

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

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**ORDER WQ 2026-0019**

In the Matter of Petitions for Reconsideration of Water Quality Certification for the  
**PACIFIC GAS AND ELECTRIC COMPANY**  
**MCCLOUD-PIT HYDROELECTRIC PROJECT**  
**FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2106**

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SOURCES: McCloud River, Pit River, and Iron Canyon Creek

COUNTIES: Shasta and Siskiyou

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**ORDER GRANTING IN PART AND DENYING IN PART PETITIONS FOR**  
**RECONSIDERATION AND CERTIFYING A FINAL SUBSEQUENT**  
**ENVIRONMENTAL IMPACT REPORT**

**BY THE BOARD:**

**1.0 INTRODUCTION**

The Winnemem Wintu Tribe (Tribe) and North Coast Rivers Alliance (NCRA) petition the State Water Resources Control Board (State Water Board or Board) for reconsideration of the November 8, 2019 water quality certification (2019 certification) issued by the Executive Director of the State Water Board (Executive Director) associated with the Federal Energy Regulatory Commission's (FERC) relicensing of the McCloud-Pit Hydroelectric Project (McCloud-Pit Project; FERC Project No. 2106) and the final initial study and negative declaration (IS/ND) (issued by the Board pursuant to the California Environmental Quality Act (CEQA) for the 2019 certification). Pacific Gas and Electric Company (PG&E) separately petitioned the Board for reconsideration of the 2019 certification.

The State Water Board finds that portions of each petition for reconsideration have merit and thus incorporates changes to the 2019 certification as described below and shown in Attachment 1. (Cal. Code Regs., tit. 23, § 3869.)<sup>1</sup>

## **2.0 FACTUAL BACKGROUND**

### **2.1 Certification Proceedings**

PG&E owns and operates the McCloud-Pit Project, which is located on the McCloud and Pit Rivers and Iron Canyon Creek in Shasta and Siskiyou Counties. The McCloud-Pit Project commenced commercial operations in 1965. As further described in Attachment 1, the McCloud-Pit Project comprises three hydroelectric developments with an installed capacity of 368 megawatts.<sup>2</sup> The McCloud-Pit Project is undergoing relicensing before FERC, as the original FERC license for the McCloud-Pit Project expired on July 31, 2011. Since then, the McCloud-Pit Project has operated under annual licenses issued by FERC.

On July 16, 2009, PG&E applied to FERC for a new license for the McCloud-Pit Project. In addition to continued operations, PG&E's proposed relicensing includes revised flows, recreational facility construction/improvements, and new management plans/measures. FERC issued a draft environmental impact statement (EIS) to support

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<sup>1</sup> The State Water Board is directed to order or deny reconsideration on a petition within 90 days from the date on which the Board adopts the decision or order. (Wat. Code, § 13330, subd. (a).) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the Board is not divested of jurisdiction to act upon the petition simply because it failed to complete its review of the petition on time. (State Water Board Order WR 2009-00612 at p. 2, fn. 1; see *California Correctional Peace Officers Ass'n v. State Personnel Board* (1995) 10 Cal.4th 1133, 1147-1148, 1150-51; State Water Board Order WQ 98-05-UST at pp. 3-4.)

<sup>2</sup> McCloud-Pit Project facilities include two storage reservoirs (McCloud and Iron Canyon), two regulating reservoirs (Pit 6 and Pit 7), one afterbay (Pit 7), three powerhouses (James B. Black, Pit 6, and Pit 7), five dams (Pit 6, Pit 7, Pit 7 Afterbay, Iron Canyon, and McCloud), three recreation areas (Tarantula Gulch Boat Launch and Day Use Area, Deadlun Creek Campground, Hawkins Landing Campground and Boat Launch), two tunnels, and associated equipment and transmission facilities.

its decision regarding the McCloud-Pit Project relicensing in July 2010, and issued a final EIS in February 2011.

PG&E first applied to the State Water Board for a Clean Water Act section 401 water quality certification for McCloud-Pit Project relicensing (Proposed Project) on January 27, 2010. PG&E withdrew and resubmitted its water quality certification application on January 5, 2011, and thereafter annually submitted and withdrew several other water quality certification applications for the Proposed Project. PG&E filed the water quality certification application for the Proposed Project that resulted in the proceedings discussed in this order on November 9, 2018.

In compliance with CEQA, the State Water Board prepared an IS/ND for the Proposed Project to inform and support its decision regarding PG&E's certification application. On October 26, 2012, Board staff issued a notice of informal consultation<sup>3</sup> pursuant to CEQA Guidelines section 15063(g) (Cal. Code Regs., tit. 14, §§ 15000 et seq.). Several parties responded to the consultation notice, including the Tribe and NCRA, who responded by letter dated November 29, 2012. On May 2, 2012, the State Water Board released a draft IS/ND for public review and comment. Following the close of the public comment period, five comment letters were received, including comment letters from PG&E and the Tribe and NCRA. On November 8, 2019, the State Water Board, acting through its Executive Director issued a final IS/ND for the Proposed Project and the 2019 certification.

## **2.2 Petitions for Reconsideration and Interim Order**

On December 6, 2019, PG&E (separately) and the Tribe and NCRA (jointly) filed petitions for reconsideration (Petitions) with the State Water Board. Each Petition requests Project certification changes, and the Tribe and NCRA's Petition additionally challenges the CEQA analysis and process conducted for the Project 2019 certification.

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<sup>3</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/docs/mccloud\\_ferc2106/mccloud\\_not\\_consult.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/mccloud_ferc2106/mccloud_not_consult.pdf)

On December 30, 2020, in response to the Petitions, the State Water Board's Executive Director issued an order ([Order WQ 2020-0041-EXEC<sup>4</sup>](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2020/wqo2020_0041_exec.pdf)) directing staff to reinstate consultation with California Native American tribes affiliated with the geographic area of the McCloud-Pit Project to inform whether, and if so, what additional CEQA work may be necessary. The December 30, 2020, order states that the Petitions would remain pending at the State Water Board, with final action to be taken after the completion of consultation with interested tribes and any necessary supplemental CEQA review. The order further provides that prior to final action on the Petitions, the petitioning parties would be provided with an opportunity to modify or supplement their Petitions and interested parties would be provided with an opportunity to respond to the Petitions.

On March 6, 2026, the State Water Board notified the Tribe, NCRA, and PG&E of their opportunity to modify or supplement their Petitions. The Tribe and NCRA submitted a supplemental petition reaffirming items previously raised in their December 6, 2019, Petition.

PG&E's Petition requests: (1) deletion or modification of several conditions, which include Condition 1(B)(1) (Minimum Instream Flows and Ramping Rates, McCloud River Below McCloud Dam), Condition 1(B)(2) (Minimum Instream Flows and Ramping Rates, Iron Canyon Creek Below Iron Canyon Dam), Condition 3 (Water Quality Monitoring and Management), Condition 10 (Whitewater Recreation), Condition 12 (Reintroduction of Anadromous Fish), and global changes regarding plan submission deadlines; (2) identifies federal authorities it claims limit the scope of the State Water Board's certification authority; (3) states that the IS/ND did not sufficiently analyze up-ramping flows and whitewater recreation flows; and (4) identifies miscellaneous minor corrections and clarifications it asserts are needed to facilitate certification implementation.

The Tribe and NCRA's original petition claims the certification: (1) violates CEQA due to lack of consultation with the Tribe, erring in the use of an IS/ND, and insufficient environmental analysis; (2) violates California's public trust doctrine; and (3) is not

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<sup>4</sup> [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2020/wqo2020\\_0041\\_exec.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2020/wqo2020_0041_exec.pdf)

sufficiently protective of designated beneficial uses of the McCloud and Pit rivers, including cold freshwater habitat and cold water spawning habitat. The Tribe and NCRA's supplemental petition submitted on March 27, 2026, includes updates to the statements in the original Petition and reiterates objections to the 2019 certification. The original and supplemental petitions are collectively referred to herein as the "Tribe's Petition."

Additionally, on March 13, 2026, the State Water Board issued a [Notice of Opportunity to Respond to Petitions for Reconsideration of Water Quality Certification for McCloud-Pit Hydroelectric Project](#)<sup>5</sup> soliciting public input on the pending Petitions. Responses to the Petitions were submitted by the following parties:

- (1) The Tribe and NCRA (Tribe response)
- (2) California Trout, The Nature Conservancy, and the McCloud River Club (CalTrout response)
- (3) Nikcole Whipple, Save California Salmon (SCS response)
- (4) California Sportfishing Protection Alliance (CSPA response)
- (5) Travis Olexiewicz (Olexiewicz response)

The Tribe response opposes PG&E's Petition and joins in the CSPA response. More specifically, it disagrees with PG&E's arguments regarding Conditions 1(B)(1) and 12 of the 2019 certification.

The CalTrout response supports the Tribe's Petition and requests that the Board require additional evaluation of turbidity impacts and actions that would reduce these impacts.

The SCS response supports the Tribe's Petition, notes the impacts reservoirs can have related to invasive species and water quality and the importance of incorporating traditional ecological knowledge and protecting tribal beneficial uses, and states that consideration of dam removal should be part of the reconsideration.

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<sup>5</sup> [https://waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/docs/2026/mc-cloud-petitions-notice.pdf](https://waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/2026/mc-cloud-petitions-notice.pdf).

The CSPA response generally opposes PG&E's Petition and generally supports the Tribe's Petition. More specifically, the CSPA response urges the Board to reject PG&E's arguments regarding application of section 401 of the Clean Water Act and to analyze flows and other conditions to protect salmon in the McCloud River as well as flows proposed to support whitewater boating.

The Olexiewicz response urges the State Water Board to reconsider the certification based on concerns about "unresolved risks" including the historical impacts of mill and railroad operations in the watershed, lack of access to or availability of groundwater monitoring data, and groundwater-surface water connectivity.

On April 23, 2026, the Board issued a draft Order that included proposed redline revisions to the 2019 certification. The comment period concluded on May 19, 2026. Comment letters were received from: (1) PG&E; (2) the Tribe and NCRA; (3) American Whitewater and American Rivers; (4) CSPA; (5) California Trout; (6) SCS; and (7) 21 individual whitewater recreationists.

PG&E's comments assert that the Board waived its certification authority and violated the Administrative Procedure Act and PG&E's right to due process. Additionally, PG&E asserts that Conditions 3(B) (Reservoir Turbidity Monitoring and Management); 10 (Whitewater Recreation); and 12 (Reintroduction of Anadromous Fish Species) are either outside the Board's authority to require and/or are not supported by evidence in the record.

The Tribe and NCRA's comments reiterate previous comments that the 2019 certification flow requirements are insufficient for salmon habitat and protection of public trust resources and that the final order should require flows recommended by the National Marine Fisheries Service (NMFS) or return the system to natural flows. Additionally, the Tribe and NCRA request updates to Condition 3 to identify how often review, study, and monitoring will occur, and Condition 12 to include NCRA and CSPA as consulting parties and identify specific conditions that would trigger higher flows.

American Whitewater and American Rivers' comments propose updates to Condition 1(C) (Minimum Instream Flow Measurement and Dissemination) and its associated

rationale to increased public data availability. Additionally, American Whitewater requests updates to Condition 10 generally to require annual spring pulse flows to provide for increased ecological and recreational uses, a shorter deadline for development of the whitewater boating plan, and inclusion of American Whitewater in consultation requirements throughout Condition 10.

CSPA requests that the certification require higher flows to support salmon. Additionally, CSPA proposes flow compliance be determined by water temperature and that Condition 12 be updated to broaden triggers for flow evaluation. Finally, CSPA requested removal of Condition 14 (Extremely Dry Conditions).

CalTrout, The Nature Conservancy, and McCloud River Club's comments request updates to Condition 3(B) and that the ongoing California Environmental Flows Framework study of flows on the McCloud River be considered in Conditions 12 and 17.

SCS's comments express support for comments submitted by the Tribe, CalTrout, The Nature Conservancy, and McCloud River Club related to flows for salmon and turbidity monitoring. Additionally, SCS recommends ongoing consultation with the Tribe throughout Proposed Project implementation.

Twenty-one whitewater recreationists submitted comments reiterating some of the comments raised by American Whitewater that are primarily focused on annual spring pulse flows that would also serve as whitewater boating flows.

All comments were considered in the development of this order. Where warranted, updates were also made to the 2019 certification (Attachment 1 and Attachment 2).

### **2.3 Assembly Bill 52 Consultation and Subsequent Environmental Impact Report**

In compliance with the Executive Director's December 30, 2020, order, Board staff sent letters offering consultation pursuant to Assembly Bill 52 (AB 52) (Stats. 2014, ch. 52) to the Winnemem Wintu and Pit River Tribes on January 6, 2021. The Pit River Tribe did not respond while the Tribe requested consultation. The Tribe and State Water Board staff conducted approximately 30 consultation meetings over the period of March 2021

through May 2026. As part of the consultation, Board staff determined that preparation of a subsequent environmental impact report (SEIR) would be appropriate to analyze impacts to tribal cultural resources that were not known and could not have been known with the exercise of reasonable diligence during the original CEQA process. Board staff issued a [Notice of Preparation and Scoping Meetings](#)<sup>6</sup> for the SEIR on March 10, 2022. Board staff issued a [draft SEIR](#)<sup>7</sup> for the Proposed Project on April 7, 2026. The deadline for comments on the draft SEIR was May 22, 2026.

## **2.4 Salmonid Reintroduction**

Discussions and preliminary planning regarding reintroduction of salmonids above Shasta Dam have been occurring for many years. When the IS/ND was prepared and the 2019 certification issued, no salmon were present in the McCloud River and no firm plans for reintroduction were publicly available. In 2022 reintroduction efforts were initiated by NMFS, United States Fish and Wildlife Service, California Department of Fish and Wildlife (CDFW), and the Tribe, resulting in the successful incubation and hatching of eggs and rearing of juvenile winter-run Chinook salmon in the McCloud River. In 2023, NMFS designated a nonessential experimental population of winter-run Chinook salmon in McCloud River under section 10(j) of the federal Endangered Species Act (ESA).<sup>8</sup> As part of reintroduction efforts, juvenile salmon are captured in the McCloud River and released in the Sacramento River downstream of Keswick Dam, though it appears some juveniles have escaped capture and were able to reach adulthood and spawn in the Lower McCloud River as documented by CDFW in summer 2025. This egg incubation and juvenile rearing of winter-run Chinook salmon effort has annually continued since 2022 and is ongoing; though funding sources supporting the

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<sup>6</sup> [https://waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/docs/2022/mccloud-pit-nop.pdf](https://waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/2022/mccloud-pit-nop.pdf)

<sup>7</sup> [https://waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/docs/2026/mccloud-dseir.pdf](https://waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/2026/mccloud-dseir.pdf)

<sup>8</sup> Under the ESA, a nonessential experimental population is a population of a species authorized for release outside of the current range of the species and determined not to be essential to the continued existence of the species.” (16 USC § 1539, subd. (j)(2).)

effort may shift and the extent to which existing efforts may be modified or augmented in the future are not entirely clear.

### **3.0 LEGAL BACKGROUND**

#### **3.1 Federal Power Act (16 USC §§ 791 et seq.)**

The Federal Power Act (FPA) establishes the federal government as the paramount regulator of most hydroelectric production in the United States and establishes procedures and requirements for the issuance of termed licenses for hydroelectric projects. FERC has approval and oversight authority for these licenses, but the FPA provides for other agencies to set license conditions or provide input regarding licensing determinations. Section 4(e) of the FPA requires that licenses for projects within federal reservations (such as National Forests) include conditions determined to be necessary by the federal agency that manages the reservation. Section 10(j) of the FPA establishes a process for consideration of hydroelectric license conditions based on recommendations from federal or state fish and wildlife agencies regarding the protection or enhancement of fish and wildlife resources. Section 18 of the FPA provides that licensees must construct, operate, and maintain fishways prescribed by the secretaries of the Department of Commerce and the Department of the Interior.

#### **3.2 Clean Water Act Section 401 (33 U.S.C. § 1341)**

The Clean Water Act recognizes and maintains states as the primary authority over water quality within their boundaries. (33 U.S.C. § 1251 (b).) Section 401 of the Clean Water Act creates an exception to the FPA's preemption of state authority to regulate privately owned single-purpose hydroelectric projects. It requires every applicant for a federal license or permit that may result in a discharge to waters of the United States to obtain certification from the appropriate state agency that the project will comply with Clean Water Act requirements including water quality standards adopted by the state in accordance with the Clean Water Act. The state may issue a certification subject to conditions that the state determines to be necessary to comply with those Clean Water Act requirements or any water quality-related state law requirements. If the state denies certification the federal licensing or permitting agency cannot issue the license or

permit. If the state issues certification with conditions those become conditions of the federal license or permit.

The State Water Board is responsible for issuing certifications in California. Certifying state agencies have one year to take action on complete certification applications: failure to take action within one year can result in FERC determining that the state agency waived its certification authority with respect to the respective FERC proceeding.<sup>9</sup>

### 3.3 CEQA

CEQA requires that a public agency analyze and identify mitigation measures to reduce or avoid significant environmental impacts that would result from an activity that requires a discretionary approval by the public agency. The State Water Board's issuance of a certification is a discretionary action that requires analysis under CEQA. CEQA serves an important informational purpose that helps decisionmakers and members of the

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<sup>9</sup> PG&E has asserted in these proceedings that the Board has waived its certification authority with respect to the McCloud-Pit Project. PG&E's argument relies on outdated law and ignores more recent precedent. For example, PG&E argues that "the facts here are virtually indistinguishable from those in FERC's order granting waiver in *Merced Irrigation Dist.* [171 FERC ¶ 61240]." That FERC decision, along with FERC's decisions finding waiver in *Yuba County Water Agency* (171 FERC ¶ 61139) and *Nevada Irrigation District* (171 FERC ¶ 61029) was vacated by the Ninth Circuit Court of Appeals in the case *California State Water Resources Control Board v. FERC* (9th Cir. 2022) 43 F.4th 920. *Hoopa Valley Tribe v. FERC* (D.C. Cir. 2019) 913 F.3d 1099 is a narrow decision, and both the Fourth Circuit Court of Appeals and the D.C. Circuit Court of Appeals have also criticized FERC's reliance on it to find waiver of state water quality certification authority. (*Village of Morrisville, Vermont v. FERC* (D.C. Cir. 2025) 136 F.4th 1117; *North Carolina Department of Environmental Quality v. FERC* (4th Cir. 2021) 3 F.4th 655.) The November 8, 2019 certification was issued within one year of PG&E's November 9, 2018 application, and FERC has not granted PG&E's February 5, 2021 request that FERC find that the Board has waived its authority in this case. PG&E also errs in its other arguments regarding process. For example, contrary to PG&E's assertion, the Board's failure to act on a petition within 90 days as directed by Water Code section 1122 (which is not applicable to water quality certifications, but Water Code section 13330, subdivision (a) includes a similar directive that is applicable) does not deprive a petitioner of due process but instead, as explained in Footnote 1 of the draft Order and herein, opens the door for the petitioner to seek judicial review without divesting the Board of jurisdiction to act on the petition.

public understand the environmental consequences of projects, even when those consequences cannot feasibly be avoided. CEQA analysis is focused on the effects of changes to the environment: CEQA defines “project” to mean an activity that may cause a direct or reasonably foreseeable indirect physical change in the environment, and defines “significant effect on the environment” to mean a substantial or potentially substantial adverse change in the environment. In this respect the CEQA analysis is narrower than the State Water Board’s water quality certification, which may address ongoing impacts of project operations, not just adverse changes from existing conditions.

In addition to identifying measures to mitigate a project’s significant effects, environmental impact reports (EIRs) must consider a reasonable range of alternatives to the project under review, including a “no project” alternative. When the project involves a revision of an ongoing operation, CEQA Guidelines provide that the “no project” alternative is the continuation of the existing operation.

The FPA does not preempt CEQA analysis of hydroelectric projects or the use of CEQA analysis to inform the State Water Board’s action on certification applications. The FPA’s preemptive effect does, however, limit what the State Water Board can require of applicants through the CEQA process. Under its water quality certification authority the Board can only deny or condition certification based on water quality-related concerns. Hence, the State Water Board can require an applicant to implement mitigation measures identified in the CEQA review process only where those mitigation measures are water quality-related.<sup>10</sup>

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<sup>10</sup> Relying on *County of Butte* (2022) 13 Cal.5th 612, the Tribe and NCRA argue that the Board’s authority to require mitigation measures pursuant to CEQA in the context of section 401 water quality certifications is only limited when the measures directly conflict with the terms of FERC’s license. This argument extends the *County of Butte* decision beyond its scope. The majority opinion in *County of Butte* distinguished between “state regulation of private parties” and “the state’s prerogative to govern the work of its own agency.” (13 Cal.5th 612 at pp. 630-631, 634-635.) This proceeding involves the former. *County of Butte* involved the latter.

### **3.4 Reconsideration**

An interested person may petition the State Water Board for reconsideration of the Executive Director's action or failure to act in connection with a certification request. (Cal. Code Regs., tit. 23, § 3867.) Following a petition, the State Water Board may:

- (1) refuse to reconsider the action or failure to act if the petition fails to raise substantial issues that are appropriate for reconsideration;
- (2) deny the petition upon a finding that the original action or failure to act was appropriate and proper;
- (3) set aside or modify, if possible, the previous action or take new appropriate action; or
- (4) direct the executive director to take appropriate action.

(Cal. Code Regs., tit. 23, § 3869, subd. (a).)

## **4.0 DISCUSSION**

### **4.1 Certification Condition 1(B)(1) – Minimum Instream Flows and Ramping Rates**

#### **4.1.1 Issues raised by the Petitions and State Water Board response.**

Condition 1(B)(1) sets requirements for minimum instream flows (MIFs) and ramping rates for flows in the McCloud River below McCloud Dam based on water year types (defined in Condition 1(A)). Condition 1(B)(1) requires PG&E to implement MIFs no later than 30 days following completion of facility modifications required by Condition 2 and install a new gage at McCloud Dam.

The Tribe's Petition states that MIFs required by the certification are insufficient for salmon habitat and therefore are not high enough to protect tribal water rights or protect the cold freshwater habitat and cold spawning habitat beneficial uses.

PG&E's comments and requests regarding Condition 1(B)(1) include the following:

- (1) PG&E states that the MIF table in the certification does not account for monthly Bulletin 120 updates that inform water year type between months, which could result in inconsistencies between the United States Forest Service (Forest Service) requirements imposed under section 4(e) of the Federal Power Act (4(e) requirements)<sup>11</sup> and the certification's requirements.
- (2) PG&E states that the up-ramping flow requirement would not be feasible based on its modeling and would potentially result in conflict with Forest Service 4(e) requirements. PG&E requests that Condition 1(B)(1) be updated to remove this requirement.
- (3) PG&E states that the requirement to implement MIFs within 30 days of completing facility modifications could be interpreted to require PG&E to meet MIFs by releasing water through the McCloud Dam spillway, which could violate safety requirements. PG&E requests that Condition 1(B)(1) be modified to require a good faith effort to meet MIFs.
- (4) PG&E states that the purpose of the installation of the new gage is to replace the existing MC-7 gage. PG&E requests that Condition 1(B)(1) be updated to reflect this.
- (5) PG&E requests that ramping rate requirements for controllable operational spills be changed since the current wording could require activities that would not be feasible. Additionally, PG&E requests changes that provide details of how ramping will be performed during low-level outlet testing. Alternatively, PG&E suggests removing the ramping rate requirements for controllable operational spills altogether.

This order agrees with PG&E's first, fourth, and fifth comments regarding Condition 1(B)(1) and changes the certification to ensure the MIF requirements are consistent with the Forest Service 4(e) requirements, note that the new gage will replace gage MC-7 for MIF compliance once it has been constructed and appropriately rated for that purpose,

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<sup>11</sup> The Forest Service issued the final 4(e) requirements for the McCloud-Pit Project on November 29, 2010.

and to include language regarding ramping rate requirements and provide additional details regarding how ramping will be performed.

Regarding PG&E's second comment, Condition 1(B)(1) requires up-ramping prior to uncontrolled spill events to the extent feasible. Over the term of the Project's anticipated 50-year FERC license, model predictions may advance to a point that spill events can be predicted. "To the extent feasible" gives PG&E the flexibility to implement this requirement when the ability to predict high inflows has been better developed, which will allow flows to more closely mimic natural flow increases. Further, while this requirement is different from the Forest Service ramping requirement, it does not create a conflict as the Forest Service 4(e) requirements do not prohibit PG&E from up-ramping before spills. Condition 1(B)(1) remains in place and additional explanation regarding these points is included in the supporting rationale section of the certification.

Regarding PG&E's third comment, Condition 1(B)(1) is updated to clarify that the condition does not require PG&E to meet MIFs through spillway releases or to otherwise violate safety requirements, but does require PG&E to meet the MIFs to the fullest extent possible using capabilities of the existing McCloud-Pit Project MIF facilities in advance of infrastructure changes that will allow PG&E to consistently meet the new MIFs requirements in the certification.

Condition 1(B)(1) is changed as described above and shown in the attached amended certification. Responses to comments and requests regarding requirements for salmon and salmon habitat, including those raised by the Tribe's Petition, are discussed below in Section 4.5.

#### **4.2 Certification Condition 1(B)(2) – Minimum Instream Flows and Ramping Rates, Iron Canyon Creek Below Iron Canyon Dam**

Condition 1(B)(2) establishes MIFs for Iron Canyon Creek below Iron Canyon Dam based on water year types, requires ramping rates for valve testing, and limits valve testing to March of each year.

PG&E's Petition states that limiting valve testing to March could prevent PG&E from timing valve testing with natural high flow events, and could prevent PG&E from performing annual testing (e.g., landslides could block access to the valve during March in wet years).

To ensure annual valve testing can occur even if circumstances do not permit it to be performed in March, Condition 1(B)(2) is updated to allow valve testing to occur after March 31 if approved by the Deputy Director or if mandated by dam safety agencies. Deputy Director approval is required for evaluation of whether such testing will unreasonably impact beneficial uses (e.g., impact foothill yellow-legged frog breeding).

#### **4.3 Certification Condition 3 – Water Quality Monitoring and Management**

Condition 3 requires PG&E to develop a Water Quality Monitoring and Management Plan to ensure the McCloud-Pit Project complies with basin plan water quality objectives and specifically requires water temperature, dissolved oxygen, turbidity, and bacteria monitoring. The specific requirements of Condition 3 include a requirement for bacterial monitoring in all Project reservoirs during the recreation season and monitoring of "other potential contaminants (e.g., quagga mussels, etc.)" at key recreation locations. PG&E's Petition states that the monitoring requirement of Condition 3 is too open-ended and could require monitoring not actually related to the activity covered by the plan. PG&E requests that Condition 3 be updated to require monitoring of "appropriate" parameters. PG&E also notes that "other potential contaminants" is too broad a term, and since the only example given of "other potential contaminants" is quagga mussels the implication is that the intent of that requirement to monitor for invasive species. PG&E requests that Condition 3 be updated to require monitoring for recreation-related aquatic invasive species (e.g., quagga mussels) at key recreation locations.

Condition 3 is updated to clarify that PG&E is only required to monitor for parameters relevant to the activity in question and to replace the requirement to monitor for "other potential contaminants (e.g., quagga mussels, etc.)" with a requirement to monitor for recreation-related aquatic invasive species (e.g. quagga mussels) at key recreation locations.

The requirement of Condition 3(B) for development of a Turbidity Plan that establishes turbidity and sediment monitoring protocols and identifies appropriate management actions, if applicable, to address McCloud Reservoir sedimentation and the Project's impact to downstream turbidity is necessary to ensure the Project is operated in a manner that is protective of water quality for the duration of the Project's FERC license.

#### **4.4 Certification Condition 10 – Whitewater Recreation**

Condition 10 requires PG&E to develop a Whitewater Recreation Management Plan (Whitewater Plan) to establish whitewater recreation flows, monitor whitewater boating use, and facilitate whitewater boating opportunities.

PG&E's Petition states that the State Water Board does not have the authority to require recreation flows or recreation access improvements because they are not related to water quality, and notes that the two existing access routes for whitewater boating are located outside of the FERC Project boundary and not managed by PG&E.

The water quality control plans adopted by the State Water Board or Regional Water Quality Control Boards (collectively Water Boards) designate the beneficial uses of water to be protected, water quality objectives established for the reasonable protection of those beneficial uses or the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Id., § 13241, § 13050, subds. (h), (j).) The beneficial uses together with the water quality objectives that are contained in the water quality control plans and state and federal anti-degradation requirements constitute California's water quality standards.

The *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basins* (Basin Plan) is the applicable water quality control plan for the McCloud River. The beneficial uses identified by the Basin Plan for the McCloud River related to recreation include contact recreation, canoeing and rafting (potential), and other noncontact recreation.

As explained in the rationale for Condition 10, the McCloud River's natural hydrograph provided for boating opportunities that were reduced by operation of the McCloud-Pit

Project and the resultant smoothing of flows below McCloud Dam. While PG&E proposed a boating recreation flow of 300 cfs over 11 days in its license application for the Proposed Project, a flow of 300 cfs only provides for boating-based access to the river for fishing or camping, not whitewater boating. (Nevares, Whittaker, and Shelby 2009.)<sup>12</sup> Condition 10 supports the State Water Board's certification that the Project will be operated in a manner that is protective of designated beneficial uses of the McCloud River and therefore is protective of water quality standards as required by Clean Water Act section 401.

In addition, Condition 10 does not require PG&E to take action on property to which it has no right of access. It requires PG&E to develop and implement a Whitewater Plan that includes, among other components, identification of measures PG&E will take to facilitate whitewater boating opportunities. Improving access to put-ins and take-outs is one example of measures that can facilitate whitewater boating opportunities but is not a mandatory component of the Whitewater Plan. As PG&E works with the consulting parties to develop the Whitewater Plan it will be able to propose appropriate approaches for facilitating whitewater boating opportunities. Condition 10 has been revised to: (1) include whitewater boater monitoring to determine whether changes to the Whitewater Recreation Management Plan are necessary based on boater usage, (2) shorten the time for plan development from three years to two years, and (3) include American Whitewater as a consulting party throughout Condition 10.

The State Water Board's certification authority includes the authority to set conditions requiring actions outside the FERC project boundaries. A contrary conclusion would preclude requirements for offsite mitigation, a limitation that would require denial of certification for a project that fails to meet water quality requirements without mitigation even if those water quality requirements would be satisfied by implementing offsite mitigation. PG&E contends that FERC cannot enforce conditions of certification that apply outside project boundaries, that conditions of certification are enforceable only by the federal licensing or permitting agency, and that therefore issuance of certification

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<sup>12</sup> 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.

conditions FERC cannot enforce is unauthorized. It is unnecessary for purposes of this order to determine whether FERC would be precluded from setting conditions, independent of water quality certification requirements, that apply outside of project boundaries. Nor is it necessary to address whether FERC would be precluded from enforcing conditions of certification that apply outside project boundaries—even though the conditions of certification are conditions of the FERC license. (See *Eugene Water & Elec. Bd.* (2019) 169 FERC ¶ 61124 at pp. 3-4 (recognizing that FERC is required to include the state’s conditions of certification as conditions of the FERC license, but nevertheless contending the conditions are unenforceable).) PG&E’s premise that conditions of certification can only be enforced by the federal permitting and licensing agency is erroneous. Conditions of certification can be enforced through a Clean Water Act citizen suit. (See 33 U.S.C. § 1365(a)(1)&(f); *Oregon Natural Desert Association v. Dombek* (9th Cir. 1998) 172 F.3d 1092, cert. denied (1999) 528 U.S. 964.) A state may bring a citizen suit. (See *U.S. Dept. of Energy v. Ohio* (1992) 503 U.S. 607, 613 fn. 5 & 616.) More importantly, and consistent with the cooperative federalism embodied in the Clean Water Act, states enforce Clean Water Act requirements through their own state law enforcement statutes, not through enforcement by federal agencies or through a delegation from those federal agencies. (See 40 C.F.R. § 123.23; Wat. Code, § 13370 et seq.)

The requirements of Condition 10 are appropriate. As discussed below in Section 4.6.1, however, the draft SEIR includes analysis of potential whitewater recreation flows impacts and includes a mitigation measure (Mitigation Measure BIO-1) that will ensure implementation of the analyzed flow regime will not result in significant impacts to aquatic resources. Condition 10 is updated to include the requirements of Mitigation Measure BIO-1.

#### **4.5 Certification Condition 12 – Reintroduction of Anadromous Fish**

Condition 12 provides that the State Water Board may change or add conditions or require PG&E to conduct studies when it appears that a reintroduction plan for anadromous fish species in the McCloud-Pit Project area will be implemented within the next 18 months.

PG&E's Petition states that salmon are not present in the McCloud River, salmon cannot reach the McCloud River due to Shasta Dam, and that there are no reintroduction plans that warrant inclusion of Condition 12. PG&E requests that Condition 12 be removed from the certification.

As noted above, the Tribe's Petition states that the MIFs required by the certification are insufficient for salmon habitat and therefore are not high enough to protect tribal water rights or protect the cold freshwater habitat and cold spawning habitat beneficial uses. In addition, the Tribe's response to PG&E's Petition states that Condition 12 is appropriate, and notes that PG&E's statements regarding the absence of salmon in the McCloud River are no longer correct. Several other responses to the Petitions, including the CSPA response, the SCS response, and the CalTrout response also note the importance of salmon to the McCloud River watershed.

As described above in Section 2.4, at the time the 2019 certification was issued salmon reintroduction in the McCloud River may not have been reasonably foreseeable. While numerous discussions among various parties and several preliminary studies and planning efforts had been conducted, in 2019 there was considerable uncertainty regarding when and how salmonid reintroduction would occur—for example, there was no available information regarding the egg incubation and rearing action that ultimately began in the summer of 2022. With the continuation of planning efforts, and the significant interest of various groups in supporting reintroduction, there is a strong potential for salmon reintroduction within the anticipated 50-year FERC license for the McCloud-Pit Project. And the general decline of salmon populations in California underscores the need. Condition 12 is necessary and appropriate to ensure the Project is operated in a manner that is protective of water quality for the duration of the Project's FERC license.

In addition, while a permanent reintroduction program has not been established, winter-run Chinook salmon have now been returned to the McCloud River (as a nonessential experimental population under 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.

Condition 12 is updated to provide for adaptive management to address the Proposed Project impacts to salmon eggs and juveniles in the McCloud River associated with more recent reintroduction activities. Condition 12 requires PG&E to work with the Board and fisheries agencies to evaluate existing information related to McCloud River salmon reintroduction and determine if additional studies or actions (e.g., gravel augmentation, etc.) are needed in the near-term to support the existing nonessential experimental population and related reintroduction effort, while providing for updates to flows or other actions if reintroduction efforts progress during the term of the new FERC license. These changes accord with section 401 of the Clean Water Act, which anticipates that certifications will not only set limits on operations but will also establish monitoring requirements in accordance with section 401. (33 U.S.C. § 1341(d).)

In light of the experimental status and existing uncertainty related to the form and timing of future reintroduction efforts, staff do not recommend updating the certification with the higher flows recommended by NMFS at this time. However, Condition 12 is updated to provide for revisions to flows during the term of the new FERC license if appropriate, for example in the event an authorized federal agency requires fish passage or other actions during the license term. The SEIR provides analysis of the salmon flows identified by NMFS that can be relied upon or updated, as necessary, to support future changes of flow requirements if appropriate.

## **4.6 CEQA Analysis**

### **4.6.1 Up-ramping and whitewater boating flows have been analyzed in the CEQA documents.**

PG&E states that the State Water Board should have analyzed the following certification conditions in the IS/ND:

- (1) up-ramping flows prior to uncontrolled spill events; and
- (2) whitewater recreation flows.

Ramping rates, including ramping for uncontrolled spill events, were analyzed in Section 3.2.4 (Biological Resources) of the IS/ND. The draft SEIR includes an analysis

of recreation flows in Section 4.4 (Biological Resources) and Section 5.4 (Alternative 1 – Whitewater Boater Flows), and identifies Mitigation Measure BIO-1 as an appropriate measure to ensure that recreation flows do not cause significant impacts to aquatic resources. Responses to PG&E’s other comments regarding up-ramping requirements are provided above in Sections 4.1 and 4.2.

4.6.2 The Board complied with the CEQA guidelines section 15063 consultation requirements that applied to its original CEQA process and offered AB 52 consultation in response to the Tribe’s Petition.

The Tribe’s Petition states that the IS/ND violated CEQA because the State Water Board did not conduct AB 52 consultation in connection with preparation of the IS/ND.

The Board provided informal consultation consistent with the consultation requirement in effect in 2012. (Cal. Code Regs., tit. 14, § 15063.) AB 52 did not take effect until 2015, after the section 15063 consultation process had been completed. As stated in Order WQ 2020-0041-EXEC, the consultation offered to tribes and other interested parties by the State Water Board during the prior CEQA process was appropriate.

In light of the State Water Board’s commitment to improving communication and relationships with California’s Native American tribes and recognition of the value consultation can provide regarding unique tribal interests, Order WQ 2020-0041-EXEC directed staff to reinitiate consultation with the tribes affiliated with the Proposed Project area. There have been numerous AB 52 consultation meetings between the Board and the Tribe, and the Board appreciates the Tribe’s knowledge-sharing and effort throughout this process. As noted below, the consultation process resulted in the development of new information that was not known and could not have been known prior to the issuance of the IS/ND and is now included in the draft SEIR. Even after the conclusion of AB 52 consultation between the Tribe and the State Water Board under Public Resources Code section 21080.3.2, subdivision (b), the State Water Board welcomes future dialogue with the Tribe on this matter and other items in the future and notes that the certification includes numerous conditions that provide for consultation with the Tribe, agencies, and interested parties.

4.6.3 The original preparation of the IS/ND and later development of the SEIR were appropriate.

The Tribe's Petition asserts that preparing an IS/ND instead of an EIR for the Proposed Project violated CEQA, and that an EIR was required.

The IS/ND was based on the information that could be developed with the exercise of reasonable diligence within the time period provided for the State Water Board to respond to PG&E's McCloud-Pit Project certification application.<sup>13</sup> An impasse between Tribe and PG&E regarding confidentiality concerns for tribal cultural resources that are within the Tribe's unique knowledge had prevented the development of information that would have allowed for a robust analysis of the Tribe's tribal cultural resources. It was not until approximately one year of consultation meetings (which was outside the time provided for the State Water Board to respond to the November 9, 2018, certification application without risking waiver of its authority) that the Tribe and State Water Board identified a viable path to compiling and documenting information that could inform such an analysis. New information developed as part of the Tribe's consultation with the State Water Board informed the determination to prepare an SEIR under section 15162(a)(3) of the CEQA Guidelines. The SEIR enhances understanding of the Proposed Project's impacts by addressing new information that became available during the course of the consultation and preparation of the draft SEIR, including the *Winnemem Wintu Tribe Traditional Cultural Landscape Tribal Cultural Resource Memorandum and Analysis In Support of California Register of Historical Resources Evaluation McCloud-Pit River Hydroelectric Project Relicensing* (FERC Project No. 2106) (WWT, Davis-King and West 2025) (WWT TCL Memo), information regarding

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<sup>13</sup> In January 2019, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Hoopa Valley Tribe v. FERC* (2019) 913 F.3d 1099, which affirmed that "Section 401 requires state action within a reasonable period of time, not to exceed one year," and cast doubt on the ability of states to avoid waiving their certification authority by allowing applicants to resubmit their applications when certification is not issued within one year of an application. Later precedents adopt a narrow reading of *Hoopa Valley Tribe v. FERC* and find no basis for waiver where, as here, the state merely acquiesces in applicant's decisions to withdraw and resubmit its request for certification. (*California State Water Resources Control Board v. Federal Energy Regulatory Commission* (9th Cir. 2022) 43 F.4th 920.)

salmon reintroduction efforts that began in 2022, and information regarding turbidity developed by The Nature Conservancy in 2022 and 2023.

The administrative petition for reconsideration process has thus resulted in development of the SEIR that discusses matters of interest to the Tribe, including a determination by the State Water Board that the WWT Traditional Cultural Landscape is itself a tribal cultural resource as defined by Public Resources Code section 21074, and also provided an opportunity to include the components identified by PG&E as noted in Section 4.6.1 above.

#### 4.6.4 The environmental review meets CEQA's requirement to provide information regarding the effects of a project.

The Tribe's Petition contends that the IS/ND violated principles expressed in the case of *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645 (*Lotus*) because it treated certain environmentally protective elements of the Proposed Project as project components instead of mitigation measures. The key problem identified in *Lotus* was that incorrect framing of project components and mitigation measures prevents the public from understanding the impacts the project would have in the absence of mitigation measures. (223 Cal.App.4th at p. 658.) The *Lotus* 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.)

It would be nonsensical to analyze a version of the Proposed Project that PG&E has not proposed and that could not be implemented in light of the requirements imposed by various federal agencies through the FERC process under the FPA. Moreover, even if the environmental components were deemed mitigation measures, the IS/ND did not deny the public of the information necessary to understand the effects of continuing operation of the McCloud Pit Project without the additional components included with the Proposed Project: it incorporated the FERC EIS by reference, and the EIS included analysis of a "No-Action Alternative" that consisted of continued operation of the McCloud-Pit Project without implementation of the new environmental protection, mitigation, or enhancement measures.

In addition, EIRs include analysis of alternatives to a proposed project, including a “no project” alternative. Because in this case the Proposed Project involves revision of ongoing project operations, the “no project” alternative analyzed in the SEIR is the continued operation of the McCloud-Pit Project without the new components proposed by PG&E or required through the FERC process. (Cal. Code Regs., tit. 14, § 15126.6, subd. (e)(3)(A).) Even if the new components were deemed mitigation measures, the SEIR provides the information needed to compare the projected impacts of project operations without those new components and the projected impacts of project operations with those new components. The informational gap criticized in *Lotus* is not present in the CEQA analysis for the Proposed Project.

#### **4.7 Tribal Water Rights**

Relying on the decision *Baley v. United States* (2019) 942 F.3d 1312, the Tribe’s Petition contends that the conditions of certification must provide the flows necessary to restore salmonids and other native fishes that are vital to the Tribe.

The tribal water rights at issue in *Baley* were federal reserved rights, which are a specific category of water rights that arise when the federal government withdraws land from the public domain and reserves it for a federal purpose. (E.g., 942 F.3d 1312, 1328 (“[T]urning to the issue of tribal water rights, the Court of Federal Claims determined those rights to be federal reserved rights.”), 1340 (“[T]here is no need for a state adjudication to occur before federal reserved rights are recognized.”).) It is the policy and practice of the State Water Board that federally reserved rights be respected in full.

The Tribe has not asked the State Water Board to determine whether the Tribe holds federal reserved water rights or identified a federal reservation or statute providing a basis for federal reserved rights, but the State Water Board’s water quality authority is not limited to protection of water rights. (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 116 [In its *water quality* role of setting the level of water quality protection, the Board’s task is not to protect water rights, but to protect “beneficial uses.”] (italics original).) The State Water Board may set conditions of water quality certification to protect tribal beneficial uses. The State Water Board may also consider tribal beneficial uses in determining what constitutes a reasonable level of

protection for other beneficial uses, including cold freshwater habitat and cold water spawning habitat.

Condition 12 of the certification is updated to require PG&E to consult with the Winnemem Wintu Tribe, Pit River Tribe, and federal and state agencies to develop studies related to Chinook salmon that include consideration of Project operations, flow releases, water quality, and aquatic habitat impacts and to develop appropriate adaptive management measures to address McCloud-Pit Project impacts based on study results. As updated, Condition 12 also includes provisions for adaptive management if any authorized federal agency requires fish passage or related actions pursuant to Section 18 of the FPA. The updates to Condition 12 provide for tribal knowledge to be incorporated into the development of plans that can be closely tailored to the needs of salmon and refined as salmon populations in the McCloud River may change in the future.

#### **4.8 The State Water Board Has Satisfied its Duty Under the Public Trust Doctrine**

The Tribe's Petition states that the State Water Board violated the public trust doctrine because the McCloud-Pit Project has harmed public trust resources and the Board did not require measures that would correct those harms.

The public trust doctrine requires the state to "take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible, but it does not prohibit the state from approving uses of trust property even if harm to public trust uses is the foreseeable result. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446 (*National Audubon*)).) The public trust doctrine's requirement to protect public trust resources "to the extent feasible" does not broadly mandate that watersheds be returned to natural conditions: the public trust doctrine requires balancing of competing uses. (*National Audubon*, 33 Cal.3d at p. 446 ["it would be disingenuous to hold that [longstanding appropriations of water] are and have always been improper to the extent that they harm public trust use"]; *Center for Biological Diversity v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1369 ["A delicate balancing of the conflicting demands for energy and for the protection of other

environmental values must be made. '[T]he public trust permits—indeed requires—the balancing of competing uses.']( citation omitted).)

The State Water Board recognizes that the public trust in water resources is an appropriate requirement of state law applicable to water quality certification, and has not taken the position that hydropower is a competing public trust use. (See generally *San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242 Cal.App.4th 202, 232-238. [rejecting argument that sand mining is a public trust use and that therefore there was no need consider whether sand mining violated the public trust].) Instead, 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, as conditioned through the certification, the Proposed Project will not impermissibly harm public trust resources. The State Water Board's consideration of public trust resources and determinations regarding the Proposed Project satisfy its obligations under the public trust doctrine.

The McCloud-Pit Project involves a primarily non-consumptive use of water to generate renewable energy relied upon by thousands of Californians under the regulation of the California Public Utilities Commission, as well as providing recreational activities on and along the McCloud River and McCloud Reservoir.<sup>14</sup> The ongoing operation of the McCloud-Pit Project has not prevented the success of nonessential experimental population reintroduction efforts, and the conditions of the Lower McCloud River remain suitable for winter-run Chinook salmon to reach adulthood and spawn. (CDFW 2025.)

The certification imposes new requirements on the Proposed Project to ensure the protection of public trust resources. It requires the preparation and implementation of numerous environmental management plans, including a Water Quality Monitoring and Management Plan, Large Woody Material Management Plan, Gravel Augmentation Plan, Biological Resources Monitoring Plan, and Recreation Facilities Management Plan. The conditions provide the State Water Board with a continued oversight role

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<sup>14</sup> There will be approximately 6,300 gallons (0.02 acre-feet) of consumptive use after new wells are installed at McCloud-Pit Project recreation sites.

regarding the development and approval of the details of how public trust resources will be protected and enhanced. In addition, the draft SEIR addresses new information that has become available and new developments that have occurred since the IS/ND and certification were issued in 2019, such as the preparation of the WWT TCL Memo, initiation of reintroduction efforts in 2022, and the development of new information regarding existing project operations on turbidity in the lower McCloud River developed by The Nature Conservancy in 2022 and 2023. The SEIR uses 2024 as the baseline year to best reflect the potential impacts of the Proposed Project on existing environmental conditions and includes mitigation measures that will inform whether, and if so what, additional actions are necessary to ensure the Proposed Project's contribution to turbidity impacts. Those mitigation measures are reflected in Condition 3(B) as shown in Attachment 1.

The SEIR analyzes impacts of the Proposed Project on aquatic resources including salmon and includes an analysis of higher flows for support of salmon. This analysis did not result in development of a certification condition that immediately requires implementation of salmon flows because there is continuing uncertainty regarding the manner in which reintroduction will continue and the specific needs of reintroduced salmon populations, as well as how actions to benefit salmon should be weighed against the purposes fulfilled by the McCloud-Pit Project. As noted above in Section 4.5, however, Condition 12 is updated to address potential Proposed Project impacts to existing salmon eggs and juveniles in the McCloud River associated with reintroduction efforts, and to require PG&E to work with the Board and fisheries agencies to evaluate existing information regarding impacts to salmon and determine if additional studies or actions are needed in the near-term, while providing for updates to flows or other actions if necessary over the term of the new McCloud-Pit Project FERC license.

The Board's determinations regarding CEQA and certification of the FERC relicensing of the McCloud-Pit Project protect public trust resources in and beneficial uses of the affected watersheds by establishing mitigation measures and include 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 new FERC

license for the McCloud-Pit Project 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 and 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.

#### **4.9 United States Environmental Protection Agency Guidance and Standards for Water Quality Certifications**

PG&E's Petition notes that in June 2019 the United States Environmental Protection Agency (USEPA) issued guidance regarding section 401 certifications that explains the certification process should focus on water quality impacts and requirements, and that USEPA initiated a rulemaking process in August 2019 to clarify the scope of a certification.

The rule proposed in August 2019 did not take effect until September 2020, after the McCloud-Pit Project certification had been issued, and was superseded by the adoption of a new rule in 2023. (85 Fed.Reg. 42210 and 88 Fed.Reg. 66558, respectively.) Moreover, the conditions of the certification all relate to the Proposed Project's potential water quality impacts, as informed by the need to protect beneficial uses of the watersheds that would be impacted by the Proposed Project. The certification conditions are necessary for the State Water Board to certify that the Proposed Project will be operated in a manner that is protective of water quality as required by Clean Water Act section 401. No changes to the certification are required in response to PG&E's comment.

#### **4.10 Conditions Requiring Future Approval of Plans by the Deputy Director of the Division of Water Rights**

PG&E's Petition notes that if it must wait for Deputy Director approval of plans required by conditions 1(B)(1), 2, 3(A), 3(B), 4, 5, 6, 7, 9, 10, 11, 12, and 14 before submitting those plans to FERC, it may not be able to meet FERC's deadlines for submission of the plans. PG&E requests that the certification include a provision that if the Deputy

Director does not approve the plan within 14 days of a FERC deadline, PG&E may file the plan with FERC, but could not implement the plan without Deputy Director approval.

The requested change does not appear to be necessary, as PG&E's past practices have included filing management plans required by certifications with FERC prior to approval by the Deputy Director. However, for clarity in implementation of the certification, Condition 16 is updated to address PG&E's request.

#### **4.11 Miscellaneous Corrections and Clarifications**

PG&E's Petition proposes edits to correct errors related to the McCloud-Pit Project description in the certification and to align condition timelines with timelines specified in Forest Service 4(e) requirements. PG&E's proposal to correct errors is appropriate. The Project description is updated as shown in the attached certification (Attachment 1 and Attachment 2).

In addition, for internal consistency, the certification is updated where appropriate (e.g., updates to rationale Sections 5.1, 5.3, and 5.12) to reflect the substantive changes made to the certification by this order.

Lastly, Condition 37 was developed subsequent to issuance of the 2019 certification. It is included in the amended certification to ensure PG&E complies with the Dredge or Fill Procedures and the Project's operation and maintenance activities result in no net loss of wetland quantity, quality, or permanence, consistent with the Water Code sections 16200-16201.

#### **4.12 Comments Received on the Draft Subsequent Environmental Impact Report**

On April 7, 2026, staff released a draft SEIR for public review and comment. The comment period concluded on May 22, 2026. During the comment period, staff received comments from: (1) PG&E; (2) the Tribe and NCRA; (3) American Whitewater; and (4) the Indian Cultural Organization. Comments and associated responses and SEIR updates are in Attachment 3: Final Subsequent Environmental Impact Report.

Comments received on the draft SEIR informed development of this Order, the final SEIR, and associated 2019 certification updates.

The final SEIR is included as Attachment 3 hereto and comprises the draft SEIR and its appendices (Volume 1) and responses to comments on the draft SEIR and revisions made to the draft SEIR (collectively, Volume 2). In addition, the State Water Board has prepared a Mitigation Monitoring or Reporting Program, included as Attachment 4 hereto, and CEQA Findings and Statement of Overriding Consideration, included as Attachment 5 hereto.

## **5.0 CONCLUSION**

For the reasons discussed above the Petitions are each granted in part and denied in part. The certification is amended as described in this Order and shown in Attachment 1 and Attachment 2. The final SEIR has been completed in accordance with CEQA and reflects the State Water Board's independent judgment and analysis. The State Water Board has reviewed and considered the information in the final SEIR prior to its adoption of this Order.

## 6.0 ORDER

IT IS HEREBY ORDERED that:

- (1) The certification for the McCloud-Pit Project, FERC Project No. 2106, is amended as attached to this order;
- (2) The final SEIR is certified as being completed in compliance with CEQA and reflecting the independent judgment and analysis of the State Water Board and has been reviewed and considered prior to the adoption of this Order;
- (3) The Mitigation Monitoring or Reporting Program and the CEQA Findings and Statement of Overriding Consideration are adopted.

### CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 17, 2026.

AYE: Chair E. Joaquin Esquivel  
Vice Chair Dorene D'Adamo  
Board Member Sean Maguire  
Board Member Laurel Firestone  
Board Member Nichole Morgan

NAY: None

ABSENT: None

ABSTAIN: None

  
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Courtney Tyler  
Clerk to the Board

- Attachment 1: Final Water Quality Certification for Federal Permit or License (Part of Order Responding to Petitions for Reconsideration) (Strikethrough/Underline Version)
- Attachment 2: Final Water Quality Certification for Federal Permit or License (Part of Order Responding to Petitions for Reconsideration) (Clean Version)
- Attachment 3: Final Subsequent Environmental Impact Report
- Attachment 4: Mitigation Monitoring or Reporting Program
- Attachment 5: California Environmental Quality Act Findings and Statement of Overriding Considerations