially lessened if the lead agency adopts a statement of overriding considerations that states the specific reasons for supporting its action. (Cal. Code Regs., § 15093, subd. (b).)</p>
PG&E	PGE-5	<p>MM BIO-1:</p> <p>As discussed in greater detail in the <i>Technical Memorandum: State Water Board Mitigation Measure BIO-1</i>, dated May 19, 2026, attached hereto as <u>Exhibit A</u>¹, MM BIO-1 is triggered by the stated concern that whitewater boating flow releases of 300 cubic feet per second (“cfs”) or greater could have an adverse effect on foothill yellow-legged frog (“FYLF”) breeding and tadpoles. (DSEIR, pp. 4-27–4-29.) However, the Project does not actually include such whitewater boating flow releases. (See Exhibit A.) The Project’s flows are set forth in United States Department of Agriculture – Forest Service (“USFS”) Section 4(e) Condition 19—Minimum Streamflow Requirements and Measures, which does not include releases for whitewater boating. (<i>Id.</i>; DSEIR, pp. 3-38–3-40.) Rather, it is the Board’s “Alternative 1 – Whitewater Boater Flows” that includes such heightened whitewater boating flow releases. (See DSEIR, p. 5-8 [this “alternative is identical to the Proposed Project in all respects except for the magnitude of whitewater boating flow releases in the McCloud River below McCloud Dam”].) As such, MM BIO-1 is mitigation for Alternative 1, not for the Project. (See Exhibit A.) Accordingly, consistent with guidance on the level of discussion necessary for significant impacts caused by mitigation measures, MM BIO-1</p>	<p>Mitigation Measure BIO-1 is appropriately applied to the Proposed Project, rather than Alternative 1. Alternative 1 includes language which intentionally avoids whitewater boating flows during the foothill yellow-legged frog (FYLF) breeding season: “[Whitewater boating flows] would be released only during the spring high flow season and would be timed to occur prior to the onset of foothill yellow-legged frog breeding. . .” The DSEIR is clarified to state that Alternative 1 is identical to the Proposed Project “...in all respects except for the magnitude <i>and timing</i> of whitewater boating flow releases...”. (See Attachment 3, Volume II Part 2, items 1, 23, and 24.)</p> <p>Although the USFS Section 4(e) mandatory conditions do not specifically include whitewater boating flow releases, they also do not state that PG&E cannot implement its whitewater boating measure (Measure 6) as described in its Final License Application (FLA). PG&E has not set aside or otherwise withdrawn FLA Measure 6, and appears to erroneously assume that 4(e) Condition 19 necessarily</p>

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		<p>should be relocated entirely into the alternatives analysis for Alternative 1. (See CEQA Guidelines, § 15126.4, subd. (a)(1)(D) [if a mitigation measure identified in an EIR would itself cause significant environmental impacts distinct from the significant effects caused by the project, those impacts must be discussed in the EIR, but in less detail than the project's significant impacts].) And the <i>proposed Project's</i> potential impact on FYLF (e.g., Impact BIO-1) should be changed to less-than-significant <i>without</i> mitigation.</p> <p>Even when correctly placed in the alternatives section, if the Board adopts Alternative 1 in lieu of the Project, MM BIO-1 needs to be revised as follows² in order to be feasible and consistent with USFS Section 4(e) Condition 19:</p> <p>Whitewater Flow Seasonality. Whitewater boating flow releases below McCloud Dam, e.g., 300 cfs or greater, shall occur only during the winter/spring high flow season (i.e., consistent with natural high flow hydrology timing) and shall be only initiated prior to FYLF breeding season. <u>This measure only applies when flows are released specifically for the purpose of providing flows for whitewater boating and does not apply to operational flows of the Project to meet minimum instream flow requirements or storm events:</u></p> <ul style="list-style-type: none"> o The initiation of <u>scheduled whitewater</u> boating flows <u>releases</u> shall occur before FYLF breeding <u>season which begins about</u> occurs (e.g., May 15th, depending on the water year type). o <u>PG&E shall monitor</u> Monitoring of the initiation of FYLF breeding shall occur by PG&E in the vicinity of FYLF monitoring Site 120. <u>Monitoring will be conducted at Site 120 consistent with protocols and frequency contained in the Aquatic Biological Monitoring Plan shall occur during the first three years of whitewater boating flows to verify that FYLF breeding is not occurring prior to commencement of whitewater boating flows and to develop initiation of information about</u> FYLF breeding timing data to guide implementation of future <u>scheduled releases specifically for whitewater boating flows.</u> <p>Furthermore, the Final SEIR must also acknowledge that the mitigation is uncertain and therefore infeasible and disclose that the corresponding impact <i>for Alternative 1</i> is significant and unavoidable. This is because whether the proposed mitigation will be enforceable will be determined in the FERC licensing proceedings. (See Pub. Res. Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2).) For the same reason, if the Board does not change its significance conclusion for impacts on FYLF (e.g., Impact BIO-1) to less-than-significant <i>without</i> mitigation, it should change the impact conclusion to significant and unavoidable.</p> <p>[fn.1] Throughout this cover letter, we summarize several experts' key conclusions, which are addressed in greater detail in their respective underlying technical memoranda. The Board must also review, consider, and respond in good faith to all parts of the underlying technical memoranda submitted herewith. (CEQA Guidelines, §§ 15088, 15204, subd. (c).)</p> <p>[fn.2] For all proposed revisions to the DSEIR in this letter, proposed additions are shown as <u>double-underlined text</u> and deletions as strike-through text.</p>	<p>conflicts with FLA Measure 6 in all cases. Please also see comment PGE-14.</p> <p>The Biological Monitoring Plan has not been finalized. Though it is anticipated that the Biological Monitoring Plan will include foothill yellow-legged frog (FYLF) monitoring protocols, specific monitoring locations, frequency, methods, etc. have not been developed. As such, MM BIO-1 includes FYLF monitoring to ensure that whitewater boating flows do not significantly impact FYLF breeding.</p> <p>MM BIO-1 has been clarified to state that the measure is only intended to apply specifically to whitewater boating flow releases, not other minimum instream flow requirements or storm events. (See Attachment 3, Volume II Part 2, item 4.)</p> <p>MM BIO-1 is within the State Water Board's authority to require through issuance of a water quality certification action.</p>
PG&E	PGE-6	<u>MM WATER-1³</u>	As stated in the Draft SEIR and quoted in comment PGE-6, higher flows under the Proposed Project have the potential to alter turbidity downstream of McCloud Dam relative to baseline conditions. This is a

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		<p>The rationale offered in the DSEIR for MM WATER-1 is that reservoir operations may, “at some point in the future,” mobilize fine sediment and release it downstream causing turbidity levels to potentially exceed standards in the Central Valley Regional Water Quality Water Quality Control Plan for the Sacramento and San Joaquin River Basins (the “Basin Plan”). (See DSEIR, pp. 4-47–4-56.) As discussed in greater detail in the <i>Technical Memorandum: State Water Mitigation Measure WATER-1</i>, dated May 19, 2026, attached hereto as Exhibit B, MM WATER-1 is unjustified.</p> <p>Mobilization of fine sediment would not change from existing PG&E McCloud-Pit Hydroelectric Project operations. (See Exhibit B; see also Exhibit C [technical memorandum explaining that turbidity is caused by natural sediment inputs and transport dynamics from Mud Creek, i.e., not caused by the Project].) This means that the turbidity concern is part of the CEQA baseline, not a new Project impact. CEQA measures impacts against existing physical conditions—and conditions that are already existing at the time of environmental review are not project impacts requiring mitigation. (CEQA Guidelines, § 15125, subd. (a); see also <i>Rohn v. City of Visalia</i> (1989) 214 Cal.App.3d 1463, 1476–1477 [agency cannot require an applicant to remedy, as a condition of approval, deficient conditions that existed prior to (<i>i.e.</i>, that are not caused by) the applicant’s project].)</p> <p>Even setting aside the baseline question, the DSEIR’s own characterization of the evidence is insufficient to constitute substantial evidence of a significant impact that would require mitigation. The DSEIR consistently hedges its turbidity concerns with language acknowledging uncertainty. (<i>E.g.</i>, DSEIR, p. 4-51 “[w]ithout additional turbidity and flow data that include the combined turbidity inflow to McCloud Reservoir and the turbidity outflow below McCloud Dam it is not possible to determine the extent the current Hydroelectric Project is increasing turbidity releases above the Basin Plan standard and it is not possible to determine the overall effect of the Proposed Project on turbidity”]; p. 4-52 “[h]igher flows from the Proposed Project may slightly decrease turbidity through dilution but it is unknown how releases from the lower portion of the reservoir and the suspended sediment density current in the reservoir would behave under higher flow releases”]; see also DSEIR, Executive Summary, p. xv [“the possibility of significant impacts related to turbidity cannot be ruled out due to uncertain data”].) Speculation and uncertainty do not satisfy the substantial evidence standard that must support a significant impact finding. (CEQA Guidelines, § 15384, subd. (a) [“[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence”]; CEQA Guidelines, § 15145 “[i]f, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.”].)</p> <p>Not only that, but the rate of reservoir filling was quantified during relicensing studies—and the data forecloses the concern the measure purports to address. (See Exhibit B.) More specifically, based on the quantified sedimentation rate, there is no reasonable concern regarding reservoir filling within the Project’s 30- to 50-year license term. (<i>Id.</i>) Likewise, the quantified sedimentation rate forecloses the need for PG&E to monitor sediment accumulation every five years as proposed by the Board in the DSEIR. (<i>Id.</i>) The DSEIR</p>	<p>potentially significant impact resulting from a change associated with the Proposed Project that requires mitigation, and is separate from turbidity related to existing physical conditions.</p> <p>The Draft SEIR cites previous work and includes analyses which demonstrate that: 1) Project operations cause resuspension of sediment in McCloud Reservoir which causes elevated turbidity downstream; 2) turbidity downstream of McCloud Dam is higher than would be expected under natural conditions, and; 3) turbidity below McCloud Dam peaks higher than inflow turbidity, and remains higher on average over time. While additional data are needed to determine the specific impact of Proposed Project operations on turbidity, it is inaccurate to state that the existing data and analyses are too speculative for the Board to address.</p> <p>The Draft SEIR acknowledges and cites the 2007 bathymetric survey of McCloud Reservoir, which found that the reservoir storage capacity had been reduced by nearly ten percent since McCloud Dam’s construction in 1964. Assuming a steady rate of sedimentation, in the time since that study was conducted the reservoir storage capacity has been reduced by an additional approximately five percent, and in 50 years would be reduced by nearly a quarter of the total storage of the reservoir. The potential impact of reservoir sedimentation is not solely limited to complete reservoir filling, but rather sufficient sedimentation to cause a negative impact to Proposed Project operations such that it requires “removal, sequestration, or release downstream”, as stated in the DSEIR. (Section 4.5.3.4 Settleable Material, page 4-47.) However, with only two datapoints (1964 and 2007), it is not known if the rate of reservoir filling has changed since 2007, or whether the rate will change in the future as Konwakiton glacier continues to melt. Additional surveys are necessary to determine whether the rate of reservoir filling is changing over time.</p> <p>The Draft SEIR does not state that sediment inputs from within the Iron Canyon Reservoir watershed are the source of elevated turbidity and sedimentation in the reservoir, rather that “turbidity levels of the inter-basin transfer from the McCloud River watershed during Mud Creek events were slightly above those found during base flow conditions.” (Section 4.5.3.6 Turbidity, page 4-52.)</p> <p>To summarize, available evidence shows that operation of the McCloud-Pit Hydroelectric Project may have the effect of collecting and then releasing higher concentrations of sediment than cumulatively enters McCloud Reservoir from upstream sources. As the Proposed Project involves changes to existing operations, including changes to MIFs, the available evidence indicates that under the Proposed Project the manner in which operations affect turbidity will also change. Additionally, as a primary source of</p>

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		<p>also inaptly analogizes sediment conditions relevant to the Project to the sediment conditions of the upper Klamath basin—which is not substantial evidence of potential significant impacts of the Project. (<i>Id.</i>; cf. <i>Surfside Colony v. Cal. Coastal Com.</i> (1991) 226 Cal.App.3d 1260, 1268–1272 [because revetments and seawalls may have different effects at different beaches, agency lacked relevant evidence of an impact absent site-specific evidence].)</p> <p>Moreover, given the small watershed of the Iron Canyon Reservoir, there is no possibility for significant sedimentation to occur and, therefore, no significant impacts to occur therefrom. (See Exhibit B; <i>San Franciscans for Reasonable Growth v. City & County of San Francisco</i> (1989) 209 Cal.App.3d 1502, 1517 [no mitigation required to mitigate threats to open space as no significant impacts on open space identified in the first instance].)</p> <p>Given the above, the corresponding impact analyses should be changed to less-than-significant <i>without</i> mitigation and MM WATER-1 should be deleted as there is no impact to mitigate. If the Board does not change the impact conclusion in the DSEIR to less-than-significant without mitigation, the Board should make the following revisions to MM WATER-1 to address the deficiencies summarized above and discussed in Exhibit B and Exhibit C:</p> <p>Long-term Turbidity Control. PG&E shall incorporate the following measures into the proposed Erosion and Sediment Control Management Plan:</p> <ul style="list-style-type: none"> o Within the first full calendar year <u>fifteen years</u> following license acceptance and every five years thereafter throughout the term of the license, PG&E shall monitor sediment accumulation in McCloud <u>Reservoir</u> and Iron Canyon reservoirs, including the total amount of sediment accumulated and the percentage of reservoir volume. <u>Within one year of monitoring PG&E shall report the results and develop recommendations and a plan for any additional monitoring during the license term (including monitoring frequency, methods, and potential effects of climate change on sediment inputs to McCloud Reservoir). The plan shall be developed in cooperation with CDFW, SWB, and USFS.</u> o PG&E shall include within the Erosion and Sediment Control Management Plan specific actions to manage the sediment in the reservoirs to avoid a future release of excess sediment into the rivers downstream (e.g., sequestration, removal, periodic release). The plan shall account for the potential effects of climate change on sediment inputs to the reservoirs. The plan shall be developed in cooperation with CDFW, SWB, and USFS. <p>Furthermore, to the extent the corresponding impact analyses are not changed to less-than-significant <i>without</i> mitigation, they should be changed to significant and unavoidable. This is because whether the proposed mitigation will be enforceable will be determined in the FERC licensing proceedings. (See Pub. Res. Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2).)</p> <p>[fn.3] For MM WATER-1 and MM WATER-2 (below), we also incorporate by reference the points and explanations raised in Section V.A of the comment letter from Troutman Pepper Locke LLP to the Board, dated May 19, 2026, and attached hereto as <u>Exhibit E</u>, as to why the turbidity measures are unjustified.</p>	<p>upstream sediment is mud flow/landslide events resulting from glacial melt or collapse on the slopes of Mount Shasta and these events are expected to increase in frequency and severity due to climate change, it is reasonable to infer that over the anticipated 50-year term of the FERC license there may be a need for PG&E to address sediment that has accumulated in the reservoirs – something not currently necessary under the baseline condition. PG&E’s comment letter includes as exhibits two technical memorandums presenting additional information challenging these conclusions. The comment letter and the technical memorandums provide useful detail and highlight that there is uncertainty regarding the Proposed Project’s effect on turbidity in the McCloud River, but are not sufficient to support a conclusion that the effect will be less than significant.</p> <p>It is appropriate for a lead agency to take a cautious approach regarding potential impacts. It is also appropriate for a lead agency to consider the anticipated timeline of a project and the potential for impacts to occur years, or even decades, into the applicable timeline. When there are uncertainties regarding whether a particular impact will occur a lead agency may adopt contingent mitigation measures, and may rely on future studies to tailor mitigation measures to fit on-the-ground conditions.</p> <p>MM WATER-1 is updated to provide additional clarity regarding its requirements. (See Attachment 3, Volume II Part 2, item 6.)</p> <p>In addition, and as described in the Mitigation Monitoring or Reporting Program (Attachment 4), MM WATER-1, like the other mitigation measures imposed by the SEIR, is enforceable through its incorporation into the certification.</p>

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PG&E	PGE-7	<p><u>MM WATER-2</u></p> <p>The rationale offered in the DSEIR for MM WATER-2 is the stated concern that the Project would mobilize fine sediment in the reservoirs and release it downstream causing turbidity levels to potentially exceed standards in the Basin Plan. (See DSEIR, pp. 4-47–4-56.) As discussed in greater detail in <i>Technical Memorandum: State Water Board Mitigation Measure WATER-2</i>, dated May 19, 2026, attached hereto as Exhibit C, this is not only tied to turbidity caused by natural sediment inputs and transport dynamics from Mud Creek, but also arising from existing PG&E McCloud-Pit Hydroelectric Project operations (See Exhibit C and Exhibit B.) As discussed above, this means that the turbidity concern is part of the CEQA baseline, not a new Project impact. CEQA measures impacts against existing physical conditions—and conditions that are already existing at the time of environmental review are not project impacts requiring mitigation. (CEQA Guidelines, § 15125, subd. (a); see also <i>Rohn v. City of Visalia</i> (1989) 214 Cal.App.3d 1463, 1476–1477 [agency cannot require an applicant to remedy, as a condition of approval, deficient conditions that existed prior to (i.e., that are not caused by) the applicant’s project].)</p> <p>There is, therefore, no Project significant impact to be mitigated. (See Exhibit C; CEQA Guidelines, § 15126.4, subd. (a)(3) [mitigation measures are not required for effects which are not found to be significant].) Furthermore, the DSEIR’s rationale used to suggest the Project increases turbidity, and how that is a significant impact, is based on a flawed analysis, including (a) the inappropriate use of a flow weighting technique to express turbidity, (b) the erroneous assumption that the water and associated suspended sediment entering from Huckleberry Creek completely mixes with McCloud Reservoir water at the sample site (or within the reservoir), (c) how the Basin Plan does not consider flow-weighted turbidity a valid measure for determining compliance with water quality standards, and (d) how the calculation failed to account for all inputs because the turbidity sensor in Mud Creek lacked a sufficient limit for the conditions being measured. (See Exhibit C.)</p> <p>Given the above, the corresponding impact analyses should be changed to less-than-significant <i>without</i> mitigation and MM WATER-2 should be deleted as there is no impact to mitigate. If the Board does not change the impact conclusion in the DSEIR to less-than-significant without mitigation, the Board should make the following revisions to MM WATER-2 to address the deficiencies summarized above and discussed in Exhibit C and Exhibit B:</p> <p>McCloud Reservoir and McCloud River Turbidity Monitoring and Modeling. To prevent Proposed Project operations from increasing <u>better understand how turbidity inflows to McCloud Reservoir translate to</u> turbidity levels in the McCloud River below McCloud Dam, PG&E shall incorporate the following measures in the proposed Erosion and Sediment Control Management Plan:</p> <ul style="list-style-type: none"> o Continuously monitor inflow turbidity from Mud Creek and the McCloud River upstream of the Mud Creek inflow, and other McCloud Reservoir inflow sources as appropriate (e.g., Huckleberry Creek); <u>o Seasonally (April 25–November 15, as access conditions allow) monitor inflow turbidity from 1) Mud/Huckleberry Creek and 2) the McCloud River upstream of Mud/Huckleberry Creek inflow to characterize the timing, magnitude, and duration sediment inputs to</u> 	<p>See response to PGE-6.</p> <p>In the absence of additional data, which the Draft SEIR acknowledges is necessary to fully understand Proposed Project impacts on turbidity and suspended sediment in the Lower McCloud River, flow-weighting is used to estimate the combined turbidity of McCloud Reservoir natural inflows. As Exhibit C reiterates, the Basin Plan objectives for turbidity “are all relative to ‘natural turbidity’, which with respect to McCloud Project effects, would be measured at the inflow to the reservoir”; thus, it is necessary to understand how natural inflow turbidity is likely to combine within the reservoir. The Basin Plan does not allow for preferential selection of a particular inflow to a water body as a “natural” condition reference.</p> <p>The Draft SEIR also acknowledges that turbid inflows may be concentrated within the reservoir and may not fully mix with surrounding water: “it is unknown how releases from the lower portion of the reservoir and the suspended sediment density current in the reservoir would behave under higher flow releases.” (Section 4.5.3.6 Turbidity, page 4-52.) Insufficient data to fully understand Proposed Project effects on downstream turbidity, combined with existing data indicating that Hydroelectric Project operations have the potential to cause increases in downstream turbidity relative to natural conditions, are why MM WATER-2 is necessary.</p> <p>Although the upper limit of the turbidity sensors used in TM-30 limited the amount of data used, a higher upper limit would not have been likely to impact the analysis in the Draft SEIR. Events when Mud Creek turbidity exceeded the upper limit of the sensors largely coincide with periods when turbidity below McCloud Dam is nearly an order of magnitude higher than that of the combined inflows to McCloud Reservoir. A calculation which includes a substantially higher turbidity value during Mud Creek events, relative to the low-turbidity contribution of the McCloud River would be likely to exceed the turbidity below McCloud Dam. However, as MM WATER-2 states, more information is needed to fully understand the Proposed Project impacts on downstream turbidity. Additional information has been added to the description of Figure 4-7 clarifying that the Mud Creek sensors were limited to 1,600 NTU. (See Attachment 3, Volume II Part 2, item 5.)</p> <p>MM WATER-2 is updated to provide additional clarity regarding its requirements. (See Attachment 3, Volume II Part 2, item 7.)</p>

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		<p><u>McCloud Reservoir based on a reasonable level of effort given the harsh conditions in Mud/Huckleberry Creek during mud flows.</u></p> <ul style="list-style-type: none"> o Continuously monitor discharge of the primary turbidity inflow sources; o <u>Seasonally (April 25–November 15, as access conditions allow) monitor discharge from 1) Mud/Huckleberry Creek and 2) the McCloud River upstream of Mud/Huckleberry Creek to characterize flow volume of the primary sediment sources to McCloud Reservoir based on a reasonable level of effort given the harsh conditions in Mud/Huckleberry Creek during mud flows.</u> o Monitor McCloud Reservoir profiles of turbidity and temperature monthly April–November or more frequently if needed to characterize turbidity conditions within the reservoir; o Continuously <u>Seasonally (April 25–November 15, as access conditions allow)</u> monitor outflow turbidity and discharge from McCloud reservoir; o Develop a numerical model of the reservoir temperature and turbidity that can be used to assist management of reservoir turbidity outflows; and o <u>Monitor the effects of Mud/Huckleberry Creek turbidity events. Determine the effect of the reservoir and Proposed Project operations on outflow turbidity below McCloud Dam related to the Basin Plan standard and identify management actions, if needed, to mitigate and address turbidity issues. Implement the management action, as appropriate.</u> <p>Furthermore, to the extent the corresponding impact analyses are not changed to less-than-significant <i>without</i> mitigation, they should be changed to significant and unavoidable. This is because whether the proposed mitigation will be enforceable will be determined in the FERC licensing proceedings. (See Pub. Res. Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2).)</p>	
PG&E	PGE-8	<p><u>MM TRIBAL-1:</u></p> <p>As the DSEIR acknowledges, the Board does not have authority to impose MM TRIBAL-1 absent agreement of PG&E, as the measure is unrelated to addressing water quality impacts and thus extends beyond the Board’s regulatory authority. (DSEIR, pp. 4-2, 4-81.)</p> <p>MM TRIBAL-1 requires PG&E, as necessary, to amend its Historic Properties Management Plan (“HPMP”) to incorporate the Winnemem Wintu Tribe’s (“WWT”) traditional cultural landscape (“TCL”). Including the TCL in the HPMP is unwarranted because: (a) as a document developed to comply with federal laws and regulations (e.g., the National Historic Preservation Act (“NHPA”) Section 106, 36 C.F.R. § 800), an HPMP is not the appropriate place to manage tribal cultural resources (“TCRs”), which are resources defined and considered in a state regulatory framework⁴; (b) the Project Area of Potential Effect (“APE”) overlaps with less than one-percent of the TCR’s geographic extent (DSEIR, pp. 4-65–4-67, 3-17); and (c) no impacts to specific character defining features of the TCL within the APE have been identified (DSEIR, pp. 4-79–4-91), so there is no defined resource within the APE to manage. Accordingly, there is no substantial evidence of an impact that would support proposing MM TRIBAL-1. The corresponding impact analyses</p>	<p>On March 27, 2026, a representative of PG&E attended a government-to-government consultation between the Winnemem Wintu Tribe and SWRCB to discuss whether PG&E would commit to implement tribal cultural resource mitigation measures as they were outside the SWRCB’s authority to require and are needed to reduce Proposed Project impacts to the Winnemem Wintu Tribe’s TCL/TCR.</p> <p>During the meeting, PG&E representatives stated that they would be unable to commit to implement the tribal cultural resource mitigation measures without the context of the SEIR analysis.</p> <p>PG&E’s Draft SEIR comments do not indicate that it will agree to implement tribal cultural resource mitigation measures necessary to reduce impacts to the Winnemem Wintu Tribe’s TCL/TCR. The SEIR accurately describes the significance determination to tribal cultural resources in the event that tribal cultural resource mitigation measures are not implemented.</p> <p>The commenters request to delete MM TRIBAL-1 and change the significance criteria to less than significant is not incorporated into the</p>

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		<p>should be changed to less-than-significant <i>without</i> mitigation and MM TRIBAL-1 should be deleted as there is no corresponding significant impact to mitigate.</p> <p>If the Board does not delete MM TRIBAL-1, that measure should be revised to address the geographic area of potential direct and indirect effects of the Project. The APE is tied to the Project's direct and indirect physical impact footprint from Project-related activities. (36 C.F.R. § 800.16 (d).) The APE is defined as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." (<i>Id.</i>) The Project APE has been delineated by FERC, in extensive consultation with the California State Historic Preservation Officer ("SHPO"), in compliance with 36 C.F.R. § 800.4(a)(1). Establishment of the APE's extent demonstrates the determination that there will be no potential or actual Project effects beyond the APE. Accordingly, it is inaccurate to state there are potential impacts to the TCR beyond the APE.</p> <p>The Board delineated the Tribal Cultural Resources Area of Analysis ("AOA"), and the resulting impact and mitigation conclusions in the DSEIR, based on the extent of other CEQA studies, rather than on potential impacts as required by CEQA. Further, CEQA recommends that a lead agency rely on an EIS "whenever possible." (See Pub. Res. Code, § 21083.7). The DSEIR does not provide any explanation how the APE as defined in the federal regulatory context (NEPA, NHPA Section 106) is insufficient to address potential impacts pursuant to CEQA.</p> <p>The TCR boundaries extend approximately 50-miles North/South by 20-miles East/West. The Project APE that overlaps the TCR is less than one-percent of the geographic area of the TCR. As such, including those additional areas within MM TRIBAL-1 would exceed nexus and rough proportionality considerations necessarily embedded in mitigation limitations. (CEQA Guidelines, §§ 15041, subd. (a), 15126.4, subd. (a)(4).)</p> <p>Therefore, if the Board does delete MM TRIBAL-1 as requested above, the Board should make the following revisions to MM TRIBAL-1:</p> <p>Historical Properties Management Plan (HPMP). In addition to United States Forest Service 4(e) Condition No. 34 and PG&E Measure 22, once the WWT ethnographic information is provided to PG&E, PG&E shall amend the HPMP as necessary to ensure that include character defining features of the WWT Traditional Cultural Landscape TCR that are within the APE is incorporated into the HPMP. PG&E shall request consultation with the WWT regarding amendment of the HPMP. If consensus regarding amendments to the HPMP cannot be reached during consultation, PG&E shall provide a record of the disputed issue(s), PG&E's statement of its positions on the disputed issues, the WWT's statement of its positions on the disputed issues, and PG&E's proposed resolution to FERC, the ACHP, and the SHPO. The WWT shall be invited as signatory to the HPMP.⁵</p> <p>Extensive consultation between the SWB and the WWT has resulted in development of information that necessitates consideration of the following amendments and additional studies as part of PG&E's update and revisions to the 2010 HPMP (required within one year of license issuance by United States Forest Service 4(e) Condition No. 34 and PG&E Measure 22). Amendments may include, but are not limited to: description and protection measures for the WWT Traditional Cultural Landscape TCR (all sections of</p>	<p>Final SEIR. MM TRIBAL-1 was developed through an over five-year tribal consultation process with the Winnemem Wintu Tribe and was determined necessary to help reduce the Proposed Project's potential impacts to the Winnemem Wintu Tribe's TCL/TCR.</p> <p>During consultation with the Winnemem Wintu Tribe it was determined that the Winnemem Wintu Tribe's TCL as a whole is a TCR and all its character-defining features contribute to the integrity of the TCL. Character-defining features and additional information on how the TCL/TCR area of analysis are established are discussed in the <i>Winnemem Wintu Tribe Traditional Cultural Landscape Tribal Cultural Resources Memorandum and Analysis in Support of California Register of Historical Resources Evaluation</i> as Attachment E of the SEIR.</p> <p>Since the cultural value of a resource to a tribe and the significance of a resource to a tribe are core factors in the identification of TCRs under subdivisions (a)(1) and (a)(2), respectively, of Public Resources Code section 21074 it is appropriate for a lead agency to consider those factors in determining whether a project may significantly affect TCRs identified pursuant to those subdivisions. In other words, analysis of impacts to TCRs identified under Public Resources Code section 21074 is not limited to consideration of impacts to other resources analyzed in an EIR, but instead may include consideration of factors unique to TCRs.</p> <p>The existing, or "baseline" condition of the Winnemem Wintu Tribe's TCL/TCR is an adversely affected condition: the Winnemem Wintu Tribe has already been forced to change the manner in which it interacts physically and spiritually with the TCL/TCR. Because the various elements and character-defining features of the TCL/TCR are part of the same indivisible resource, further alterations of the TCL/TCR that detract from elements such as setting, feeling, association, or the Tribe's communication with spirits, and that require the Winnemem Wintu Tribe to adopt additional changes to the manner in which it interacts with the TCL/TCR would harm the overall sense of place of the TCL/TCR even if the alterations would be beneficial from a scientific or other non-tribal perspective. This means that the significance determinations for TCR impacts are not necessarily identical to the significance determinations for other resource categories.</p> <p>While CEQA lead agencies are to rely on EIS's prepared pursuant to the National Environmental Policy Act "whenever possible," a lead agency may determine when such reliance is not possible. As the CEQA lead agency, the SWRCB determined an additional area greater than the area of potential effect was necessary to accurately</p>

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		<p>HPMP), updates to procedures for staff training about Tribal Resources including the Tribe as trainers (HPMP Sections 5.1 and 5.7), updates to management procedures for ethnobiological resources (Section 5.6), updates to provisions for site-specific treatment measures (Section 5.7), updates to emergency protocols, including provisions of MM TRIBAL-2 (Section 5.10), and updates to treatment of inadvertent discoveries (Section 5.11). The HPMP shall acknowledge the September 27, 2023, designation of the NEP of Chinook salmon in the McCloud River under sections 10(j) and 4(d) of the ESA, and shall include protection and management of Nur (salmon) habitat in the McCloud River as a key character defining feature of the WWT Traditional Cultural Landscape TCR (Section 5.7).⁶ If required by the SWB or other agency, the HPMP shall include monitoring measures or studies related to Nur (Section 5.15).⁷</p> <p>Furthermore, to the extent the corresponding impact analysis are not changed to less-than-significant without mitigation, they should be changed to significant and unavoidable. This is because whether the proposed mitigation will be enforceable will be determined in the FERC licensing proceedings. (See Pub. Res. Code, Section 21081.6, subd. (b); CEQA Guidelines, Section 15126.4, subd(a)(2).)</p> <p>[fn.4] TCRs are defined in California Public Resources Code section 21074, and AB 52 required an update to the CEQA Guidelines to include questions related to impacts to TCRs. TCRs are not defined or considered in a federal regulatory context (e.g., NHPA Section 106, 36 C.F.R. § 800). The McCloud-Pit HPMP is a document developed to support ongoing compliance with NHPA Section 106 and 36 C.F.R. § 800 throughout the term of a new FERC license. The HPMP includes resources defined and considered in a federal regulatory context and it is therefore not the document or process through which TCRs are managed.</p> <p>[fn.5] The HPMP does not have signatories.</p> <p>[fn.6] Sections 10(j) and 4(d) of the Endangered Species Act (“ESA”) provide protections for “protected species.” They do not provide protections for Chinook salmon as part of a TCR.</p> <p>[fn.7] The HPMP is intended to manage effects to historic properties; it is not a mechanism for monitoring or regulating fishery studies relating to Chinook salmon.</p>	<p>analyze the Proposed Project’s potential effects to the Winnemem Wintu Tribe’s TCL/TCR.</p> <p>PG&E’s request to update text for MM TRIBAL-1 to specify that: 1) the Historic Properties Management Plan would be updated to include character defining features of the Winnemem Wintu Tribe’s TCL/TCR that are within the area of potential effect and 2) remove reference to <i>Nur</i> monitoring and protection measures are not incorporated into the Final SEIR. PG&E’s request to remove MM TRIBAL-1 language that the Winnemem Wintu Tribe will be invited as a signatory to the HPMP is removed. (See Attachment 3, Volume II Part 2, item 9.)</p>
PG&E	PGE-9	<p><u>The DSEIR Should Be Recirculated</u></p> <p>As established above, the DSEIR’s significance conclusions must be revisited—either because there is a lack of substantial evidence of a significant underlying impact, because the proposed mitigation extends beyond the Board’s regulatory authority, or otherwise. If any impact that the DSEIR currently concludes is less-than-significant with mitigation but would instead be significant and unavoidable without the mitigation -- because, for example, whether the proposed mitigation will be enforceable will be determined in the FERC licensing proceedings -- then that change in significance constitutes a basis for requiring recirculation of the DSEIR before it can be certified by the Board. (CEQA Guidelines, § 15088.5, subd. (a).)</p>	<p>Comment noted. Additionally, recirculation is required only when significant new information is added to an EIR. New information is not significant unless it deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponents have declined to implement. (Cal. Code Regs., tit. 14, § 15088.5, subd. (a).)</p> <p>The Final SEIR does not identify any new significant environmental impacts or substantial increases in the severity of environmental impacts. With respect to potential impacts to TCRs, for example, the Draft SEIR informed the public that there are potentially significant impacts to TCRs that could be mitigated, that PG&E must agree to</p>

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			<p>the mitigation for it to take effect, and that if PG&E does not agree to the mitigation then the impacts the mitigation is intended to address remain potentially significant and will be deemed significant and unavoidable. The public was thus provided with information regarding potentially significant impacts to TCRs and information regarding ways to mitigate the impacts that required agreement that PG&E had not provided.</p> <p>The situation in the Final SEIR is the same as that in the Draft SEIR: there are potentially significant impacts to TCRs that could be mitigated, PG&E has declined to implement the identified mitigation, and so the impacts remain potentially significant and will be deemed significant and unavoidable. The Final SEIR's affirmance of information provided in the Draft SEIR does not constitute significant new information requiring recirculation.</p>
PG&E	PGE-10	<p><u>The Environmentally Superior Alternative Designation for Alternative 2 (Salmon Flows Below McCloud Dam) is Not Supported by Substantial Evidence</u></p> <p>CEQA requires the Board to identify an “environmentally superior alternative.” (CEQA Guidelines, § 15126.6, subd. (e)(2); DSEIR, p. 5-5.) The DSEIR designates Alternative 2 – Salmon Flows Below McCloud Dam as the environmentally superior alternative on the basis that it “would provide additional protection and enhancement of aquatic cultural and biological resources” in that it “provides the greatest benefit to salmon.” (DSEIR, pp. 5-5–5-6.) The Project, however, does not cause significant impacts to salmon (or other biological resources for that matter). MM BIO-1, the only biological resources mitigation measure, is intended to reduce potentially significant impacts to FYLF, not salmon. Further, as discussed above, MM BIO-1 is mitigation for Alternative 1, not for the Project. Accordingly, Alternative 2 does not reduce or avoid a significant impact of the Project. (See CEQA Guidelines, § 15126.6, subd. (b) [“alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project”].) Alternative 2 therefore cannot qualify as the environmentally superior alternative. The Final SEIR should either revise its selection of the environmentally superior alternative or acknowledge that no alternative has been demonstrated to be environmentally superior to the Project. (See Practice Under the California Environmental Quality Act (2d ed. Cal. CEB 2026), § 15.37 [when none of the alternatives is clearly environmentally superior to the project, it should be sufficient for the EIR to explain the environmental advantages and disadvantages of each alternative in comparison with the project].)</p>	<p>With implementation of the mitigation measures the Proposed Project will generally improve recreational opportunities and conditions in the Lower McCloud River. Alternative 2 would result in a greater improvement to conditions in the Lower McCloud River and is therefore the environmentally superior alternative.</p> <p>Please also see response to comment PGE-5.</p>
PG&E	PGE-11	<p><u>No Substantial Evidence of “Reintroduction” of Winter-run Chinook Salmon</u></p> <p>The DSEIR presumes that the winter-run Chinook salmon (<i>i.e.</i>, <i>Nur</i>) have been “reintroduced” to the McCloud River as a baseline condition. (<i>E.g.</i>, DSEIR, pp. 4-63–4-64.) The Board departed from the standard Notice of Preparation (“NOP”)-date baseline to account for the reintroduction of the winter-run Chinook salmon. (DSEIR, pp. 2-2–2-3.) However, as explained in detail in the <i>Technical Memorandum: Status of Anadromous Fish Reintroductions into the McCloud River</i>, dated May 20, 2026, and attached hereto as</p>	<p>CEQA provides a lead agency with the discretion to select a baseline other than the time of preparation of the Notice of Preparation for purposes of CEQA analysis if the selection of the baseline is warranted by the circumstances and supported by substantial evidence (<i>Neighbors for Smart Rail v. Exposition Metro Line Construction Authority</i> (2013) 57 Cal.4th 439, 449 (citing</p>

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		<p>Exhibit D, the record does not show a reintroduction, but rather experimental reintroduction efforts. (See Exhibit D.) Indeed, there is no planning or funding available for a reintroduction. (<i>Id.</i>) Thus, there is no substantial evidence of reintroduction—and, in turn, no substantial evidence supporting the Board’s baseline determination. (CEQA Guidelines, § 15125, subd. (a); see <i>also</i> DSEIR, pp. 2-3 [“this SEIR uses 2024 as the baseline year to analyze impacts of the Proposed Project and alternatives”].) Using an artificially managed, non-self-sustaining experimental program as a proxy for an established salmon population reintroduction improperly inflates the purported environmental impacts of the Project.</p>	<p><i>Communities for a Better Environment v. South Coast Air Quality Management Dist.</i> (2010) 48 Cal.4th 310, 322, 325, 328.)</p> <p>The circumstances and evidence supporting the SWRCB’s selection of the baseline include the collaborative effort of NMFS, United States Fish and Wildlife Service (USFWS), California Department of Water Resources (DWR), California Department of Fish and Wildlife (CDFW), and the Winnemem Wintu Tribe that resulted in the presence of endangered winter-run Chinook salmon in McCloud River for the first time since the construction of Shasta Dam in the 1940s (NMFS 2024a) and support of that effort under the Central Valley Salmonid Recovery Plan (NMFS 2014), NMFS’ issuance of a Final Rule on the “Designation of Nonessential Experimental Populations of Chinook Salmon Upstream of Shasta Dam, Authorization for Release, and Adoption of Limited Protection Regulations Under the Endangered Species Act §10(j) and 4(d)” (88 Fed. Reg. 58511) on August 28, 2023, and information included in NMFS’ May 1, 2024 letter to SWRCB that describes the collaborative effort, including urgent drought response actions in 2022 that involved the incubation and rearing of winter-run Chinook eggs and fry in the McCloud River watershed, and further reintroduction efforts over the summer of 2023.</p> <p>In addition, efforts to reintroduce salmon to the McCloud River are described favorably in “California Salmon Strategy for a Hotter Drier Future: Restoring Aquatic Ecosystems in the Age of Climate Change”* (e.g., at pages 11, 33, and 34), also described (though less favorably) in Exhibit D to PG&E’s comment letter on the Draft SEIR, and comments submitted by the Winnemem Wintu Tribe regarding the Draft SEIR which show that the Tribe will continue to pursue reintroduction efforts. Temporary lapses in funding for reintroduction efforts do not undercut the conclusion that reintroduction efforts will continue throughout the term of the new FERC license and that utilizing a baseline that reflects the reality of reintroduction efforts provides a more accurate picture of the Proposed Project’s likely impacts than utilizing a baseline that ignores actions that have occurred.</p> <p>* Office of the Governor of the State of California. 2024. “California Salmon Strategy for a Hotter Drier Future: Restoring Aquatic Ecosystems in the Age of Climate Change”. Available online at: https://www.gov.ca.gov/wp-content/uploads/2024/01/Salmon-Strategy-for-a-Hotter-Drier-Future.pdf. Accessed June 1, 2026.</p>
PG&E	PGE-12	<p><u>As Needed, the Board Should Adopt a Statement of Overriding Considerations</u></p> <p>As discussed above, even to the extent the Board may (improperly) conclude the Project has significant and unavoidable impacts, such impacts can still be “acceptable” and the</p>	<p>The SWRCB will adopt a statement of overriding considerations for any significant and unavoidable impacts identified in the Final SEIR.</p>

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		<p>Project can still be approved. (CEQA Guidelines, § 15093, subd. (a).) Accordingly, to the extent the Board concludes, after considering the comments submitted herein, that any significant and unavoidable impacts remain, the Board should adopt a statement of overriding considerations (“SOC”) based on the Project’s many benefits, including the following:</p> <ul style="list-style-type: none"> • The Project is a major source of greenhouse gas-free energy. The Project has an installed capacity of approximately 364 megawatts and generates, on average, approximately 1,570 gigawatt hours of electricity annually, representing a significant source of carbon free energy in Northern California. This generation supports State policies to reduce greenhouse gas emissions and improve air quality. • The Project provides essential grid reliability and resilience benefits. As a dispatchable hydropower resource with multiple storage and regulating reservoirs, and three powerhouses, the Project can rapidly adjust generation in response to system conditions. In addition, certain Project powerhouses provide “Black Start” capability, enabling initiation of generation without <ul style="list-style-type: none"> • external power, in support of electric grid restoration following a widespread outage. This capability allows the Project to energize transmission infrastructure and facilitate the orderly restart of other generating resources, reducing the duration and severity of outages affecting public health, safety, and the economy. • The Project provides important socioeconomic benefits. As a longstanding source of reliable electricity, the Project supports regional and statewide economic activity by helping ensure a stable and dependable power supply for homes, businesses, and critical infrastructure. Continued operation of the Project contributes to the local and regional economy by supporting grid reliability, reducing outage impacts, and protecting public health and safety. • The Project provides substantial and long-term public benefits through the continued operation, enhancement, and expansion of recreational resources within the McCloud and Pit River watersheds. Facilities—including boat launches, campgrounds, and day-use areas—provide established opportunities for boating, fishing, camping, and other outdoor recreation. The Project further enhances these benefits through license-required improvements and new facility development, including upgraded campgrounds and boat launches, new day-use areas, expanded shoreline access, and improved public access. Collectively, these measures expand the range and quality of public recreational opportunities in the region, thereby supporting regional recreation demand and contributing to local economies. 	
PG&E (Exhibit A – Technical Memorandum: State Water Board Mitigation Measure BIO-1)	PGE-13	<p>The stated intent of Mitigation Measure BIO-1, <i>Whitewater Flow Seasonality</i> (MM BIO-1), is to address a potential impact that the Proposed Project would, “Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service (IMPACT BIO-1)” (DSEIR, p. 4-23). The specific concern associated with this impact is that high flows released to provide whitewater boating opportunities occurring after FLYF have initiated breeding could scour egg mass and flush tadpoles downstream (DSEIR, p. 4-28).</p>	Please see comment response PGE-5

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		<p>The DSEIR refers to PG&E's flow proposal in the Final License Application that included releases for whitewater boating (DSEIR, p. 4-28). However, the flow regime required by Forest Service 4(e) condition 19 establishes a different flow regime that does not include releases for whitewater boating. Therefore, the WB uses an incorrect flow scenario as the basis for claiming the Proposed Project could have a potential impact. Because the Proposed Project would not provide releases for whitewater boating, the impact on FYLF would be less than significant and there would be no need for a mitigation measure. In fact, the Executive Summary states, "Changes in flow timing and magnitude could affect recreational opportunities; however, the SEIR finds that the Proposed Project would not substantially degrade recreational use. Impacts to recreation would be less than significant due to temporary construction effects and long-term maintenance or enhancement of recreational access and use opportunities. In addition, with implementation of existing flow management measures and coordination with recreational stakeholders, impacts to recreation would be less than significant."</p> <p>Unlike the Proposed Action, Alternative 1 would require specific whitewater boating releases and MM BIO-1 should be incorporated into Alternative 1 to address the potential impact that the releases could have on FLYF after breeding season initiation. The monitoring component required by this mitigation measure is also unnecessary because monitoring protocols locations, and frequencies would be addressed in the Aquatic Biological Monitoring Plan.</p>	
PG&E (Exhibit A – Technical Memorandum: State Water Board Mitigation Measure BIO-1)	PGE-14	<p>The rationale for Alternative 1 states, "the primary goal is to identify whitewater recreation flows that provide adequate boating opportunities on the McCloud River." Although the DSEIR incorporates the FERC FEIS by reference, it disregards the conclusion that the Proposed Project enhances whitewater boating opportunities and balances these opportunities with aquatic resource protection and angling opportunities (FERC 2011). The DSEIR does not explain why FERC's conclusion is incorrect or why any other flow scenario warrants attention. More importantly, the rationale for Alternative 1 says the intent is to provide "adequate" boating opportunities without defining or quantifying this term. The analysis in the DSEIR only discusses the effects using this and similar unquantifiable terms such as "appropriate" or "suitable" which do not allow impact identification, determination of significance or comparison of alternatives. Accordingly, the DSEIR analysis relative to whitewater boating opportunities of alternatives is subjective and does not support any determination of impacts or benefits.</p>	<p>Section 4.7.3.3 Whitewater Boating of the Draft SEIR does state that the Proposed Project enhances boating opportunities relative to existing conditions: "Under the Proposed Project MIFs boaters would gain 500 days, compared to the current MIFs over the 33-year record." (Page 4-98.) The Draft SEIR has been updated to clarify that 300 cfs only provides for boating-based access to the river for fishing or camping, not whitewater boating, and the minimum acceptable whitewater boating flow identified by the relicensing study TM-24 was 500 cfs. (See Attachment 3, Volume II Part 2, item 2.)</p>
PG&E (Exhibit A – Technical Memorandum: State Water Board Mitigation Measure BIO-1)	PGE-15	<p>Alternative Analysis for Alternative 1 concludes the alternative has more beneficial effects than the Proposed Project. However, the supporting analysis for this conclusion is missing or incorrect and, at best, the impacts are less than significant and similar to the Proposed Project. See the following:</p> <p>Text on p. 5-8 states:</p> <p><i>...this alternative evaluates higher boating flow releases, including: (1) 500 cfs for 11 days per year, and (2) a broader potential range of 500 to 900 cfs for whitewater boating events.</i></p> <p>There is no evidence in the record to indicate that there is sufficient whitewater boating demand to support the need for whitewater boating events. In fact, when PG&E filed alternative 4(e) conditions it removed any mention of providing recreation flow events from</p>	<p>Please see comment response PGE-5. Additionally, the Proposed Project analyzed by the SEIR is PG&E's project as proposed in its July 2009 Final License Application (as supplemented by October and December 2009 updated technical memos TM-71, TM-74, TM-18, and TM-27) and as changed by mandatory conditions (United States Forest Service 4(e) conditions). PG&E's Final License Application identifies that the Proposed Project will include Measure 6: "The Licensee shall, beginning no later than the first full calendar year after license issuance, provide a Recreation Flow Event from McCloud Dam (Gage MC-7) if a spill flow of at least 300 cfs for 7 consecutive days during the period of April 1 through October 31 has not occurred</p>

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		<p>its proposal because of the lack of stakeholder support. This is documented in the FERC FEIS, p. 376, "In its alternative condition 19, however, PG&E does not propose to provide a recreation flow event because of lack of support from stakeholders (FERC 2011)." Consequently, this component of the alternative provides no benefit.</p>	<p>at any time in the previous 3 calendar years. A Recreation Flow Event is defined as a minimum flow release of 300 cfs from McCloud Dam as measured at MC-7 (McCloud Dam), for 11 consecutive days during the period between May 15 and June 15. The event shall begin at 8 a.m. on a Friday and continue for 11 days, ending at 4 p.m. on the eleventh day (Monday)."</p> <p>United States Forest Service 4(e) condition 19 does not remove PG&E's proposed Recreation Flow Event, nor has PG&E filed a supplement to its Final License Application proposing to update its proposed project with FERC. SEIR analysis is correct in that Alternative 1 provides greater benefits regarding whitewater boating than the Proposed Project. Please also see comment responses AW-1 through AW-10 regarding whitewater boating interest.</p> <p>Additionally, please note PG&E's November 9, 2018 email, titled "McCloud Pit Hydroelectric Project FERC No. 2106-059 New Request for Water Quality Certification" identified the project for which PG&E was seeking a certification as "the License Application [Final License Application, dated July 2009], as supplemented by October and December 2009 updated technical memos TM-71, TM-74, TM-18, and TM-27". PG&E does not identify its March 2010 alternative 4(e) in a request for certification.</p>
<p>PG&E (Exhibit A – Technical Memorandum: State Water Board Mitigation Measure BIO-1)</p>	<p>PGE-16</p>	<p>Text on p. 5-11 states: <i>Alternative 1 would enhance whitewater recreation by providing higher, more suitable boating flows on the McCloud River, generally ranging from approximately 500 to 900 cubic feet per second during designated release periods.</i></p> <p>Alternative 1 flows of 500 to 900 cfs may be higher than what PG&E proposed in the FLA but that is not the correct comparison that should be made—it should compare effects to the Proposed Project. Also, the range of flows specified in Alternative 1 would occur under the Proposed Project (Forest Service 4(e) condition 19) and does not make flows of 500 to 900 "more suitable" simply because flows would be specifically released to provide whitewater boating opportunities. The Proposed Project would provide boating opportunities in the optimal range of 600 to 1,000 cfs on 130 more days as compared to the base case which was compiled over 33 years of hydrology data (Stillwater Sciences 2012). Therefore, the Proposed Project would already provide an increased number of days with flow in the optimum boating range as compared to the baseline and the impact would be similar to the Proposed Project.</p>	<p>Please see comment responses PGE-5 and PGE-14.</p> <p>While the Proposed Project would include flows that exceed 500 cfs in some cases, Alternative 1 is intended to provide an enhancement to boating flows. Section 5.4.4 Recreation is clarified to state that Alternative 1 whitewater boating flows are "more suitable" than the 300 cfs boating flows included in the Proposed Project. (See Attachment 3, Volume II Part 2, item 25.) In addition, certification Condition 10, which is incorporated into Alternative 1, includes a provision that considers cases in which the Licensee may be excused from providing additional whitewater boating flows, including years where instream flow requirements are high enough to provide whitewater recreation opportunities.</p>
<p>PG&E (Exhibit A – Technical Memorandum: State Water</p>	<p>PGE-17</p>	<p>Text on p. 5-11 states: <i>These flows would improve boating quality, reliability, and predictability compared to the Proposed Project and would ensure annual boating opportunities, including during dry years.</i></p> <p>Flows in the optimal boating range of 600 to 1,000 cfs would result from the Proposed Project flow regime so there is no basis to conclude that making releases of 500 to 900 cfs</p>	<p>Please see comment response PGE-15.</p> <p>Certification Condition 10, which is incorporated into and analyzed by Alternative 1, includes a provision that requires the Licensee to consider additional measures to facilitate whitewater boating, such as improving access by plowing access roads. The specific timing of whitewater boating flows will be determined as part of the plan</p>

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Board Mitigation Measure BIO-1)		<p>would constitute flows of an “improved quality”. Also, Alternative 1 would not improve reliability or predictability because, similar to the Proposed Project, snow would still block access on public roads to these boating opportunities in early spring. Access would remain an unknown factor and therefore there would not be any increase in reliability or predictability of boating opportunities as compared to the Proposed Project.</p> <p>Additionally, concluding that providing flows for whitewater boating in winter/early spring is a beneficial impact disregards boater survey data that reports boaters have little interest in boating the McCloud River during this time of year (PG&E and Confluence Research and Consulting 2009). It is incorrect to claim a benefit would occur if boaters would not take advantage of the flows at a time at which they are not interested.</p>	developed for Condition 10, which may include requiring flow releases after snow removal. Please also see comment responses AW-1 through AW-10 regarding whitewater boating interest.
PG&E (Exhibit A – Technical Memorandum: State Water Board Mitigation Measure BIO-1)	PGE-18	<p>Text on p. 5-11 states:</p> <p><i>Boating releases would occur on a limited number of days per year and would temporarily exceed optimal angling conditions; however, angling opportunities would remain available outside release periods.</i></p> <p>All flows within the scope of Alternative 1 exceed the wadeable threshold of 300 cfs (Stillwater Sciences 2011). Consequently, it is an understatement to report that conditions would not be optimal when, in fact, there would be a negative impact on angling during scheduled releases.</p>	Exhibit A incorrectly states that 300 cfs is a “threshold” for wading suitability in the Lower McCloud River. TM-78 (Stillwater Sciences 2011 as cited in Exhibit A) in fact states that for the upper reach of the Lower McCloud River (upstream of Yét Atwam Creek, formerly Squaw Valley Creek), 90 percent of the maximum usable area for wading is available at 325 cfs, and 80 percent is available at 425 cfs; in the lower reach, 90 percent is available at 300 cfs and 80 percent is available at 400 cfs. The “threshold” for wading suitability, as defined in TM-78, is a combination of velocity and depth, not a specific discharge. The Draft SEIR accurately states that angling opportunities would be reduced but remain available during boating releases.
PG&E (Exhibit A – Technical Memorandum: State Water Board Mitigation Measure BIO-1)	PGE-19	<p>The intent of Alternative 2 is to provide appropriate habitat conditions for holding, spawning, incubation, and rearing, primarily by ensuring cooler water temperatures and higher flows during key periods. The DSEIR conclusion on p. 5-17 that healthier cold-water fisheries and overall aquatic habitat quality would benefit water-based recreation is incorrect mainly because higher flows and cooler water temperatures would not improve conditions for angling. The Alternative 2 flows in July and August (400 to 600 cfs and 300 to 400 cfs in August) would exceed the 300 cfs threshold for optimal wading (Stillwater Sciences 2011) during the angling season (last Saturday in April through Nov 15). The Alternative 2 flow scenario would not make wading “more challenging”, it would likely eliminate angling in July and August. Also, the WB incorrectly assumes, without any basis, that anglers equally prefer to catch trout or salmon and does not recognize that, by law, anglers would not be allowed to fish for endangered salmon. Accordingly, it is not only incorrect to conclude that the recreational fishing experience would be enhanced, when, in fact, there would be a significant negative impact on angling in terms of wadeability and restrictions on catching fish (endangered salmon).</p>	<p>The Draft SEIR states that higher flows and cooler water temperatures would improve conditions for angling “by supporting healthier cold-water fisheries and enhancing overall aquatic habitat quality,” not that higher flows and cooler temperatures inherently improve angling conditions.</p> <p>See comment response PGE-18 regarding wading suitability. It is inaccurate to state that angling would be eliminated under Alternative 2. Under the maximum flows required by Alternative 2, TM-78 demonstrates that more than 60 percent of the maximum useable area for wading would remain available in the Lower McCloud River.</p> <p>Section 5.5.4 Recreation makes no statements about angler catch preferences as this comment claims. Secondly, take of the McCloud River nonessential experimental population (NEP) of Chinook salmon that is incidental to an otherwise lawful activity is explicitly allowed by NMFS’ final rule establishing the NEP. (88 FR 58511)</p>
PG&E (Exhibit A – Technical Memorandum: State Water	PGE-20	<p>Additionally, California Fish and Wildlife Department, the agency responsible for management of fish species in the state, designates the Lower McCloud River a “Wild Trout Water,” defined as: “aesthetically pleasing and environmentally productive streams...managed exclusively for wild trout, where the trout populations are managed with appropriate regulations to be largely unaffected by the angling process.” General objectives for this designation include:</p>	As noted in Section 5.5.1.1 Aquatic Resources (Fish, Benthic Macroinvertebrates, and Aquatic Habitat), flow increases under Alternative 2 would be expected to benefit other aquatic species that rely on cold-water conditions, including resident rainbow trout. Additionally, salmonids (including rainbow trout and Chinook salmon)

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Board Mitigation Measure BIO-1)		<ul style="list-style-type: none"> Maintenance of wild trout populations at levels necessary to provide satisfactory recreational angling opportunities; and Maintenance and enhancement, where appropriate, of the habitat required for optimum wild trout production.is similar to the “blue ribbon” designation used in other states. <p>Alternative 2 flows would manage the LMR for salmon instead of wild trout, which would be inconsistent with this designation.</p>	historically coexisted, and indeed thrived, under natural high-flow conditions in many California rivers, including McCloud River.
PG&E (Exhibit B – Technical Memorandum: State Water Board Mitigation Measure WATER-1)	PGE-21	This exhibit is a technical memorandum prepared by Stillwater Sciences and PG&E and states issues that the commenters have related to Mitigation Measure WATER-1: Long-term Turbidity Control. It provides references and technical analysis.	This technical memorandum is noted and is included in the record for the SWRCB’s McCloud-Pit proceedings. Please see comment response PGE-6 for items raised in this technical memorandum
PG&E (Exhibit C – Technical Memorandum: State Water Board Mitigation Measure WATER-2)	PGE-22	<p>This exhibit is a technical memorandum prepared by Stillwater Sciences and PG&E and states issues that the commenters have related to Mitigation Measure WATER-2: McCloud Reservoir and McCloud River Turbidity Monitoring and Modeling. It provides references and technical analysis.</p> <p>In addition it raises two items not covered by PG&E’s comment letter pertaining to modeling reliability/utility and the feasibility of continuous turbidity monitoring.</p>	<p>Please see comment responses PGE-6 and PGE-7.</p> <p>Additionally, the intent of MM WATER-2 is to better understand the existing condition and the Proposed Project’s effects to turbidity releases downstream of Proposed Project dams, and to develop adaptive management actions that would address identified impacts from the Proposed Project. It is understood that the Proposed Project does not affect turbidity inflow from Mud Creek/Huckleberry Creek, but Proposed Project operations may affect the amount and timing of turbidity releases.</p> <p>Comments related to the feasibility of turbidity monitoring are noted. However, MM WATER-2 does not specify specific turbidity monitoring methods, frequency, or location. Specific monitoring aspects would be developed per implementation of MM WATER-2 and informed in part by site conditions.</p>
PG&E (Exhibit D – Technical Memorandum: Status of Anadromous Fish Reintroductions into the McCloud River)	PGE-23	<p>This exhibit is a technical memorandum prepared by Stillwater Sciences and PG&E and states that it summarizes recent actions the authors are aware of related to salmon reintroduction efforts and the presence of Chinook salmon in the McCloud River to clarify how they fall short of a permanent long-term reintroduction program with a self-sustaining anadromous Chinook salmon population.</p> <p>It provides the authors’ overview of recent reports and technical evaluations prepared by the California Department of Fish and Wildlife (CDFW), California Department of Water and Resources (DWR), National Oceanic and Atmospheric Administration (NOAA Fisheries), the Bureau of Reclamation (BOR), the Winnemem Wintu Tribe, and associated project partners and takes the position that available information reflects an ongoing investigatory and adaptive management process focused on pilot-level hatchery egg incubation efforts using remote site incubators along the shore of McCloud River, juvenile salmon collection and transport testing, conceptual fish passage alternatives above Shasta Dam, and</p>	<p>This technical memorandum is noted and is included in the record for the SWRCB’s McCloud-Pit proceedings.</p> <p>The memorandum describes reintroduction efforts that are also described in the SEIR. (e.g., Draft SEIR, pp. 2-3, 4-10, 4-11.) The final SEIR will clarify that the reintroduction efforts it describes are not part of a permanently established reintroduction program and did not include fish passage around Shasta Dam. (See Attachment 3, Volume II Part 2, item 3.)</p> <p>The SEIR does not impose “permanent McCloud-Pit Project mitigation measures or flow modifications” related to salmon reintroduction on PG&E. The SEIR identifies a mitigation measure that includes updating the existing HPMP to incorporate the</p>

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		<p>continued evaluation of operations feasibility. It states that available information further demonstrates that future implementation would require substantial capital investment, long-term operational commitments from various stakeholders, extensive permitting, and resolution of significant biological and engineering uncertainties.</p> <p>It concludes that imposing permanent McCloud-Pit Project mitigation measures or flow modifications based on potential future anadromous fish reintroduction program would be premature at this time.</p>	<p>Winnemem Wintu Tribe's TCL/TCR, including acknowledgement of the designation of the nonessential experimental population and protection and management of salmon habitat as a key character-defining element of the TCL/TCR, but it explains that the mitigation measure will not take effect unless PG&E agrees to it. In addition, the SEIR provides an analysis of an alternative (Alternative 2) that includes higher flows recommended by NMFS to facilitate salmon reintroduction, which may obviate the need for additional environmental analysis for the purposes of future determinations by FERC if a permanent reintroduction program is established.</p> <p>For the purposes of certifying that the Proposed Project will be operated in a manner that is protective of water quality as informed by designated beneficial uses of the affected watersheds, which include cold freshwater habitat and cold water spawning habitat, the certification includes Condition 12, which requires a determination of the need for studies related to winter-run Chinook salmon, development of a report that includes, among other things and if appropriate, identification of adaptive management measures, and potential further study and planning in the event an authorized federal agency requires fish passage or related actions. These actions will facilitate future consultation and evaluation under FERC processes if a permanent reintroduction program is ultimately implemented.</p> <p>Please see responses to comment PGE-11.</p>
PG&E (Exhibit E – PG&E Comments on McCloud-Pit Hydroelectric Project Draft Order)	PGE-24	This exhibit is the comment letter PG&E submitted on May 19, 2026, regarding the draft order granting in part and denying in part petitions for reconsideration submitted by PG&E (separately) and the Winnemem Wintu Tribe and North Coast Rivers Alliance (jointly) in December 2019.	This letter, which focuses on the <i>Draft Order Granting in Part and Denying in Part Petitions for Reconsideration</i> (Draft Order) and not the SEIR, is noted and is included in the record for the SWRCB's McCloud-Pit proceedings. Please also see responses to comments PGE-5, PGE-6, and PGE-7.
Winnemem Wintu Tribe and NCRA	WWT-NCRA-1	These DSEIR comments build on and incorporate by reference Petitioners' May 19, 2026 comments on the Board's April 23, 2026 Draft Order Granting in Part and Denying in Part Petitions for Reconsideration ("Draft Order").	The May 19, 2026, comments are noted and included in the record for the SWRCB's McCloud-Pit proceedings. Please also see responses to comments WWT-NCRA-3, WWT-NCRA-4, WWT-NCRA-6, WWT-NCRA-7, and WWT-NCRA-12.
Winnemem Wintu Tribe and NCRA	WWT-NCRA-2	<p>GENERAL COMMENTS</p> <p>The DSEIR is subject to the same requirements and review as any other EIR. Title 14, California Code of Regulations ("14 CCR") § 15162(d). As the lead agency under CEQA, the Board was required, but failed, to prepare an EIR that examines the whole of the Project in order to adequately determine and address its impacts. PRC § 21065; 14 CCR § 15378(a); <i>RiverWatch v. Olivenhain Municipal Water Dist.</i> (2009) 170 Cal.App.4th 1186, 1203; <i>Habitat and Watershed Caretakers v. City of Santa Cruz</i> (2013) 213 Cal.App.4th</p>	The SWRCB values Winnemem Wintu Tribe's tribal cultural knowledge and connection to the TCL since time immemorial. Since March 2021 (approximately five years), the SWRCB and Winnemem Wintu Tribe have worked together to identify TCRs and mitigation measures to reduce potential impacts of the Proposed Project as compared to the CEQA baseline. All items raised by the Winnemem Wintu Tribe in relation to the ongoing CEQA process have either been discussed during consultation and/or are adequately addressed in the

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		<p>1277, 1304-1305 (EIR must address impacts that responsible agencies as well as the lead agency are authorized to evaluate and mitigate). The Board’s Initial Study/Negative Declaration (“IS/ND”) issued November 8, 2019 ignored many of the Project’s significant impacts, and in particular, failed to account for the Tribe’s unique, significant, and all-encompassing relationship with its Tribal Cultural Landscape (“TCL”). Unfortunately, many of those same errors and omissions carry over to the DSEIR.</p> <p>The Board seemed to acknowledge this failure when it reversed course and issued a Notice of Preparation for the SEIR on March 10, 2022. But that awakening was short-lived. Rather than repudiate the IS/ND, the DSEIR gives the incorrect impression that the IS/ND remains valid. Indeed, reinforcing this error, the DSEIR incorporates the IS/ND “by reference to the extent [it does] not conflict with the analysis and conclusions presented in th[e] SEIR.” DSEIR 2-2. But the IS/ND remains deeply flawed, and should be rejected rather than embraced.</p> <p>Because the Board has not repudiated its IS/ND, it continues to be the subject of an ongoing lawsuit. <i>Winnemem Wintu Tribe, et al. v. State Water Resources Control Board</i>, Sacramento Superior Court, Case No. 34-2020-80003350; DSEIR, Appendix E at 5. After the Board failed to take timely action on Petitioners’ original Petition for Reconsideration of the IS/ND, and its inaction became a denial of that Petition by operation of law, on March 6, 2020 the Tribe and NCRA filed a lawsuit to preserve their rights and to ensure that the Board corrected its violations of law. That lawsuit challenged the IS/ND on the grounds that it violated the California Environmental Quality Act (“CEQA”), the Public Trust Doctrine, and the Clean Water Act (“CWA”). Indeed, that lawsuit was a proximate cause for this SEIR’s preparation.</p> <p>While the Board has taken considerable efforts to coordinate with the Tribe, it has not remedied all of the violations of law that the Tribe and NCRA identified in their lawsuit. And now, the DSEIR relies on a document that entirely failed to account for the Project’s significant impacts to the TCL. As the Tribal Cultural Resources Memorandum and Analysis (DSEIR Appendix E) makes clear, the Tribe’s deeply intertwined relationship with its ancestral lands and waters, including most centrally the McCloud River and its salmon, and the spirit world that encompasses both, is omnipresent in all areas of the lives of the Tribe’s people. See, e.g., DSEIR, Appendix E at 1 (“The land and all its parts are central to the Winnemem people and the spirit and the whole area of the Winnemem territory is part of our religion.”). The DSEIR’s failure to address the impacts to the Tribe in <i>each and every</i> resource area considered renders it broadly deficient.</p>	<p>SEIR, which incorporates the Initial Study and Negative Declaration (IS/ND) and FERC’s EIS in addition to providing detailed information regarding tribal cultural resources that could not have been developed prior to finalization of the IS/ND. The SEIR provides analysis of new information of substantial importance that was not known and could not have been known at the time the IS/ND was approved in addition to the analyses set forth in FERC’s EIS and the IS/ND.</p>
Winnemem Wintu Tribe and NCRA	WWT-NCRA-3	<p>BASELINE</p> <p>Normally, the “EIR must include a description of the physical environmental conditions in the vicinity of the project . . . as they exist at the time the notice of preparation is published.” CCR § 15125(a). “Where existing conditions change . . . over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts, a lead agency may define existing conditions by referencing . . . conditions expected when the project becomes operational.” <i>Id.</i>; <i>Association of Irrigated Residents vv. Kern County Board of Supervisors</i> (“AIR”) (2017) 17 Cal.App.5th 708, 731 (“an existing conditions baseline could deviate from the norm identified in Guidelines section 15125, subdivision (a)</p>	<p>A CEQA lead agency has significant discretion to select a different environmental baseline that allows for a more realistic evaluation of a project’s impacts, and the State Water Board has done so here. But a lead agency is not required to update the baseline in response to every environmental change that may occur while an EIR is being prepared.</p> <p>Page 4-64 in part states, “In 2025, CDFW confirmed reports of adult salmon near Ash Camp on the Lower McCloud River and saw an adult female Chinook salmon exhibiting spawning behavior along with</p>

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		<p>by measuring existing physical conditions at a time other than when the notice of preparation is published”).</p> <p>Here, the Board has appropriately selected a baseline that measures the existing physical conditions “at a time other than when the notice of preparation is published.” <i>AIR</i>, 17 Cal.App.5th at 731. There have been significant changes since the NOP was issued on March 10, 2022. Most notably, the reintroduction of salmon in the McCloud River has entirely changed the river’s landscape, the Project’s impacts, and the TCL. As the DSEIR correctly articulates, a March 2022 baseline “would not give the public and decision makers the most accurate picture practically possible of the Proposed Project’s likely impacts because such a baseline would not include the presence of winter-run Chinook in the McCloud River or acknowledge the designation of the nonessential experimental population and could result in the SEIR understating the environmental impacts of the Proposed Project.” DSEIR 2-3.</p> <p>The DSEIR’s reliance on a May 1, 2024 baseline is a vast improvement over the standard 2022 baseline that fails to provide an accurate picture of the Project’s impacts. However, in summer 2025, adult salmon were seen exhibiting spawning behaviors and redds were identified in the Lower McCloud River. DSEIR 4-64, 4-69. CDFW, July 16, 2025, Observations of winter-run Chinook Salmon Spawning in the Lower McCloud River on July 15, 2025; CDFW, August 8, 2025, Documentation of Winter-Run Chinook Salmon Spawning in the Lower McCloud River July 2025, attached hereto as Exhibits 1 and 2, respectively. The recent developments confirm, however, that now the appropriate baseline is August 8, 2025, when CDFW had confirmed adult spawning salmon – indicators of a permanent, rather than “experimental” – salmon population in the river. This is important, because as the DSEIR concedes, nearly any change to the river’s flow or temperature will affect salmonids. DSEIR 4-24 to 4-25. The presence of redds in the Lower McCloud only further highlights the needs of the salmon. Indeed, the presence of salmon “in the landscape is vital, as their absence weakens both the [Tribe’s] spiritual connection and the natural character of the river and its surroundings.” DSEIR 4-69. Because there is clear evidence of the existence of spawning adults in the Lower McCloud, the baseline should be updated to include that significant change in the environment.</p>	<p>small males (jacks) nearby. These fish would have originated from earlier egg rearing efforts on the river and subsequent rearing of the juveniles in Shasta Lake. This indicates that baseline conditions allow Chinook salmon to reach adulthood and spawn, though survival rates across the life cycle are not clear. CDFW staff has recommended further surveys of spawning habitat (CDFW Memo 8/8/2025).” The SEIR thus acknowledges evidence that under the 2024 baseline condition some salmon from the past reintroduction efforts have escaped recapture, reached adulthood, and spawned in the lower McCloud River. However, a permanent reintroduction program has not yet been implemented and uncertainty regarding the number of salmon that my presently be in the McCloud River—which could change rapidly over a short period of time—makes it impractical to specify a population for purposes of the baseline.</p>
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-4</p>	<p>ALTERNATIVES</p> <p>CEQA requires EIRs to “describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” 14 CCR § 15126.6(a). Alternatives that would lessen significant effects should be considered even if they “would impede to some degree the attainment of the project objectives, or be more costly.” <i>Id.</i> § 15126.6(b). The range of alternatives considered must “foster informed decisionmaking and public participation.” <i>Id.</i> § 15126.6(a). Alternatives may only be eliminated from “detailed consideration” when substantial evidence in the record shows that they either (1) “fail[] to meet most of the basic project objectives,” (2) are “infeasibl[e],” or (3) do not “avoid significant environmental impacts.” <i>Id.</i> § 15126.6(c).</p>	<p>CEQA guidelines 15126.6 in part states “An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.” It further provides that an EIR need only set forth only alternatives as necessary to permit a reasoned choice and need only examine in detail the alternatives that the lead agency determines could feasibly attain most of the basic objectives of the project. Economic viability and requirements of other plans or regulatory limitations are factors that may be considered in determining the feasibility of an alternative.</p> <p>An alternative involving restoration of the natural hydrograph would be functionally similar to the alternative of project retirement without removal of the dams that was excluded from detailed analysis in FERC’s EIS and the SEIR. Such an alternative would not meet the</p>

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		<p>Contrary to these requirements, the DSEIR fails to analyze an alternative that mimics the natural flow (or hydrograph) of the river. “Historically, unimpaired flows at McCloud Dam exceeded 600 cfs, with median flows above 850 cfs, offering more optimal conditions.” DSEIR 3-42. But the only alternatives the DSEIR considers are the No Project Alternative, Whitewater Boater Flows, and Salmon Flows below the McCloud Dam. None of these alternatives mimic the natural hydrograph of the river.</p> <p>Because the DSEIR entirely fails to consider an alternative that mimics the natural flow of the river, the public and decision-makers are prevented from accurately understanding and fully considering how the Project’s impacts may be lessened.</p> <p>Only when and if the Board prepares an adequate EIR, may it approve the Project. If, contrary to CEQA, the Board should nonetheless restrict its (and the public’s) review to the alternatives currently considered in the DSEIR, the Board should approve Alternative 2 - Salmon Flows Below McCloud Dam. As the DSEIR admits, it is the environmentally superior alternative. DSEIR 5-6. It “provides seasonal instream flow releases to support aquatic habitats, downstream uses, and the WWT Traditional Cultural Landscape TCR—including the McCloud River—to sustain the Tribe’s cultural, spiritual, ceremonial, and traditional lifeways central to its health, and identity.” DSEIR 5-5. Because Alternative 2 relies on the flow regime that is “most similar to historical conditions of the McCloud River among the alternatives evaluated” and will “improv[e] habitat availability, support[] key life stages, and enhanc[e] ecological processes in the downstream reach,” the Tribe and NCRA respectfully request that, if the DSEIR is not revised to address the natural hydrograph as an alternative, then of the alternatives considered, the Board should approve Alternative 2. DSEIR 5-5 to 5-6.</p> <p>The goal of CEQA is to investigate and balance the impacts and benefits of a project. The benefits described in Alternative 2 would positively affect the environment, endangered species, the Tribe, and the public. The yearly loss of power producing water to PG&E is small when compared to the total amount of water diverted by the Project for an entire year. Any loss of profit from the Salmon Flows recommended by NMFS is minuscule. The Board must not put profit over life. And that is what is at stake here: the life and survival of a species, a river, and a Tribe.</p>	<p>Proposed Project’s objectives related to the generation of hydroelectric energy (see FERC’s EIS, Section 2.4.3, page 59), would not be economically feasible (<i>id.</i>), and would pose a risk of violating operational safety requirements that apply to McCloud Dam by passing flows over the dam or via the spillway (See PG&E’s petition for reconsideration, Exhibit C, row 1 under “Condition 1. Minimum Instream Flow and Ramping Rates”).</p> <p>The commenter requests that the SWRCB ‘approve’ Alternative 2. As the CEQA lead agency, the SWRCB’s role is to evaluate the Proposed Project and consider mitigation measures and a reasonable range of alternatives for potential impacts in comparison to baseline conditions. Chapter 5 of the SEIR explains that Alternative 2 would have similar impacts to the Proposed Project and marginally better improvements, though like the Proposed Project Alternative 2 would not restore the natural hydrograph. The SWRCB’s CEQA findings regarding mitigation measures, alternatives, and considerations that override concerns regarding potentially significant environmental impacts are set forth in Attachment 5 to the final Order.</p>
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-5</p>	<p>IMPACTS</p> <p>CEQA mandates that the Draft EIR adequately analyze the Project’s environmental impacts in order to foster informed decisionmaking and allow the public to fully grasp the Project’s impacts. PRC § 21002.1; 14 CCR §§ 15121, 15126. 15126.2. An EIR must include “enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” <i>Sierra Club v. County of Fresno and Friant Ranch, L.P.</i> (“<i>Friant Ranch</i>”) (2018) 6 Cal.5th 502, 513. The EIR “fail[s] to comply with the information disclosure provisions of CEQA” when it “omit[s] any meaningful consideration” of a potentially significant environmental impact identified in the record.</p>	<p>Comment noted. Please see responses to comments WWT-NCRA-6, WWT-NCRA-7, WWT-NCRA-8, WWT-NCRA-9, and PGE-3.</p>

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		<p><i>Bakersfield Citizens for Local Control v. City of Bakersfield</i> (“<i>Bakersfield Citizens</i>”) (2004) 124 Cal.App.4th 1184, 1208. The DSEIR fails to adequately analyze numerous Project impacts, as detailed below.</p>	
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-6</p>	<p>Biological Resources</p> <p>The DSEIR fails to adequately address the Project’s impacts on biological resources. It claims that after mitigation the Project will have <i>no</i> significant impacts on biological resources. See e.g. DSEIR 4-23 to 4-40. Yet the DSEIR fails to accurately assess the Project’s potentially significant impacts to plants and wildlife, including habitat, and overstates the effectiveness of the Project’s mitigation measures, in violation of CEQA. 14 CCR §§ 15126.2(a), 15126.4, 15144; <i>Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova</i> (“<i>Vineyard</i>”) (2007) 40 Cal.4th 412, 428; <i>Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners</i> (2001) 91 Cal.App.4th 1344, 1355-1356. These deficiencies are discussed below.</p> <p>The biological resources section fails to accurately depict the scope and magnitude of the McCloud Hydroelectric Project’s historical impacts on anadromous fish. DSEIR 4-10. The DSEIR glosses over this Project’s extirpation of numerous fish species by truncating its discussion into a mere five sentences that simply say that the Shasta Dam and Keswick Dam contributed to the demise of Chinook salmon and Bull trout in the McCloud and Pit River watersheds. DSEIR 4-10. But more information is needed to allow the public to meaningfully understand the Project’s impacts. <i>Friant Ranch</i>, 6 Cal.5th at 513. It is impossible to know how the Project will impact fish in the future if one is not provided information on how the Project impacted fish in the past. CEQA requires that the impacts of the Project over the course of its original license, and up to at least the 2024 baseline, be discussed in detail.</p> <p>Furthermore, the surveys that the DSEIR relies on are woefully out of date. In order to fully understand and intelligently take into account the Project’s adverse impacts, the agency must complete adequate biological surveys to document the current resources in the area and how they would be affected. PRC § 21002.1; 14 CCR §§ 15121, 15125, 15126, 15126.2. But contrary to this CEQA mandate, the surveys undertaken for the DSEIR fail to do so. <i>Id.</i> Indeed, the majority of the surveys relied upon were completed nearly 20 years ago. DSEIR 4-8 (BMI surveys completed in 2007 and 2008), 4-9 (aquatic mollusk survey in 2007, fish surveys in 2007 and 2008), 4-16 (falcon surveys in 2007-2008), 4-17 (bat surveys in 2007 and 2008). There have been significant climate shifts, new technology, and development in the last 20 years. Winter-run Chinook salmon have been reintroduced to the river in that time. New surveys must be completed.</p> <p>More current surveys that span time periods in which wildlife is likely to be present and plant species are likely to be in bloom, are necessary for an adequate review under CEQA. PRC § 21002.1; 14 CCR §§ 15121, 15126, 15126.2. “A clearly inadequate or unsupported study is entitled to no judicial deference,” and does not constitute substantial evidence supporting</p>	<p>A summary description of the baseline in the body of the EIR is sufficient when the underlying information is contained in an appendices or references to the EIR. The SEIR contains information regarding the baseline condition of biological resources that enables the public to understand the impacts that the changes to the baseline associated with the Proposed Project will have. For example, Section 4.4.1.1 explains how under the baseline condition project operations have the effect of trapping gravel, coarse sediment, and large woody debris above McCloud Dam that in an unregulated system would support and enhance aquatic habitat in the Lower McCloud River, and Section 4.4.3.1 explains that because the Proposed Project will result in placement of coarse sediment large woody debris in the McCloud River downstream of McCloud Dam that would improve fish habitat. The comment does not identify details regarding historical extirpation of fish species, including salmon and bull trout, that would provide improved information regarding the impacts of changes to the baseline condition that will result from the Proposed Project.</p> <p>The surveys upon which the environmental analysis relies have not been rescinded, invalidated, or shown to be inaccurate. Where appropriate the SEIR provides updated information regarding biological resources, for example by noting documentation of adult salmon spawning in the McCloud River in 2025.</p> <p>Since the cultural value of a resource to a tribe and the significance of a resource to a tribe are core factors in the identification of TCRs under subdivisions (a)(1) and (a)(2), respectively, of Public Resources Code section 21074 it is appropriate for a lead agency to consider those factors in determining whether a project may significantly affect TCRs identified pursuant to those subdivisions. In other words, analysis of impacts to TCRs identified under Public Resources Code section 21074 may include consideration of factors that are unique to TCRs. As a consequence, the significance determinations for impacts to other resource areas are not necessarily identical to the significance determinations for impacts to TCRs. For example, with respect to McCloud River flows the Proposed Project will result in higher MIFs compared to the baseline and therefore the record does not support a conclusion that the Proposed Project’s impact on flows, from a hydrology perspective, will be significant and adverse. But from the perspective of considering impacts to TCRs those higher MIFs could still adversely affect the indivisible whole that is the Winnemem Wintu Tribe’s TCL/TCR by forcing the Winnemem Wintu Tribe to change the way it currently interacts with the TCL. The</p>

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		<p>an agency’s finding. <i>Laurel Heights Improvement Association of San Francisco v. Regents of the University of California</i> (1988) 47 Cal.3d 376, 409 n.12. The DSEIR’s failure to provide the studies necessary to understand the Project’s impacts on critical environmental resources violates CEQA’s informational purpose and prevents the public and decisionmakers from fully considering the impacts of the Project. 14 CCR §15144; <i>Vineyard</i>, 40 Cal.4th at 428; <i>Berkeley Keep Jets</i>, 91 Cal.App.4th at 1355-1356.</p> <p>The DSEIR concludes that “temperature-related impacts to Nur are significant and unavoidable because although the Proposed Project flows improve temperature conditions, the flows are not high enough to support cold temperatures which would contribute to longterm recovery of Nur.” DSEIR 6-3. But the biological resources discussion downplays these impacts and declares the Project to be neutral or beneficial to fish species, including the newly reintroduced salmonids, aside from potential turbidity impacts. DSEIR 4-24 to 4-25. As the DSEIR admits, the “flows are not high enough to support cold temperatures” needed by winter-run Chinook salmon. DSEIR 6-3.</p> <p>Additionally, the turbidity impacts the DSEIR nonchalantly brushes aside with mitigation cannot be so easily ignored. The DSEIR admits that the “Proposed Project operations and routine reservoir drawdown and maintenance may adversely affect turbidity in the McCloud River.” DSEIR 4-49. It also admits that it is impossible to know the extent of the Project’s impacts without additional data. DSEIR 4-51 (“Without additional turbidity and flow data that include the combined turbidity inflow to McCloud Reservoir and the turbidity outflow below McCloud Dam it is not possible to determine the extent the current Hydroelectric Project is increasing turbidity releases above the Basin Plan standard and it is not possible to determine the overall effect of the Proposed Project on turbidity”). Without knowing how much turbidity the Project causes, or how that turbidity affects water quality, biological resources, and Tribal resources, the Board cannot simply declare that impacts to aquatic species will be less than significant. The Board has no evidence to support that conclusory assertion.</p>	<p>significance determination for the impact of changed flows on the TCL/TCR is thus different from the significance determination for the impact of changed flows on hydrology. The result is similar for temperature-related impacts.</p> <p>A turbidity plan will be developed to ensure Proposed Project operations do not violate Basin Plan standards for turbidity in consultation with the United States Forest Service, CDFW, USFWS, the Central Valley Regional Water Quality Control Board, and the SWRCB as well as the Winnemem Wintu Tribe, the Pit River Tribe, and The Nature Conservancy. The requirements for the turbidity plan will be enforced through certification Conditions 3(B) and 5. Mitigation measures WATER-1 and WATER-2 are updated to provide additional clarity regarding their requirements. (See Attachment 3, Volume II Part 2, items 6 and 7.)</p> <p>CEQA permits details of mitigation plans to be developed later in consultation with responsible public agencies, but it does not permit an EIR to be “held hostage” to suspicions that responsible public agencies will fail to apply their expertise in formulating bona fide, effective mitigation plans. (See <i>Tiburon Open Space Committee v. County of Marin</i> (2022) 78 Cal.App.4th 700, 774; see also <i>City of Hayward v. Board of Trustees of Cal. State University</i> (2015) 242 Cal.App.4th 833.) When there are uncertainties regarding whether a particular impact will occur a lead agency may identify mitigation that is contingent on future studies to tailor mitigation measures to fit on-the-ground conditions.</p> <p>Please also see responses to comment WWT-NCRA-7.</p>
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-7</p>	<p>Hydrology and Water Quality</p> <p>As discussed above and below, existing data show that “outflow turbidity not only peaks higher than the inflow turbidity but also maintains a higher average over time.” DSEIR4-49; Draft Order 15. These data make clear that something within the Project boundaries is causing increased turbidity. That turbidity, combined with the substantial sediment accumulation in the reservoir, is harmful and potentially catastrophic to the newly introduced salmonid population in the Lower McCloud. DSEIR 4-45 to 4-53. Therefore, the DSEIR admits: “Without additional turbidity and flow data that include the combined turbidity inflow to McCloud Reservoir and the turbidity outflow below McCloud Dam it is not possible to determine the extent the current Hydroelectric Project is increasing turbidity releases above the Basin Plan standard and it is not possible to determine the overall effect of the Proposed Project on turbidity.”</p> <p>DSEIR 4-51. It further concedes that in 2008, the existing Project turbidity levels exceeded the Basin Plan standard. DSEIR 4-51 to 4-52.</p>	<p>MM WATER-1 requires PG&E to: 1) monitor on a regular basis throughout the term of the new FERC license sediment accumulation in McCloud and Iron Canyon reservoir; and, 2) develop/include actions in its Erosion and Sediment Control Management Plan to manage sediment in the reservoirs to avoid future releases of excess sediment into the rivers that might violate Basin Plan water quality objectives.</p> <p>MM WATER-2 requires PG&E to: 1) monitor turbidity; 2) develop a numerical model of reservoir temperature and turbidity; 3) determine effects of reservoir operations on outflow turbidity; and 4) implement actions (informed by monitoring and model development) to address any turbidity issues, as appropriate.</p> <p>With implementation of MMs WATER-1 and WATER-2, the Proposed Project’s potential effects to turbidity discharges will be less than</p>

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		<p>The Tribe and NCRA agree that additional data and analysis are needed to fully determine the impacts of the Project on hydrology and water quality. And while the Board’s conservative approach properly assumes the Project “has a potentially significant impact on the Basin Plan turbidity objective,” the Board cannot know the extent of that impact without additional information, as it admits. DSEIR 4-51, 4-52. And without knowing the extent of the impact, the Board cannot claim it knows what will be required to mitigate that impact to less than significance. Yet, that is exactly what the Board does here: It claims that “[w]ith the implementation of the measures above, . . . potential adverse impacts related to turbidity from the Proposed Project could be less than significant.” DSEIR 4-53. First, the Board cannot know what, if any, mitigation will make these unknown and understudied impacts less than significant. Second, that these impacts “could be less than significant” does not mean they <i>will be</i> less than significant. By failing to consider the potential significance of turbidity impacts even after mitigation, the DSEIR fails as an informational document. <i>Friant Ranch</i>, 6 Cal.5th at 513.</p>	<p>significant. Additionally, please see comment responses PG&E 6, PG&E 7, and WWT-NCRA-6.</p>
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-8</p>	<p>Tribal Cultural Resources</p> <p>The DSEIR’s historic background of the Tribe does not truly depict the long pattern of racial discrimination and environmental exploitation and degradation that the Tribe has faced as the result of European settlement and its quest for power and profit. DEIR 4-62, 6-7 to 6-8. The DSEIR does not do justice and honor to a People that has lovingly and respectfully cared for this land, water, and the life of this watershed and territory for millennia. This is especially important, given that left unchecked, the Project could easily continue that campaign of discrimination and exploitation of the Tribe. Any conclusions, mitigations, and recommendations of this DSEIR that do not acknowledge the tragic story of the Tribe and the callous and ruthless exploitation of the resources the Tribe holds as living beings – their relatives in the truest sense – is a continuation of the historic atrocities the Tribe has faced. This chain of historic degradation – the broken treaty of 1850, the campaign of murderous genocide of Native Peoples by the State of California, the callous paternalism of “Indian Policy” of the Federal Government, and the theft of Tribal land under Shasta Reservoir that left Tribal members destitute and homeless – cannot be even inadvertently allowed to continue. It is this Board’s duty to ensure that those atrocities are exposed, and that they stop here.</p> <p>Although the ongoing Tribal Consultation has been thorough, respectful, and informative, the conclusions of the SEIR do nothing to actually mitigate the impacts of the project to the TCL and to the Tribe. The DSEIR proposes to engage in future studies, and in further consultation with the Tribe. And while the Tribe supports and appreciates these future studies, that is not sufficient to protect the Tribe, as the DSEIR admits. DSEIR 4-79 to 4-91. The Project’s impacts to the Tribe and to the Nur (a character-defining feature of the Tribe’s TCL) are considered significant but unavoidable. But they are <i>not</i> unavoidable. With higher flows more closely replicating the natural hydrograph, these impacts are avoidable. Moreover, the Tribe has proposed an uncomplicated alternative that the Tribe would grudgingly accept: Implementation of Alternative 2 and the adoption of the NMFS recommended flow regime.</p>	<p>The SEIR includes, through the discussion of impacts to TCRs and Appendix E, extensive information regarding the Winnemem Wintu Tribe’s sacred connection to the McCloud River (<i>Winnemem Waywaket</i>) watershed, Mount Shasta (<i>Buliyum Puyuuk</i>), and related cultural, spiritual, and ecological relations and provides related historical context, ethnographic information, and legal and regulatory background. The Winnemem Wintu Tribe’s contribution of its knowledge and expertise provided substantial evidence that allowed the SWRCB to determine that the Winnemem Wintu Tribe’s TCL is a TCR pursuant to Public Resources Code section 21074.</p> <p>CEQA’s focus is not on correcting historical harms but providing information to the public and a process for either avoiding or reducing substantial adverse impacts of changes in the environment that would result from a project approved by a public agency, or explaining the agency’s reasons for approving such a project despite the potential for it to cause substantial adverse impacts. The SEIR recognizes that the TCL/TCR has already been impaired and properly focuses its analysis on whether changes associated with the Proposed Project will further detract from elements of the landscape in a manner that harms the TCL/TCR even if the changes would be neutral or beneficial from a scientific or non-Tribal perspective.</p> <p>Please see comment response WWT-NCRA-4</p>

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		<p>That alternative would protect and support the reproduction of salmonid species by decreasing water temperature and lengthening the run of river suitable for salmon reproduction. The DSEIR should support the productive and effective winter-run Chinook salmon reintroduction program implemented by CDFW, NOAA, and the Tribe through the NMFS flow regime, which would more closely mimic a natural flow and greatly enhance downstream habitat of the entire river. Furthermore, adoption of the Salmon Flows Alternative would acknowledge the Tribal history of racial and environmental discrimination and resource theft and exploitation, support the active and positive working relationship between Tribe, and State and Federal agencies, and support the Tribe and its sovereignty, values, and culture.</p>	
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-9</p>	<p>Recreation Resources</p> <p>The Project includes physical changes to the environment that were not part of the existing operations of the hydroelectric project. These changes include the extraction of 150 to 600 metric tons of coarse sediment from Star City Creek or Tarantula Gulch for placement in the McCloud River below McCloud Dam (DSEIR 3-16; IS/ND 2-40 to 2-41), and the placement of large woody-debris (DSEIR 3-19 to 3-20; IS/ND 2-45). They also include new recreational accommodations: 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. DSEIR 2-8, 3-30 to 3-38; IS/ND 2-22 to 2-34. These changes, as well as the changes in the flow regime, will have significant effects on the area's recreational resources. Yet the DSEIR erroneously dismisses all of these impacts as less than significant. DSEIR 4-96 to 4-100.</p> <p>As discussed in more detail in the mitigation measure section below, the DSEIR improperly relies upon future management plans to conclude that the Project's recreation impacts would be insignificant. DSEIR xi ("Impact-reducing measures undertaken in response to permit or license conditions . . . are not considered mitigation measures under CEQA but are treated as part of the Proposed Project"), 3-14 to 3-27 (listing and describing all of the plans identified by the USFS to be completed at a future date and treating those plans as Project components rather than mitigation measures), 4-98 to 4-99 (declaring that the Project's recreation impact less than significant with no mitigation based on future plan). The DSEIR discusses the Recreation and Development Management Plan as a Project component rather than appropriately discussing this yet-to-be-developed plan as mitigation of the Project's significant impacts. DSEIR 4-98 to 4-99. By including this plan as a Project component, rather than a mitigation measure, the DSEIR does not appropriately address how, why and where, absent the management plan, the impact would be significant. DSEIR 4-96 to 4-100. This violates CEQA.</p> <p>The Board improperly conflated its discussion of the Project's impacts with its discussion of measures designed to minimize those impacts, preventing the public from understanding the scope and severity of those impacts first, as necessary to evaluate the efficacy of the proposed mitigation measures that the Board improperly presumed would reduce impacts to insignificance. DSEIR 3-14 to 3-27, 4-98 to 4-99. That the applicant included these measures as part of the Project does not excuse the Board from undertaking the required analysis. The distinction is not one of semantics, but instead of purpose and effect. <i>Lotus</i></p>	<p>The Proposed Project includes enhancement as well as continued operation of recreational facilities used for boating, camping, fishing, and other outdoor recreational activities and will provide for increased recreational opportunities while reducing the impacts of recreational uses compared to the baseline as explained in Section 4.7.1.</p> <p>Please also see responses to comments PGE-3 and WWT-NCRA-10.</p>

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		<p><i>v. Dep't of Transportation ("Lotus")</i> (2014) 223 Cal.App.4th 645, 655-656, 656 n. 8 (discussing the distinction between measures that are part of the project, such as paving mixes, from measures that are "plainly mitigation measures," such as restorative planting). In its Draft Order, the Board argued that <i>Lotus</i> is distinguishable because the plans here are Project components. Draft Order 20-21. By its design, the plan is a mitigation measure designed to lessen the Project's impacts. The Board is not bound by the applicant's framing of the Project, nor is it bound by the applicant's willingness to undertake mitigation measures. The Board has an independent duty under CEQA to review the Project and mitigate its impacts. The Board's failure to fulfill its obligation in the DSEIR violates CEQA.</p>	
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-10</p>	<p>MITIGATION MEASURES</p> <p>The DSEIR improperly relies upon future management plans to conclude that a majority of the Project's impacts would be insignificant. <i>E.g.</i> DSEIR xi, 4-31, 4-98 to 4-99. When Petitioners informed the Board of the IS/ND's same deficiency, the Board deflected. It claimed that "[t]he conditions that require the applicant to develop (and, after receiving approval, implement) management plans are intended by the Board to improve water quality conditions in the Project Area relative to existing conditions, not mitigate adverse changes to the environmental baseline that will occur as the result of continued project operations." IS/ND xxvi-xxvii. In other words, rather than appropriately discussing these yet-to-be-developed plans as mitigation measures in the IS/ND and DSEIR, the Board improperly considered them Project components. DSEIR xi.</p> <p>And now, the DSEIR relies upon those same as-of-yet incomplete management plans to mitigate the Project's impacts on most resource areas in a way that does not appropriately address where, absent the management plan, the impact would be significant. <i>E.g.</i> IS/ND 3-169 to 3-170 ("potentially significant" recreation-related impacts, including potential shoreline erosion and impacts to shoreline vegetation, and increased vehicle traffic "would be reduced to less than significant with the implementation of the Recreation and Development Management Plan as part of the Proposed Project. In addition, implementation of Proposed Project components including the Vegetation and Invasive Weed Management Plan, Terrestrial Biological Management Plan, Recreation and Development Management Plan, Historic Properties Management Plan, and Erosion and Sediment Control Management Plan would ensure that recreation-related impacts of the Proposed Project remain less than significant"), 3-175 (dismissing potential impact of Project on public safety by creating roadway hazards because, "[w]ith implementation of the measures contained within the Road and Transportation Facilities Management Plan impacts related to increased hazards would not be significant"); DSEIR xi ("Impact-reducing measures undertaken in response to permit or license conditions. . . are not considered mitigation measures under CEQA but are treated as part of the Proposed Project"), 3-14 to 3-27 (listing and describing all of the plans identified by the USFS to be completed at a future date and treating those plans as Project components rather than mitigation measures), 4-31 (declaring the Project impacts less than significant due to the Vegetation and Invasive Weed Management Plan), 4-98 to 4-99 (declaring that the Project's recreation impact is less than significant with no mitigation based on future plan).</p>	<p>As explained in the Draft Order and in response to comment PGE-3, the key problem identified in <i>Lotus</i> was that the lead agency's failure to analyze the impacts of the project separately from mitigation measures resulted in the lead agency finding that the project's impacts would be <i>less than</i> significant, which subverted CEQA's informational purposes by precluding both identification of the environmental consequences of the project and thoughtful analysis of the sufficiency of measures to mitigate those consequences. (223 Cal.App.4th at p. 658.) The <i>Lotus</i> decision recognized that the distinction between project components and mitigation measures is not always clear, and that it may be "nonsensical" to analyze a project as if it involved different components than what was proposed. (223 Cal.App.4th at p. 656, fn.8.)</p> <p>It would be nonsensical to exclude mandatory requirements imposed by federal agencies from the Proposed Project for purposes of CEQA analysis. In addition, the informational gap criticized in <i>Lotus</i> is not present because the SEIR also includes analysis of the "No Project" alternative, which includes continued operation of the Hydroelectric Project <i>without</i> the environmental components. Comparison of the "No Project" alternative (which does not include environmental components) and the Proposed Project (which does include environmental components). Additionally, the SEIR incorporates FERC's EIS for the Project, which includes analysis of a "No Action" alternative that consisted of continued operation of the Hydroelectric Project without implementation of the environmental components. The SEIR thus provides information needed to compare the projected impacts of project operations without the environmental components and the projected impacts of project operations with the environmental components.</p> <p>Please also see response to comment WWT-NCRA-6.</p>

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		<p>Thus, despite its statements to the contrary, the Board improperly conflated its discussion of the Project’s impacts with its discussion of measures designed to minimize those impacts, preventing the public from understanding the scope and severity of those impacts first, as necessary to evaluate the efficacy of the proposed mitigation measures that the Board improperly presumed would reduce impacts to insignificance. DSEIR 3-14 to 3-27; IS/ND xxvi-xxcii. That the applicant included these measures as part of the Project does not excuse the Board from undertaking the required analysis. The distinction is not one of semantics, but instead of purpose and effect. <i>Lotus</i>, 223 Cal.App.4th at 655-656, 656 n. 8 (discussing the distinction between measures that are part of the project, such as paving mixes, from measures that are “plainly mitigation measures,” such as restorative planting). As noted above, in its Draft Order, the Board argued that <i>Lotus</i> is distinguishable because the plans here are Project components.</p> <p>Draft Order 20-21. But this is incorrect. As explained, by their design, these plans cannot be Project components. As noted, the Board is not bound by the applicant’s framing of the Project, nor is it bound by the applicant’s willingness to undertake mitigation measures. To the contrary, the Board has an independent duty under CEQA to review the Project and mitigate its impacts.</p> <p>The Board’s failure to fulfill its duty to do so in the DSEIR is fundamental error.</p> <p>“[T]his shortcutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decisionmaking and informed public participation. It precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences. The deficiency cannot be considered harmless.” <i>Lotus</i>, 223 Cal.App.4th 645, 658. Absent analysis of the significance of the Project’s impacts separate from the measures on which the Board relies to reduce impacts to less than significant levels, the Board lacks sufficient information to support its CEQA Findings of no significant impacts.</p> <p>The Board must re-frame these future plans as mitigation measures, and address them fully as such by providing all of the pertinent discussion and analysis CEQA requires.</p>	
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-11</p>	<p>CUMULATIVE IMPACTS</p> <p>As discussed above, the DSEIR admits that the “Proposed Project operations and routine reservoir drawdown and maintenance may adversely affect turbidity in the McCloud River.” DSEIR 4-49. It also admits that it is impossible to know the extent of the Project’s impacts without additional data. DSEIR 4-51 (“Without additional turbidity and flow data that include the combined turbidity inflow to McCloud Reservoir and the turbidity outflow below McCloud Dam it is not possible to determine the extent the current Hydroelectric Project is increasing turbidity releases above the Basin Plan standard and it is not possible to determine the overall effect of the Proposed Project on turbidity”).</p> <p>Based on those admissions, the DSEIR “conservatively concludes that the overall cumulative effect on turbidity is significant and adverse.” DSEIR 6-6. That conclusion is the only reasonable conclusion to draw if the Board proceeds with the Project despite the lack of important turbidity information. However, the DSEIR then abandons its conservative</p>	<p>A cumulative impacts analysis addresses the possibility that a project’s potential impacts can be individually less than significant, but cumulatively significant, and involves examining incremental project impacts in connection with effects of past projects, current projects, and probable future projects. A discussion of cumulative impacts may be less detailed than discussion of project-specific effects, and a project’s contribution to a significant cumulative impact can be deemed not cumulatively considerable if the contribution is adequately mitigated. (Cal. Code Regs., tit. 14, § 15130, subds. (a)(3), (b).)</p> <p>Sections 4.5.3.4 and 4.5.3.6 conclude that impacts related to the Proposed Project’s effects on settleable material and turbidity, respectively, will be less than significant with mitigation. Section 6.5.3.2 Impact Cumulative-2: Turbidity appropriately concludes that</p>

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		<p>assumptions, and declares that “[w]ith implementation of the mitigation measures, . . . the changes in turbidity resulting from the Proposed Project will not result in a cumulatively considerable contribution to the cumulative turbidity impact.” DSEIR 6-6. While the DSEIR can assume the worst in order to conservatively consider all potential impacts, it cannot assume the best in order to declare a project environmentally sound. Like the Board’s assumptions that turbidity impacts will be significant, if the Board wants to make any assumptions about mitigation measures, it must assume those measures will be insufficient. To assume otherwise risks the environment, imperiled species, and the TCL, on an unsupported assumption. Without clear evidence that is fully analyzed for informed public review, the DSEIR cannot indulge in the wishful (and unsupported) premise that the Project will have no significant and unavoidable turbidity impacts after mitigation.</p>	<p>although the overall cumulative effect on turbidity is significant and adverse and the Proposed Project would have cumulatively considerable contribution to the overall effect <i>without</i> mitigation, with implementation of mitigation measures WATER-1 and WATER-2 the Proposed Project will not result in a cumulatively considerable contribution to the cumulative turbidity impact.</p> <p>Please see response to WWT-NCRA-7.</p>
<p>Winnemem Wintu Tribe and NCRA</p>	<p>WWT-NCRA-12</p>	<p>OTHER VIOLATIONS</p> <p>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.” <i>San Francisco Baykeeper, Inc. v. State Lands Com.</i> (2018) 29 Cal.App.5th 562, 571. The Public Trust Doctrine mandates that “before state courts and agencies approve water diversions they . . . consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests.” <i>National Audubon Society v. Superior Court</i> (1983) 33 Cal.3d 419, 426.</p> <p>Agencies tasked with protecting public trust resources have affirmative statutory and constitutional “duties to take the trust into account and protect public trust uses whenever feasible,” based on a fair and fully informed balancing of the impacts of these alternatives on public trust resources. <i>San Francisco Baykeeper</i>, 29 Cal.App.5th at 571.</p> <p>As the Draft Order admits, PG&E’s McCloud Pit Hydroelectric Project is not a public trust use. Draft Order 22. Its construction caused significant declines in native fish populations and impedes the reintroduction of native salmonids, including the Chinook salmon that have recently been observed spawning in the river. Its operation diverts cold water flows needed by the McCloud River’s native fishery to the Pit River, harming both that fishery and public recreational use of the McCloud. This diversion introduces entrained fish, dead fish, and other pollutants into the warmer Pit River where the surviving displaced fish experience increased stress and mortality. The Public Trust Doctrine requires the Board to take affirmative action to protect the remaining – and reintroduced – fish populations in the McCloud River below and above McCloud Dam and other waters in the Project area. This obligation is especially critical while the Chinook salmon population undertakes its arduous reintroduction to and repopulation of the McCloud River.</p> <p>The DSEIR admits that “[c]urrent Forest Service 4(e) MIFs are suitable for rainbow and brown trout but may not meet the needs of reintroduced winter-run Chinook salmon, which require water temperatures below 12–13°C for successful spawning and incubation.” DSEIR 3-42. The Draft Order and SEIR acknowledge “winter-run Chinook salmon have now been returned to the McCloud River (as a nonessential experimental population under</p>	<p>In these proceedings the State Water Board has carefully considered and balanced competing uses of the McCloud River watershed, recognizing that fish and wildlife habitat are public trust uses to be protected to the extent feasible considering the public benefits of the Proposed Project. The State Water Board has determined that the Proposed Project will not impermissibly harm public trust resources or beneficial uses of the affected watersheds.</p> <p>There is clear disagreement among commenting parties regarding the potential impacts of the Proposed Project, the significance of salmon reintroduction efforts and what those potential impacts and efforts mean for the SWRCB’s authority under the Clean Water Act, CEQA, and the public trust doctrine. Available evidence shows that reintroduction efforts have in fact occurred—though a permanent reintroduction program has not yet been established—and that it is likely these efforts will continue during the term of the FERC license. Available information also shows that although the baseline environmental condition is impaired compared to historical natural conditions, largely because fish passage is currently blocked by Shasta and McCloud Dams, juvenile salmon are able to reach adulthood and spawn in the Lower McCloud River.</p> <p>The SWRCB’s determinations regarding the Proposed Project protect public trust resources in and beneficial uses of the affected watersheds by establishing mitigation measures and certification conditions that will result in near-term improvements to the baseline that will not inadvertently result in adverse impacts. They also provide for protection of public trust resources and beneficial uses throughout the anticipated 50-year term of the FERC license by requiring development of additional information regarding whether and how Proposed Project operations affect turbidity levels and management adapted to the needs of salmon that are currently present or may be reintroduced during the 50-year license term, particularly in the event that an authorized federal agency requires fish passage or related actions under section 18 of the Federal Power Act.</p>

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		<p>the federal ESA) and the success of egg incubation and rearing actions has been documented, as has the presence of adult salmon in the McCloud River.” Draft Order 16; DSEIR 4-10 to 4-11. Implementing a flow regime less than the increased flows recommended by NMFS and analyzed as Alternative 2 of the SEIR will harm salmonids, and therefore it violates the Public Trust Doctrine’s mandate that the Board “attempt, so far as feasible, to avoid or minimize any harm to [public trust] interests.” <i>National Audubon Society</i>, 33 Cal.3d at 426. It is also inconsistent with the longstanding policy and water quality standard and objective of this State as expressed in Fish and Game Code section 5937 that “[t]he owner of any dam shall allow sufficient water at all times to pass . . . over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.”</p> <p>While the DSEIR may assist the Board in complying with its duties under the Public Trust Doctrine, here the DSEIR actually shows that the proposed Project flows <i>violate</i> the Doctrine. Increased flows that protect the winter-run Chinook are required under the Public Trust Doctrine.</p> <p>Furthermore, the Project does not adequately protect all of 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 as compared with the existing flow regime (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. This is especially vital given the newly reintroduced salmonid population.</p> <p>The Basin Plan includes cold fresh-water habitat, 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. Therefore, the Board must incorporate, at a minimum, the flow regime recommended by NMFS and included in Alternative 2. The Salmon Flows identified therein would support the Board’s defined Beneficial Use of aquatic species reproduction as part of the WQC Conditions. Without these flows, the Board cannot “protect and enhance beneficial uses of California’s waters and achieve compliance with associated water quality objectives.” Draft WQC at 11.</p>	
Winnemem Wintu Tribe and NCRA	WWT-NCRA-13	<p>CONCLUSION</p> <p>For the reasons explained above, the DSEIR is deficient and must be remedied. The Board must prepare and circulate a new EIR that addresses and rectifies these CEQA violations. Then, and only then, should the Board approve the most environmentally sound alternative.</p>	Please see response to WWT-NCRA-4.