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Via E-Mail and U.S. Mail

Amber Villalobos
State Water Resources Control Board
Division of Water Rights—Water Quality
Certification Program
P.O. Box 2000
Sacramento, CA 95812-2000
E-Mail: avillalobos@waterboards.ca.gov

Re: McCloud-Pit CEQA Section 15063(g) Informal Consultation

Dear Ms. Villalobos:

On behalf of the McCloud River Club, we submit this response to the State Water Resources Control Board's ("Board") Notice of Section 15063(g) Informal Consultation regarding PG&E's requested Water Quality Certification for the McCloud-Pit Hydroelectric Project. The Club appreciates the opportunity to provide input to the Board regarding whether it should prepare an environmental impact report or negative declaration to support its determination on the requested certification.

In our view, the primary factor in determining the appropriate level of CEQA review here is whether the Board intends to consider increasing in-stream flows for the McCloud River above the flow regime considered in FERC's final EIS for the Project. As you know, at the conclusion of its lengthy relicensing proceeding, FERC recommended—and the U.S. Forest Service adopted as License Condition No. 19— an in-stream flow regime that was supported by a wide range of interested stakeholders. We believe that this collaboratively developed in-stream flow regime best protects the unique fishery resources of the McCloud River and that, accordingly, the Board should ultimately adopt a condition imposing the identical flow requirements. A negative declaration, in conjunction with FERC's final EIS, would likely be the proper CEQA documentation to support such a decision.

We also understand that the Board may be considering whether additional in-stream flows might be necessary to address the potential reintroduction of Central Valley salmon species to the McCloud River upstream of the Shasta Dam. In our view, the Board could not legally require such additional flows unless it first prepared an environmental impact report (“EIR”) for the Project that fully disclosed, analyzed, and, where feasible, mitigated all potentially significant impacts of doing so.

As importantly, we believe that the Board’s CEQA review for the Project’s Water Quality Certification is not the proper forum in which to consider these issues because the National Marine Fisheries Service (“NMFS”) has not yet issued its final recovery plan for the relevant Central Valley salmon species. As a result, it is unknown what, if anything, NMFS’ final plan will recommend for the McCloud. In other words, the potential reintroduction of salmon into the McCloud is far too speculative to allow the Board to meaningfully assess the utility, effectiveness, and environmental impacts of increasing flows to support any such reintroduction. Attempting to assess those impacts in an EIR at this point in time would therefore not only add unnecessary delay and expense to the already lengthy Project relicensing, but also leave any such EIR vulnerable to legal challenge.

Moreover, as part of its efforts to prepare a final recovery plan, NMFS and the Bureau of Reclamation (“BOR”) are presently conducting feasibility studies regarding the potential reintroduction of salmon above Shasta Dam, and in other watersheds. Once these studies are completed, NMFS, BOR, and other stakeholders can then assess the viability, cost-effectiveness, and associated impacts of reintroducing salmon to the McCloud, as compared to other salmon restoration efforts. It may well be that NMFS decides that any available salmon restoration funds could most effectively be utilized on other rivers.

In light of these factors, we urge the Board to prepare a negative declaration expeditiously and to use that document, together with FERC’s final EIS, as the basis for its Water Quality Certification. We also urge the Board to adopt the collaboratively developed flow regime for the Project already adopted by the U.S. Forest Service.

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Thank you for your attention to this response, and please do not hesitate to contact me if you have any questions.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Robert "Perl" Perlmutter

cc: McCloud River Club
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